

**‘GAJAH’ IN THE LEGAL ARENA
AN ANALYSIS OF LAW RELATED TO ELEPHANT IN INDIA.**

Rekha Giri

Research Scholar, School of Law, IMS_Unison University Dehradun

Dr. Ashish Verma

Supervisor of the Research Scholar and Dean, School of Law, IMS_Unison University,
Dehradun.

Dr. Shalini Saxena

Assistant Professor, School of Law, IMS_Unison University, Dehradun.

Abstract.

Elephant known as ‘Gajah’ in Sanskrit, holding the title of ‘the Heritage Animal of India’ has great cultural, historical, religious significance. As world becoming flat there is threat for its survival due to high demand for its ivory, blood beads, trophy and skin. Due to its slow breeding process as compare to decline in population tremendously due to poaching and other factors, provide it legal protection. Asiatic Elephants is listed as “Endangered” on the IUCN Red List, and placed as Schedule I species under the Wildlife Protection Act of 1972 (WPA) and different judicial pronouncements prohibits the use of ivory. Seizers of ivory from different places of nation place concern that somewhere these legal safeguards are not enough to save our natural heritage.

Keywords: *Endangered species, Wildlife, Poaching, Illegal Trade, CITES, IUCN*

Introduction:

India, as one of the mega diverse countries of the world, plays an important global role in the trade¹ included wildlife from ancient times but illegal international trade in wildlife can be a major threat to its biodiversity². Our country has a glorious tradition of conservation, with codified laws being in place from as early as the 3rd Century B.C., when Ashoka laid down rules for elephant conservation in his rock edicts³. In India, elephants are a revered species with great cultural, historical, environmental, and religious significance. In Indian mythology, the elephant is associated with Lord Ganesh, presently they stands as one of the crucial pillars of conservation, holding the title of ‘The Heritage Animal of India’.

Persistent poaching fueled by demand for elephant ivory, blood beads, trophy and skin continues to threaten the existence of the species⁴. Elephants are the largest land mammals on Earth. There are two iconic African species of elephants, the savanna elephant (*Loxodonta africana*), which is categorized as ‘endangered’ on the International Union for Conservation of

¹ Wildlife enforcement by Samir Sinha

²(Minin, Sas-Rolfes, Selier, Louis, & Bradshaw, 2022)

³Supra 1

⁴Supra 2

Nature (IUCN) Red List, and the forest elephant (*Loxodonta cyclotis*), which is categorized as ‘critically endangered’⁵. Both elephant species are listed in Appendix I of CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora), which prohibits commercial trade in ivory⁶. The Indian Elephant (*Elephas maximus indicus*) is one of three extant recognized subspecies of Asian elephant. Since 1986, the Asian elephant has been listed as Endangered on IUCN Red List as the wild population has declined tremendously⁷. The poaching economy of such storable goods is driven by a combination of persistent consumer demand and market speculation, and enable by weak legislation and governance, lack of adequate resources for species protection⁸. Demand reduction of elephant products is widely promoted measure to tackle it, trade restriction and demand reduction is effectively done by the Wild Life (Protection) Act, 1972 (WPA) and various judicial pronouncement in India.

Lawsthat Conserve Gajah:

Listed as “Endangered” on the IUCN Red List, Asiatic Elephants hold several legal protections in India. The most prominent of those being the classification of the species as a Schedule I Animal under the Wildlife Protection Act of 1972 (WPA). The WPA, was amended in 2002 and banned the sale of captive elephants which were not registered with the Chief Wildlife Warden of the State. If an elephant is owned without being declared, the Forest Department has the authority to cease the elephant on the grounds of illegal ownership.

Section 9 of the Wildlife Protection Act, 1972 talks about the prohibition of hunting of the animals listed under Schedule I, II, III, IV. The elephant is a protected species under Schedule I and so is the sloth bear! Hunting of animals listed under these Schedules will invite heavy punishment and incarceration of up to 7 years.

Elephants are afforded maximum protection under section 40 (2) of India’s Wildlife Protection Act, 1972 which prohibits the acquisition, possession and transfer of a captive elephant without the written permission of the Chief Wildlife Warden of the State.

Section 42 reinstates that the Ownership Certificate can be issued to the person who has the lawful authority of the captive animal listed under Schedule I and II.

Section 48 (b) clearly states that no wild animal under Schedule I and II can be captured, sold, purchased, transferred and transported unless the Authorized Officer does not certify the lawful possession of the same.

Section 40 of the Wildlife Protection Act, 1972, also talks about the mandatory issuance of Transit Permit (TP) by the State Forest Department when an elephant is being transported from one state to another. Additionally, TP has to be issued by each state from which the elephant will pass through including the state in which the elephant will be finally going to. Under this

⁵ KS Gobush et al., *Loxodonta cyclotis*, IUCN Red List of Threatened Species, 2021, e.T181007989A181019888.

⁶<https://globalinitiative.net/wp-content/uploads/2021/08/Illegal-Wildlife-Trade-Elephant-Ivory.v4-web.pdf>

⁷https://en.wikipedia.org/wiki/Indian_elephant#cite_note-Shoshani1982-3

⁸Minin, op. cit.

act, hunting and even possession of a captive animal, animal article, meat or animal trophy is classified as an offense.

Additionally, “Under Section 52 of the Act, an attempt or an abetment of an offense under the Act is deemed to be equivalent to committing the offense itself”. Any individual found to have committed such an offense may face imprisonment of up to seven years or a fine of maximum twenty-five thousand Rupees. Offenses against any schedule I species under the WPA are non-bailable. The Act also bans the sale of captive elephants not registered with the forest department. Yet, people continue to exploit loopholes to commercially exploit these animals at will.

The Parliament on 20th November, 1986 incorporated a completely new chapter in the Act which imposed an absolute prohibition on trade or commerce in trophies and animal articles derived from protected scheduled species. The skin traders within three weeks of the said provisions prohibiting trade in animal articles. The law makers had omitted to prohibit trade in imported ivory, which took five years to rectify it, on October 2nd, 1991 trade in imported ivory and articles made therefrom was prohibited by the Parliament with effect from April 2nd, 1992. This legislation was resented by the ivory traders, they rushed to the courts for the redressal of their grievances.⁹

Reasons for population of elephants going down:

i) Poaching: Tens and thousands of elephants killed every year for ivory. Poachers have begun taking the elephant’s skin and turning it into ruby red jewelry. The skin is also ground into powder and sold as medicine¹⁰. And ever-growing demand for ivory, has led to a surge in ivory poaching and trafficking. Recent data also indicates that criminal syndicates are increasingly becoming involved in the ivory trade. 2011 and 2012 marked the highest levels of poaching and illegal trading in rhino horn and elephant ivory (CITES, 2012).¹¹

In the past, ivory poaching has had a limited impact on Asian elephants because only adult males grow tusks, and even then, it only happens 25 percent of the time. Skin poaching is much more problematic than killing elephants for their ivory because it’s indiscriminate — it targets adult males, adult females and calves¹². Although India does not reported any case of skinning of elephant till now.

According to Wildlife Preservation Society of India’s data the loss of over 121 elephants due to poaching in a period of four years from 2008 to 2011, with record of 781 kg of ivory, 69 tusks, 31 cut piece of ivory bangles that have been seized from across the country; further wild elephants died in road and train accidents and a shocking 111 elephants died from electrocution. But poaching remains the major cause of death for wild elephants¹³.

⁹ Ban on Ivory, Fur and Snake Skin Trade by Raj Panjwani, Published by WWF India, June 1997 pg 2

¹⁰<https://www.pbs.org/newshour/science/skin-poaching-asian-elephants-myanmar-blood-beads>

¹¹https://files.worldwildlife.org/wwfprod/files/Publication/file/3rwl4v5l05_wwf_ivorytrade_eng_eversion.pdf

¹²<https://www.pbs.org/newshour/science/skin-poaching-asian-elephants-myanmar-blood-beads>

¹³https://www.wpsi-india.org/projects/elephant_poaching.php visited on 18.11.2022

Profit side of poaching:In 2019 TRAFFIC found that raw ivory selling prices were down to an average of about US\$570 per kilogram. In 2020, the wholesale price rose to an average of US\$1450/kilogram,¹⁴.

ii) Corruption: the involvement of organized criminals' enterprises along the entire commodity chain, from elephant range states to some of the main ivory consumer countries, corruption enables the laundering of illegal ivory into legal or potentially legal markets. This can involve official demanding bribes for compliance or political influences and accepting bribes to overlook illegal activities.¹⁵

iii) Habitat Loss:human population grows and settlements expand, elephants are losing their habitats and ancient migratory routes. Development and the construction of infrastructure have had a devastating effect

iv) Conflict with humans:As a result of this habitat loss, elephants are forced into close quarters with humans. When elephants follow their traditional migration corridors through what was once forest or savannah, they are now confronted by roads, field and villages. Elephants walk into fields without realizing that the fruits and crops they hold are not for them. This led to a vicious cycle of conflict – local people kill elephants in retaliation for crop losses, and elephants also accidentally kill people in self-defense, then wildlife authorities shoot elephants to protect humans and their property. elephant habitat is shrinking and becoming more fragmented, and people and elephants are increasingly coming into contact - and conflict - with each other.¹⁶

Why Elephant poached:

There are multiple reasons some was studies by Yufan Gao¹⁷, who mentioned some below mentioned points:

Motivation	Use	Types of items
Economic	Investment, speculation	Raw tusks, antiques, fine art carvings
Social	Gift-giving, bribes	Jewellery, chopsticks, polished and carved tusks
Cultural	Home or business adornment	Chinese sages, legendary figures, Laughing Buddha, folk tale figures
Religious	Blessing, protection, good luck	Buddha amulets, Buddha, Guan Yin, Eight Immortals
Aesthetic	Personal or home adornment	Jewellery, vases, carved composite pieces, carved tusks, ivory paneling

¹⁴<https://globalinitiative.net/wp-content/uploads/2021/08/Illegal-Wildlife-Trade-Elephant-Ivory.v4-web.pdf>

¹⁵ Legal Ivory Trade in a corrupt world and its impact on African elephant populations' by Elizabeth L. Bennett on Conservation Biology, August 2014

¹⁶https://wwf.panda.org/discover/knowledge_hub/endangered_species/elephants/african_elephants/afelephants_threats/

¹⁷<https://globalinitiative.net/wp-content/uploads/2021/08/Illegal-Wildlife-Trade-Elephant-Ivory.v4-web.pdf>. (A Chinese graduate student at Yale University, conducted in-depth research on the Chinese ivory market. Page no. 20)

Medical	Treat maladies, purge toxins, anti-convulsant, bone diseases	Ivory powder, medicine doll
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Why it matters:

Wildlife crime is now the most serious threat to many species – especially elephants, rhinos and tigers. The severity and the extent of violence perpetrated by wildlife poachers and traffickers is now threatening peace, security and the rule of law in a number of nations¹⁸. Wildlife trafficking undermines security across nations; well-armed, well-equipped, and well-organized networks of criminals and corrupt officials exploit porous borders and weak institutions to profit from trading in poached wildlife. Record high demand for wildlife products, coupled with inadequate preventative measures and weak institutions has resulted in an explosion of illicit trade in wildlife in recent years¹⁹.

Large-scale organized criminal groups are not only involved in the illegal trafficking of wildlife, but also in the trafficking of drugs, arms and people. They have been found to engage in fraud, tax evasion, extortion, corruption, money laundering and murder²⁰. There are indications that the proceeds from wildlife trafficking also finance groups of militants and rebels, funding weapons purchases or even terrorist activities.

Each year, many elephants are illegally killed for their tusks. A decade-long resurgence in demand for elephant ivory, particularly in parts of Asia, has fuelled this rampant poaching epidemic. The elephant ivory trade not only threatens the very survival of this iconic species and causes broader ecological consequences, but also endangers the lives and livelihoods of local people and undermines national and regional security. WWF is addressing the root of the problem by engaging directly with elephant ivory consumers and working with other governments to ensure the imminent closure of open elephant ivory markets, as well as working to understand the underlying motivations of elephant ivory buyers to develop strategies to influence them. Our goal is to create a new social norm that buying illegal elephant ivory products is socially unacceptable.²¹

The international commercial trade in ivory (white gold) was banned in 1989²² by the Convention for International Trade in Endangered Species (CITES)²³ then there is a drop in ivory trade. But international ban on ivory trade has neither reduced elephant poaching nor the volume of the illegal trade. So, a portion is demanding to legalize it²⁴. The main reason is the

¹⁸https://files.worldwildlife.org/wwfmsprod/files/Publication/file/3rwl4v5l05_wwf_ivorytrade_eng_eversion.pdf

¹⁹<https://www.awf.org/sites/default/files/NationalStrategyWildlifeTrafficking.pdf>
20(Interpol, 2015; UNODC, 2015)

²¹<https://www.worldwildlife.org/initiatives/stopping-elephant-ivory-demand#:~:text=The%20United%20States%20implemented%20a,at%20the%20end%20of%202017.>

²²<https://www.wwf.org.uk/updates/fighting-end-elephant-ivory-trade>

²³<https://www.downtoearth.org.in/coverage/wildlife-biodiversity/should-ivory-trade-be-legalised--53564>

²⁴<https://www.downtoearth.org.in/coverage/wildlife-biodiversity/should-ivory-trade-be-legalised--53564> (4)

“legal” ivory found a way back onto the global market.²⁵ Some African countries were granted special permission to auction stockpiles of seized tusks. In USA, regulations allow ivory to be legally imported into the country as hunting trophies and permit pre-ban ivory to be traded across state lines. Some government allows a portion of ivory from its own stockpile to be sold each year. Traffickers take advantage of the legal trade to launder their illegal wares.²⁶ Some of the motivations among ivory products is the affordability of the middle class and most notably the belief that ivory is the ‘perfect gift’, fuelled by the perception that it is rare, precious, pure, beautiful, exotic and importantly, that it is a status product. While sizable population view it as a token of good luck.

India and Ivory Trade

With its connections to organized crime and terrorism, combating elephant poaching and ivory trafficking is no longer the sole concern of the conservation community. Many countries are cracking down on wildlife crime by using new legislative and law enforcement tools²⁷. India among those country where legal and judicial regime successfully fight with the wildlife crime effectively. The enforcement agencies also fighting with this crime very effectively.

The latest census conducted by the Union ministry of environment, forests and climate change estimates the exact population of the Indian elephants is 27,312²⁸ and the country is one of the main ivory carving centres of the world. India has also had its share of poaching cases. According to Wildlife Crime Control Bureau of India, about 30 elephants were poached in August 2015 from Kerala and Tamil Nadu alone. According to Raman Sukumar, senior elephant biologist at the Indian Institute of Science, Bengaluru, around 1,000 elephants were poached from the country during 1990-2015. India is a part of CITES and is against removing the ban on international ivory trade despite having an ivory stockpile of around 25,000 kg, worth over \$275 million, stored with the forest departments of various states.²⁹

Authorities may have put a ban on ivory trade in India, but recent raids suggest there's resurgence in the practice that has put elephants on the path of extinction. What has shocked is the resurgence of the 'domestic ivory market' in India. As opposed to the centuries-old practice, whereby all 'raw and finished' tusk products were routed to China, Japan and Thailand - the global destinations for these illegal items - a reliable clientele base seems to have developed within the country.

²⁵<https://www.nationalgeographic.com/pages/article/150812-ivory-demand-wildlife-trafficking-china-world> (2)

²⁶[https://www.nationalgeographic.com/pages/article/150812-ivory-demand-wildlife-trafficking-china-world\(2\)](https://www.nationalgeographic.com/pages/article/150812-ivory-demand-wildlife-trafficking-china-world(2))

²⁷<https://www.awf.org/blog/behind-legal-domestic-ivory-trade-black-market-flourishes>

²⁸<https://timesofindia.indiatimes.com/home/environment/flora-fauna/indias-ivory-population-stable-census/articleshow/60040603.cms>. The report ‘Synchronised elephant population on World Elephant Day estimates that the exact population of jumbo in the country is 27312 with the highest reporting of Karnataka i.e. 6049.

²⁹<https://www.downtoearth.org.in/coverage/wildlife-biodiversity/should-ivory-trade-be-legalised--53564>

Conclusion and Suggestions:

Insufficient anti-poaching capacity, weak law enforcement and corruption undermine efforts to stop the poaching and trafficking in some countries.³⁰Habitat loss and degradation and conflict with communities will remain major threats to elephants' survival proper policy must be there curb such things.While this rapid phase-out is being planned and implemented, the following steps can be useful to conserve the natural heritage

1. **Habitat Conservation:** Elephants are largest herbivorous migratory animals that require large tracts of forest land in order to sustain their sizeable appetites. Growing rates of deforestation coupled with a rapid rise in human encroachment in and around elephant habitats have put both species on the frontline of a dangerous conflict.A single calf is born to a female once every four to five years following a gestation period of 22 months. Baby calves can walk within 20 minutes of birth. Healthy adult elephants have no natural predators. But they require a large amount of food – approximately 150 kg per day³¹. On average, elephants have a lifespan of around 70 years.³² Strong law and its implementation is the requirement with saving its habitat. Online preservation of land records and implementation of anti-encroachment measures strongly conserve the habitat of gajah.

2. **No uniform policy:** global treat for its survival require uniform law with Top-Down Model, which form at international level but its effective implementation monitor at local level. Some countries has done some agreement in this regard like China has made recent progress in its battle to reduce the nation's demand for illegal elephant parts, instituted a ban on domestic ivory trade as part of a joint arrangement made with USA in 2015. While, President Donald Trump partially reversed this ban, **allowing elephant trophy imports.**

3. **Strengthening anti-poaching initiatives:**Closing the loopholes in the licensing system Closely monitor the legal ivory stockpile by ensuring that each individual ivory product is legal, is identified with a tamper-proof sticker and serial number, and there is a system in place to report and track transactions for each piece; ensure that frequent random checks are undertaken; require that ivory traders ensure they do not encourage illegal cross-border smuggling of their sales. Ivory crushes of seized products are a way to demonstrate a countries commitment to fight illegal trafficking.

4. **Curbing demand :** as we know wildlife crime is demand driven crime. It is also true that changing people's belief on any topic is neither quick nor easy task, but it will be essential if the international community hopes to end ivory trafficking. To stop the poacher, the traders must also be stopped and to stop the trader, the final buyer must be convinced not to buy. Till there is demand, there is someone will sell. So it is important to curb the demand.

5. **Stopping the illegal ivory trade:**Strengthen the policing of the ivory trade by increasing the resources available to frontline enforcement staff. Ensure frequent inspections at borders by expanding the use of law enforcement techniques such as sniffer dogs, forensics and

³⁰https://wwf.panda.org/discover/knowledge_hub/endangered_species/elephants/african_elephants/afelephants_threats/

³¹<https://www.sciencedirect.com/science/article/abs/pii/S000632077900568>

³²https://files.worldwildlife.org/wwfcomprod/files/Publication/file/3rwl4v5l05_wwf_ivorytrade_eng_eversion.pdf

controlled deliveries; continue monitoring boundary control points to intercept shipments of illegal ivory. Support international governance by reporting on the above phase out and tightening of regulation to the CITES National Ivory Action Plan.

6. Public participation: Educate the public and demand reduction Produce educational materials and notices that can be displayed at retail outlets and other key public areas such as airports and boundary control points. The educational materials should raise awareness of wildlife crime and remind consumers that ivory purchased. Public support for new measures to restrict the ivory trade. The campaign against the ivory trade impact the buying nature of buyers. Making people aware of how the illegal ivory trade is funnelling large amount of money into criminal syndicates and terrorist groups.

7. Forensics: the most effective way to contain this illegal trade is to determine where the wildlife is being removed. This allows authorities to direct law enforcement to poaching hot spots, potentially stops trade before the wildlife is actually killed, prevents countries from denying their poaching problems at home, and thwarts trade before it enters into an increasingly complex web of international criminal activity. Forensic tools have been limited in their ability to determine product origin because the information they can provide typically begins only at the point of shipment. DNA assignment analyses can determine product origin, but its use has been limited by the inability to assign samples to locations where reference samples do not exist. We applied new DNA assignment methods that can determine the geographic origin(s) of wildlife products from anywhere within its range. We used these methods to examine the geographic origin(s)³³.

8. Strengthen Enforcement — We will improve efforts in the United States to stop illegal trade in wildlife and to enforce laws prohibiting wildlife trafficking. We will use administrative tools to address the dramatic increase in illegal elephant ivory and rhino horn trade. We will improve coordination and prioritize wildlife trafficking across enforcement, regulatory, and intelligence agencies. We will integrate wildlife trafficking, where appropriate, with other U.S. efforts to combat transnational organized crime. We will also help improve global enforcement efforts by supporting partner countries to build enforcement capacity. We will provide assistance for field-level wildlife and protected area management and enforcement, and also assist and participate in multinational enforcement operations targeting illegal trade in wildlife. We will work to dismantle trafficking networks and prevent others from assuming their illegal activities.

2. Reduce Demand for Illegally Traded Wildlife — We will raise public awareness of the harms done by wildlife trafficking through outreach in the United States and public diplomacy abroad to dissuade consumers from purchasing illegally traded wildlife. Criminals will continue to kill wildlife and traffic in contraband as long as the potential profits remain so high. We must enlist individual consumers in our country and other nations in this fight by educating them about the impacts of wildlife trafficking, on people as well as wildlife, and

³³**Combating the Illegal Trade in African Elephant Ivory with DNA Forensics**

Samuel K. Wasser, William Joseph Clark, Ofir Drori, Emily Stephen Kisamo, Celia Mailand, Benezeth Mutayoba and

Vol. 22, No. 4 (Aug., 2008), pp. 1065-1071 (7 pages)

encouraging them to examine their purchasing patterns. The reduced poaching seems to be the result of the dismembering through arrests and prosecutions of a large number of transnational organized criminal networks involved in ivory poaching and trafficking³⁴. WCCB must expand their work more effectively as larger the seizure, more is the loss to traffickers and destruction of those seizure will discourage

9. Expand International Cooperation and Commitment — Through our diplomacy, we will mobilize global support for, and encourage partners to actively participate in, the fight against wildlife trafficking. We will strengthen implementation of international agreements and arrangements that protect wildlife. We will build partnerships with governments, intergovernmental organizations, nongovernmental organizations, local communities, and the private sector to address this issue to develop and implement innovative and effective approaches to combating wildlife trafficking³⁵.

Mix Strategy of law making and implementation should be applied with scientific approach with public participation require to save our natural heritage.

³⁴<https://globalinitiative.net/wp-content/uploads/2021/08/Illegal-Wildlife-Trade-Elephant-Ivory.v4-web.pdf>

³⁵<https://www.awf.org/sites/default/files/NationalStrategyWildlifeTrafficking.pdf>