

About the Wildlife Protection Act, 1972 & Asian elephant (elephas maximus)

1. The Government of India, vide Act No. 53 of 1972 enacted the Wildlife (Protection) Act (hereinafter, the Act) to provide for the protection of wild animals, birds and plants.
2. That the Government of India through Amendment Act No. 16 of 2003 amended the Act with the objective to protect wild animals, regulate trade in parts and produce derived from wild animals, and among other purposes, to provide that captive & wild animals included in Schedule I & Part II of Schedule II, the parts and produce derived from such animals, be acquired only by way of inheritance.
3. The Asian elephant (elephas maximus) is listed in Schedule I, Part I of the Wildlife Protection Act, 1972 [‘Act’] and hence is categorized as a Wild Animal. Elephants are found in the wild and are found to be captured, kept and are also bred in captivity, throughout the country. The definition of wild animal is under Section 2(36) of the Act, and a captive animal is defined under Section 2(16) of the Act.
4. Section 9 of the Act prohibits hunting of any wild animal, including elephants.
5. That Chapter IV-A, Section 38A, of the Act provides for the constitution of the Central Zoo Authority (hereinafter, CZA). The functions of the CZA, inter alia, are enlisted under 38C of the Act, and provide for it to specify minimum standards for housing, upkeep & veterinary care of animals in zoo; to evaluate and assess functioning of zoos as per the prescribed standards; to recognise and de-recognise zoo; provide technical and other such assistance to zoos for proper management and any other functions necessary to carry forward the purpose of the Act with regard to zoos.
6. That section 38H of the Act provides for recognition of zoos, and without such recognition no zoo shall be allowed to operate. It is pertinent to note that no zoo shall be granted recognition if it does not have due regard for the norms and standards prescribed by the CZA. That such recognition may be revoked for non-observance of norms or conditions levied.
7. That section 39(1)(a) states that any wild animal kept in contravention of any provisions of the Act, including those not declared under Section 40 of the Act and those who do not have a Ownership Certificate (hereinafter, OC) as per Section 42 of the Act or a wild animal found dead or killed by mistake are government property.
8. That Section 39(3) prohibits persons, without previous permission in writing from the Chief Wildlife Warden (hereinafter, CWW) or authorised officer, from acquiring, or keeping in custody, control or possession; or transfer to any person by way of gift, sale or other; or destroy or damage such government property.
9. The trade & commerce in wild animals, animal articles and trophies is governed by Chapter V of the Act. An elephant could be kept in lawful custody only in compliance of Section 40, 40-A and 42 of the Act.
10. The persons in possession of wild animals, had been given two opportunities for a declaration of lawful possession of the same. The first was with the coming into force of the Act, in 1972, wherein as per Section 40, a period of 30 days was given for the owner of any wild animal to declare the same and procure a valid ownership certificate. The second opportunity arose, in 2002-2003, with the amendment to the Act and the enactment of Section 40-A read with ‘The Wildlife Stock Declaration Rules 2003’ [‘Rules’] wherein a period of 180 days [6 months] was given for anyone in possession of a wild animal to

declare the same to the Chief Wildlife Warden. Rule 11 of the said Rules states that “...the CWW should provide a certificate of ownership to the applicant, whose claim is found valid.....”

11. That Section 42 of the Act empowers the CWW, to issue a certificate of ownership to any person who is in lawful possession of any wild animal or a part or derivative of such wild animal. It is pertinent to note that the Government of India, vide the 2003 amendment included a proviso in section 42 which states that prior to issuing such a certificate, the CWW shall ascertain that the applicant has adequate facilities for housing, maintenance and upkeep of the animal.
12. A reading of Rule 11 of the Rules along with Section 42 of the Act clearly establishes that every person who held an ownership certificate before the 2003 amendment had to apply for a new certificate of ownership from the CWW.
13. That Section 43 regulates the transfer of animals. Wherein, sub-section (1) prohibits a person having lawful possession of an animal or article, trophy,(an OC in accordance with Section 42) from transferring ownership by way of sale, offer to sell or by any other mode of commercial transaction. Further, section 43(2) provides that the person having a valid ownership certificate transferring or transporting such animal from the State of residence to another state shall report such transfer or transport to the CWW of the State wherein such transfer or transport is affected.
14. That Section 48A places a restriction on transportation of wild animals, requiring any person accepting any wild animal or animal article or any derivative thereof, for transportation to exercise due care to ascertain that all necessary permits from the CWW or authorised officers or the State Government have been obtained.
15. That section 50 empowers the Director, or officer authorised on his behalf, or CWW or officer authorised on his behalf, or forest officer or any police officer not below the rank of a sub-inspector, to enter, search, arrest, detain any person in violation of the provisions of this Act and to seize any captive or wild animal, animal article or trophy with regard to which an offense under this Act is committed, including seizure of vessel or vehicle involved in such an offense.