
THE CASE FOR ABROGATION OF SECTION 28 OF THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

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ABSTRACT

In India, the regime of animal rights is fraught with a distinguished tension between the constitutional aspiration towards compassion and judicially and statutorily sanctioned harm. The Prevention of Cruelty to Animals Act, 1960,¹ was introduced as a progressive shift towards safeguarding Animals. Yet, it enshrines such tension under the ambit of Section 28,² which exempts ritualistic killing from the purview of cruelty. This provision undermines the ethical coherence by subordinating animal welfare to ritual imperatives.

This disjuncture was starkly mirrored in the Hon'ble Supreme Court's recent decision concerning the fate of stray dogs in Delhi-National Capital Territory Region, continued with a reversal of the same on the 22nd of August, 2025, by a three-judge bench that modified its earlier directive to remove stray dogs permanently to shelters. The revised order mandates the sterilisation, vaccination, and release of non-rabid dogs, affirming the Animal Birth Control Rules, 2023.³

This article underscores the judicial oscillation between utilitarian safety and rights, and the recognition of the rights of animals. It resonates with the doctrine of constitutional morality, where courts have previously invoked their powers to uphold the rights of animals, as a guiding principle in animal jurisprudence. The incorporation of scientific reasoning and humane protocols in the recent judgments' hints at a gradual doctrinal shift towards an eco-centrism-oriented approach. This article draws from comparative perspectives, constitutional norms, and emerging philosophical discourses that envision animals as subjects rather than objects as such.

Keywords: Section 28, Prevention of Cruelty to Animals Act, 1960; Animal Birth Control Rules, 2023; Judicial oscillation; Animal Rights; Constitutional Morality

¹ The Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India).

² Prevention of Cruelty to Animals Act, 1960, No. 59, § 28, Acts of Parliament, 1960 (India).

³ Animal Birth Control Rules, 2023, G.S.R. 193(E) (Mar. 10, 2023) (India).

I. Introduction

The jurisprudence surrounding animal rights is gradually finding its place in mainstream law concerns. The discussions over the recognition of animal rights as a legal person entitled to hold rights, coming up with a stricter regime of laws to prevent animal violence and cruelty, imposing liability on caretakers, and recognising the victimhood of animals for crimes against them, inter alia, are ongoing in many jurisdictions across the globe. Animals and Humans have a very close relationship where both are interdependent. Among these relations, religion is one such aspect where humans use animals, sometimes to kill them for a ritual's sake, as a sacrificial offering to the Gods. This Article is an attempt to critically understand the scope of Section 28 of the Prevention of Cruelty to Animals Act, 1960⁴ (herein referred to as the 'Act'), understanding its scope and the legitimacy of animal sacrifice, which is enabled by this section. Section 28 of the Act⁵ allows for the sacrifice of animals for religious purposes while keeping it outside the scope of cruelty. In light of the recent jurisprudential developments, where eco-centric and animal-sensitive approaches are taken up to narrow down the scope of Section 28 of the Act.⁶

This article is comprised of five parts, the first being the overview of the Prevention of Cruelty to Animals Act, 1960.⁷ The second part specifically focuses on Section 28 of the Act,⁸ which attempts to analyse its constitutionality in view of the eco-centric approach and jurisprudence towards the amendment or abrogation of the provision. The third part analyses the practice of animal sacrifice and its interrelation with constitutional morality and the developments in the contemporary world. The fourth part discusses a festival named Gadhamai, which is celebrated in Nepal, wherein Animal sacrifice is done in huge volumes, and the judicial activism of the Hon'ble Supreme Court of India in contributing positively towards an eco-centric approach. The fifth part of this article offers concluding remarks as well as effective and practical revisits of Section 28⁹ in light of the other four parts.

II. Prevention of Cruelty to Animals Act, 1960 - An Overview

The human will to prevent cruelty to animals is not a new phenomenon. The Act of 1960¹⁰

⁴ Supra Note 2.

⁵ Ibid.

⁶ Ibid.

⁷ Supra Note 1.

⁸ Supra Note 2.

⁹ Ibid.

¹⁰ Supra Note 1.

replaced the then prevalent Prevention of Cruelty to Animals Act, 1890¹¹ (herein referred to as the 'Act of 1890'). The Act was passed to address and remove certain deficiencies and make the legislation more comprehensible. The Act declared certain types of cruelty to animals as offences, while providing necessary penalties for such violations, and thus establishing an 'Animal Welfare Board' to promote the welfare of Animals.¹² As for the training and performance of Animals, the Act contains regulations as well as licences that an individual must possess for any entertainment to which the public is to be admitted by virtue of the sale of tickets.¹³

The Preamble of the Act provides for "An Act to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to prevention of cruelty to animals."¹⁴ In the Landmark Judgement of the Hon'ble Supreme Court of India in *Animal Welfare Board of India v. A. Nagaraja*,¹⁵ the court opined that this act is a welfare legislation and the enactment has been subject to the Directive Principles of State Policy. Further, the court held that, in trite law, that is, in matters of welfare legislation, the provisions should be construed in favour of the weak and infirm. Owing to such liberal interpretation, the court should be vigilant in making use of devices so as not to defeat the benefits conferred by such welfare legislation.¹⁶ In the pertinent case, a tussle between the tradition of Jallikattu (Bull Taming) and the law concerning cruelty to animals was a point of contention between the parties. The Hon'ble court, in its ratio decidendi, ruled, the Act, being a welfare legislation, overrides tradition and culture. And assuming that it has been in vogue for a considerable amount of time, it should give way to this welfare legislation, which was enacted to prevent the infliction of unnecessary pain or suffering on animals, and confers a duty on persons in charge of animals. India has a history of doing away with the evil practices of society, using coercive methods and inflicting unnecessary pain for amusement and enjoyment.

Chapter III of the Act is the most operative part since it provides for what amounts to treating animals cruelly and the necessary sanctions pertaining to the same.¹⁷ The Act makes provisions for experimentation and performance of animals, too.

¹¹ Prevention of Cruelty to Animals Act, 1890, No. 11, Acts of the Governor-General in Council, 1890 (India).

¹² Supra Note 1.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ (2014) 7 SCC 547.

¹⁶ Ibid.

¹⁷ Prevention of Cruelty to Animals Act, 1960, No. 59, Chapter III, Acts of Parliament, 1960 (India).

III. Section 28 of Prevention of Cruelty to Animals, 1960

This part focuses on section 28 of the Act,¹⁸ the issues and challenges that this provision entails. An attempt to understand the rationale behind this section. Contemporary legal developments need to be taken into account. The research focuses on two questions: the first one being whether the ‘essential religious test’ for a religious practice to be protected under this provision, or, some other criterion needs to be satisfied? The second question being, even if an ‘essential religious test’ is met as a criterion, is it fair regarding the determination criterion in light of legal jurisprudence in India?

Section 28 of the Act postulates that, “Nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community.”¹⁹ On analysis of this section, it is easily ascertainable that the section does not differentiate between ‘religious sentiments’ vis-à-vis ‘religious belief.’ When the preamble of an Enactment provides for the prevention of cruelty to animals, it is somewhat contrary to the words entailed in this provision. An analogy may be drawn from foreign laws preventing cruelty to animals, wherein the law has failed to define “bona fide” scientific experiments on animals.²⁰ In his discourse, Varn Chandola states, “such loose terminology allows for any school experiment on an animal, whether it be conducted in the elementary school or university, to be considered legal.”²¹ This provision suffers from similar defects and challenges.

Cruelty must not be limited to an act, in this case, sacrifice; it should be interpreted in the broadest sense, as actively done in the case of *Animal Welfare Board of India v. A. Nagarja*.²² While placing a ban on the practice of Jallikattu. The Court attempted to bring animals under the protection of rights conferred by Article 21 of the Indian Constitution, 1950.²³ The Court noted that the term ‘life’ must be interpreted broadly, as animals form a crucial part of the human environment.²⁴

To understand the concept of animal rights, it is essential to understand what ‘rights mean.’ As

¹⁸ Supra Note 2.

¹⁹ Ibid.

²⁰ Thomas E. Baker, *Constitutional Theory in a Nutshell*, 13 Wm. & Mary Bill of Rts. J. 57 (2005).

²¹ Mary Kavita Dominic, *Essential Religious Practices’ Doctrine as a Cautionary Tale: Adopting Efficient Modalities of Socio-Cultural Fact-Finding*, 16 SOCIO-LEGAL REV. 46 (2020).

²² Supra Note 15.

²³ INDIA CONST. art. 21.

²⁴ Anita Dichter, *Legal Definitions of Cruelty and Animals Rights*, 7 B.C. ENV’T AFF. L. REV. 147 (1979).

a matter of fact, rights are valid claims that specific treatment is owed or due to oneself or another.²⁵ To be more precise, it is quintessential to focus on John Rawls's contract theory. Rawls takes the social contract theory to justify his claims, describing the legitimacy of political authority.²⁶ The two assumptions on which Rawls' theory is based are, there was an 'original position,' before society was formed,²⁷ and humans are rational creatures and can reciprocate, subject to the interests of others.²⁸ A syllogism satisfies the defect in the second assumption that there is no reciprocity.²⁹ All and only beings with interests can have rights; animals can have rights, therefore animals can have rights.³⁰

Tom Regan, who is considered the founder of the animal rights view, argues that nonhuman animals with characteristics such as perception, memory, the ability to feel pain and suffering, psychological identity, and the ability to act on beliefs and desires have inherent value.³¹ And owing to such nature, all beings who share interests and values based on a similarity must be treated equally. David Favre, a world-renowned animal rights scholar, opines that animal interests must be balanced with those of humans.³²

Where religious norms appear to conflict with the overarching constitutional structure, most courts in India avoid the Gordian Knot. They, instead of engaging in political discussions, have developed a threshold criterion to determine what religious practices hold merit of protection.³³ Essential is dubbed as the Essential Religious Practices Doctrine, wherein, once a religious practice is protected once it's deemed 'essential' to the followers of that religion. In Ancient times, the practice of an Ashvamedha Yajna was considered pious; however, this practice doesn't hold well in modern times.³⁴ As per Sunstein, most of the animals bred and used for food fall outside the scope of anti-cruelty legislation. Therefore, Sunstein advocates for stricter

²⁵ TOM REGAN, THE CASE FOR ANIMAL RIGHTS 327 (Univ. of Cal. Press 1983).

²⁶ Ann Cudd & Barry Lam, *Contractarianism*, Stan. Encyclopedia Phil. (Apr. 9, 2024), <https://plato.stanford.edu/entries/contractarianism/>.

²⁷ Ibid.

²⁸ Ibid.

²⁹ WESLEY W. HOHFELD ET AL., FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING AND OTHER LEGAL ESSAYS 35–64 (The Lawbook Exch., Ltd. 1983).

³⁰ IZHAK ENGLARD, *Human Dignity: From Antiquity to Modern Israel's Constitutional Framework*, 21 CARDOZO L. REV. 1903 (2000).

³¹ Supra Note 19.

³² CASS R. SUNSTEIN, *The Rights of Animals*, 70 U. CHI. L. REV. 387 (2003).

³³ MARY KAVITA DOMINIC, *Essential Religious Practices' Doctrine as a Cautionary Tale: Adopting Efficient Modalities of Socio-Cultural Fact-Finding*, 16 SOCIO-LEGAL REV. 46 (2020).

³⁴ Ibid.

regulation and narrow exceptions.³⁵

In *N.R. Nair v. Union of India*,³⁶ the Hon'ble Supreme Court of India, for the first time, iterated that legal rights must be granted to animals and should not be restricted to humans alone.³⁷ Subsequently, on the basis of this, the Apex Court in *Nagaraja*.³⁸ Granted animal rights, including the right to live with dignity, freedom from hunger, thirst, and malnutrition, freedom from fear and distress, freedom from physical and thermal discomfort, freedom from pain, injury, and disease, and freedom to express standard patterns of behaviour.³⁹ In the case of *Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai*,⁴⁰ the Bombay High Court, opined that, animals have intrinsic worth and interests as such and they have a right to live with dignity, this decision was given in the wake of use of horse driven carriages for human pleasure, as it was held as a non-essential, avoidable human activity.⁴¹ Wherein these non-essential, avoidable human activities violate the fundamental rights conferred on animals by the Constitution.⁴²

Eco-Centric Principles

In relevance to these principles and ethics, all animals have an intrinsic value attached to them and within. Moral worth and interests attached to them must be protected; this, in turn, implies that ethical considerations should guide humans' treatment of animals.⁴³ Yet, Indian Courts have often rejected the anthropological approach.⁴⁴ Anthropocentrism holds that humans are morally superior and that their interests take precedence over non-humans.⁴⁵ Anthropocentrism has been used to justify animal welfare causes by arguing that protecting the interests of nature is also in the interests of the human race.⁴⁶ While some courts have made an exception by allowing certain activities that use animals for human benefit, such as using animals for food,

³⁵ Ibid.

³⁶ (2001) 6 SCC 84.

³⁷ Ibid.

³⁸ Supra Note 15.

³⁹ Ibid.

⁴⁰ 2015 (4) ABR 242.

⁴¹ Ibid.

⁴² Ibid.

⁴³ SUE DONALDSON & WILL KYMLICKA, *ZOOPOLIS: A POLITICAL THEORY OF ANIMAL RIGHTS* (Oxford Univ. Press 2011).

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ GEORGE B. CURTIS, *The Checkered Career of Parens Patriae: The State as Parent or Tyrant?*, 25 DEPAUL L. REV. 895, 895–97 (1976).

the Indian judiciary has primarily rejected this ideological position in favour of the eco-centric philosophy when deciding animal welfare cases.⁴⁷

It is pertinent to note that the Hon'ble High Court of Himachal Pradesh in *Ramesh Sharma v. State of Himachal Pradesh*⁴⁸ applied the doctrine of *parens patriae*, while banning the sacrifice of animals and birds in temples.⁴⁹ This was followed by the ban on Jallikattu by the Apex Court. This is relevant because the doctrine of *parens patriae* provides that the State has the duty and authority to protect those legally unable to act independently, and animals belong to this category.⁵⁰

Recent Developments in India

Through the Prevention of Cruelty to Animals (Amendment) Bill 2011⁵¹, section 28 was proposed to be omitted from the Act of 1960.⁵² The rationale for proposing this omission was based on the assertion that, killing of animals for religious purposes was against the tenets of religion, in addition to the spirit of the Constitution of India. Through the Prevention of Cruelty to Animals (Amendment) Bill 2015⁵³ Section 28 was proposed to be substituted with a new provision. The new provision allowed for the central government to notify the religious occasions on which customary sacrifice of animals will be allowed, and such sacrifice shall be carried out by a trained professional to ensure minimum pain and trauma to the sacrificial animal.⁵⁴ People for Ethical Treatment of Animals (PETA), in a letter dated April 24, 2017,⁵⁵ addressed to the Prime Minister appealed for the elimination of animal-derived foods from the menus of all government forums, in light of climate change and ethical treatment of animals.

IV. Animal Sacrifice vis-à-vis Constitutional Morality

Law in today's world is widely regarded as the primary tool for social control. As a result, morals and religion have to be compared in reference to each other. What is the extent to which

⁴⁷ T.N. Godavarman Thirumulpad v. Union of India (2012) 3 SCC 227; Centre for Environmental Law, World Wide Fund-India v. Union of India (2013) 8 SCC 234; Animal Welfare Board of India v. A. Nagaraja (2014) 7 SCC 547.

⁴⁸ 2014 SCC Online H.P. 4679

⁴⁹ Ibid.

⁵⁰ Supra at 40.

⁵¹ The Prevention of Cruelty to Animals (Amendment) Bill, 2011, Bill No. 67 of 2011 (Lok Sabha).

⁵² The Prevention of Cruelty to Animals (Amendment) Bill, 2015, Bill No. 298 of 2015 (Lok Sabha).

⁵³ Ibid.

⁵⁴ PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, *Letter to Narendra Modi, Prime Minister of India* (Apr. 2017), <https://www.petaindia.com/wp-content/uploads/2017/04/PETAs-Letter-to-PM-Modi.pdf>.

law can enforce morals when religious obligations are in question? It further raises another pertinent question: Can sacrificing animals in the name of religion even be considered an essential religious practice?⁵⁵

Constitutional Morality refers to the respect, reverence, and internalisation of the “form” and the spirit of the Constitution.⁵⁶ This term is rarely used by judges and academicians in India when discussing constitutional disputes.⁵⁷ In *Manoj Narula v. Union of India*,⁵⁸ Hon’ble Justices Lodha and Bobde elucidated on the principle of constitutional morality, deeming it as submitting to the norms of the Constitution and not acting in a way that would violate the Rule of Law.⁵⁹ It operates at the fulcrum and guides as a laser beam in a building.⁶⁰ Traditions and conventions must develop to sustain the value of such morality.⁶¹

This definition establishes a nexus between morals and practice. In India, being a secular state, there is no state or preferred religion, and all religious groups enjoy the same constitutional protection without any favour or discrimination.⁶² It is an essential characteristic of religion, i.e., it is evolutionary.⁶³ The same is true for law, as Roscoe Pound stated, “Law must be stable, and yet it cannot stand still.”⁶⁴ And upon this premise, it is contended that section 28 of the Act⁶⁵ must be revisited. What was considered right in the olden times might not be true in today's modern times, for example, triple talaq was once considered constitutional, but was struck down by the Hon’ble Supreme Court of India in *Shayra Bano v. Union of India*.⁶⁶

Section 28 of the Act,⁶⁷ states that, “no act shall be punished if it is done in the form of sacrifice.”⁶⁸ This definition, by virtue of its spirit, does not align with the ratio decidendi of the

⁵⁵ *Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282; *Ratilal Panachand Gandhi v. State of Bombay and others*, AIR 1954 SC 388

⁵⁶ LATIKA VASHIST, *Re-Thinking Criminalisable Harm in India: Constitutional Morality as a Restraint on Criminalisation*, 55 J. INDIAN L. INST. 71 (2013).

⁵⁷ KRITIKA SETH, *Constitutional Morality and Bar Dancers Judgment*, 24 PUB. L. REV. 28 (2014).
⁵⁸ (2014) 9 SCC 1.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² S. RADHAKRISHNAN, *RECOVERY OF FAITH* 127 (1984).

⁶³ E. SZÜCS ET AL., *Animal Welfare in Different Human Cultures, Traditions and Religious Faith*, 25 ASIAN-AUST. J. ANIM. SCI. 1499 (2012).

⁶⁴ ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* 1 (Cambridge Univ. Press 1923).

⁶⁵ *Supra* Note 2.

⁶⁶ (2017) 9 SCC 1.

⁶⁷ *Supra* Note 2.

⁶⁸ *Ibid.*

Apex court in the Nagraj Case,⁶⁹ wherein the right to life was extended to animals.⁷⁰ This goes against natural law. As per Blackstone, “This natural law is, of course, superior in obligation to any other because it is co-eval with humanity and is dictated by God himself. It is binding over the entire globe, in all countries, and at all times: no human laws are valid if they contradict this; and those that are valid derive all their force and authority, mediately or directly, from this original.”⁷¹

The law does not explicitly recognise the intrinsic worth of animals and therefore does not warrant the protection thereof. The failure of the law to identify any inherent value that animals possess. But other jurisdictions have taken steps to protect such intrinsic worth as early as 1896, in the Supreme Court of Colorado in the case of *Waters v. People*,⁷² the court opined that the statutes of such nature have a dual purpose, that is, protecting animals and conserving human morals.⁷³ The court further opined that the aim is not limited to the protection of these animals but to protect and conserve public morals, both of which are undoubtedly a proper subject of Legislation.⁷⁴

V. Intervention by the Hon’ble Supreme Court in Gadhimai

Gadhimai is an infamous tradition, celebrated in Nepal, wherein animals are sacrificed as an offering to the deity. The Intervention by the Hon’ble Supreme Court that barred the transport of animals from India to be sacrificed in the festival mentioned above. Thousands of animals are killed in a couple of days. The Indian Supreme Court, on October 20th, 2014, passed an order directing the government to prohibit such illegal transport of animals to Nepal for such sacrifice.⁷⁵ “The Gadhimai Festival’s massacre of innocent animals is an unholy bloodbath that has no place whatsoever in religion. This mass slaughter of animals is not part of Hinduism and has been thoroughly and rightly rejected by the Hindu Council of Britain. The Supreme Court of India’s order offers a vital lifeline to the hundreds of thousands of animals being illegally taken across the border to be killed, and there is every chance that with this action, we can prevent the killing from going ahead this year. In a modern, civilised society, we cannot

⁶⁹ Supra Note 15.

⁷⁰ Ibid.

⁷¹ 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *41 (1768).

⁷² 23 Colo. 33. 46 P. 112 (1896).

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Rastriya Samachar Samiti, *Supreme Court directs govt to ‘control’ Gadhimai Sacrifice*, THE HIMALAYAN (Aug. 4, 2016), <https://thehimalayantimes.com/nepal/supreme-court-order-gadhimai-festival-sacrifice>.

continue to sanction the death of animals in the name of religion.”⁷⁶ such was the contention of N.G. Jayasimha, the managing director of Humane Society International/India.

VI. Conclusion and Suggestion

It's time that we focus on animals and non-humans as victims of crime and grant them protection in both letter and spirit.⁷⁷ The anthem of the animal rights movement is a quote by Jeremy Bentham, wherein he argues that the rights of non-humans can be emphatically stated, “The question is not can they reason? Nor can they talk. But can they suffer?”⁷⁸ A normative shift in society's view of animals is the need of the hour; the state may have a compelling interest in protecting animals from certain types of mistreatment. The state should call for a fact-specific investigation that focuses on existing laws, the animals involved, and the level of public concern and other compelling social priorities.

In the case of the state's liability, the state is bound to protect animals in view of the doctrine of *parens patriae*. In the 2019 case of *Shri Subhash Bhattacharjee v. State of Tripura*,⁷⁹ wherein the court was faced with the question, whether animal sacrifice constitutes an essential religious practice under Article 25 of the Indian Constitution, 1950.⁸⁰ The court held Section 28 of the Act⁸¹ as deviating from its objectives. The court further opined that a method involving barbaric practices can never be called an essential religious practice.

Animals are an integrated part of our ecosystem. Slovenia, in its Animal Welfare Act (Amendment), 2012,⁸² banned all sorts of religious sacrifices. Law's ever-changing nature is often referred to as growing like grass; what was once held valid may now fail the test of time.

In light of the authorities mentioned above and the logic that follows, an effective and

⁷⁶ NAVAMITA MUKHERJEE, *Supreme Court of India Intervenes to Save Thousands of Animals from Nepal's Brutal Gadhimai Festival Sacrifice*, HUMANE SOC'Y INT'L (Oct. 20, 2014), <https://www.hsi.org/news-media/india-supreme-court-gadhimai-ruling-102014/>.

⁷⁷ ARNOLD ARLUKE, *JUST A DOG: ANIMAL CRUELTY, SELF AND SOCIETY* 29 (Temple Univ. Press 2006).

⁷⁸ *Ibid.*

⁷⁹ 2019 SCC OnLine Tri 441.

⁸⁰ INDIA CONST. art. 25.

⁸¹ *Zakon o zaščiti živali (ZZZiv)*, Uradni list Republike Slovenije [Uradni list RS] [Official Gazette], No. 43/07, art. 1 (2012) (Slovn.).

⁸² Global Animal Gal Association, available at: <https://www.globalanimallaw.org/database/national/slovenia/> (last visited on July 6, 2022).

expeditious visit so as to abrogate the provisions of Section 28 of the Act⁸³ is necessary.

⁸³ Supra Note 2.