

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 2

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Part of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaints**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com

Desecrating the Silent Majority Critical Analysis of Animal Laws in India

CHAKSHU SINGH¹ AND SUNANDA MOHAN²

ABSTRACT

The reminiscent memories of our childhood may remind some of us of monkeys dancing to the beat of the drums or a snake being enchanted by the tunes of a snake charmer, growing up, however, the reality seems contradictory, distraught and disappointing. From wearing their skin on our wrists, their furs on our back and immuring them into cages the truth of human brutality towards these voiceless creatures remains beyond our grasps.

In order to vocalise these silent majority this article critically analysis various animal welfare legislation in India. Unfortunately, the growth of animal laws is stunted in India. This field of law is considered less important, more emotional and poor pragmatic approach is taken while responding to the suffering of animals.

Although, there exist a number of animal welfare laws yet, there is a need to recognise and understand the difference between animal welfare and animals' rights. Where Animal welfare works towards minimizing an animal's suffering, Animal rights are the inherent rights of animals, much like human rights are inherent rights by the virtue of being a human.

The question that still remains unanswered is whether these rescue attempts are truly saving or protecting a population of animals that are "strictly" protected under various animal laws in India? In the end, the aim of any legislation should not be mere sustainability but a better quality of life.

MAIN MANUSCRIPT

*Unseen they suffer, Unheard they cry, in agony they linger, in loneliness they die.*³

Animal abuse is a subject that always gets pushed aside. Day to day, thousands of animals silently suffer from animal abuse. Recent events surrounding animal barbarity like the death of police horse Shaktiman following the merciless thrashing by a BJP MLA⁴; acid poured over 5

¹ Student of Amity University, Amity Law School, Noida, India.

² Student of Delhi Metropolitan Education, Guru Gobind Singh Indraprastha University, India.

³ PETA, 2012.

⁴ Zeeshan Sheikh, Shaktiman is a rare horse and there is more than one reason for it, The Indian Express (March 17,2016,11:36 A.M), <https://indianexpress.com/article/explained/shaktiman-is-a-rare-horse-and-there-is-more-than-one-reason-for-it/>.

new born puppies and their mother by a man in UP; unnatural sex with 3 cows in Varodara and many other instances like these are depictions of our present and fair warning for our future .⁵

‘Ubi Jus Ibi Remedium’ literally means whenever there is a legal right, there is a legal remedy, the fauna of our country has been crowned with various rights, however their implementation and legal remedies perish when it comes to reality.

These sentient beings have been crucial to the evolution of man himself yet ironically their rights have been a theme of juridical discussion among various jurists with some regarding them as “chattels” of their “superior beings”.

This view is reiterated under the Indian Penal code, prevalent since the Victorian era in India. Section 378 illustration (ii) of this section elucidates the essence by giving the example of a dog being dishonestly taken away from its owner as a theft of “movable property”⁶. Other sections such as section 289⁷, 428 and 429 deal with negligent conduct and Mischief by Killing or Maiming an animal of the value of ten rupees and fifty rupees respectively.⁸ Although, animal cruelty laws fundamentally create a difference between animals and other movable property yet, the comparison of living beings to movable property is abysmal to say the least.

The Prevention of Cruelty to Animals Act, 1960 was India’s first National Animal Welfare law. Though an affirmative action in the right direction, the growth in legislation relating to protection of animal rights and legislations of animal welfare has been laggard. The said legislation criminalises cruelty against animals however, exceptions had been made for food and scientific experimentations. Chapter – IV of the act provides that experiments on animals should be avoided as much as possible yet animals were continuously used in medical colleges

⁵TNN,Man held for unnatural sex with 3 cows, The Times Of India (Jan,17,2018,04:15 IST), <https://timesofindia.indiatimes.com/city/vadodara/man-held-for-unnatural-sex-with-three-cows/articleshow/62531114.cms>.

⁶ Indian Penal Code,1860, Section 378, Theft:Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft. Illustrations III- A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

⁷ Indian Penal Code, 1860, Section 289, Negligent conduct with respect to animal: shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

⁸ The Indian Penal Code,1860, Section 428, Mischief by killing or maiming animal of the value of ten rupees: Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The Indian Penal Code,1860, Section 429 Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees: Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

for the purpose of teaching until the 2003 directive by the Pharmacy Council of India for using CAL softwares as alternatives. However, not much has changed and animals like rats, rabbits and frogs still continue to be used for the purpose of experimentation- food, medical and cosmetic. The greatest use of Animal skins is for articles of clothing and accessories symbolised as ‘products’ of ‘luxury’ with skin of different animals being used as leather, fur, wool, artefacts and others.

Through The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 the sale of all types of cattle’s, Buffalos and camels via animal market for slaughter is impermissible however these rules do not prevent the dairy industry from supplying animals to the beef industry.⁹

It is outlandish that section 11 of the Prevention of Cruelty against Animals Act prescribes a fine of meagre ten to fifty rupees upon first conviction and rupees twenty-five upon subsequent convictions for cruelty against animals.¹⁰ This anomaly in law was also pointed out by the Supreme court in –

Animal Welfare Board of India versus A. Nagaraja and Others¹¹

The supreme court while recognising the pain, anxiety and suffering of the bulls involved in the practice of Jallikattu, held the practice as a violation of the PCA and added that the right to dignity and fair treatment as enshrined in Article 21 of the Indian Constitution is not confined to human beings alone and extends to animals as well. The court also pointed out the need for adequate fines and penalties in order to give effect to the object and purpose of the PCA.

In Hindu Mythology, every animal was associated with god. Animals breathe and are capable of feeling emotions just like humans. They too need food, shelter, clean water and medical care. It’s ironical how cows are worshipped as ‘Gau Mata’ but in the dairy industry they are nothing but milk producing machines. In order to increase dairy output, cows are artificially inseminated and forced to lactate. The process of milking is carried out by machines that yield maximum output or by hand and is continued beyond the milking capacity of the udders of these cows. No minimum standard of care is taken in the process of sterilization of the cows which is carried by ‘barefoot healers. There is as much cruelty in a glass of milk as there is in a pound of meat.

Farmers drug and genetically manipulate chickens, these innocent creatures are brought into hell from their shell and are confined into cages, as a result, many birds suffer from disorders

⁹ Rule 2(e) of the Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017.

¹⁰ Prevention of Cruelty to Animals Act, 1960.

¹¹ *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547 (India).

and spinal defects.

The principle legislation in India for Wildlife protection is the Wildlife Protection Act, 1972 which contains detailed provisions against illegal activities like hunting, maiming and killing of animals for their products like horn, skin, ivory etc and schedules detailing endangered or safeguarded fauna. India is suffering from wildlife crime which is administered by various international and national networks stemming from the fact that only “wild animal” or “captive animals” are protected under the ambit of the legislation whereas exotic species can be imported into India for exotic pet trade.

Another forte left untouched by this legislation is that of migratory birds that migrate to India for considerable period of time. The result of this insufficiency is that although the hunting of these migratory birds is prohibited, once caught, they can be transported un- accosted since they can be labelled as foreign species which is not covered by the Wildlife Protection Act.

Our marine life is also tormented, they are caught on hooks or with nets, kept in live-animal markets or raised on fish farms. According to statistics, about six million metric tonnes of fish is consumed in India each year while four million metric tonnes is exported. These sea animals are viewed as swimming vegetables and are killed for the purpose of meat as well as for liver oil. Many sea animals including dolphins and whales are openly butchered at government-owned ports¹². Currently, all species of marine mammals in the Indian seas are placed under Wildlife (Protection) Act, 1972 and The Indian Fisheries Act, 1897. Factually, the act of 1972 has been negligent towards marine species and focused largely on terrestrial species.¹³ It was only in 2001 that species such as marine sharks, rays and molluscs were included in the schedule of protected animals in the act of 1972. Still, thousands of species of fishes need protection from over-exploitation.

The Indian Fisheries Act, 1897 recognizes and prohibits only two acts which causes cruelty to the aquatic animals i.e. -Destruction of fish by poisoning waters ¹⁴and Destruction of fish by explosives in inland waters ¹⁵ and on coasts but the act does not mention anything about illegal fishing, over fishing or ocean noise pollution which is an invisible threat and a menace to ocean wildlife¹⁶

Animal sacrifice, commonly known as “Bali” as a *modus operandi* to appease deities and Gods has emerged as a grey area owing to religious beliefs. However, no religion preaches violence

¹² http://re.indiaenvironmentportal.org.in/files/Release_Screen_Fish_Report.pdf.

¹³ Sec 2(1), THE WILD LIFE (PROTECTION) ACT, 1972.

¹⁴ Sec. 4 The Indian Fisheries Act, 1897.

¹⁵ Sec 5 The Indian Fisheries Act, 1897.

¹⁶ http://www.indiaenvironmentportal.org.in/files/Release_Screen_Fish_Report.pdf.

or requires its followers to kill naïve animals.

Section 28 of the Prevention of Cruelty to Animal Act, 1960 provides that it is not an offence to kill any animal in a manner required by the religion of any community. This essentially upholds the age-old practice of animal sacrifice in the name of religion without any legal ramifications. The Apex Court has refused to intervene in the religious matters and traditions that are centuries old to balance law and religious practices.¹⁷

Gauri Maulekhi V Union of India¹⁸ is a landmark case that examined the legality of animal sacrifice with the Supreme Court declaring the animal sacrifice to be ‘demeaning and cruel’. However, it is pertinent to note that the practice of animal sacrifice has itself not been denounced by the courts and continues to be practiced in some remote areas of our country in the name of religion.

Despite being party to five major international conventions related to wildlife conservation, viz. *Convention of International Trade in Endangered Species of wild fauna and flora (CITES)*; *International Union for Conservation of Nature and Natural Resources (IUCN)*; *International Whaling Commission (IWC)*; *United Nations Educational, Scientific & Cultural Organization World Heritage Committee (UNESCO-WHC)* and the *Convention on Migratory Species (CMS)*, India still falls short on animal welfare policies. The Animal Protection Index 2020 ranks various countries from A (highest score) to G (lowest score) as per their policies and constitutional system. Recently, Animal Protection Index 2020 released by World Animal Protection graded India as having a ‘C’ ranking in its Index. The report highlighted the system of poor regulation of rearing of farm animals, along with an unregulated urban dairy system which is developing with equally poor welfare standards.¹⁹

Building upon the current Prevention of Cruelty to Animals Act, which recognizes that creatures can suffer physically and mentally, the Government of India should introduce new domestic laws so as to provide security to these living beings and so that loopholes can be filled-in. However, purely domestic rights for animals wouldn't be enough. The primary dispute that led to the codification of human rights in international arena, can also be contended for the development of international animal rights as well. “First, from the outlook of fairness and justice, such rights (once accepted as a matter of principle) belong to animals independent of

¹⁷Dhananjay Mahapatra, Can't interfere in animal sacrifice tradition: Supreme Court, Times Of India (Sept.28, 2015,23:47IST) <https://timesofindia.indiatimes.com/india/Cant-interfere-in-animal-sacrifice-tradition-Supreme-Court/articleshow/49144192.cms>.

¹⁸ Gauri Maulekhi V Union of India, Writ Petition (PIL) No. 77 of 2010 (India).

¹⁹ Gorky Bakshi, Animal Protection Index 2020 : India attains ‘c’ rank, need to improve in many domains , Jagranjosh (Mar, 13,2020, 15:19 IST),<https://www.jagranjosh.com/current-affairs/animal-protection-index-2020-india-attain-c-rank-need-to-improve-in-many-domains-1584093042-1>.

their place of birth and abode. Second, international rights would also set a benchmark for domestic laws. International instruments would potentially yield for some monitoring or at least help to mould the formulation of criticism against domestic practices that do not satisfy the international standards. Third, while the main tool for enforcing rights in domestic law is a court process where standing for animals creates additional problems, international rights are often monitored in no adversarial reporting procedures within which the rights-holders don't act as parties. The factual difference between human victims and animal victims that cannot speak or represent themselves does not bear on these proceedings.”²⁰

The lack of social awareness regarding animal protection and the lack of sensitivity of humans towards animals in India further prevents these sentient beings from being protected. States should create social awareness programmes in order to make certain that the fauna of our Country are out of danger and lead safe lives. The need of the hour necessitates that our environmental laws need an upgradation in this regard. Such laws can't be merely preventive, they need to advocate positively for animal welfare.

In April, 2019 the Centre transferred administrative control and matters concerning cow shelters, prevention of cruelty to animals and its governing laws from Environment Ministry to Agriculture Ministry on grounds of 'administrative convenience'. Such a move might defeat the purpose of animal welfare as the regulated (agriculture) industry is more engrossed in production of dairy, meat and fish industry. The esse of wellbeing of Animal should have been kept at an arm's length from the ministry whose sole purpose is to intensify production. Moreover, our government and majority religious sects largely focus on protection of Cows and hence, at policy levels, the government should actively work and regulate policies for protection of all the animals without attaching religious sentiments to any particular animal. Because as long as they live, their lives are meant to be protected and being indifferent to our fellow creatures is the essence of inhumanity.

Conclusion

The Universal Declaration of Human Rights, 1948 recognises the inherent human rights of all living persons. Such a document in respect of animals was conceived in the year 2000.²¹ However, it merely remained proposed and was never formally adopted. In India, following the footsteps of the Uttarakhand High Court, The High Court of Punjab and Haryana has accorded the status of a “legal persons” to animals. The status of persons in “loco parentis” has

²⁰ Anne Peters, Rights of Humans and Non Human Animals; Complementing the Universal Declaration of Human Rights, Vol 112, AJIL Unbound, 355-360 (2018).

²¹ Universal Declaration of Animal Welfare, 2000.

been conferred upon citizens as a reinstatement of their fundamental duty to “have compassion for living creatures.”²² It was observed by the court that rights and responsibilities of various types of “legal persons” differ according to their nature like corporations can protect their Right of Expression but are not endowed with Right to life. “The paradox is that we may loathe to extend legal personality to animals because we find it difficult to value animals for what they are - but we may continue to have difficulty seeing animals' intrinsic worth and dignity until we can bring ourselves to give them rights.”²³ This status of animals has been recognised 60 years after the recognition of Human Rights and is yet to be fully established by the Supreme court.

A notable legislation in this respect is the *Animal Birth Control (Dogs) Rules, 2001* which provides that dogs are to be sterilized, vaccinated and neutered and subsequently released in the same area from where they had been captured. This legislation also provides that dogs suffering from medical problems have to be treated before performance of any such procedure. The World Health Organisation has recognised vaccines as one of the most effective ways to control the spread of rabies, subsequently, mass vaccinations form a big part of this legislation. Legislations like *Animal Birth Control (Dogs) Rules, 2001* and Judgements like *Karnail Singh And Ors V State of Haryana* can be seen as channels for establishment of Animals Rights And their Welfare legislations in India. However, the ultimate goal is still afar.

The characteristics of a fiend is being cruel and disregarding the cries of his companion beings and barely treating their lives as ‘life’, so are we not humans without humanity or fiends? Nonetheless, at the core, no matter where an animal strands, there should be an intrinsic desire to “shield” these animals. The conjecture that they are somehow like “us”, and need to be saved should be the only beacon while legislating laws for animal welfare.

²² Article 51A(g) in The Constitution of India-to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

²³ *Karnail Singh and others, Petitioners v. State of Haryana, CRR-533-2013(India)*