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Analysis of Legislative Framework Concerning Exotic Species in India

ANKUR TRIPATHI¹ AND ABHIJIT ROY²

ABSTRACT

In the recent decades, there has been a perceptible rise in the number of people keeping pet animals/birds and exotic species but there has been a stark lack of any regulatory or legislative framework concerning exotic species which has led to the uncontrolled trade in exotic animals. The matter is of important nature having ramifications wherever pets are being kept and/or traded. There are several instances of confiscated exotic animals dying in the custody of authorities. However, they are not widely reported due to the lack of information in routine, governmental matters and also because many of the remaining animals are returned to their owners if some of these animals die. There is also a clear lack of legislation in this regard due to which these exotic animals and their owners are unnecessary harassed. In this article we analyse the legislative framework for exotic species in India and why we need an enactment for their regulation.

Keywords: Exotic Species, Animals Laws, India.

I. INTRODUCTION

The expression ‘exotic animals’ has not been formally defined under Indian law but it generally means or includes such fauna which is not indigenous or local to a particular geographical area. However, the term ‘exotic’ refers only to the species and not to individual specimen.

These exotic species can either be brought into India from other countries through various channels or be bred in India. Almost 95% of the numbers of these species are bred in India by domestic breeders from specimen of such species that were originally brought from their native countries, sometimes centuries ago. Some such specimen would also have been imported before India had any legal framework at all concerning import. For instance certain species of animals have a lifespan of about 75 years to 100 years and though alive even today.

Origin of these specimen of exotic species is very nearly impossible to determine with any reasonable degree of certainty. The origin of the specimen is certainly not evident to a person

¹ Author is an Associate at Conscientia Law Associates, Bengaluru, India.

² Author is a student at Alliance School of Law, India.

seeking to purchase these animals from open market, where they are openly sold.

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II. DEFICIENT LEGISLATIVE AND REGULATORY FRAMEWORK

There is a clear and stark lack of any regulatory or legislative framework concerning exotic species. This, in no small measure, has led to the uncontrolled trade in exotic animals. There is not database of exotic animals in India, in many other countries in the world, keeping of pets is regulated, even if minimally. There is no registry at any level to regulate or mandatorily record the particulars of pets and ensure their well-being.

(A) Wild Life (Protection) Act, 1972

It provides for protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto. This legislation prescribes certain acts including hunting of animals provided in the Schedule to the Act. Most of the exotic species of animals are not covered under the Schedule of the Act. Most of the exotic pets are not *per se* covered under the provisions of this Act.

(B) Customs Act, 1962

Customs Act, 1962 applies only to 'goods'. Animals are not covered under the definition of 'goods' provided under the Act. 'Goods', as defined in Section 2(22) of the Act, includes several items of movable property. It can be noted that different legislations define 'goods' to include live animals/livestock etc which *prima facie*, presents a problem in the present facts. Any court could want a resort to benevolent interpretation of the provisions of Customs Act and want to include animals therein. This cannot be done in a taxing or penal legislation. The rules of interpretation of taxing as also penal legislations is that the same must be strictly interpreted without reading anything into them. Legislations that mean to incorporate animals as part definition of 'goods' do so specifically, which has not been so done in the case of Customs Act. Also, since Customs Act uses the expression "animals", it must be deemed that the legislature did not intend to include animals within 'goods'. The Act cannot be applicable to owners/keepers of pets as the Act does not apply to domestic trade.

(C) Foreign Trade (Development & Regulation) Act, 1992 & Import Policy

The Foreign Trade (Development & Regulation) Act came into effect on 7th August 1992 and

prescribes for development and regulation of foreign trade and matters connected therewith for incidental thereto. It is the successor legislation to Imports and Exports (Control) Act, 1947. Most confiscations and prosecution in respect of exotic animals takes place by invoking the provisions of this Act read with the provisions of Customs Act and the Trade Policy of India. Under Section 5 of the said Act, the Central Government may formulate, announce and give effect to a Foreign Trade Policy (FTP)³. Under the said Act, the Central Government has notified trade policy for both export and import. The Central Government has notified the conditions for import live animals/animal product as well for Fish etc. Ostensibly, the same seems to provide conditions and guidelines for import of live animals/Fish. However, it is clear that the provisions of this Act do not apply to animals/fish as the said Act applies only to trade in goods, service and/or technology. Animals are covered in neither of these categories. The trade policies formulated under Section 5 of the Act are therefore ultra vires the provisions of this Act. The Act cannot be applicable to owners/keepers of pets as the Act does not apply to domestic trade.

(D) Prevention of Cruelty to Animals Act, 1960

The Prevention of Cruelty to Animals Act came into effect on 26th December 1960. This Act was aimed at preventing the infliction of unnecessary pain or suffering on animals. The Act prescribes cruelty, the actions which constitute cruelty to animals and punishment thereof. It also prescribes the powers of the Police including powers of entry, search, seizure, treatment and care of animals. It may be useful to note that the said Act makes no distinction between the exotic and indigenous species. Section 35 of the Act makes provision for the treatment and care of animals. It is also pertinent to note that the Act does not apply until an instance of cruelty to animals has been found.

If exotic animals are found to be cruelly treated in accordance with the Act, it would apply *in presenti* irrespective of the species of animal, which is mostly not the case with animal lovers who keep exotic pets. Owners of exotic pets usually take great care to ensure the well-being of the pets and to provide them with appropriate food and living space. To take these exotic pet animals away into a government shelter which has inadequate resources, untrained manpower and unsuitable living conditions for exotic animals is a travesty and a matter of great harassment and suffering to such animals. It could be argued that such government action would constitute cruelty within the meaning of the Act. As a matter of fact, it would not be

³ Digital Editor, *New Foreign Trade Policy 2021-2026*, Business Standard (Jan. 13, 2021 09:15 IST), www.business-standard.com/article/economy-policy/new-foreign-trade-policy-2021-2026-to-be-rolled-out-from-april-says-govt-1210113001171.html

wrong to suggest that action ought to be taken against such officers who order taking into custody of such exotic pets and putting them into such harsh conditions that they die, in most cases shortly after being seized.

(E) Live-Stock Importation Act, 1898

This Act gives the Central Government the power to restrict or prohibit in such manner and to such extent as it may think fit, the import of any live-stock which may be liable to be affected by infectious or contagious disorders and of any fodder, dung, stable-litter, clothing, harness or fittings appertaining to live-stock or that may have been in contact therewith. It is categorically mentioned in the Act that a notification issued under sub-section (1) of Section 3 or Section 3A shall operate as if it has been issued under Section 11 of the Customs Act, 1962 and the officers of the Customs at every port, airport, inland container depot and Land Customs Station shall have the same powers in respect of any live-stock or live-stock product or thing with regard to the importation of which such a notification has been issued. It is neither the mandate of the Act or anybody's case that a general order of prohibition or restriction can be issued under the said Act or that any such notification has been issued under this Act. What is important to note is that such animals as to which this Act applies would be liable to be quarantined by the Animal Quarantine and Certification Services (AQCS) established under the Ministry of Agriculture, Government of India⁴. It is clear that the case of exotic pets is not covered even under the provisions of this Act. This Act cannot be applicable to owners/keepers of pets as the Act does not apply to domestic trade.

(F) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

On 3rd March 1973 a convention was signed at Washington DC called the Convention on International Trade in Endangered Species of Wild Fauna and Flora (popularly known as 'CITES'). CITES was and is an international treaty aimed at regulating trade of endangered species of flora and fauna. The said treaty classifies flora and fauna on the basis of the level of danger to their existence and accordingly prescribes regulatory safeguard as guidelines for incorporation and implementation in domestic law. India adopted this convention on 18th October 1976, however, the Indian Government did not follow through with making domestic legislation corresponding to, or creating necessary and suitable infrastructure to meet, its treaty obligations.

⁴ *Standard Operation procedure for animal quarantine and certification Services*, Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries, Government of India

Treaty obligations by themselves, do not form the basis of any municipal action, much less punitive action, unless the same translates into municipal law. The provisions of CITES, by itself, therefore does not furnish any legal basis for confiscation of specimen of animals and/or prosecution or steps connected therewith or incidental thereto (like search, seizure etc.) especially if such steps are detrimental to the animals themselves. The convention cannot be applicable to the owners/keepers of pets in any event as the Convention does not apply to domestic trade.

III. PROBLEMS FACED BY OWNERS/KEEPERS DUE TO DEFICIENT LEGISLATIVE AND REGULATORY FRAMEWORK

Owners/keepers of such pets go to great lengths to ensure the well-being of their pets. To that end, they ensure that these pets are given the atmosphere that resemble the natural habitat of the animals and they are provided appropriate food and met by qualified medical professional in medical needs. These owners/keepers are harassed at times by officials as raids are conducted on their properties and pets are often taken into custody/confiscated by such officers. When these animals are taken into custody, they are placed in great discomfort.

The government agencies are extremely underprepared, infrastructurally and personnel-wise, to cater to the needs of such animals, as a consequence of which these animals seldom die. Apart from this consequence, there is a human dimension, the owners/keepers of these pets are put to extreme anguish, agony and distress at the loss of their pets, which in many cases are treated as family-members. For the present purposes, it is submitted that there is no legal warrant for confiscation of animals as there is no law that deals with exotic species.

IV. CONCERNS AND PROBLEMS IN EXECUTION OF LEGAL ENACTMENTS

The first and foremost concern in implementation of any form of regulation of exotic animals would stem from the challenge of positive identification of a species as species imported in alleged violation of any laws. The identification of animals as 'imported' would require determination of the source of such animals, which will depend on an examination of each individual animal. For instance, in a lot of 20 exotic animals, very few may have been imported, if at all, and most may have been locally sources from owners of other such animals. Some specimen may be the offspring of the originally brought animals. Some specimen could be left behind by sheer force of circumstances during migration. The possibilities of how a specimen of exotic species comes to be in a person's possession are endless.

The second concern in implementation stems from the question as to what was the law at the

time that the specimen may have been brought to India, it at all it is first established that the specimen itself was brought from outside India. Certain species of birds and animals live for much longer than many others (eg. Macau, Tortoise – can live upto 100 years etc.) . If such animals were brought to India prior to independence, the legal ramifications would be very different⁵.

It is not out of contemplation that owners may come in possession of exotic species in matters that are wholly bonafide – like domestic market/traders (pet shops), breeders and/or by way of gifts. In such circumstances, they cannot be prosecuted.

V. RECENT SCHEMES AND DEVELOPMENTS

In December 2020, the Ministry of Environment, Forest and Climate Change (MoEFCC) rolled out an advisory⁶ also known as a one-time voluntary disclosure scheme which allowed the owners of exotic live species to declare it to the government. The scheme applied for those who have illegally acquired exotic pets between June and December 2020 and do not have any documents. With the introduction of this scheme, the government took steps towards better compliance under CITES and to address the challenge of zoonotic diseases as well as develop an inventory of exotic live species. However, it is to note that the current form suggesting an amnesty scheme is an advisory and not a law as of now.

According to the report of Directorate of Revenue Intelligence (DRI)⁷ in November 2020, there is an unfortunate and increasing trend in smuggling of endangered and exotic fauna from different parts of the world into India. Most of these land up as exotic pets. The exotic pet trade in India has grown with the main demand being for birds, tortoises. Birds belonging to the parrot family including Macaws and Cockatoos are particularly vulnerable. Since there is a complete ban on trade in Indian species, interest of the smugglers has shifted to exotic species, which has led to disastrous global environmental consequences. There has been a growing interest in sale of exotic species of birds in India. Most of these exotic birds are imported through Illegal channels and then sold in the domestic market as pets. The long international border and air routes are used to source consignments from Bangkok, Malaysia and other top tourist destinations in South East Asia, as well as from Europe from where they are sent to

⁵ FE Online, *Do you have exotic pet species? Now is the right time to declare it*, INDIAN EXPRESS GROUP (Dec.14, 2020 12:41 PM), <https://www.financialexpress.com/lifestyle/do-you-have-exotic-pet-species-now-is-the-right-time-to-declare-it/2149526/>

⁶ *Advisory for dealing with import of exotic live species in India and declaration of stock*, Ministry of Environment Forest and Climate Change (Wildlife Division)

⁷ *Smuggling in India Report 2019 - 2020* by Directorate of Revenue Intelligence, 2020, http://dri.nic.in/writereaddata/dri_report_dat_1_12_20.pdf

major cities i.e. Kolkata, Chennai, Hyderabad, Delhi, Bangalore, Mumbai, Cochin, etc.

On 13th October 2020, A three-member bench headed by Chief Justice SA Bobde upheld the Allahabad High Court's ruling that cases against those who cannot acquire or capture exotic wildlife species between June 2020 and December 2020 under an amnesty scheme. The Allahabad High Court held that it will not be open for any other agency to investigate and prosecute anyone making such declarations during the six-month window, under the Voluntary Disclosure Scheme. The petition in the case was filed by one Dinesh Chandra.

Before the Allahabad High Court, the central government had opposed Chandra's petition, emphasising that several such amnesty schemes with immunity from prosecution have been announced in the past too. The government maintained it would defeat the entire purpose of the scheme if the declarants were to face investigations and prosecutions. In response to the petition, the Allahabad High Court had noted the government had come out with the amnesty scheme in the direction to regulate possession and trade of exotic species, which had been kept out of the ambit of the Wildlife Protection Act so far. It said the 'voluntary disclosure scheme' was introduced in wider public interest and announced immunity for a limited window of six months to promote and invite voluntary disclosure declaration⁸.

VI. CONCLUSION

If the Government intends to deal with such issues including prosecution, it will only be appropriate that a clear law, as well as suitable regulatory framework be laid down in this regard specifically for the purpose of ensuring the well-being of animals, fairness to owners and to honour India's treaty obligation under CITES. Legislative action in this regard has been, without doubt, left wanting. Until such law is made and infrastructure developed, certain interim steps and guidelines ought to be put in place by which the animals and their owners are not unnecessary harassed.

⁸ FP Staff, *Supreme Court upholds Centre's amnesty scheme on exotic birds and animals*, FIRSTPOST (Nov. 22, 2020 14:54 PM), <https://www.firstpost.com/india/supreme-court-upholds-centres-amnesty-scheme-on-exotic-birds-and-animals-9041071.html>