

White Paper Seeking a Ban on Elephant Ownership by Private Individuals

We represent organisations working for the protection, welfare and rights of animals in India. One of our core beliefs is that elephants have an *intrinsic value* and must be treated with *dignity*. Thereby, we strongly affirm that all elephants must be entitled to a range of legal and constitutional rights namely: bodily integrity, autonomy, liberty and dignity. These **core** rights will prohibit ownership of elephants as *things*, prevent their commercial exploitation, torture, cruel and degrading treatment and ensure their right to physical and mental well-being.

Recently, elephant Saumya was killed by eating a fruit laced with explosives, which severely damaged her mouth leading to a slow and painful death. This confirms that baiting with explosives is a primitive practice to exterminate animals termed as “vermin”. The focus should now be to implement innovative methods to manage human-animal conflict.

Humane policy changes should be initiated to deter unauthorized use of firearms and explosives. Not doing so, will have negative repercussions for both humans and animals and ultimately on conservation efforts. In addition, we need farmer centric policies to mitigate human-wildlife conflict. Compensation for crop loss is central to this conflict, and must be addressed on top priority.

We seek your support in requesting an independent investigation of the reasons for Saumya’s separation from her group and many factors that may have led to her being grievously harmed. Many other elephants might meet the same fate if precautions are not immediately put into place.

One of the principal root causes of violence against elephants is the loophole in law (Section 40 of the Wildlife Protection Act) that allows for their capture and ownership. Captivity is extremely cruel to elephants. Additionally, COVID-19 has exposed a harsh reality of elephants in captivity. As per government estimates from 2019 there are close to 2675 captive elephants in India of these more than 1800 are owned by private individuals.

The upkeep of most privately held elephants depends on the ability of their owners to generate daily income by making them work. In the absence of such income, due to Covid-19 lockdowns, we fear for the health and safety of these captive elephants. As captive animals, elephants are at greater risk of zoonotic

infection. Continuous lockdowns have only exposed the vulnerability to their care and upkeep:

Health Risks due to Zoonotic Tuberculosis in Captive Elephants

- 1) Captive Elephants commonly suffer from zoonotic Tuberculosis. A December 2017 report of the Animal Welfare Board of India confirmed that 10 out of 91 captive elephants in Hathigaon, Amer Fort, Jaipur were suffering from zoonotic TB.¹ These ten elephants continued to ferry tourists with no breaks up until the COVID-19 lockdowns. It is suspected that more elephants in Hathigaon may have acquired foot rot and TB, but due to lack of neutral and independent inspection such practices are allowed to go unchecked. A Supreme Court mandated inspection with Forest Department and PETA is yet to take place.
- 2) A scientific study conducted on 600 captive elephants in the states of Karnataka, Kerala, and Tamil Nadu in southern India found a high prevalence of asymptomatic TB infection in Asian elephants.² People for the Ethical Treatment of Animals (PETA) states: “COVID-19 is a zoonotic disease and so is tuberculosis. It is high time that the government made interventions in preventing such diseases among captive elephants. Unfortunately, infected captive elephants are forced to work and paraded around at crowded festivals increasing the chance of disease transmission to humans and other elephants.”³

Health risks due to lack of “Care and Upkeep” because of loss of revenue

- 1) Rupali is an 18-year-old captive elephant captured from the wild in Assam. She was traded in 2018 to R.Haresh Babu, a private owner in Madurai through the notorious *Sonepur* Mela in Bihar where thousands of animals are trafficked. After the COVID lockdown Haresh joined **many elephant owners from across the country** whose daily earnings from elephant rentals have stopped, in calling for help to ‘**source fodder, namely coconut palm leaves, CO3, CO4 grass, peepal/banyan tree leaves**’. They are blaming ‘unemployment’ (of the elephant) for their inability.⁴

¹ REPORT ON EVALUATION OF APPLICATIONS FOR REGISTRATION OF CAPTIVE ELEPHANTS FOR PERFORMANCE IN JAIPUR <https://www.petaindia.com/wp-content/uploads/2018/07/AWBI-REPORT-ON-APPLICATIONS-FOR-REGISTRATION-OF-ELEPHANTS-UNDER-PARR.pdf>

² Serodiagnosis of Tuberculosis in Asian Elephants (*Elephas maximus*) in Southern India: A Latent Class Analysis <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3500311/>

³ “PETA raises Zoonotic disease threat of captive elephants” 12th may 2020 <https://www.newindianexpress.com/states/kerala/2020/may/12/peta-raises-zoonotic-disease-threat-to-captive-elephants-2142050.html>

⁴ How COVID-19 has exposed the limits of captivity for Elephants? April 7, 2020 <http://theleaflet.in/how-covid-19-has-exposed-the-limits-of-captivity-for-elephants/>

- 2) Ever since the beginning of the lockdown numerous reports have emerged where circus owners are unable to provide for both their human and animal workers. Rambo Circus is stranded with 88 staffers and approximately 20 animals in Airoli, Navi Mumbai.⁵ Jumbo circus has two camps stranded in Kerala with over 30 animals.⁶ Great Bombay Circus is stranded in Manurgudi⁷, Tamil Nadu with 134 workers and many animals.⁸ Similar reports have emerged from Olympic⁹ and Empire¹⁰ Circuses in West Bengal, and Kamala Circus¹¹ in Tamil Nadu. As per the MoEFCC affidavit in January 2019 before the Hon’ble Supreme Court there are 26 elephants in circuses. But a recent AWBI RTI response received by FIAPO places the actual number of elephants in circuses at a much higher count. (RTI response of AWBI dated 22nd May 2020 is attached as **Annexure A.**)
- 3) Some states are making efforts to help. The Rajasthan Forest Department has said they are providing daily *per diem* to Hathigaon elephant owners to provide feed for the elephants.¹² Similarly, Kerala announced free food kits for 255 captive elephants for 40 days during the first lockdown.¹³ While laudable, these efforts are **not** sustainable in the long run, as social gatherings could be suspended for this entire year which will make it impossible for private owners to generate revenue from performances, joy rides and begging.
- 4) On 24th May 2020 a young temple captive elephant Deivyani has attacked and killed her mahout.¹⁴ We strongly suspect that this was caused by increased stress due to lack of adequate nutrition and exercise. Incidents like this are only likely to rise.

We submit that the pandemic is an important time to revisit elephant captivity as it stands at odds with public policy, law, ethics, rights and public health. The

⁵ “No money or food: Coronavirus lockdown leaves Mumbai’s-famed Rambo Circus stranded” April 6, 2020 <https://www.indiatoday.in/india/story/no-money-or-food-coronavirus-lockdown-leaves-mumbai-s-famed-rambo-circus-stranded-1663915-2020-04-06>;

⁶ With 30 Animals & 350 Staff, Jumbo Circus Reels Under Lockdown, April 14 2020 <https://www.thequint.com/coronavirus/jumbo-circus-gemini-lockdown-limbo-government-financial-aid-business-collapse>

⁷ “Coronavirus: India’s circuses struggle to survive the lockdown” April 26, 2020 (BBC) <https://www.bbc.com/news/world-asia-india-52407534>

⁸ <https://www.outlookindia.com/website/story/india-news-even-with-help-from-locals-lockdown-could-spell-doom-for-indias-last-circus-struggling-for-survival/351642>

⁹ Lockdown Could Spell Doom For India’s Last Of The Big Circuses Despite Help From Locals “Coronavirus: India’s circuses struggle to survive the lockdown” April 26, 2020 (BBC) <https://news.yahoo.com/coronavirus-indias-circuses-struggle-survive-230753969.html>

¹⁰ “Coronavirus | In lockdown, the big top collapses in Bengal” April 13, 2020 <https://www.thehindu.com/news/cities/kolkata/coronavirus-in-lockdown-the-big-top-collapses-in-bengal/article31325826.ece>

¹¹ <https://www.newindianexpress.com/states/tamil-nadu/2020/apr/12/travelling-circus-troupe-stranded-near-madurai-2128952.html>

¹² ‘Jumbo concern for Raj gentle giants’, Jaipur, Times of India, 24th April 2020

¹³ <http://www.uniindia.com/covid-19-255-captive-elephants-to-get-free-food-kits-in-kerala/south/news/1971652.html>

¹⁴ “Temple Jumbo Kills Man” Express News Service, 25th May 2020

Center must urge States to facilitate unconditional handover of elephants whose owners, guardians and custodians are finding it difficult to care for. Often, Forest Departments delay confiscation or sheltering of such animals since the owners cannot pay the requisite maintenance fees to the Forest Department.

The policy of trying to make the owners pay for upkeep often delays and destroys the life and health of the elephant in question. Furthermore, it is ten years since the Government-commissioned *Gajah* report was released, which recognised the cruelty faced by captive elephants and recommended phasing out captivity. *Gajah* also recommended a range of humane, farmer centric policies to mitigate human-animal conflict.

In this White Paper submission, through a survey of law, policy, cases of individual captive elephants and Indian jurisprudence on animal rights read with the science of animal sentience; we respectfully submit that the time is ripe to ban further issuance of ownership certificates of elephants to private individuals - **as an unconstitutional practice.**

I. Violent Crimes Against Wild and Captive Elephants

At this time of collective national outrage against the brutal murder of Saumya, we submit that it would be hypocritical not to acknowledge the brutal plight of every violence and torture faced by captive elephants that often leads to their untimely death, or unfortunate attacks on their handlers. We urge Project Elephant to conduct a detailed investigation of several wild, zoo and captive elephant deaths in the past two years which have gone unpunished, and often with no investigation at all. For example:

- 1) On 21st April 2018, a 42 year old temple elephant, Rajeshwari in Salem, Tamil Nadu died of multiple abscess and negligence. There was no investigation of her wounds as ‘inflicted by violence’, and no one was arrested.¹⁵
- 2) On 25th May 2018, Masini a 10 year old temple elephant in Trichy, trampled a mahout to death. While she was later transferred to an elephant camp, violence between captive elephants and mahout is a sign of their retaliation against daily violence by ankush and bull hooks.¹⁶

¹⁵ <https://www.thehindu.com/news/national/tamil-nadu/temple-elephant-dies-a-natural-death/article23632219.ece>

¹⁶ <https://timesofindia.indiatimes.com/city/trichy/samayapuram-temple-elephant-tramples-its-mahout-to-death/articleshow/64325474.cms>

- 3) On 3rd September 2018 a 68 year privately owned elephant Sundari in died in private captivity after she was abandoned because of multiple ailments. Sundari had born over six decades of hardship and violence of captivity.¹⁷
- 4) On 23rd April 2019 an 18 year young temple elephant Valli died in captivity in Tenkasi, Tamil Nadu.¹⁸
- 5) On 29th November 2019, Vedhanayaki a 40 temple Elephant in Erode, Tamil Nadu died of multiple abscess and negligence in captivity.¹⁹
- 6) On 28th December 2019, Neelakantan a 20 year young temple elephant died of multiple ailments and negligence in captivity in Kollam, Kerala.²⁰
- 7) On 2nd March 2020, Pawankali an 80 year old temple elephant in Haridwar, Uttarakhand died of multiple abscess and foot rot disease, largely due to the violence and negligence of captivity.²¹
- 8) On 8th March 2020 Jameela, a 55 year old privately owned elephant was abused and tortured and abused for over a decade, finally moved to a government facility. But once again there was no investigation or arrest for abuse and torture she faced.²²
- 9) On 9th March 2020, Sri Sri a temple elephant killed his mahout under tremendous distress from the violence of captivity.²³
- 10) On 11th April 2020, a wild elephant was found dead in Kollam, Kerala, investigatins confirmed it was a murder, as the elephant consumed a fruit snare with a hidden explosive kept for illegally hunting a wild Sambar Deer.²⁴
- 11) On 8th May 2020 media reported the horrible state of Rakesh a zoo elephant in Kapila Zoo, Odisha who was captured from wild, tortured in captivity, suffering from deep septic wounds on all feet due to prolonged or full time chains. As per CZA website, this zoo license is expired. Rakesh still suffers with all of his ailments in zoo captivity.

¹⁷ <https://www.thehindu.com/news/cities/Madurai/elephant-under-treatment-dies-tirunelveli/article24857095.ece>

¹⁸ <https://www.thehindu.com/news/cities/Madurai/ilanji-temple-elephant-valli-dead-tirunelveli/article26933577.ece>

¹⁹ <https://timesofindia.indiatimes.com/city/erode/temple-elephant-vedhanayaki-dies-of-ailment/articleshow/72300991.cms>

²⁰ <https://www.thenewsminute.com/article/kerala-jumbo-neelakantan-dies-after-years-neglect-abuse-caretakers-115037#:~:text=Shasthamkotta%20Neelakantan%2C%20a%20tusker%20of,tusker%20succumbed%20to%20his%20injuries.>

²¹ <https://www.dailypioneer.com/2020/state-editions/80-year-old-pawankali-leaves-akhada-in-grief.html>

²² <https://timesofindia.indiatimes.com/city/chennai/elephant-with-open-wounds-rescued-sent-to-rehab/articleshow/74543182.cms>

²³ <https://www.thehindu.com/news/national/karnataka/appeal-to-shift-elephant-that-killed-mahout-on-aol-campus/article31034434.ece>

²⁴ <https://keralakaumudi.com/en/news/news.php?id=322646&u=>

- 12) On 27th May 2020, Elephant Soumya died in Silent Valley National Park in Palakkad after consuming a fruit snare that had a hidden explosive fitted in it.²⁵
- 13) On 10th June 2020, two wild female elephants – one of whom was full term pregnant – died by consuming poisoned water in the Surajpur Forest Division, Chhattisgarh.²⁶ Another report has also appeared of a third wild elephant in Chhattisgarh who died of poisoning.²⁷
- 14) In addition, heart wrenching reports have emerged of a death of a six year old boy in Tamil Nadu by consuming a fruit snare filled with explosives²⁸, and another report of a jackal who died also in Tamil Nadu²⁹, and a monkey was found in Kerala with a completely disfigured face in the forest, against mostly because of an explosive that burst in his mouth³⁰.

With this narration of cases, we submit that violence against elephants (and also spreading to other wild animals and humans) whether it is during captivity, or a violent attack in the forest or an attempt to capture them illegally for captivity need to be addressed urgently.

II. Ownership Certificates for Elephants are at odds with the Wild Life Act, 1972 and Constitution of India

A. Ownership of Elephants is an Anomalous Exception in Law

It is our contention that one of the primary purposes of the Wild Life Act is to create immunity from captivity. Ownership of elephants as captive is contrary to WPA and the Constitution. At best ownership is an anomalous exception, that comes with a set of conditions. The only reason a mechanism of ownership certificate (OCs) was allowed under the said Act was to bring existing numbers of captive elephants, at the time of enactment of WPA in 1972, under a welfare framework.

²⁵ <https://scroll.in/latest/963867/kerala-elephant-death-police-make-first-arrest-another-person-detained>

²⁶ <https://www.thequint.com/news/india/two-elephants-died-in-chhattisgarh-one-among-them-was-pregnant#:~:text=Days%20after%20there%20were%20nationwide,one%20of%20them%20was%20pregnant.>

²⁷ <https://www.hindustantimes.com/india-news/3-elephants-found-dead-in-3-days-in-north-chhattisgarh-cause-of-death-still-unclear/story-wesxRF2leejO2LY4nytkbj.html>

²⁸ <https://www.indiatoday.in/india/story/boy-dies-after-biting-into-explosive-in-tamil-nadu-village-1687781-2020-06-11#:~:text=A%206%2Dyear%2Dold%20boy%20died%20at%20Alagarai%20village%20near,fishing%20near%20the%20Cauvery%20banks.&text=The%20child%20died%20before%20he%20could%20get%20any%20medical%20hel>

²⁹ <https://weather.com/en-IN/india/news/news/2020-06-10-meat-bomb-jackal-arrested-tn>

³⁰ <https://www.newindianexpress.com/states/kerala/2020/jun/11/after-tragic-death-of-elephant-now-monkey-with-disfigured-face-spotted-in-kerala-2155214.html>

The elephant like all Schedule I **animals** under the purview of the act are solely defined as those that are found wild in nature (section 2(36))³¹. However, for the sake of description it describes a **captive animal** as one which is captured or bred in captivity (under section 2(5)). In the earlier 1972 version of WPA, the elephant was placed in Schedule II, Part I, and domesticated elephants were placed in a separate category of cattle with much lower protection. This was later rectified in the 1991 amendment of the WPA - removing the domesticated elephant with the cattle category altogether and protecting the elephant as a Schedule I animal, **and deemed wild**. Thus, at present under WPA there is only one kind of elephant which is wild and hence free. In *Zulfikar Ali*, a Delhi District Court by a 2014 order clarifies that there is no captivity versus wild distinction with respect to elephant. The Court states:

“The Wild Life (Protection) Act, 1972 does not speak about any domestic animal. The term 'Wild Animal' which has been used is in reference to an animal which can be found 'wild in nature' in general. Nobody can say that Indian elephant cannot be found 'wild in nature'. Therefore, an elephant though... may have been domesticated would still qualify to be a "Wild Animal" under the said definition.”³²

Also, the larger ethos of the policy created by WPA is that the Forest Department is the sole custodian of all schedule flora and fauna (section 39). An inference may be drawn that wild animals in general are not owned by anyone and are not considered to be property. It is only in certain circumstances as mentioned in the Act and when a person is ***given permission by the Chief Wildlife Warden*** to own an animal, can they be considered to *have an owner*.

According to Section 40 of the Act, no person can keep in his control, custody or possession an elephant or sell, offer for sale or otherwise transfer or transport any elephant without the permission of the Chief Wildlife Warden of the state. Section 42 of the Wildlife (Protection) Act gives the power to the Chief Wildlife Warden (CWLW) to issue a certificate of ownership to a person who in his opinion is in lawful possession of such animal; provided that he is convinced that there are **'adequate facilities for housing, maintenance and upkeep of the animal'**. Section 43(1) of the Wildlife (Protection) Act 1972 prohibits the transfer of captive elephants by sale or offer for sale or by any other mode of consideration of commercial nature.

³¹ Section 2 (36) of WPA states “wild animal” means any animal specified in Schedules I to IV and found wild in nature.

³² <https://www.thequint.com/news/india/two-elephants-died-in-chhattisgarh-one-among-them-was-pregnant#:~:text=Days%20after%20there%20were%20nationwide.one%20of%20them%20was%20pregnant.https://indiankanoon.org/doc/27695794/>

The above scheme allowed ownership certificates under Section 42 for any wild animal with the permission of the CWLW. This was radically reformed by the 2002 Amendment (Act 16 of 2003) which freezes 17th January 2003 as the last date of issuing fresh ownership certificates for any captive wild animal except for 'live elephants' via a proviso in Section 40 (2A/2B), continuing a backdoor window for issuing of ownership certificates **only for captive elephants** to private parties.

40. Declarations.—(1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I or Part II of Schedule II, 1[or animal article, trophy or uncured trophy] derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept. ...

*2[(2B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration had been made under sub-section (1) of section 40: **Provided that nothing in sub-sections (2A) and (2B) shall apply to the live elephant.**]*

It is our contention that the 2003 amendment on the one hand clarifies the ambiguity in Chapter V; and aligns WPA with its correct intention of making any further captivity of wild animals illegal. But on the other hand the sole exception of 'live elephants' in section 40 (2A/2B) is arbitrary and unconstitutional under Articles 14 and 21 and completely inconsistent with WPA and the overall corrective purpose of the Amendment Act 16 of 2003. **The protection provided by the amendment must also extend to live elephants.** The amendment Act 16 of 2003 is attached as **Annexure B**.

In brief, as a consequence of this amendment all captivity/ownership/or trade before the date of the amendment is given immunity, and all further transactions in wild animals outlawed - except for elephants. Hence we are faced with an extremely anomalous situation, wherein, post an illegal capture of a wild elephant, an application for regularisation, ownership and issuance of Ownership Certificate remains a rampantly available option.

It is our case that elephants are sentient beings that have a deep sense of themselves and we have a greater duty to protect them against a life of forced captivity, because of which the sole exception of live elephants in the impugned amendment is arbitrary. The benefit of protection against captivity embedded in the 2003 amendment must apply to all wild animals including the elephant - or we lose the entire purpose of WPA and the 42nd Amendment to the Constitution.

B. Ownership of elephants comes with a conditional legal duty to provide care

Because captivity is cruel to elephants their ownership under section 42 is linked to the capacity of the owner to provide for their care and upkeep. This a key, unconditional duty, and possibly the only set of rights available with captive elephants subjected to years of hardship.

*Section 42. Certificate of ownership.—The Chief Wild Life Warden may, for the purposes of section 40, issue a certificate of ownership in such form, as may be prescribed, to any person who, in his opinion, is in lawful possession of any wild animal or any animal article, trophy, uncured trophy and may, where possible, mark, in the prescribed manner, such animal article, trophy or uncured trophy for purposes of identification: 1[**Provided that before issuing the certificate of ownership in respect of any captive animal, the Chief Wild Life Warden shall ensure that the applicant has adequate facilities for housing, maintenance and upkeep of the animal.**]*

Further meaning and details have been added to the idea of adequate facilities for housing, maintenance and upkeep of elephants. These details have been provided by the Project Elephant issued ‘Guidelines for Care and Management of Captive Elephants (2008)’; Kerala Captive Elephants (Management and Maintenance) Rules, 2003 and finally the Tamil Nadu Captive Elephant (Management and Maintenance) Rules, 2011. All of these provide detail procedures for housing, maintenance, travel, work, feed, and regular veterinary care. (All these guidelines are attached as **Annexures C1, C2 and C3**).

The guidelines and rules for care and maintenance of captive elephants are detail and impose an unconditional – legally enforceable – duty on the owners of elephants. The most prominent is retirement of old elephants from all work tasks at age 65 years as per PE and Kerala and 60 years as per the Tamil Nadu Guidelines. It is common cause that this retirement rules are never followed,

along with many other mandatory rules. Further, the guidelines in line with the Prevention of Cruelty Act, 1960, consider failure to provide adequate feed as cruelty to the animal an issue that has cropped up during the COVID-19 lockdown.

The duty to provide care of the elephant is not linked to generating revenue, but is unconditional. WPA does not offer OCs for the ostensive purpose of making an elephant work for a revenue. Animal Welfare Board of India in 2016 has stopped providing any NOCs for seeking Performing Animal Registrations for Elephants for circuses. Repeat investigations of elephants used for joyrides, for example in Hathigaon in Jaipur have revealed no performance registrations are obtained.

Thus, not only are elephants allowed to be owned through a legal loophole, they are made to work without any permissions under the Performing Animal Registration Rules. On top of this, during COVID-19 lockdowns most captive elephant owners are openly expressing their inability to feed them for lack of revenue from joy rides and processions.

This is an important reality to note, as over 1800 elephants are owned by private individuals, who have bought captive elephants by taking advantage of the aforesaid loopholes, and use them to generate revenue. **As per records of the MoEFCC, 723 of these privately owned elephants do not even have ownership certificates – which confirms that their possession itself is illegal.** This exposes the unsustainability of captivity of elephants, and proves that owners of captive elephants can never be the true and correct care providers. (Annexure D)³³

Rehabilitation of captive elephants in dire need of rescue remains the greatest challenge. We have nowhere near the capacities in limited government and privately recognized elephant sanctuaries to rehome captive elephants in distress. However, the central government has time and again made funds available especially through CAMPA (Compensatory Afforestation Fund Management and Planning Authority) scheme. We need a better central-state mechanisms for this funds to reach state forest departments to set up elephant sanctuaries, and we request the Project Elephant to play a central role in this.

³³ We are grateful to independent animal activist Antony Rubin for sharing this RTI copy with us.

C. SHIFT IN POLICY

The Indian government through numerous policies, reports and its own actions - like the Project Elephant, the *Gajah* Report and its proposition to declare the Asian Elephant endangered in the Convention of Migratory Species COP 13 in Gandhinagar - has demonstrated a commitment to completely rule out fresh captivity of elephants. Hence the impugned 2003 exception stands contrary to a deep recognition of inherent rights of elephants and deemed cruelty of captivity.

In 2010, under the aegis of Project Elephant, MoEF constituted the Elephant Task Force to undertake the largest study and survey on captive and wild elephants in India, through which the *Gajah* report is published, and the relevant recommendations pertaining to captive elephants are:

1. Eventual phasing out of the acquisition of elephants, already in captivity or wild-caught, for entertainment, commercial or other purposes by agencies, institutions or individuals. It has further recommended an end to new commercial acquisition of wild-caught elephants by agencies, institutions or individuals.
2. Amendment to the Wildlife (Protection) Act 1972 to prohibit the ‘use of elephants in exhibitions, circuses, weddings, unregulated tourism, public functions, begging or for other entertainment’.
3. **Particularly deletion of the impugned proviso of Section 40 2A/2B, that creates a live elephant exception.**
4. Elephant should be declared as the National Heritage animal.

The Elephant Task Force concluded that “captive elephants have specific needs for access to water, adequate nutrition and exercise. **They ideally need to interact with others of their own species. Elephants are a long lived and intelligent species with a developed sense of self and relationships with other elephant kin. The Task Force is convinced of the need to act decisively to improve the quality of care of captive elephants.**”

The report also recognized the **sentience and intelligence of elephants**. It said that compassion must not only extend to other humans but also to other living beings. The report cited and referred to certain research articles and studies indicating the high cognitive skills of elephants. Some of these are as follows: -

1. a) “Whether endangered or not, ivory comes from highly intelligent, social animals that are affected by death and are bound by close familial ties. This is demonstrated by a plethora of elephant studies. “(Varner, 2003)

2. b) Whether through poaching or culling, ivory sourced from non-natural mortalities originates from the killing of sentient individuals. In a recent paper on elephant personhood and memory, Varner concludes that elephants are “near-persons” based on biographical consciousness, Machiavellian intelligence and encephalization quotients among other traits. He argues that although “person” is normally considered synonymous with human beings, that “among ethicists, the descriptive component usually refers to certain cognitive capacities which may or may not be unique to human such as rationality, self-consciousness, or moral agency”.

c) “Elephants exhibit remarkable physical vigour, unusual social complexity and significant cognitive abilities. Furthermore, it acknowledges that elephants are complex, self-aware individuals, possessing distinct histories, personalities and interests, and that they are capable of physical and mental suffering.” (Global Elephant Charter)³⁴

It is now a scientific fact that Elephant captivity is cruel, and creates high levels of stress. A 2019 study by the Centre for Cellular and Molecular Biology, Hyderabad has confirmed that elephants made to perform at religious ceremonies “had a higher amount of stress hormones than others. The study explained that heightened levels of stress can cause infertility, hyperglycemia, suppression of immune response, imperfect wound healing, and neuronal cell death.”³⁵ **(The study is attached as Annexure E.)**

Even though no significant law and policy changes have followed the recommendations of Gajah, certain incremental decisions deserve mention. In 2015 AWBI decided to stop registration of elephants for performances under the Performing Animals Rules in view of the cruelty and abuse suffered by the animals circuses.

Emboldened, the MoEFCC Memorandum dated 07.11.2013 states that Chief Wild Life Wardens do not have the power to issue ‘No Objection Certificates’ to the transfer of elephants for religious purposes. This is violated regularly. In line with the MoEFCC 1998 notification, AWBI in September 2016 issued an advisory asking MoEF to ban elephants from performances stating “This move is both informed and scientific and in the best interests of this species and the human.” This culminated in a draft MoEFCC notification dated Nov 2018

³⁴ http://www.environmentandsociety.org/sites/default/files/key_docs/Gajah.pdf

³⁵ “As captive elephants starve, lockdown brings problematic practice to the fore” by Supriya Vohra, 27 May 2020 (<https://india.mongabay.com/2020/05/as-captive-elephants-starve-lockdown-brings-problematic-practice-to-the-fore/#>)

banning all animals including elephants from circuses, for comments. The draft notification states that: *'No animals shall be used for any performances or exhibition at any circus or mobile entertainment facility.'*³⁶ However, it is yet to be notified.

Ironically, despite the above, but largely consistent with the argument of this section that there is shift towards phasing out captivity but lacking a clear policy and rights based foundation: the Indian government submitted a proposal to seek a vote on adding the Asian Elephant in Appendix I of the Convention of Migratory Species (CMS) - which is governed by Article III of the convention which will recognise at a UN global level that the Asian Elephant has become endangered. This is further critical because Article III (5) of the convention reads: *"Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species. Exceptions may be made to this prohibition only if: a) the taking is for scientific purposes; b) the taking is for the purpose of enhancing the propagation or survival of the affected species; c) the taking is to accommodate the needs of traditional subsistence users of such species; or d) extraordinary circumstances so require; provided that such exceptions are precise as to content and limited in space and time. Such taking should not operate to the disadvantage of the species."*³⁷

Taking elephants captives serves none of the limited exceptions in Article III (5). To really meet its international, constitutional and policy objectives the government needs to recognise a rights based interest in the elephant, and declare issuance of any further ownership certificates illegal. We commend the government's proposal at CMS and its success, however our domestic law needs to be made consistent with a ban on any further Ownership Certificates and create a mechanism for rescue and rehabilitation of elephants currently under captivity. This necessitates that the anomaly of the impugned 2003 amendment, and the live elephant exception is struck down as unconstitutional.

III. Captivity is an Extremely Cruel Practise fed by a criminal nexus of illegal capture and trade of wild elephants

Repeated government, non-government, private and media investigations have confirmed a strong criminal nexus between Assam (where most illegal capture of wild elephants happens) and OCs are issued in lieu of the impugned 'live elephant' proviso; traded in Sonapur in Bihar to private owners across India, who

³⁶ <http://egazette.nic.in/WriteReadData/2018/193395.pdf>

³⁷ https://www.cms.int/sites/default/files/instrument/CMS-text.en_.PDF

use them for ‘performances’ as entertainment, parades, tourist rides and religious/wedding processions. Any interference with the right of the elephant to remain free in the wild – whether by illegal capture, poaching or violent crimes like faced by Saumya must be shunned with strong legal action.

1. In **2003**, MoEFCC led committee chaired by **SC Dey** on captive elephants placed the estimates of captive elephants to be between 3300-3400, out of which 2650-2700 were in private ownership. If compared with the 2019 figures listed above, almost 900 captive elephants in private ownership either died within a gap 15 years or many captive elephants remain unaccounted for, and we are far from a correct figure of captivity.
2. “Captive Elephants in Bihar” a Wildlife Rescue and Rehabilitation Centre investigation dated **2009** states that: “Elephants were brought by temples, circus owners, ashrams and by individual owners. Female were bought by private owners and some ashrams. The elephants mostly originated from Assam and had gone through basic training process.”
3. The Jha Committee Report (**2011**), empowered by MoEF confirms ‘that there still exists a scope of illegal trade happening at the Sonepur Mela in Bihar’.
4. A 2011 report by Chaturbhuj Behera of Wildlife Crime Control Bureau, “*Study on illegal sale and transfer of live elephants from Assam*” once again confirmed an active nexus of illegal capture of wild elephants from Assam and their trade via the Sonepur Mela to demand in the Southern states. Some the findings, especially on the horrors of torture of captivity training and illegal networks of capture, acquisition and transfer are so strong, they are quoted in their entirety below:
 - a. “*Allegations are made by civil society on the trading of calves with the grown-up captive elephants. Locals in Doom Dooma, Tinsukia, Jorhat, revealed that young ones are occasionally captured and tamed by the elephant trainers.*”
 - b. “*The Assam Forest department faces enormous pressure from the elephant owners to allow the transfer of elephants, which is objected by NGOs, conservationists and animal-lovers.. General views are as: (1) Sale and transfer of elephants should be allowed on the consent of the two parties. ... “Transfer” of elephant from one state to another state does not take place without any tacit understanding of commercial nature.*”
 - c. “*Gangs and network of elephant trafficking: Well-organized elephant traffickers are spread over various districts of Assam, Bihar and UP. Their presence is significant around the source areas, such as Tinsukia (Dibrugarh, Doom- Dooma), Golaghat, Nawgaon, Lakhimpur, Sonitpur, Sivsagar and the destination points*

around Sonapur; Saran, Patna, Chapra, Balia, Baishali, Sitamarhi. Some of the elephant traffickers belong to Tripura, Deoria (UP) and Kerala. 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. Sadhus are sent by Maths. Wildlife Crime Control Bureau information reveals that well-conversant traffickers visit interiors of Assam and Arunachal Pradesh and make direct purchase from the owners. A person from Kerala, namely Chacko, used to frequent every nook and corner of Assam and Arunachal Pradesh to identify best elephants for transfer to Kerala.” (Annexure F)

5. TRAFFIC conducted another 2014 investigative report of the Sonapur Mela in November- December 2013 stating: “Furthermore, information from reliable sources suggests that more elephants are traded privately and are not displayed in Sonapur. Further obtained indicates there is a demand for live elephants in Kerala and that full grown tuskers are bought from the fair for temples and elephants are also bought locally by rich landlords who keep them as status symbols.”³⁸

6. Some important news reports on illegal capture of captive elephants just from the year 2019:

- a. 7th July 2019: “**320 elephants ‘leased’ by Assam have not returned**”

“Assam has, over the years, transferred 320 elephants to other States through an ambiguous leasing system. None of these animals has returned, and many are not even traceable.”...“Elephants are sold in the guise of a lease, whose term is usually not mentioned. The Wildlife (Protection) Act, 1972 is violated through this system that borders between legality and illegality. An elephant is sold for ₹10-

³⁸ <https://www.traffic.org/site/assets/files/5929/sonapur-advisory.pdf>

15 lakh, depending on whether female, male and tusker. The juveniles are invariably sold, although technically only those above 8-10 years old — the period when they reach maturity — should be transferred,” said a wildlife activist declining to be quoted.”³⁹

- b. 6th September 2019 **“Assam’s Elephant-Smuggling Racket”** “Between June 12 and 14, Ranjana Gupta, the Chief Wildlife Warden of Assam, issued the official orders to transport four juvenile elephants – Joytara, Babulal, Rupsing and Rani – from the state to Ahmedabad in Gujarat, where they were required for temple festivities. Two of the elephants were microchipped on June 13, and **were issued ownership certificates on the same day.**”⁴⁰
- c. 7th November 2019 **“Assam’s Joymala begging in Tamil Nadu temple”** “A 33-year old female elephant from Assam is allegedly in the illegal custody of a temple at Srivilliputhur in Tamil Nadu, and is being used for begging. Documents available with the Tamil Nadu forest department show that Joymala was leased only for six months in 2008 and that one Girin Moran of Kakopathar in Tinusikia district in Assam is the actual owner of the elephant.”⁴¹
- d. 20th November 2019 **“Assam Has Maximum Captive Elephants in India; Registers Rise in Jumbo Deaths, Conflicts”** “An RTI query filed by animal rights activist Antony Clement Rubin has revealed the Assam forest department has 150 elephants, while 752 pachyderms are in private custody. A total of 335 elephants in possession of private individuals have no ownership certificate or their documents are under process.”⁴²
- e. 17th November 2019 **“6 days after its capture, elephant dies at Assam training facility”** “A fully-grown wild elephant died at Assam’s Orang National Park on Sunday six days after it was captured with the help of drones and brought to a training facility there for domestication after being blamed for killing five people in Goalpara district on October 29, officials said.”⁴³
- f. November 2019: **‘Panel formed to ensure jumbos turn up at Bihar's famous Sonepur fair.’** New Indian Express reported and as

³⁹<https://www.thehindu.com/news/national/320-elephants-leased-by-assam-have-not-returned/article28313686.ece>

⁴⁰ <http://eastwindjournal.com/2019/09/06/environment/>

⁴¹ <https://nenow.in/north-east-news/assam/assams-joymala-begging-in-tamil-nadu-temple.html>

⁴² <https://www.news18.com/news/india/assam-has-maximum-no-of-captive-elephants-registers-rise-in-jumbo-deaths-conflicts-2393133.html>

⁴³ <https://www.hindustantimes.com/india-news/krishna-the-wild-jumbo-captured-recently-dies-at-a-training-facility-in-assam/story-VJDaCLwjodjYZPNDTI09OL.html>

a result of which after a gap of four years 9-12 captive elephants returned to Sonepur, allegedly for the purpose of trade.⁴⁴

Alarming after a four year gap, *Sonepur Mela* in December 2019 had almost 12 fresh captive elephants - ostensibly for the *Haathi Snaan*, but essentially for trade purposes. This a result of a failure in policy. Even though the policy of Indian government has been moving towards phasing out captivity, and putting additional controls over certain uses or outcomes of captivity; they have failed to take a clear stand recognising the right of the elephant to remain free and not be privately owned. It is this failure of a rights based interest to protect the elephants that has resulted in continued fresh ownership even today.

As recent as 2019, four captive elephants - all of young age, recently captured and issued with fresh ownership certificates were transferred to a temple in Gujarat, invoking international outrage. A statement by the global “Free Elephant Network” on the proposed transfer of four young freshly captured elephants from Assam to Gujarat reads:

“The elephants -- Rupsing, Joymati, Babulal and Rani – are suspected to have been illegally taken from the wild. For three of the elephants, there is no record of them being captive born until December 30, 2018. One male juvenile has a bullet injury on his left foreleg, suggesting violent capture. • The Jagganath Temple reportedly lacks adequate infrastructure and management for the elephants currently in their care... In captivity the young elephants’ physical, psychological, and social needs cannot be sufficiently met, which will cause poor health, mental distress, and lifelong suffering”

“If the four elephants were in fact taken from the wild, they have been subjected to the trauma of being removed from their natal herd. This separation is certain to cause long- term adverse effects on their health and welfare as they grow up lacking the normal social, psychological, physical, and environmental conditions that are crucial to the wellbeing of these complex and highly intelligent animals.³ Even if born in captivity, the trauma of separation causes the same long-term effects. The forcible capture and removal of wild elephants from their home ranges and social groups is archaic and unethical.”

Through the above timeline we see repeated evidence suggests that the current framework is failing to put an end to the practice of taking wild elephants, subjecting them to the cruelty of captivity training - renegading them to a lifetime

⁴⁴ <https://www.newindianexpress.com/nation/2019/nov/06/panel-formed-to-ensure-jumbos-turn-up-at-bihars-famous-sonepur-fair-2057993.html>

of bondage, fear, cruelty and a deep abrogation of their inherent rights to live free, in a herd, in the wild.

IV. Elephants have Rights

Elephants in India - *Elephas Maxis* - are advanced cognitive species that are sentient, complex, social beings who must remain in social herds in the wild - and therefore have inherent, inalienable rights to remain *free with dignity*. We urge you to recognise a new constitutional duty in Article 48A read with Article 21 to acknowledge a ***valid inherent rights interest*** in the elephant, discussed in chapter IV - ***“the right to live with no interference freely, in social herds in the wild”***.

Elephants as a species have several special characteristics and are often considered to be more human-like than any other large mammal. They are extremely intelligent beings with memories that span several years. Elephant intelligence has been compared with that of primates and cetaceans. Scientists are of the opinion that elephants are self-aware and self-reflective. They are **autonomous beings with high cognitive and social skills**.

In 2018 FIAPO led a Declaration on rights of the Elephants through which we recognize that elephants have inherent value and deserve to be treated with dignity. Their interests deserve equal moral and legal consideration. We believe that elephants should not be commodified and should be a subject of rights. At the same time, we realize that the legal status of elephants as that of property requires reconsideration and change. Thereby, we strongly affirm that all elephant must be entitled to the following legal rights:

1. Right to life with dignity
2. Right to bodily liberty, integrity and autonomy
3. Right against commercial exploitation, torture, cruel and degrading treatment
4. Right to physical and mental well-being
5. Right to interact and socialize with others of the same species
6. Right to a healthy environment and protection of natural habitat
7. Right to equal consideration of interests

We submit a table as a guide that adds meaning to the rights of the elephants from a non-anthropomorphic perspective; as imagined and lived by a free elephant - a core component of the idea of dignity supported by cognitive and sentience studies that confirm their experience of loss liberty in captivity. **(Annexure G)**

Recognition of a “higher interest” in Elephants

Until we recognise a higher and elevated interest in the elephant comparable to the idea of human rights, and challenge the very basis of ownership that licenses captivity, we will not be able to resolve the crisis of wild elephant captivity we have on our hands in India. This higher interest is based on a scientific understanding of animal sentience coupled with a deep behavioural knowledge of elephants as social herd animals.

Perhaps the best formation of animal rights was made in the case of *Nitin Singhvi*, Chhattisgarh HC, 2017 where in reference to wild animals the Court recognised “*that animals do have their rights... A salutary principle..is to uphold the rights of the animals to say “Leave us Alone”*”. We will discuss **four** other relevant decisions where Courts have recognised an animal interest, in the first three with reference to elephants to recognise a rights based claim, but through a limited framework of cruelty:

1. *Dr. Manilal Valliyate(PETA) v. State of Maharashtra and others* [Bombay High Court 2014]

Sunder, a captive elephant was shifted to an elephant sanctuary based on complaints of cruelty. The Court **acknowledged that elephants are highly cognitive and intelligent animals**. It also opined that “**Laws being man-made, there is likelihood of bias towards the man and the rights of animals have been treated as subservient**. It is the duty of the Court to ensure that the balance exists in the system.”

2. *N.R. Nair vs. Union of India* AIR 2001 SC 2337
In this case while upholding the MoEFCC notification dated 1998 banning five animals in performances (namely circuses) - bears, monkeys, panthers, tigers and lions, both the Kerala High Court and the Supreme Court on appeal recognised the first recorded language of animal sentience in Indian Courts. Once again the Courts upheld the notification against the claims of the right to trade of circus owners, and ruled in favour of animals by recognising a greater interest in them. The Court held:

- “*In Article 19(1) (g) do not permit carrying on of an activity whether commercial or otherwise, if it results in infliction of unnecessary pain and suffering on the specified animals.*”
- “*Circus animals are being forced to perform unnatural tricks, are housed in cramped cages. subjected to fear, hunger, pain, not to mention the undignified way of life they have to live with no respite and the impugned notification has been issued in conformity with the changing scenario, values of human life, philosophy of the Constitution,*

prevailing conditions and the surrounding circumstances to prevent the infliction of unnecessary pain or suffering on animals. Though not homosapiens. they are also beings entitled to dignified existences and humane treatment sans cruelty and torture.”

4. *Animal Welfare Board of India v. A Nagaraja (2014) [Supreme Court of India]*

The Apex Court opined that animals also have intrinsic value and worth and created a sentience based language of animal suffering and rights:

a. *“ Bulls (Bos Indicus) are herbivores, prey by nature adopted to protest themselves when threatened engaging in a ‘flight response’, that is run away stimulus, which they find when threatening...Frustration of the Bulls is noticeable in their vocalization and, looking at the facial expression of the bulls, ethologist or an ordinary man can easily sense their suffering.Bulls are also intentionally subjected to fear, injury – both mentally and physically – and put to unnecessary stress and strain for human pleasure and enjoyment”*

b. *Jallikatu recognised that the pain and suffering of animals. The Court went even further by reading Article 21 into this suffering: 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... “Life” for animals 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.*

5. In a recent 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.”

V. Conclusion:

Elephant captivity perpetuates the myth of elephants being social animals with humans, by denying their intellectual, emotional and physical independence. Elephant captivity is cruel, per se, and during COVID-19 has become an additional public burden and public health challenge. All elephants belong in the wild as free animals. Through this submission we seek:

1. We urge Project Elephant to propose to the Ministry of Environment, Forests and Climate Change (MoEFCC) to notify a ban on issuance of any further Ownership Certificates to private individuals for Elephants as captive animals.
2. We propose an immediate order to be issued for an independent investigation into the violent and brutal murder of Saumya and many other wild and captive elephants that have died in the past two years, including the additional recent cases of an elephant in Kollam, Kerala and two female elephants in Surjapur, Chhattisgarh (Many other cases are listed in the White Paper submission annexed.)
3. We are also seeking your support in developing mandatory protocols for surrender_of sick and old elephants in captivity following the care and management guidelines for Captive Elephants;
 - An independent investigation and inspection of the status of all captive elephants jointly with animal activists, elephant experts, and forest department officials, in every state;
 - Those captive elephants for which their current owners cannot provide proper care and upkeep a key requirement of ownership under section 42 of WPA. This second issue has gained additional urgency under the COVID-19 lockdowns as elephants in private custody are stuck without adequate food, water, and veterinary care across India.
4. We urge Project Elephant to proactively allocate designated funds for state forest departments to create Elephant Rehabilitation Centres.
5. We urge that Project Elephant should follow in the footsteps of the **Gajah** report that was put out 10 years ago, and create humane, farmer and animal centric policies to mitigate human-animal conflict.