
CRITICAL ANALYSIS OF THE CRIMINALIZATION OF ANIMAL CRUELTY

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“For as long as men massacre animals, they will kill each other. Indeed, he who sows the seeds of murder and pain cannot reap the joy of love.”

– Pythagoras

ABSTRACT

There is a recent trend in the newspapers, online articles and other media platforms highlighting how the animals are treated cruelly including the pet animals where number of animals being raped are increasing day by day, where such incidents have led to death or other health related problems, cooking the pet dogs and cats for consuming purpose etc. One such example recently we can see is that a woman threw acid on the dog causing damage to its eye and the body. We can see that in spite of the Supreme Court has always defended the rights of animals there is a rapid increase in animal cruelty which is not being reported. This leads to a question whether the laws in IPC, 1860 such as Section 428 and 429 and PCA, 1960 (Prevention of Cruelty to Animals Act) should be reformed because it raises a question if the provisions for the criminal penalties and bail are adequate or suitable to this modern society as these laws were framed during those days where animal cruelty was comparatively very less. Hence, this research paper talks about what changes to be made in law so as to reduce the cruelties such as bestiality, negligence, animal hoarding, physical domestic abuse, organized animal abuse etc or what are the different types of cruelties animals face and which provisions can be reformed for an appropriate punished who violate these which is not provided pertinently, currently as per Indian laws. Hence, this paper enhances the knowledge on Critical analysis of animal cruelty both from law and morality perspectives.

Keywords: Animal Cruelty, Criminal Penalties, Bestiality, Animal Hoarding, Organized Animal Abuse

INTRODUCTION:

Humans identifies themselves as “Civilized animals” which is means compassion whereas on the other hand they are know for being “Ahimsa” especially Indians, where they worship Animals but on the contrary now it has become a land where right of animals are in question and there is requirement for those rights to be protected. We can take a recent example, when there was a G20 summit in India, especially in Delhi the stray dogs were rigorously dragged using a wire in order to portray India as a Beautiful country. Hence, we can see through various studies that animals are in danger 99 percent because of humans and their acts.

During, past few years many countries have identified the rights of animals under the constitution mainly, the United Nations where they have a framework which talks about protection of animals in the form of some conventions and different organizations have also made some efforts declaring the rights of animals. In the Indian Constitution, it indirectly recognizes the right of animals which is a major drawback as these animals cannot be protected nor their rights can be exercised. There is data on violence against humans but not with violence against animals. So, it's high time we understand that we should be the voice of voiceless animals and protect those helpless creatures.

This Research paper in the first chapter talks about various perspectives such as the history of animal rights, how animal rights came into spotlight and how effective and useful they are in eradicating the main issue and giving protection to animals which gives an overall idea about why animal rights should be given importance. The second chapter emphasizes on the Judicial framework regarding the issue, how different laws such as IPC or PCA are giving importance or effectiveness. Then, the last Chapter tells us about the moral aspect i.e., how the society is impacting on empowering the rights of animals and protection of animals. So, to conclude the whole research paper analyze the current laws in India and to give suggestions as to how to improve them in order to make them more effective.

LITERATURE REVIEW:

1. Jessamine Therese Mathew & Ira Chadha-Sridhar, Granting Animal Rights under the constitution: a misplaced approach? An analysis in light of animal welfare board of India v. A. Nagaraja NUJS LAW REVIEW 7 NUJS L.REV. 349 (2014):

While the conclusion suggests a duty-based approach as the correct path, it does not provide specific recommendations for policymakers. Offering practical recommendations for implementing this approach or areas of further research would be valuable. My research paper will provide specific and practical recommendations for the policymakers

2. A Constitutional Analysis of Animal Rights in India, Volume 5, Issue 6y Tania Bagwe:

This research paper talks about various aspects such as legislative and constitutional framework, historical development especially in India and also gives a practical conclusion.

3. Bhumika Sharma & Priyanka Sharma, Rights of Animals at practice in India, Journal On Contemporary Issues of Law Volume 3 Issue 7:

While this research paper mentions the historical context of animal rights globally, it fails to go in depth about the historical background of animal rights in India.

RESEARCH OBJECTIVE:

This Research paper mainly focuses on study of:

1. To examine what are contributions made by the society in order to improve the status of animals and their rights.
2. To get knowledge regarding the historical development of animal rights and laws.
3. To evaluate what are the developments made by Judiciary and Indian laws regarding the matter
4. To analyze up to what extent these laws are effective on protecting the animals.

RESEARCH METHODOLOGY:

This research paper has adopted Black letter methodology which is also called doctrinal method where the sources are mainly based on articles, Newspapers, Books etc...

RESEARCH PROBLEM:

In India, different animals are treated as Gods and worship them and will treat them as our Companion. Every religion recognizes the importance of animals and their co-existence in

society. But despite all this animal rights in India are not recognized and animals are suffering. The constitution of India gives Fundamental rights to Humans whereas it does not recognize the rights of animals directly or explicitly anywhere. As a result of this, there is ambiguity in society regarding the legal rights of animals. Therefore, this raises a problem of Constitutional loophole about moral and legal obligations and responsibilities towards animals and their rights.

RESEARCH QUESTIONS:

This research mainly answers these following questions:

1. How animal rights developed in India's constitution?
2. How effective is the already existing legislative framework of animal rights?
3. What was the contribution of the judiciary in the development of animal rights?
4. What was the contribution of civil society in advancing animal rights?
5. Why is it important to have animal rights?

RESEARCH ANALYSIS:

CHAPTER I: HISTORY:

The protection of animals and their rights is not a recent issue it goes back to several decades i.e., even in the ancient days people tried to protect them but in ancient times animal cruelty was not in large number as it is in current era. During ancient time, one of the known persons who made policies regarding animal cruelty especially for Cows and protected animals was King Akbar. In the era of King Harshavardhana and Akbar they made few policies in order to take care and protect animals and they. They also even built few hospitals where they used to treat injured animals. This was not only followed by them but also several other kings, rulers and leaders of ancient time. But after their eras when Mughals invaded India, they started Slaughter of animals for the purpose of food. And in Mughal's era only there was a time where numerous animals in the forest especially deer were killed for the purpose of Various hunting competitions where even kings participated in such competitions. But one of the positive customs followed by them was they did not slaughter cows during Hindu festivals in order to show respect to Hindu religion.

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During the British Era, they took many important decisions in order to protect animals. It was in 1817. It was in 1860, where the British enacted India's first animal protection and rights law. This Act gave a legal framework where they gave prominence for prevention of animal cruelty and this act also allowed the prosecution of people who violated this act. In the current era, the official law for Criminalization of Animal cruelty is Indian Penal Code, 1860 which was introduced by Britishers which provides provisions for all criminal acts. In this act, it criminalizes all the acts such killing, poisoning, maiming or rendering useless any animals. These Acts are punishable under section 428[1] and section 429[2] according to IPC. After this Act, as there was rise in After this Act, as there was rise in killing Wildlife animals, In 1912 they introduce an act called The Wild Birds and Animal Protection Act, 1912[3] in order to protect wildlife animals. animals from poaching and hunting. Then after the British era, that is during Post independence time in order to bring various other effective laws, as these previous laws were not very efficient in fulfilling their purpose, they introduced an act called Prevention of Cruelty to Animal Act in 1960[4]. This act also led to the establishment of the Animal Welfare Board of India. And then, in order to strengthen even more the laws related to animals especially Wildlife animals as in because during that time there was increase in using animal skin and various other parts of animals for purpose clothes, shoes, designs and several

other purposes. In order to reduce this, they introduced the Wildlife Protection Act, 1972[5]. This act led to establishments of several Wildlife sanctuaries and National parks. There was an

amendment to this act in 2006, which was even more strengthened by increasing the penalties for the offense committed under this and it gave prominence to endangered animals such as Bengal Tigers, Asian lions etc.

Hence, this whole chapter talks about how the laws and rights related to animals evolved from many centuries and how they have improved and strengthened their laws and provisions by introducing various Acts for better effectiveness and reducing animal cruelty.

CHAPTER II

CONSTITUTIONAL FRAMEWORK:

The idea that animals should not be used or exploited by humans is known as "animal rights." [6] In the constitution there are no specific provisions which explicitly are for animal protection or rights. But there are few Judicial interpretations which can be made through few Articles. One of the main important ones is Article 21 [7] which gives Right to Life and Personal Liberty. Here, it says all the Living Beings have the right to live a Dignified life. Therefore, we can say that even animals have a right to lead dignified life without any such above mentioned cruelties which has also been interpreted through many landmark judgements by courts.

We also have another provision which is under DPSP (Directive Principles of State Policy) which also states examine the protection of the environment which also includes Animals and to protect them from cruelty. As per, Article 48 [8] under this which is explicitly for protection and improvement of animal breeds whose primary perspective is to improve and increase the livestock breeds such as cows and to prevent cow slaughters. And also, as per Article 51 And also, as per Article 51A [9] all the people residing in India have a duty to protect animals from agony and cruelty which also have a broader aspect that is to even respect animals and treat them as one of us.

Criminal Law Framework (IPC, 1860):

Under IPC, there are mainly two sections which protect the rights of animals from cruelty which is Section 428 and Section 429. Section 428 states that Mischief by killing or maiming animal of the value of 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. Section 429 states that 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. This section deals with diminution of water supply, e.g., the placing of an embankment across a channel. Section 277 applies if the water is fouled so as to be unfit for use. This section applies equally to irrigation channels as to other sources of irrigation, such as tanks and ponds.[10] The offense under this section is cognizable, bailable, compoundable and triable by any Magistrate.

Here, Maiming refers to those injuries which cause the privation of the use of a limb or member of body.[11] Maiming also implies a permanent injury[12], wounding is not necessarily maiming. Here, this section is applicable when there is permanent injury caused to the animal by the offense of mischief as mentioned above. The Supreme Court in many of its judgments has stated that the offense done under this section as well as under section 9(1) which is read with section 50 are the same offense which will therefore not operate as double jeopardy.[13] The essential ingredient of this section is mischief which is defined under section 425 of IPC. Here for offense of mischief one of the main essentials is destruction of property where we can interpret that if no one has right over that animal, the offenses mentioned above are committed then they cannot be punished under this provision which acts as a major drawback or loophole as this is the only act which protects animals' rights directly but on the other hand it is not properly framed which has resulted in lack of effective protection of animals.

Here, a horse includes a mare. In this case the plaintiff gave all his horses to defendant for the purpose of training and development, the defendant removed the high heel horse shoes and replaced them with flat ones for training purposes which would have caused pain to horses but on the other hand, there is no evidence to prove that the pain was caused to the horse hence this case was quashed.[14] In one of the other cases Madras High Court gave its judgment such as the calf does not come under bull, cow or ox hence any offense committed against it does not come under this purview.[15] But on the other hand, Calcutta High Court held that younger ones of Bull and Cow will come under this purview but younger ones of Ox do not come under this purview. And also, this section implies that as domestic animals are more valuable regardless of their age comes under the ambit of this section but as for other animals which is

not domestic in nature will not come under this section unless it is proved that these animals are more valuable than fifty rupees[16] which is another major loophole in these sections as it is very difficult to prove the value of any other animal.

In case when a cattle in cattle are killed on public road by a vehicle by rash and negligent driving, this act will not constitute as an offense under this section, as mischief is hard to prove another main ingredient in mischief is intention or knowledge and, in this act, it should be proved that it was done intentionally which is not easy to prove. Hence, this showcases another major drawback which will make it easier for the offenders to be not punished. In another case when a few dogs entered the grass field of the plaintiff and ate the goats of his, in this case also it is very difficult to prove the intention behind this act.

In one of the other cases, where the poison was mixed in pond here the allegation was that the accused formed an unlawful assembly and mixed poison in pond which resulted in the death of many fishes but on the other hand report of chemical analyst or post mortem report of the fishes procured from pond could not prove the same. Hence, we can say that proving in such cases is very difficult according to their essentials and acts as a major drawback.

Landmark Judgements:

1. Animal Welfare of India v. A Nagaraja and Ors:[17]

Jallikattu is a traditional sport that takes place in Tamil Nadu during Pongal. In this sport, bulls of a certain breed are released into a crowd of people. The people have to grab the hump of the bull and hold on to it while the bull is attempting to escape. This sport was brought into the notice of Madras High Court as it violates Article 21 that is right to life and liberty of animals. In May 2014, the Supreme Court of India delivered its judgment in this case. The court held that Jallikattu and bullock cart races inherently involve cruelty to animals and are in violation of the Prevention of Cruelty to Animals Act. The court also emphasized the need to uphold the welfare of animals and the duty of the State to prevent any unnecessary pain or suffering to animals. The judgment was seen as a landmark decision in the realm of animal rights in India, as it emphasized the importance of animal welfare and sought to prevent cruelty to animals in the name of tradition or sport.

2. People for Ethical Treatment of Animals v. Union of India: [18]

The Animal Welfare Board of India must issue a No objection certificate to any film that wishes to use animals, according to the Bombay High Court's decision in this case. This decision assures that animals will be better protected during the filming process. Thus, the judgment forbids more cruel practices such as beating, depriving animals of food and water, or subjecting them to loud, unusual noises. Thus, the judiciary has helped in transforming India into a more animal friendly country but it is still at its infant stage.

Hence to conclude this chapter, we can see that it may be a constitutional framework or IPC. There are many loopholes which even now are affecting the rights of animals and animals are not getting protected. Even though there are few landmark judgements have upheld Justice by protecting the rights of animals but on other hand there are many cases which are going unknown or coming under the ambit if these provisions as there major and many loopholes in law which is resulting in increase in animal cruelty Chapter III:

In the recent era we can see that people's or society 's voices reach a higher level, which means that governments give importance or give attention to issues raised by the society or the NGOs or Animal activists etc. One of the recent examples, for the same we can take the Hijab issue, which showcased the power of voices of people. When we come to the topic of animals, there are many NGOs (Non-Governmental Organizations) and animal activists who are creating awareness about animal rights and their protection and also about how animal cruelty is increasing in society due to major loopholes in the law regarding the same. They do various types of programmes, campaigns, workshops etc. in order to create awareness among the people in the society. One of the popular NGOs who are creating awareness about these in India are PITA (People for Ethical Treatment of Animals). They conduct very successful campaigns and programs with the help of Celebrities in order to reach numerous audiences. They conduct these in various sectors such as entertainment, Fashion, meat and also give knowledge about cruelties such as bestiality, physical abuse of animals, Animal hoarding, Organized animal abuse which are faced are by all sectors of animals such as domestic, pet, street/ stray, wildlife etc. in order to make people understand what pain even animals go through. One of the recent cases handled by them was the case mentioned above of stray dogs being treated badly during the G20 summit. There were many organizations and NGOs which provided food and water to stray animals during the pandemic and helped them get the needful. Hence, we can conclude that we are in the infant stage now where there has been an increase in awareness as there is increase in animal cruelty. There should be many people in society who should come forward

not only to the fundamental rights of people but also animals who are currently suffering due to different types of cruelties.

CONCLUSION AND SUGGESTION:

This Research paper concludes that currently there are many loopholes in law as well as there is negligence from the society towards the protection and rights of animals as we have seen above. So, there is a serious requirement of stricter law without any drawback which helps animals to gain their rights back. We can see that recently the laws have become more efficient and punishment for cruelty of animals has changed under BNS, 2023 (Bharatiya Nyay Sanhita) which before in IPC was not very efficient as the punishment for cruelty of animals was just Rupees fifty. But on the other hand, even in recent acts and laws there is mention of mischief which acts as a major loophole even now. Hence, still as there are many loopholes and drawbacks regarding the same there should be some improvised laws which should be created in order to eradicate such types of animal cruelties from the society. Therefore, we can adopt a theory called deterrence theory of punishment where rapid, severe and certain punishments will be given in order to reduce such criminal acts or behavior which according to this research paper is the most effective way for protecting animals. There are many different aspects which now are included in BNS such as trafficking of wildlife animals through air or water and etc. under Section 324 (b) which is one of the useful laws.

There are few changes that people are adopting to where many people are turning themselves to vegan which will reduce major animal cruelty which is bringing a positive and useful impact both to the society as well as the animals. And there is a recent trend that people are using beauty products, clothes, shoes, bags which are made up of only vegan products where they are certified as PETA approved Vegan. These types of lifestyles should be adopted and this awareness should spread among whole society in order to reduce animal cruelty. Hence, we as human beings should think how to help and protect those voiceless animals and implement them as we as Indians believe that animals are gods which protect us and we are all one.

“To my mind, the life of a lamb is no less precious than that of a human being. I hold that, the more helpless the creature, the more entitled it is to protection by man from the cruelty of man.” - M.K Gandhi.

ENDNOTES:

- [1] Indian Penal Code, 1860
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- [3] The Wild Birds and Animals Protection Act, 1912, Acts of Parliament, No.8 of 1912 (India).
- [4] The Prevention of Cruelty to Animals Act, 1960, Acts of Parliament, No.59 of 1960 (India)
- [5] The Wildlife Protection Act, 1972, Acts of Parliament, No. 53 of 1972 (India).
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- [7] Indian Constitution, Article 21
- [8] Indian Constitution, Article 48
- [9] Indian Constitution, Article 51
- [10] The Indian Penal Code, Ratanlal and Dhirjlal
- [11] Fattehadin, (1881) PR No. 33 OF 1881
- [12] Jeans (1884) 1 C & K 539
- [13] State of Bihar vs Murad Ali Khan, (1998) 4 SCC 655: 1989 Cr LJ 1005: AIR 1989 SC 1.
- [14] Donald Netto & Ors v. State of Jharkhand, 2008 Cr LJ 3350 (Jha)
- [15] Cholley, (1864) Mad Unrep.
- [16] Hari Mandle v. Jafar, (1895) 22 Cal 457
- [17] Animal Welfare of India v. A Nagaraja and Ors, (2014) 7 SCC 547.
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6. Constitution, Bare Act
7. BNS, 2023 Bare Act