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Status of Animal Laws in India: Strict Implementation or a Tribute Suffices?

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“Humanity's true moral test, its fundamental test...consists of its attitude towards those who are at its mercy: animals.”

— Milan Kundera¹

Animals, one of the greatest gifts God has bestowed upon mankind. We know how important they are both to us and to the environment we live in. However, humans have failed to consider their welfare and have become blind to the ruthlessness the animals are subjected to. These animals are brutally beaten, castrated, tortured, sacrificed, burned, tested, and whatnot. Considering the recent incidents of Animal Cruelty, we witness on a daily basis; it has become extremely imperative to safeguard the animals and treat them with the affection they deserve. The Present changes to the PCA, 1960 have been no short of loopholes and it is indispensable to balance animal welfare and human interests by addressing these loopholes. The paper gives prime examples of brutality and lists out major laws in force currently, to protect animals. The paper aims to point out the wrong with the implementation of these laws, especially the current provisions of the newly amended PCA, 1960. Though the laws are sufficient to map the goals, yet the gaps between the creation and strict enforcement are not yet bridged. The attitudes of both humans and authorities seem to be indifferent, callous, and apathetic towards animals. The paper also recommends the methods to safeguard the animals from an individual as well as authorities' point of view.

Keywords: *animal laws, prevention of cruelty act, amendments, human brutality.*

¹ Archit Mishra & Neha Choudhary, 'Lack of Implementation of Animal Laws in India' 2016 Supremo Amicus

INTRODUCTION

The Kerala High Court recently took cognizance of the inhumane murder of Bruno, a black Labrador. In an attempt to pay a fitting tribute to the death of the hapless animal, the Bench name the case-“In Re: Bruno”² The High Court also sought the accountability of the State welfare Boards in this regard. But it is not the only incident where an innocent animal succumbed to human cruelty. A pregnant elephant died due to the consumption of a cracker-stuffed fruit intended to repel wild boars from farms, around 300 dogs were poisoned in a certain village of Kerala, a dog was thrown off the many floors of a building, etc. These constitute only a small percentage of instances that take place almost every single day.

LAWS AND LEGISLATION FOR THE PROTECTION OF ANIMALS

THE CONSTITUTION OF INDIA, 1950

Directive Principles of State Policies (DPSPs):

- a. Under Article 48, “The State shall take steps in the organisation of animal husbandry, on modern and scientific scales. It shall ensure preservation and improvement of the breeds, and prohibit the slaughter of Cow, Calves, milch, or draught cattle.” Cattle serve humans in a variety of ways and they are entitled to dignity even in old age.
- b. Under Article 48A, “The State shall undertake to protect the wildlife of the nation.”

The Supreme Court, in *Abdul Hakim Qureshi v the State of Bihar*,³ pronounced that the ban on cow slaughter does not in any way infringe the Muslim community’s right to religion Article 25. Further, it is noted that cattle serve in various ways to humans and should be treated with dignity in old age.

² Bhadra Sinha, “In Re: Bruno’ - Kerala HC pays tribute to dog beaten to death, renames case after him’ (*The Print*, 2 July 2021) <<https://theprint.in/judiciary/in-re-bruno-kerala-hc-pays-tribute-to-dog-beaten-to-death-renames-case-after-him/689028/>> accessed 2 August 2021

³ *Abdul Hakim Quraishi and Others v The State of Bihar* 1961 AIR 448, 1961 SCR (2) 610

Fundamental Duties:

“Article 51A[g] seeks for protection and improvement of our natural environment that include forests, lakes, rivers, and wildlife, and to have compassion for these living creatures. The Hon’ble High Court in *Ramesh Sharma v State of Himachal Pradesh*⁴ held that every citizen has the duty to live and to let other living creatures on this earth life.”⁵

Distribution of Power between Centre and State:

Article 245 and Article 246 have laid down the allocation of Animal-related matters in the State and Concurrent Lists:

- a. Item 14 (State List) mentions that States have the power to “preserve, protect and improve stock and prevent animal diseases and enforce veterinary training and practice.”
- b. Item 17 (Concurrent List) entails the prevention of animal cruelty.
- c. Item 17B (Concurrent List) entails the protection of wild animals and birds.

THE INDIAN PENAL CODE (SEC. 428 AND 429)

In the Indian Penal Code, Section 428 and 429 lay down punishment for all the acts that amount to cruelty in the form of “killing, poisoning, maiming or rendering useless of animals.”⁶ These acts constitute punishable offences and the legislation was enacted for preventing the infliction of pain and suffering of innocent animals (includes Stray Animals).

In *Sri Ramratan Jhavar v. Govt. of AP & Anr.*⁷, the Hon’ble High Court ruled that any person who commits mischief by killing animals will be held liable under Sections 428 and 429. They will be subjected to 2 years of imprisonment and a fine.

THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

⁴ *Ramesh Sharma v State of Himanchal Pradesh* CWP No 9257 of 2011 and CWO Nos 4499 and 5076/2012

⁵ *Ibid*

⁶ Indian Penal Code 1860, s 429

⁷ *R Kanthamma v Boyapati Ravindra* [2002] 2 AP LJ 25 (SN)

Section 11 of the PCA, 2016 indicates the variety of forms the animals are subjected to:

- a) Thrashing, kicking, overriding, overloading, torturing, and causing unnecessary pain to any animal.⁸
- b) Making an old, injured, or incapable animal work. This makes both owner and user liable.
- c) Giving injurious drugs/medicine to any animal.
- d) Transporting animals through any vehicle in a manner that causes pain and discomfort.
- e) Restraining animals in any type of enclosure that deprives them of movement.
- f) Tying an animal with excessively heavy or short-chain for an unreasonable duration.
- g) Subjecting the animal to total, habitual confinement and depriving the freedom to exercise.
- h) Failing or neglecting care to provide the animal with sufficient food, drink, or shelter.⁹
- i) Disown or desert the animal without any reasonable reason.
- j) Voluntarily permitting animals owned to stray or abandon on the streets to die of disease, old age, or disability.¹⁰
- k) Selling or offering to sell an animal suffering from pain. (Caused by mutilation, malnourishment, decapacitation, thirst or sickness)
- l) Subjecting the animal to Mutilation or murdering animals cruelly in methods like administering strychnine injections.
- m) Putting up an animal as bait for entertainment.
- n) Organizing, keeping, using, or managing any place for animal fighting.¹¹

⁸ Prevention of Cruelty Act 1960, s 11(1)(a)

⁹ Prevention of Cruelty Act 1960, s 11(1)(h)

¹⁰ Prevention of Cruelty Act 1960, s 11(1)(j)

o) Hunting an animal released from captivity for animal fighting or entertainment.

The judgement in *Mohammed Balesharief v.the State of A.P.*¹² was that those who do not give sufficient food, water, or shelter and/or confine animals will be subject to punishment with up to 3 years of imprisonment and/or fine.

Under, Section 22(ii) - Bears, monkeys, tigers, panthers, lions, and bulls are prohibited from being trained and used for entertainment purposes, either in circuses or streets.

The PCA 2016, being prime legislation has been discussed and analysed in an in-depth manner below:

The Wildlife Protection Act, 1972:

- a. Monkeys are protected and cannot be used as a display nor be owned.
- b. Under Section 38(J) of the Act, The Supreme Court of India held that any person who intrudes the animals living in the zoo will be liable and will be punished with a fine of Rs. 25000 or 3 years of imprisonment.¹³
- c. Under Section 9 of the Act, capturing, trapping, poisoning, baiting, or hunting any wild animal or even making an attempt to do so, is punishable with a fine of up to Rs. 25000 or 7 years of imprisonment or both.
- d. The act also states that hunting, disturbing, destroying eggs or nests of birds/reptiles or even cutting trees with nests of such birds/reptiles or even trying to do so will be subjected to punishment up to the sum of 25000 Rs. or 7-years imprisonment or even both.

In *Vikram Trivedi and Anr. v Union of India-Through Project Director and Ors.*¹⁴ , the High Court held that in order to serve justice, it was illegal to chop trees with nests of birds and reptiles.

¹¹ Prevention of Cruelty Act 1960, s 11(1)(n)

¹² *Mohammed Balesharief v State of AP* [2014] SCC OnLine Hyd 1588

¹³ *Shri Sachidanand Pandey and Anr v The State of West Bengal and Ors* 1987 SCR (2) 223

¹⁴ *Vikram Trivedi v Union of India* [2013] SCC OnLine Guj 5792

Attempting to do such, will also be construed as hunting and will make the person liable for punishment.

Drugs & Cosmetics Rules, 1945:

Rules 148-C and 135-B of the rules entail that, cosmetics have experimented upon animals and even the import of such cosmetics is banned. In the case of *Indian Soaps and Toiletries Makers Association v. Qazir Husain and Ors.*¹⁵, the Hon'ble Supreme Court of India ruled that any individual or organisation that administers chemicals on animals will be held liable with punishment.

Animal Birth Control (Dog) Rules, 2001:

The aforementioned rule states that Stray dogs that have been subjected to birth control operation, cannot be captured or relocated by anybody including any authority.¹⁶

Prevention of Cruelty to Animals, (Slaughterhouse) Rules, 2001 and Food Safety and Standards Regulations, 2011:

- a. Prevention of Cruelty to Animals, (Slaughterhouse) Rules, 2001 (Rule 3) state that, "no animal (including chickens) can be slaughtered in any place other than a slaughterhouse."¹⁷
- b. Food Safety and Standards Regulations, 2011 (Chapter 4) state that, "sick or pregnant animals can not be slaughtered."¹⁸

In the landmark case of *Animal Welfare Board of India v A. Nagaraja and Ors.*¹⁹, the Hon'ble Supreme Court of India pronounced that any such person who slaughters an animal at a place other than the slaughterhouse or tries overpowering the animal to do a certain activity will be punished accordingly.

JUDICIAL APPROACH WITH RESPECT TO ARTICLE 21 'RIGHT TO LIFE'

¹⁵ *Indian Soaps and Toiletries Makers Association v Qazir Husain and Ors* [2013] 3 SCC 641

¹⁶ Animal Birth Control (Dog) Rules 2001

¹⁷ Prevention of Cruelty to Animals (Slaughterhouse) Rules 2001, r 3

¹⁸ Food Safety and Standards Regulations 2011, ch 4

¹⁹ *Animal Welfare Board of India v A Nagaraja and Ors* AIR 2014 SCW 3327

The Judiciary has interpreted Article 21, with conscience and consideration. It has attempted to encompass dignified life and 'elevation from mere animal existence'²⁰ and ensuring a healthy environment, ecological balance, and protection of forests. In the case of *T.N. Godavarman Thirumulpad v UOI*,²¹ Life under Article 21 has a much wider ambit and it applies to the protection of nature and its resources. Besides applying environmental jurisprudence, Supreme Court envisaged the protection of flora and fauna. The Judiciary has duly recognised the dignified existence of animals and their role in the subsistence of tribes, whilst upholding constitutional values. In another case of *Subhas Bhattacharjee v State of Tripura*,²² the High Court was directed to ban animals and birds' sacrificial rituals in the temple. The court based its decision on consonance with its reasoning under Article 21.

CRITICAL OVERVIEW OF PREVENTION OF CRUELTY TO ANIMALS ACT, 1960: AMENDMENTS AND LOOPHOLES

The Parliament of India enacted the Prevention of Cruelty to Animals Act in 1960, with the objective to obviate the pain and suffering of the wildlife and thereby amend the laws to prevent the inhuman treatment of the animals. The Act defines "animal" as any living creature other than a human.²³ The Government of India had also set up an Animal Welfare Board under Chapter II of the Act. The Board was established to:

- Serve as an advisory body of Central Government for amendments and general matters
- Prevent animal suffering while they are being transported
- Regulate experiments conducted on them
- Prevent captivity
- Encourage financial aid, rescue camps, shelters for Aged or weak animals

²⁰ Vijayant Goel and Lolita Delma Crasta, 'Should Wildlife be included under the Ambit of Article 21 of the Indian Constitution?' (2021) Manupatra

²¹ *TN Godavarman v Union of India* [2012] 3 SCC 277

²² *Subhas Bhattacharjee v State of Tripura* [2019] SCC OnLine Tri 441

²³ Anushka, 'Animal Welfare Rights: Where does India Stand?' (*The Daily Guardian*, 5 August 2021)

<<https://thedailyguardian.com/animal-welfare-rights-where-does-india-stand/>> accessed 07 August 2021

- Advise Government on medical care and hospitals
- Impart awareness and education for animal welfare

It is worthy to be noted that Section 11 of the Act, does not explicitly deem it cruelty in form of dehorning or castration of cattle, murdering stray dogs in poisonous chambers, or even extermination of animals under authorities. Further, under Section 28, any religion that commits the offence of killing an animal would be held liable. This is an inconsiderate rule provided that India is a land of diverse religions.

Despite the laws put into operation, thousands of animal cruelty cases are observed daily. As the figures of incidents increase, so does the degree of ruthlessness too. The offenders are still free, roaming without a sense of guilt and fear. They get away unharmed due to the leverage of the laws. The first-time offender gets away with a mere Rs. 50 as a fine. After 60 years, with constant labour of the activists, the Act had been considered for amendments. "The government drafted a proposal to amend the Prevention of Cruelty to Animals Act determining a penalty up to Rs, 75000 or three times the price of the animal with imprisonment up to 5 years or both. The offences under the aforementioned draft have been divided into 3 categories of injury: Minor injury, major injury leading to disability, and death due to cruelty. It also states penalties ranging from Rs, 750 to Rs, 75,000 and imprisonment of up to 5 years."

The Centre had proposed amendments to the Prevention of Cruelty to Animals, 1960. The provisions that had been made in the new section of the Act are:

- *Section 11(A):*

The penalties in the case of Extreme or life-threatening cruelty against animals is Rs. 50,000 or the cost estimated by a veterinarian. The imprisonment can be of one year up to three years.

- *Section 11(B):*

The penalties in the case of the killing of an animal have been kept at Rs.75000 or “three times the price of the victim animal), in addition to the imprisonment of three years which may be extended to five years. (Or both).

- *Section 11(C):*

Exceptions under Section 11(B)- Accident, Defense of self or property, Act of God, and Unforeseeable situations.

Section 12 mentions the Practice of doom dev, a process of blowing air into a cow’s vagina to induce the production of more milk or administering an injection for lactation. The penalties in such cases are determined at Rs. 75,000 with an imprisonment of 3-5 years. Presently, the penalty is mere Rs. 1000 or imprisonment of 2 years or both.

LOOPHOLES

The steps are narrow-sighted with a focus only on a particular caste and class. It will trigger elitism and is unlikely to help address institutionalized animal cruelty. ²⁴The term ‘Cruelty’ has been vaguely and inadequately defined in the laws nor do they address what cruelty is. This is because animal suffering carries a deep correlation with cultural values. The Animal Rights movements and Legal Jurisprudence spells out that cruelty must entail high suffering beyond unacceptable levels.

“In the *Animal Welfare Board of India vs A Nagaraj*²⁵, the supreme court opined that animal suffering which is caused for legitimate purposes cannot be construed as cruelty. Upon observation, the judicial notions are typically based on the Vedic and Brahmanical ideology of suffering, reasonability, and proportionality.”²⁶

²⁴ Srujena Bej and others, ‘When anti-cruelty laws don’t protect animals and only harm humans’ (*The Indian Express*, 25 March 2021) <<https://indianexpress.com/article/opinion/when-anti-cruelty-laws-dont-protect-animals-and-only-harm-humans-7245350/>> accessed 09 August 2021

²⁵ Regulations (n 18)

²⁶ Goel and Castra (n 20)

In Nagaland, the ban on dog meat was justified on the ground of cruelty, where stray dogs were killed by inhuman methods. The imposed ban was seen as an arbitrary and disproportionate measure in respect to all dog meat and it did not directly address animal cruelty from the inhuman methods of killing. Laws bar only inhuman killing techniques for poultry or cattle, instead of a blanket ban on meat.

The criminal justice system does not support imposing/increasing penalties or stringency in the laws for deterring crimes. Therefore, higher fines may not lower the incidents of cruelty against animals. The communities like '*Sapera*' and '*Madari*', that are able to earn their livelihood from animal labours, are also criminalised. They suffer because the police vilify the usage of animals by these communities, as cruelty. Higher punishments and selectively enforcing laws over these very communities will only promote further marginalisation. These communities will be deemed as offenders by the laws and police. Moreover, they will have to face jail time without any chance of rehabilitation.

Tribes that sustain on monkeys, dogs, or any other type of meat, are often targeted merely because they have no other option rather the meat they get from animals. Generally, animal rights activists are of elite classes and thus they have assumed themselves to be the group with more impact or influence. These groups have often emphasised on 'increased penalty theory to cease the torture of animals whilst promoting balance between human needs and animal protection. What they fail to consider is that these are flawed steps that will only oppress the lower castes. It also fails to cover a wider group and omits the large-scale industrial penalties. Leather production, processed meat factories, factory farms that profit off the cruelty of millions of animals are too invisible to be addressed and no stringent penalties are imposed on them.

RECOMMENDATIONS

1. The first step starts from an individual level itself. Whenever a person witnesses any type of cruelty on any animal, that person must report and lodge an FIR.

2. Adopt the animals from animal welfare shelters and if anyone sees an injured animal, he/she must take them to veterinary clinics.
3. Make the offender be aware of the laws and get him to stop the cruelty.
4. “Killing dogs merely to contain the spread of rabies is the worst solution. Instead, get them immunised. In the case of *Indian Handicrafts Emporium and Ors. vs Union of India and Ors.*²⁷ The court ruled that killing stray animals is illegal and whoever indulges in doing that, attracts severe punishment.”
5. Urge the Animal Welfare Board of the area or any such authorities to step in for the protection of animals.
6. The Animal Welfare Board has set guidelines for implementing Animal Birth Control. The municipalities must consider those guidelines.
7. The municipal authorities must not mercilessly capture the animals and abandon them outside safe places. It will only make them vulnerable to deaths and diseases.
8. The municipal authorities can make good use of the grant provided to built shelter for abandoned, injured, feeble, or any animal which seeks care and protection. NGOs providing such care must be contacted.
9. The owners of Cows, Buffaloes, or cattle tied to roadsides must be contacted and warned of the rules and punishments. These cows or cattle often consume plastic bags, dirt, glass pieces, and trash. They might also die due to getting hit by vehicles and may also cause accidents.
10. If the owners are unable to take care of their animals or pets, the municipals must ensure that they are sent to shelters.

²⁷ *Indian Handicrafts Emporium v Union of India* [2003] 7 SCC 589

11. If cows or any other animal is found to be having burn marks, make sure that they are treated. Generally, stallholders throw chemicals at them to chase them away. If you witness such actions, warn them of the relevant laws and liabilities.
12. Recognize your rights to feed stray animals.

CONCLUSION

Though, there have been sufficient provisions and legislations to protect our wildlife with the awareness that they must not be differentiated in terms of dignity and humane treatment. Stringent enforcement of these laws and legislation is the need of the hour. The PCA, though adds value in shielding animals from cruelty to some extent but does not address the need of including the industries under penalties, and only exacerbates the caste and class elitism. There is still a long way in developing a stringent foundation related to animal welfare in India. The penalties determined are not adequate for obviating the pain of animals. The threat emerging from the behaviour of humans towards the voiceless creatures is another pandemic we can observe in the current scenario. Experimentations, slavery, overburdening, circus display reflects the heinous nature of human.

The very essence of the research was to examine if the laws are inadequate. It can be concluded that the laws are not inadequate as far as safeguarding the interest of animals is concerned but the lacuna is implementation and administration. The reality is dim. Worthy to be noted that, it is not the truth that people do not know what laws deal with animals, rather they lack the desire and inner urge to help and protect. Hence, we require the people to develop a conscience, authorities to enforce the laws, take into consideration the suggestions of authorities like PETA, and ensure that the change does not do away with the sustenance of the needy.