

# AN ANALYSIS OF OFFENCES AGAINST ANIMALS AS A CRIME IN INDIA

KSHITIJ KAS VISWANATH

## ABSTRACT

*In recent times, we have come across numerous incidents wherein animals have been subject to cruelty, making us question whether the laws that are present today are effective and practical. The study aims to study the impact that animal abuse has on the legal system today and also understand what the motive and purpose of the laws are by tracing their history and how we have moved from an anthropocentric society to an eco-centric society and the implications of the same. The paper also studies animal abuse from a constitutional viewpoint and tries to establish its effect on the criminality of animal abuse. The paper further studies Indian provisions in comparison to that in Austria for an international perspective on an ideal animal abuse provision. The paper also studies in detail the impact that the limitations of the provisions viz. non-cognizable nature and lack of proportionality of animal abuse punishments have on society. Finally, the paper aims to hypothesize certain recommendations and suggestions that the researcher believes would be beneficial for the same.*

Keywords: Animal Abuse, Cruelty, Anthropocentrism, Abuse, Constitutionality.

## 1. INTRODUCTION

*“The Question is not ‘Can They Reason?’ Nor ‘Can They Talk?’ But it is ‘Can They Suffer?’”*

-Jeremy Bentham

### 1.1. HISTORY OF ANIMAL RIGHTS

The history of animal rights in India can be traced to prehistoric times, when civilization depended on Animals for their daily needs such as food and clothing. This directly translated into respect and emitted a ray of harmony as even religious beliefs began incorporating animals as deities. Even in Greek Paganism, there are records of animals co-existing with Humans and creatures that are half man and half animal as well such as the centaur<sup>1</sup>.

However, with the passing of time, this original thought split into two distinct schools i.e. the Western School and Eastern School of Thought<sup>2</sup>.

<sup>1</sup>Steven H Lonsdale, *Attitudes towards animals in ancient Greece*, 26 GREECE & ROME 146–159 (1979).

<sup>2</sup>*The easternisation of the west*, in NEW RELIGIOUS MOVEMENTS 53–66.

On one hand, the Western School of Thought, deeply influenced by Roman Law, considered animals as beings without the capability to make rational choices and domesticated animals were the property of its owner, who had all rights over the animal.

The Eastern School of Thought, on the other hand, believed that all lives held some value and considered humans and animals as entities in the same continuum and sometimes also took to revering them as spiritual beings of high importance.

Due to colonization and the spread of European influence over the world from the 16<sup>th</sup> to the 20<sup>th</sup> century, the western school of thought took precedence in crafting and engineering laws in countries. In this setup, one question that was raised would be questioning the ethics of treating animals as property or chattel<sup>3</sup>.

Despite this, certain elements of the eastern school of thought still have a lasting effect on society. The practice of Karma engrained in Hindu culture creates an informal point system, which puts a person on path to heaven or hell<sup>4</sup> and the Halal system of slaughtering animals tries to imbibe a painless and humane approach to kill the animal<sup>5</sup>.

One set of arguments against treating animals as chattel was that they were sentient beings i.e. they were able to perceive and feel things, however this thought was regarded as very simple and could not be distinguished from one another<sup>6</sup>.

However, as the world moved towards a newer, egalitarian order with the thought of world peace and harmony, the need for better, more humane practices in our day-to-day needs became essential and, in this sense, the humane outlook towards Animals was an integral part as well, setting certain standards and practices to handle them ethically.

Today, the world of legal rights for animals has moved beyond ethical practices and the law pushes for personification i.e., personifying an animal to have the same rights as a Human in the eyes of the Law<sup>7</sup>.

<sup>3</sup>Gary L. Francione, *Animal rights and animal welfare*, 48 RUTGERS L. REV. 397 (1995).

<sup>4</sup>NORM PHELPS, *THE GREAT COMPASSION: BUDDHISM AND ANIMAL RIGHTS* (Lantern Books) (2004).

<sup>5</sup>FEBEARMANIOS&BOĞAÇ A. ERGENE, *HALAL FOOD: A HISTORY* (Oxford University Press) (2018).

<sup>6</sup>ALASDAIR COCHRANE, *ANIMAL RIGHTS WITHOUT LIBERATION: APPLIED ETHICS AND HUMAN OBLIGATIONS* (Columbia University Press) (2012).

<sup>7</sup>*Ibid.*

In India, other entities such as forests and rivers have received a status as a person in the eyes of law<sup>8</sup>.

## 1.2.CURRENT PROBLEMS FACED REGARDING ANIMAL RIGHTS IN INDIA

Animals in India today often find themselves in between the fight of modernity versus Indian culture. On one hand, modern practices and technologies pose a threat to animals by implementing animal testing in cosmetics, pharmaceuticals and other such fields and ancient practices such as *Jallikattu* (Bull racing) and Cock Fighting also threaten animals and the thought that no pain must be caused to them.

In light of above, following are the contemporary issues of Animal Rights faced in India:

### a. Cosmetic Testing on Animals:

Every year, millions of animals are killed for the purpose of testing cosmetic products and pharmaceuticals to identify fatal side effects and reactions of chemicals in these medicines and these tests often take place in inhumane and improper conditions. India banned animal testing in 2014, however has not created checks to prevent the ban on imported products which have gone through animal testing<sup>9</sup>.

### b. Improper animal sterilization procedures:

According to the Animal Birth Control Rules, 2001<sup>10</sup>, the central government mandated the sterilization of street animals to check their proliferation, which is to be done by doctors. However, this process is often done in a negligent manner, causing harm or death to the animals<sup>11</sup>.

### c. Animals for sport and entertainment:

Animals such as elephants and monkeys are kept in captivity or cages for the purpose of entertainment, often subject to torture and uncomfortable conditions. Sports such as *Jallikattu*

<sup>8</sup> Donnell. O.E & Jones J.T., *Three rivers are now legally people – but that's just the start of looking after them*, DOWNTOEARTH, 27 MARCH 2017, <https://www.downtoearth.org.in/news/water/three-rivers-are-now-legally-people-but-that-s-just-the-start-of-looking-after-them-57448> (Last Visited 28 November 2020).

<sup>9</sup> *Cosmetic Regulation and Alternatives to Animal Experimentation in India*, in ALTERNATIVES TO ANIMAL TESTING 57–62.

<sup>10</sup> Animal Birth Control Rules, 2001, S.O. 1256 (E), Sec.3 (3).

<sup>11</sup> Krithika Srinivasan, *The biopolitics of animal being and welfare: dog control and care in the UK and India*, 38 TRANSACTIONS OF THE INSTITUTE OF BRITISH GEOGRAPHERS 106–119 (2013).

in Tamil Nadu and *Ahatguri* in Assam have been banned to prevent unnecessary pain and suffering on animals for the sake of entertainment<sup>12</sup>.

d. Consumption of Meat:

Although a lot of meat is consumed every day, the ethical issue of Animal Rights originates on how these animals are treated and slaughtered. Crammed cages, inhumane slaughtering conditions and lack of medical care cause unnecessary pain to animals and this must be rectified, further meats such as dog meat have been banned in states of Nagaland<sup>13</sup>.

1.3. RECENT CASES

The current scenario that India faces with respect to Animal Rights is one that is not only civil or criminal in nature, but traverse constitutionality, religion and the enjoyment of rights through the lens.

The most recent questioning of animal rights came with respect to Animal Sports, namely *Jallikattu* in Tamil Nadu and Bullock Cart racing in Maharashtra, which in their current form were in violation of the Prevention of Cruelty of Animals Act, 1960 and Section 428 and 429 of the Indian Penal Code (IPC)<sup>14</sup>.

However, the case moved to the Supreme Court, where the states pleaded their rights under Article 29(1) of the Constitution<sup>15</sup>, claiming their respective cultural rights and the protection of the same, highlighting that the sports were a ‘collective culture’ of the people of the state.

The question of *Jallikattu* not only raised the question of whether the sport is constitutional or criminal, but also raised the validity and scope of Article 29(1).

Yet in the case of *Jallikattu*, in 2014 it was held by the Supreme Court in the *Nagaraja* judgement that the sport of *Jallikattu* was cruelty towards bulls<sup>16</sup>.

<sup>12</sup>Benoy Krishna Tikader, *Threatened animals of India.*, THREATENED ANIMALS OF INDIA. (1983).

<sup>13</sup>Dolly Kikon, *From the Heart to the Plate: Dog Meat Debate in Dimapur*, (2017).

<sup>14</sup>Krishnadas Rajagopal, *Supreme Court refers jallikattu challenge to Constitution Bench*, THE HINDU, Feb. 2, 2018, <https://www.thehindu.com/news/national/sc-refers-jallikattu-challenge-to-constitution-bench/article22630214.ece> (last visited Nov 28, 2020).

<sup>15</sup>INDIA CONST. Art 29, § 1.

<sup>16</sup>*Animal Welfare Board of India v. Nagaraja*, (2014) Civil Appeal No. 5387 of 2014 SC.

However, animal cruelty still lies today, disguised behind religion and the rights of people. Numerous festivals spanning all religions include practices of animal sacrifice, which are still deemed to be animal cruelty. Through the lens of Criminal law, all these actions amount to acts of cruelty and are punishable. However, constitutionally, these are exempted acts of 'religious rights' and it is imperative that this provision be impartially implemented, not turning a blind eye only to one section.

The other issue that the country faces today is the lack of reciprocity of punishment. In the case of *Bharat Amartlal Kothari v. Dosukhan Sindh*<sup>17</sup>, the accused was ferrying cattle to the city. However, he was doing so by placing the cattle in a cramped, congested manner with lack of ventilation and water. The court ruled that this amounted to grave cruelty towards the animal and ruled the accused must be punished. However, the punishment for the said crime was a meagre fine of ₹50, which had no value in terms of the effect of punishment.

## 2. RESEARCH METHODOLOGY

### 2.1. STATEMENT OF PURPOSE

The researcher establishes that animal rights today is a growing field of study as numerous pressure groups and legal systems are moving towards an eco-centric outlook, considering animals equal in rights. However, the weak provisions of law and the lack of conviction are going against the ideals stated by the safety provisions created for animals. This study aims to identify the overlap in constitutionality, crime and the sociological outlook to understand the reason and attempt to suggest changes to the same.

### 2.2. RESEARCH QUESTIONS/ HYPOTHESIS

The researcher through the course of this research attempted to answer the following questions objectively:

- a. Whether there is a link between Animal Abuse and other Crimes
- b. Whether fundamental rights and Duties enshrined in the Constitution have effect on Animal Abuse as a crime.
- c. Whether the provisions of the current laws lack proportionality to the crime and what is the effect thereof.

<sup>17</sup>*Bharat Amartlal Kothari v. Dosukhan Sindh*, (2009) CrI.A. No. 2020 of 2009 SC.

- d. Whether there is scope for change.

### 2.3. RESEARCH OBJECTIVES

The researcher has evaluated and studied numerous variables which are determinant factors in the role played by Letters of Credit and undertaking as instruments of guarantee. In lieu of the same, the researcher has proposed the following objectives be studied for greater understanding:

- a. To understand the elements of animal abuse as a crime
- b. To highlight the impact of animal abuse on the sociology of a legal system.
- c. To establish a link between constitutionality and Animal Abuse.
- d. To suggest measures to strengthen the current laws in comparison to Austria.

### 2.4. TYPES OF DATA COLLECTION

The researcher has broadly used secondary data collection for the purpose of this research. The researcher further has used exploratory and descriptive research to undertake the study.

#### Exploratory Research-

Exploratory research is concerned with the identification of problems and exploring the root of those problems by aiding the researcher in developing research variables and formulating the hypothesis and testing the same with the help of an extensive literature review. Flexibility is an important element of exploratory research and is bound to spark new insights, ideas and revelations.

## 3. LITERATURE REVIEW

### 3.1. ANIMAL ABUSE AS A CRIME

- 3.1.1. Stephen Kellert and Alan Felthous in their work titled *Childhood Cruelty Toward Animals among Criminals and Non-Criminals*<sup>18</sup> defined Animal Abuse as harm caused to animals that is a) Socially Unacceptable B) Intentional or Deliberate 3) Unnecessary.

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<sup>18</sup>Stephen R. Kellert & Alan R. Felthous, *Childhood cruelty toward animals among criminals and noncriminals*, 38 HUMAN RELATIONS 1113–1129 (1985).

- 3.1.2. Robert Agnew in their paper titled *The Causes of Animal Abuse: A Social-Psychological Analysis*<sup>19</sup> studied the relationship between the psychological and social implication of Animal abuse and classified and differentiated the different types of animal abuse that are prevalent today. The author observed that unchecked animal abuse of violent nature has a psychological impact on the people, portraying violence to be acceptable and hence it provides scope for more heinous crimes such as murder and rape.
- 3.1.3. Frank Ascione et. al., in their work titled *The Relations Among Animal Abuse, Psychological Disorders and Crime: Implications for Forensic Assessment*<sup>20</sup> studied and established a relationship between Animal Abuse and Crime. The author observed that 61% of Individuals who have been convicted with Animal Abuse in Australia have also been held for assault, 55% have been held for domestic violence and 175 have been held for Sexual Assault, creating a link between animal abuse and violent behaviour.
- 3.1.4. Piers Bernie in their report titled *Animal Abuse and Criminology: Introduction to a Special Issue*<sup>21</sup> studied the role of numerous variables such as law, economy and social impact in the criminology of animal abuse. The author observed that animal abuse is a direct violation of morals and ethics that society follows and is contrary to the principles of lesser pain and non-violence, bring it well into the ambit of a crime.
- 3.1.5. Arnold Arluke et. al., in their paper titled *Relationship of Animal Abuse and Other Forms of Antisocial Behaviour*<sup>22</sup> studied how animal abuse aid in creating situations for anti-social behaviour to increase by observing how animal abuse affects psychological growth from childhood to adulthood. The study found that immoral acts of Animal Abuse led to the incentivization of acts such as rape and assault.
- 3.1.6. Piers Beirne in their paper titled *Criminal and Animal Studies: A Sociological View*<sup>23</sup> studied animal crimes through a sociological lens and established that animal studies are a growing field in sociological and legal developments. The author acknowledges

<sup>19</sup>ROBERT AGNEW, *The Causes of Animal Abuse: A Social-Psychological Analysis*, 2 THEORETICAL CRIMINOLOGY 177–209 (1998).

<sup>20</sup>Frank R. Ascione et al., *The relations among animal abuse, psychological disorders, and crime: Implications for forensic assessment*, 36 BEHAVIORAL SCIENCES & THE LAW 717–729 (2018).

<sup>21</sup>Piers Beirne, *Animal abuse and criminology: Introduction to a special issue*, 55 CRIME, LAW AND SOCIAL CHANGE 349 (2011).

<sup>22</sup>Arnold Arluke et al., *The relationship of animal abuse to violence and other forms of antisocial behavior*, 14 JOURNAL OF INTERPERSONAL VIOLENCE 963–975 (1999).

<sup>23</sup>Piers Beirne, *Criminology and animal studies: A sociological view*, 10 SOCIETY & ANIMALS 381–386 (2002).

that the new order is moving towards equality of all living beings from the theory of equality of among men, hence abuse of animals should be treated the same of abuse of humans, making it a crime.

### 3.2. NEED FOR REFORM IN ANIMAL ABUSE LAW

- 3.2.1. Kathryn Bayne et.al., in their work titled *The Evolution of Animal Welfare and the 3Rs in Brazil, China and India*<sup>24</sup> evaluate the conditions, laws and actions in these respective countries and suggest measures to change the same using a simple 3R method. The three Rs stand for Replacement, Refinement and Reduction. Replacement refers to changing laws to replace redundant or archaic laws. Refinement refers to the process of shaping the laws and refining them to meet contemporary needs and reduction refers to the process of simplifying the laws to not have numerous laws overlap with one another.
- 3.2.2. Cheryl Leahy in their work titled *Large-Scale Farmed Animal Abuse and Neglect: Law and its Enforcement*<sup>25</sup> studies the impact of animals and the different variables in the environment such as climate change, food shortages, pollution threatening habitats, etc and establishes the impact of animal treatment among other influences playing a role in the same. The author provides numerous suggestions such as education on new laws on humane treatment, social network building, promoting advocacy groups among others.
- 3.2.3. Piers Beirne and Nigel South in their book titled *Issues in Green Criminology*<sup>26</sup> studies the growth and status quo of Animal Rights in today's scenario. The authors observed that there is an increasing concern and demand for animal rights today. The authors further explain certain measures or yardsticks to create reforms such as creating a utilitarian measure to compare the benefits of animal rights over the loss due to its enactment. Further, the author also expounds on the theory of green criminology and puts the matter of animal rights subject to environmentalism as well.

<sup>24</sup>Kathryn Bayne et al., *The evolution of animal welfare and the 3Rs in Brazil, China, and India*, 54 JOURNAL OF THE AMERICAN ASSOCIATION FOR LABORATORY ANIMAL SCIENCE 181–191 (2015).

<sup>25</sup>Cheryl L. Leahy, *Large-Scale Farmed Animal Abuse and Neglect: Law and Its Enforcement*, JOURNAL OF ANIMAL LAW & ETHICS (2011).

<sup>26</sup>PIERS BEIRNE& NIGEL SOUTH, ISSUES IN GREEN CRIMINOLOGY (Routledge) (2013).



3.2.4. JR Lovvorn in their work titled *Animal Law in Action*<sup>27</sup> studied how animal rights law developed over the years and how it evolved. The author took an example of how people were fascinated with wildlife in Zoos and they flooded to see the exhibits. However, the author noted this trend changed over the years and the same crowd were now against the practice of captivating animals. Hence, the author states that reform should be people centric and not resource centric.

3.2.5. Kyodo in their article titled *Cruelty Against Stray Animals on the Rise in India amid Lack of Effective Laws*<sup>28</sup> observes the provisions against animal abuse in India and compares it to the rest of the world, particularly the western world. The author notes that countries like Australia have a maximum prison term of 5 years and a fine of A\$50,000 for Individuals and A\$250,000 for Corporations, showing that India is in dire requirement to make the punishment more proportional to the Crime.

#### 4. CRIMINAL NATURE AND JUSTIFICATION OF ANIMAL ABUSE

The world today is moving towards greater progress and development. This development is not restricted to political or economic development, but also social and legal development, with newer, more egalitarian ideas such as feminism and Animal rights have emerged in a new, amplified manner.

As established in the literature above and with the laws that are present today, offences against animals in the form of abuse is deemed to be a crime, however the punishment and deterrence is in question.<sup>29</sup>

The idea of making acts of animal abuse criminal in nature stems from the fact that animals, although unable to express in human sense, have the ability to feel and sense pain and pleasure and have their sentiments as well, establishing that cruelty on an animal is equivalent to cruelty on man.

<sup>27</sup>Jonathan R. Lovvorn, *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform*, 12 ANIMAL L. 133 (2006).

<sup>28</sup> Kyodo, *Cruelty Against Stray Animals on the Rise in India amid Lack of Effective Laws*, S.C.M. POST, Jun. 17, 2016, <https://www.scmp.com/news/asia/south-asia/article/1976563/cruelty-against-stray-animals-rise-india-amid-lack-effective> (Last Visited Nov 28, 2020).

<sup>29</sup>Abha Nadkarni & Adrija Ghosh, *Broadening the Scope of Liabilities for Cruelty against Animals: Gauging the Legal Adequacy of Penal Sanctions Imposed*, 10 NUJS L. REV. 515 (2017).

The initial idea of enshrining offences against animals as crimes can be traced to the thought that animals were property of a citizen or the property of the state. Harming an animal was considered to be violative of the right of the owner, hence a form of trespass. This can be seen in the colonial Indian Penal Code, where offences against animals i.e. Section 428 and Section 429 lie under the chapter titled *of Offences Against Property*<sup>30</sup>.

The contemporary criminal nature of animal abuse as enshrined in the Prevention of Cruelty of Animals Act, 1960 originates from the idea that the state is responsible for all its subjects and the law considers animals as mute subjects entitled to their rights as well, and not as mere chattel<sup>31</sup>.

Further, it is a question of what society accepts. In today's world, the concept of humane alternatives and the idea that animals can feel as well has changed the perception of society towards animals. We as a collective society view animals as separate entities and not as chattel of another<sup>32</sup>.

It has also been established that animal abuse has sociological and psychological effects on its observers and offenders, with members who indulge in animal offence being more prone to commit violent crimes such as assault and rape against humans themselves which has been established in numerous studies<sup>33</sup>.

The question as to what amounts to animal abuse or cruelty is also one of ambiguity. While the law does, to some extent, recognize the rights of animals, we still see bullock carts, horse carriages and even butchering of chicken and lamb taking place, which in itself are acts of cruelty. This leads to a phenomenon called speciesism, which essentially places one species of animals have more rights than the other. For example, killing of chicken for food would not be considered a crime, while killing of dog or deer for the same would be considered a crime<sup>34</sup>.

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<sup>30</sup> Indian Penal Code, No. 45 of 1860, § 428, 429.

<sup>31</sup> *Supra* note 28.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Supra* note 20.

<sup>34</sup> Marc Bekoff, *Deep ethology, animal rights, and the great ape/animal project: Resisting speciesism and expanding the community of equals*, 10 JOURNAL OF AGRICULTURAL AND ENVIRONMENTAL ETHICS 269–296 (1997).

Hence, we can conclude by saying that animal abuse does entail criminal offence, but the nature of animal abuse compared to other offences differs on numerous variables such as proportionality.

## 5. THE LAWS IN EFFECT AND THEIR APPLICATION IN INDIA

### 5.1. SECTION 428, 429 OF THE INDIAN PENAL CODE, 1860

#### 5.1.1. Background of Provision

The background of having provisions under Section 428 and 429 of the IPC stems from the philosophy that animals were property of the state/individual and hence maiming or killing such animal by poisoning or rendering that animal useless would be punished as though he/she has committed a crime because it would be considered as mischief or trespass on a person's property and a person has a right to seek remedy against damage to his/her property<sup>35</sup>.

#### 5.1.2. Scope of Provision

The Scope of the provisions under Section 428 and 429 can trace their basic framework to that of Mischief, which has been elaborated under Section 425 of the Indian Penal Code. Section 428 and 429 are two sections that find their place in the larger set of crimes under mischief which range from Section 425 to 440 of the IPC<sup>36</sup>.

Hence, we must observe Section 428 and 429 through the angle of Mischief and the harm to animals must be deemed as 'malicious injury to property', based on the principle *Sic UtreTuo Ut Allenum Non Leadas* which means use your own property to not harm your neighbour's property<sup>37</sup>.

Hence, we must understand for there to be application of Section 428 and/or 429, there must be<sup>38</sup>

- i. Intention or knowledge of likelihood to cause wrongful loss or damage to animals either of ₹10 or ₹50.

<sup>35</sup>Supra note 29.

<sup>36</sup>Bihar State Electricity Board V. Nand Kishore Tamakhuwala, (1986) CriLJ 1246; Supra note 16.

<sup>37</sup>Charles E. Carpenter, *The Doctrine of Green v. General Petroleum Corporation*, 5 S. CAL. L. REV. 263 (1931).

<sup>38</sup>Supra note 34.

- ii. There must be death or injury caused to such animal, leading to its value to diminish.

It is important to note that acts of negligence or acts of necessity do not fall under the scope of this law as like most offences under the IPC, there is a need for *Mens Rea* to exist for conviction under the act.

### 5.1.3. Application of Provision

The application of this provision mainly extends to physical abuse of animals and not more heinous crimes such as Animal testing or ill-treatment for entertainment. Following are some cases which would help us understand the application of Section 428 and 429 more effectively:

- i. In *Johri v. The State*<sup>39</sup>, the complainants' cow died due to an altercation between them and the accused. In this particular scenario, after investigation, the court established the application and ingredients for Section 428 and Section 429, stating that for Section 429 to be applicable, there must be Intention, wrongful loss and loss of value of asset.
- ii. In *SukhiBehra v. State of Orrisa*<sup>40</sup>, the petitioners used a *lathi*(wooden stick) to control a bull, which caused scratches and skin injuries to it. The court in this case held that the petitioners would not be liable under Section 429 of the IPC, but can be punished under Section 426 of the IPC (Punishment for Mischief).
- iii. The court in the case of *Majid Ali v. State of Uttar Pradesh*<sup>41</sup>, the court produced a two-fold judgement in their verdict by stating that Section 428 and 429 of the IPC requires a deliberate attempt on part of the accused to commit mischief, making intention the gist of the offence. The court also interpreted the language of these sections make it clear that this section is restricted only to domestic animals and not wild animals.

The only difference between the two provisions under Section 428 and 429 would be the degree of punishment prescribed and the animals that fall under its category. While Section

<sup>39</sup>*Johri v. The State*, (1970) CriLJ 1259.

<sup>40</sup>*SukhiBehra v. State of Orrisa*, (1960) Cut LT 342.

<sup>41</sup>*Majid Ali v. State of Uttar Pradesh*,(1957) All LJ 123.

428 has smaller animals like chicken and sheep, section 429 deals with larger animals such as elephants, mules and horses.

#### 5.1.4. Penalty under Provision

Although the principles of both Section 428 and 429 are similar, differing only on the value of the animal, the degree of punishment varies.

Section 428 prescribes imprisonment up to a period of 2 years, a fine proportional to the value of an animal worth ₹10 or both, while Section 429 prescribes a more enhanced punishment of up to 5 years, a fine or both.

### 5.2.PREVENTION OF CRUELTY OF ANIMALS ACT, 1960

#### 5.2.1. Background of Provisions

The Prevention of Cruelty of Animals Act, 1960 (The PCA Act) is existent largely due to the inadequacies of its predecessor, the PCA Act of 1890, which had a very restricted scope and application by defining an ‘animal’ as a domesticated or captured animal, which meant that stray animals, which are the ones subject to most cruelty were not in the ambit of the law. The PCA of 1890 was also restricted to very few types of cruelty, provided very little punishment and protected only those animals that resided within Municipal and Urban Limits<sup>42</sup>.

To counter the same, the amended PCA Act of 1960 was created, enhancing punishments and for the first time brought Research and experimentation under its fold<sup>43</sup>, prescribing proper methods for treatment and also created the Animal Welfare Board of India to oversee all activities regarding animal rights<sup>44</sup>.

Thus, the Prevention of Cruelty of Animals Act, 1960 is the widest and most powerful animal law legislation in India despite it having its own criticisms.

#### 5.2.2. Scope of Provision

<sup>42</sup>AVANTHIMEDURI, RUKMINI DEVI ARUNDALE, 1904-1986: A VISIONARY ARCHITECT OF INDIAN CULTURE AND THE PERFORMING ARTS (Motilal Banarsidass Publisher) (2005); Prevention of Cruelty of Animal Act, 1890, No. XI of 1890S, §2(1).

<sup>43</sup> Prevention of Cruelty of Animals Act, 1960, Act 59 of 1960, §14.

<sup>44</sup>Prevention of Cruelty of Animals Act, 1960, Act 59 of 1960, §4(1).

The scope of the PCA act with respect to criminalizing Animal Cruelty is largely restricted to Section 11 of the Act, which lists the numerous acts that constitute animal cruelty and lists specific offences such as kicking, beating, running over and overloading animals, thus causing them unnecessary pain as a Punishable offence<sup>45</sup>.

However, the term ‘unnecessary suffering’ in the scheme of animal rights and interpretation is up for debate. While there exists a general principle as to what exactly amounts to unreasonable suffering, there is a lack of consensus and clarity on the same and hence there is a need to set boundaries and definitions to prevent the same<sup>46</sup>.

This in India was held in the Nagaraja Judgement, wherein the Supreme Court ruled that unnecessary pain is all that pain caused to an animal that could, in ordinary circumstances, be avoided or reduced to benefit the animal, to protect the animal, etc<sup>47</sup>.

But at the same time, the Orrisa High Court in the case of *Bali Parida v. NiraParida* interpreted section 11 of the PCA Act, 1960 to mean that beating animals’ prima facie is not punishable in itself and has to be justified<sup>48</sup>.

### 5.2.3. Application of Provision

Reviewing the provisions of the PCA Act, 1960, one can deem the Act to be the Constitution or Charter of Animal Rights in India.

The application of the PCA Act, 1960 or Section 11 in particular extends far beyond physical abuse of animals, rather has taken a stance on issues such as wilfully administering injurious drugs or substances to animals under Section 11(1)(c), bringing the issue of animal testing<sup>49</sup>.

The Act also prescribes the need for the owners of then animals to provide it with adequate food, shelter and ventilation under Section 11(1)(h) of the PCA<sup>50</sup>.

<sup>45</sup>Prevention of Cruelty of Animals Act, 1960, Act 59 of 1960, §11(1).

<sup>46</sup>*Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547.

<sup>47</sup>*Ibid.*

<sup>48</sup>*Bali Parida v. NiraParida*, (1969) SCC OnLine Ori 129.

<sup>49</sup> Prevention of Cruelty of Animals Act, 1960, §11(1)(c).

<sup>50</sup>Prevention of Cruelty of Animals Act, 1960, §11(1)(h).

Keeping these provisions in mind, the question arises as to why animal sports such as Jallikattu and animal sacrifices during festivals such as Bakrid must be banned or has precedence to happen<sup>51</sup>.

To understand this, we must revert to the Nagaraja Case, where the definition of unnecessary pain was created, and the act of tying an animal to a short leash, unnecessarily slaughtering them, intoxicating them or drugging them amount to unnecessary cruelty as these can be avoided and hence, they must be banned.

However, the question of legislation versus Fundamental Rights of Citizens comes into picture, not allowing the application of this law in full practice in the present moment.

#### 5.2.4. Penalty under Provision

The penalty prescribed by the PCA Act of 1960 is one of great contention and are often considered ineffective and toothless to cause any deterrence. The provisions of the PCA Act, 1960 prescribes that the maximum fine in case of the first offence, the offender is liable to pay a fine of ₹50 and for a second offence committed in a span of a three year period of the first crime, the offender may be liable to pay a sum of ₹100 as a fine, may face imprisonment for 3 months or both with the provision of the offender being prevented from owning the animal again<sup>52</sup>.

### 6. STATUS OF ANIMAL RIGHTS AS RECOGNIZED BY THE CONSTITUTION

The concept of Animal Rights is not a new concept in Independent India. The forefathers of the country have mentioned animal cruelty and prevention of the same by providing certain provisions within the Constitution as well. This particular section looks into the role of these provisions in the constitution and how they have been interpreted in the Judiciary.

#### 6.1. ANIMAL RIGHTS AS ENSHRINED IN DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

The Directive Principles of State Policy (DPSPs) are instruments within the constitution which project the ideals that our forefathers intended be implemented in our country, but

<sup>51</sup>Supra note 46.

<sup>52</sup>Animal Welfare Board of India, *Animal Protection Laws for guidance of Police, HAWOs, NGOs & AWOs*, July 4, 2014, available at <https://awbi.org/?q=node/177> (Last visited Nov 29, 2020).

were not able to do so immediately due to the paucity of resources or the inappropriateness of the situation<sup>53</sup>.

The Fundamental Duties were included in the Constitution to provide assistance in constitutional and legal interpretations of contemporary issues<sup>54</sup>. In the given situation, the PCA Act is in consonance with the ideals in our DPSPs and Fundamental Duties i.e. to promote compassion for living beings and to promote a sense of humanity and scientific temper as enshrined in Article 51A(g) of the Constitution<sup>55</sup>.

As a DPSP, the constitution makes a commitment to Animal Welfare in Article 48<sup>56</sup> of the constitution, which seeks to preserve, improve standards of cows in India and also prevents the slaughter of cows, cattle and other similar animals. Article 48A makes a commitment to protect the environment and wildlife in the country<sup>57</sup>.

The effect of these DPSPs and Fundamental Duties have a vast implication; they lay a moral and ethical duty on the state to work towards implementing these laws in the country<sup>58</sup>.

These provisions are not mere moral obligations; however, the judiciary is increasingly using them in their judgement making process as well with respect to Animal Rights. The courts have used Article 51A(g)<sup>59</sup> in numerous interpretations such as the case of Bull Fighting (Nagaraja Case), According birds to have the Right to Fly and other such cases. The courts after the Nagaraja Judgement, the courts opined that the provisions of the PCA Act must be conjoined with the provisions of Article 51A(g) and 51A(h) of the Constitution.

The courts in the case of *N.R Nair v. Union of India*<sup>60</sup> upheld the validity of a Government Notice to ban cruelty towards bears, tigers and monkeys under Section 22(ii) of the PCA Act and also ruled that although there was no enforceable duty of the state to protect the right of animals, the state would make necessary provisions and reasonable restrictions to provide rights to animals in the current scenario.

<sup>53</sup>*State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors.*, (2005) 8 SCC 534.

<sup>54</sup>*Ibid.*

<sup>55</sup>INDIA CONST. art 51A(g).

<sup>56</sup>INDIA CONST. art 48.

<sup>57</sup>INDIA CONST. art 48A.

<sup>58</sup>*N.R. Nair v. Union of India*, (2000) AIR Ker 340.

<sup>59</sup>*Supra* at 55.

<sup>60</sup>*Supra* at 58.



Thus, this gives us an image that the judiciary today does not view animals as mere commodities or silent entities, rather the court is moving towards a more equal approach between humans and animals.

## 6.2.ANIMAL RIGHTS ENSHRINED IN THE FUNDAMENTAL RIGHTS OF THE CONSTITUTION

Fundamental Rights conferred by the constitution are supreme; under no circumstance can an entity bestowed with these rights be denied the same and such an act would be a grave threat to the state itself. Thus, it would be appropriate to study the rights bestowed to these animals through a constitutional lens of the utmost power. The arguments in this section would cover Fundamental rights from the point of view of animals and from the standpoint of Humans as well

Going back to the case of *N.R Nair v. Union of India*, the Supreme Court in its ruling stated that legal rights are not confined to humans, rather spread to all living entities, who had a Right to live a quality life with no unwarranted hindrances.

Thus, the court, arguing through the lens of Article 21 of the Constitution i.e. the Right to Life has taken numerous steps to recognize the rights of these animals and provide for them. For instance, in the Right to Fly case of *People for Animals v. Md. Mohazzim*<sup>61</sup>, where the court ruled that it was the fundamental right of birds to fly and not be restricted to cages for the purpose of exhibition, trade or business as this is an avoidable action.

This principle was further taken on in the Nagaraja Case, where the court recognized the right to Life of animals by expanding the scope of Article 21 of the Constitution by arguing that animals too have a right to live with dignity and right to life doesn't mean only existence, but living with some basic amenities<sup>62</sup>.

These principles have eventually found their way to the PCA Act through the practice of the interpretation of the term 'unnecessary pain' under section 11 of the PCA Act.

On the other hand, arguing for Fundamental Rights can be a standpoint from humans exerting their cultural and ethnic rights as well. Article 25 of the Constitution permits every citizen to freely practice, profess and propagate their religion, subject to public order, health and

<sup>61</sup>*People for Animals v. Md. Mohazzim*, (2015) SCC OnLine Del 9508.

<sup>62</sup>*Supra* note 52.

morality. The caveats mentioned above are subject to judicial interpretations and these interpretations largely depend on *Vox Populii* or the people's will<sup>63</sup>.

The provisions under Article 25 ensures the state does not interfere in the matters of religion, which when superimposed on Animal Rights is theoretically supposed to allow Animal Sacrifices and Sports such as Jallikattu as these have been established as cultural practices of religious or regional identity and practice.

However, the approach of the court today is changing. The status quo of Animal Rights today is largely determined by the clash of two schools of thought; The Anthropocentric School, which considers humans as a superior being over the others by arguing that human needs prevail over the needs of other animals, while the ecological school pushes for equality among all species, arguing that the benefit to animals would also benefit Humankind through a symbiotic relationship that exists in nature today<sup>64</sup>.

The anthropocentric school gained place in the PCA Act, wherein under Section 28 of the act exempts people indulging in animal sacrifices from criminal liability<sup>65</sup>.

Hence, we can say that in terms of fundamental duties, India is far from achieving personification of animal rights.

## 7. ANIMAL RIGHTS LAWS IN AUSTRIA; A COMPARISON

The researcher, in order to gain global perspective, made a choice to compare the provisions for Animal Rights in Austria to that of India as Austria has one of the best laws for Animal Rights.

### 7.1. PROVISIONS IN AUSTRIA IN BRIEF

The provisions in Austrian Law have a great degree of recognition under Austrian Law. Under Article 285 of the Austrian Civil Code, animals are "not objects, but they are protected

<sup>63</sup>INDIA CONST. art 25.

<sup>64</sup>ROBERT GARNER, THE POLITICAL THEORY OF ANIMAL RIGHTS (Manchester University Press) (2005).

<sup>65</sup>Prevention of Cruelty of Animals Act, 1960, §28.

by special laws". This essentially means that animals have constitutional recognition, however do not have the status of a personhood<sup>66</sup>.

The most important animal welfare legislation in the country would be the Austrian Animal Welfare Act of 2004, which was enacted with the purpose of "protecting the life and welfare of animals in light of the responsibility that mankind bears towards animals as fellow creatures"<sup>67</sup>

In general, the act prohibits the infliction of unjustified suffering, pain and injury on animals with certain exemptions made for hunting and recreational fishing. The act provides a duty on all its citizens and animal owners that they provide freedom of movement, ambient climate, food and water, depending on the animal's needs<sup>68</sup>.

The act also provides a duty of care on farms to not unnecessarily indulge in surgery or medical intervention for animals for therapeutic purposes and has banned practices such as ear snipping, tail docking (removing the tail or cutting it short) and debeaking.

The law is also comprehensive on the provisions while slaughtering animals by providing guidelines to eliminate unnecessary pain, suffering and injury by indulging in practices such as doing away with cages to store poultry or animals<sup>69</sup>.

Through the 2004 legislation, numerous practices in Austria have come to an end; the act brought an end to practices such as fur farming and the use of wild animals in circuses and the act also banned the use of Chimpanzees, orangutangs and other apes for experiments; psychological or cosmetic<sup>70</sup>.

For its achievements, Austria has been accoladed with an A grade according to the Animal Protection Index.

<sup>66</sup> Austrian Civil Code, Art 285 (1950).

<sup>67</sup> Austrian Animal Welfare Act, Statement of Object (2004).

<sup>68</sup> Austrian Animal Welfare Act, §§ 2-4 (2004).

<sup>69</sup> Austrian Animal Welfare Act, §§ 10-13 (2004).

<sup>70</sup> Austrian Animal Welfare Act, §§ 17, 21(2004).

## 7.2. A COMPARISON WITH INDIA

When the laws of Austria are juxtaposed to that of India, we find that the laws in Austria are far more comprehensive, providing scope for numerous offences of varied nature, rather just a general statement.

In India, the offences are largely restricted to Section 11 of the PCA Act, while the Austrian Animal Welfare Act has individual clauses from Section 10 to 35, explaining the different offences in detail and what constitutes these offences.

However, the mode of punishment in both countries with respect to imprisonment is very similar. In India, the maximum punishment goes up to 3 months with respect to any crime that is committed, while Austrian Law states that the maximum imprisonment can be up to 2 years<sup>71</sup>.

The fine in India is restricted to ₹50 for the first offence and ₹100 for the Second and consecutive offence, which is drastically out of proportion to the nature and gravity of the crime, making the law a mere formality. However, Austrian Law allows the court to decide the degree and amount of fine, depending on the merits and statutes of the case, rather than setting a ceiling amount<sup>72</sup>.

However, the advantage Indian Law possesses can be seen in how it treats all offences the same; irrespective of it being a minor offence, the acts in India are still tried. However, Austrian Law pardons minor acts and incidents such as beating of animals<sup>73</sup>.

The laws in Austria also have very well-defined provisions to demarcate what exactly amounts to Unnecessary pain towards animals and forbids any harm caused to these animals. The laws here also provide well defined requirements and clear standards that people have to follow, thus ensuring that there is no ambiguity.

Thus, we can say that India can adapt and learn much from Austria in terms of Animal Rights and its implementation.

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<sup>71</sup> Austrian Animal Welfare Act, §36 (2004).

<sup>72</sup>Prevention of Cruelty of Animals Act, 1960, §20; *Ibid.*

<sup>73</sup> Austrian Animal Welfare Act, §§ 36-37 (2004).

## 8. LIMITATIONS TO THE PRESENT FORM OF PUNISHMENT

### 8.1.LACK OF PROPORTIONALITY OF CRIME TO PUNISHMENT

The lack of proportionality with respect to punishment refers to the scenario wherein the deterrence to commit a crime is lesser than the effect of the crime itself. With reference to Animal Rights and Laws in India, the fine today is set at a maximum of ₹100 for the commission of an act, which does not instil a sense of fear or reflect the seriousness of the crime.

The implication of this would be that committing that offence would be normalized, which essentially means that people would consider committing the crime, knowing that they would get no punishment for the same, or the punishment is menial.

In numerous cases, the accused has burnt dogs, cats and other animals, which not only inflicts huge pain on the victim animal, but is also a disturbing and ghastly sight for onlookers<sup>74</sup>.

Further as established in the literature above, the effect of committing animal abuse traverses the act itself, rather has a long lasting sociological and psychological impact, which incentivizes animal abuse offenders to commit more heinous crimes against humans themselves.

### 8.2.NON-COGNIZABLE NATURE OF OFFENCE

The non-Cognizable nature of an offence indicates that no investigation can take place with respect to that offence without a warrant from the magistrate. The implication of this is widespread and deep.

Due to this crime being non-cognizable, the extra walls of procedure that are required to conduct investigation prevents swift and effective action from being possible to hold the accused liable for the offence.

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<sup>74</sup>Neha Madaan, InPune, 4 dogs burned alive, 16 poisoned, T. INDIA, Oct 4, 2017, <https://timesofindia.indiatimes.com/city/pune/in-pune-4-dogs-burned-alive-16-poisoned/articleshow/60933868.cms> Last Visited Nov 30, 2020).

It is due to this that numerous animal activists today face problems when it comes to registering their cases with the police as the police are reluctant to work on these cases as it involves paperwork, procedure and effort.

This also furthers the opinion of people to portray crimes against animals as one of lesser implications; crimes such as holding illegal gambling, spreading false rumours and using false weights are cognizable offences, but actual physical harm to animals is disregarded.

### 9. ANIMAL RIGHTS, RELIGION, CONSTITUTION AND CRIME; AN ANALYSIS

Animal rights as established in this paper is not an issue that is merely restricted to the helm of crime or animal welfare, rather it asks larger questions, covering subjects in the field of constitutionality, religion, psychology and sociology.

As we move towards a more enviro-centric mindset today, dismissing anthropocentrism, we realise that animals, like us have emotions and feelings, however they have been disregarded due to their sentient nature. Hence, systems are slowly, but surely moving towards a system where animals are being disregarded as chattel and are being regarded as legal entities.

The question of constitutionality and fundamental rights is also a question that is left to debate today. While some believe that animals are beings who are part of the ecosystem and deserve the same rights as us humans, others may argue that animals have no ability to accept these laws and work within the framework and disregard the role of animals in drafting rights.

The fight for these rights has the ability to grant animals a Right to Life and the ability to live with dignity and basic amenities. In the researcher's opinion, the progressive nature of the court in the Right to Fly matter as observed in the case of *People for Animals v. Md. Mohazzim*, which definitely has shown India move towards the ideals of life with peace and harmony with nature as enshrined in the DPSPs and Fundamental Duties.

However, when the same Fundamental Rights are viewed from the standpoint of Cultural and Religious rights, the standpoint automatically becomes anthropocentric in nature, with citizens claiming their right to practice religion.

This automatically disregards the concept of Animal Rights and leads to practices which from an eco-centric point of view would be unnecessary. For example, sacrificing sheep or poultry

for a festival is not necessary for human survival and can be done away with. The indulgence in acts of sacrifice and animal cruelty in the name of cultural rights goes against the principles of the IPC and PCA Act which want to prevent 'unnecessary pain' to animals.

The researcher strongly believes that a new balance must be created in order to ensure equitable balance today. It is imperative we do away with unnecessary practices and come to a common understanding that cruelty to animals today is not an acceptable practice, keeping in mind that animal abuse has been established to cause offenders to commit more heinous crimes such as assaults, rapes and burglaries.

Through this study we also observed that the lack of deterrence against animal abuse normalizes the crime, which reduces criminal provisions for animal abuse as paper laws which lack practical implementation.

Further, it was also studied that Indian law, although existent, lacks practicality and clear definition. The provisions in the system are vague and no clear explanation to what constitutes as abuse is present, which makes defining the crime a difficult process.

Further, the law also lacks on the procedural front; crimes against animals are non-cognizable, which makes it a complex process to track, investigate and convict the accused in this situation, which is a deterrent for the police to take on such cases, leading to a blind eye turned to these incidents, which silences voices against the crime of animal abuse, further normalizing the crime. This can be seen in some statistics, where in Mumbai alone, 19,028 cases of animal abuse had been reported between 2013 and 2017, but not a single arrest had taken place, showing the unwillingness and lack of action that animal abuse sees today<sup>75</sup>

With respect to this, the researcher is also in strong belief that although steps have been taken to create laws to protect animals, we are far from providing justice to our silent counterparts.

The issue of animal rights may not seem important in a time where economic, social and cultural disparities exist within the human fold itself. However, it is imperative that we consider maintaining rights of animals as well as the ecosystem that we reside in is closely connected and a benefit to them would mean a benefit to us.

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<sup>75</sup> Badri Chatterjee, *19,028 Animal Cruelty Cases in Mumbai over 5 Years; not a Single Arrest*, H. TIMES, Jun 03, 2017, <https://www.hindustantimes.com/mumbai-news/19-028-animal-cruelty-cases-in-mumbai-over-5-years-not-a-single-arrest/story-71BzHW03ONSXiKhu8FN0HL.html> (Last visited Nov 30 2020).

Lastly, the researcher is compelled to believe that for India to achieve the goals and ideals propounded by her forefathers, it is essential she keep an open mind to the developments and positive policies that exist elsewhere in the world so as to adopt, imbibe and learn to work with the new normal and be a country of true harmony and prosperity.

## 10. CONCLUSION

### 10.1. FINDINGS

Through the course of research, certain inferences and observations were made with respect to how animal rights have evolved and are developing in India today. The following are some findings of the study:

- The impact of animal abuse spans sociological and psychological issues as animal abuse is directly linked to the offenders committing other heinous crimes such as murder, rape, robbery, etc.
- The system of punishment and deterrence is inadequate in India due to the menial amount of fine or imprisonment, showing that Animal Abuse is not yet a serious crime in India and the proportionality of the crime to the punishment is skewed.
- The provisions of the PCA Act and the IPC are biased towards an anthropocentric thought as it intends to protect animals, but decriminalizes animal sacrifices and sports in lieu of cultural rights.
- India lacks procedural convenience towards convicting Animal abuse cases as it is non-cognizable, which leaves a lot of cases unreported.

### 10.2. RECOMMENDATIONS

Through the course of the study, the researcher identified numerous points where further changes in the current provisions can be made. Following are some of the recommendations that the researcher propounds:

- The fine for crimes of animal abuse must be increased from ₹50/ ₹100 to a higher amount or a provision must be made wherein the court determines the quantum of the fine based on the merits of the case, with no minimum limit.



- For studying and observing animal rights in every state, a State Animal Welfare Board, similar to the State Human Rights Commission must be created to provide required suggestions and reports, highlighting the issue of animal abuse.
- The crime of Animal Abuse under Section 428 and 429 must be amended to become cognizable offences in order to ensure swift action.
- The position of animals by law must be viewed as equal to human beings and not inferior beings in order to safeguard our rights and theirs.



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