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ANIMAL RIGHTS IN INDIA: AN OVERVIEW- Priya Kumari¹**Abstract:**

“The greatness of a nation and its moral progress can be judged by the way its animals are treated.”

- Mahatma Gandhi

Animal rights are one of the emerging issues of the 21st century. Earlier, it was believed that only human beings possess rights and they can use animals as per their wish. In Bible, it is explicitly mentioned that animals were put on earth to serve human beings. Along with the time, the situation and mentality both changed. People started believing that along with humans, animals also possess some basic rights. Some countries accepted the idea of animal rights and gave them their rights by constituting some legislation. However, India took many years to give animals their basic rights. The main reason behind this was a tussle between the rights of animals and religion. India is such a nation where religion is given too much importance. The sacrifice of animals is a religious practice in both the Hindu and Muslim religions. People have the right to practice and propagate their religion and this right has been given by Article 25 of the Indian Constitution.

This paper deals with the meaning of animals and rights, a historical overview of animal rights in India, various legislations which protect the rights of animals in depth. Along with this, the role of the judiciary in protecting animal rights with the help of numerous judgements is also discussed.

Keywords:

Animals, rights, cruelty, stringent, implementation

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Introduction:

India is a country with enriched biodiversity due to its geographical position. India is one of the 17 mega-bio diversified countries. India covers 2.4 percent area of the world but 7 to 8 percent of the world's biodiversity is found here.² According to the report of Environment and Forest Ministry of Government of India 2009, 91,364 animal species have been identified in India. There are 36 biodiversity hotspots in the world and four out of them are present in India.³ India is a habitat of a variety of animals such as the Great Indian Rhinoceros, the Bengal Tigers, orang-utans, and pig-tailed langurs.

The protection and welfare of animals are given significant importance in India. In the Indian Constitution, various duties are given to the citizens of India and the protection of animals is one of them. The Central as well as the State government, to ensure the welfare of the animals and to prevent their exploitation, have enacted several legislations. The most significant among these legislations are the Wildlife Protection Act, 1972, and the Prevention of Cruelty to Animals (PCA) Act, 1960. In India, the substantive aspects of criminal law are covered under the ambit of the IPC, 1860. Various sections of the Indian Penal Code protect the right of animals by punishing the various acts of cruelty performed towards them. Along with these, there are numerous other legislations which have been enacted to make sure that the rights of animals are protected and they do not have to face any kind of suffering. However, there are some loopholes in these legislations due to which animal rights are still violated.

Here, Judiciary comes into play. Judiciary has also played an important role in this issue. Earlier, the Supreme Court of India was of the view that animal sacrifices for religious practices could not be prohibited as it comes under the list of essential religious practices. However, later the SC recognized the rights of animals and stated that animals also possess the right to life. The Punjab and Haryana High Court also provided the status of legal persons to animals.

Do animals have rights?

“To my mind,” he said, “I hold that the more helpless a creature, the more entitled it is to protection by man from the cruelty of man.” – Mahatma Gandhi

“Right” can be defined in various ways depending upon the context or area. In law, right can be

² IUCN, <https://www.iucn.org/asia/countries/india> (last visited Aug 25, 2021).

³Katie Bagli, *Here's a look at 6 biodiversity hotspots of India*, THE HINDU (Aug. 12, 2021, 5:00 PM), <https://www.thehindu.com/children/wild-wonderlands/article34686553.ece>.

understood as an interest which is protected by legal rules and regulations.

The term “animal” is defined in different ways in different legislations. Section 2(1) of the Wildlife Protection Act, 1972 defines animals as - “animal includes amphibians, birds, mammals, and reptiles, and their young, and also includes, in the cases of birds and reptiles, their eggs”.⁴ A broader definition of animals is given in Section 2(a) of the Prevention of Cruelty to Animals (PCA) Act, 1960. According to it, “animal means any living creature other than a human being”.⁵

Just like human beings, animals have inherent worth. This worth does not depend on the fact that how much useful the animals are for human beings. Animal rights are simply a concept which says that non-human living beings should also be provided with some rights so that they get the necessary protection from different kinds of suffering. Different statutes have been constituted nationally and internationally which provide rights and protection to animals.

Historical overview of animal rights in India:

1. Ancient time

Many Indian ancient texts say that many animals were worshipped in ancient India and they were treated like Gods. It is believed that each Hindu deity has a beloved animal that they use as their vehicle or vahana. The character of Hanuman and the role of monkeys in the Ramayan showed the vital importance of animals in the life of human beings. Lord Krishna is known as Gopala which means the herder or protector of cows. The affection of lord Ram towards monkey Hanuman and Krishna towards cows are described in Ramayan and Mahabharata. Along with Hinduism, ancient texts of different religions like Jainism, Buddhism, and Islam also talk about animal protection and welfare. For example, The Holy Prophet used to say, “Whoever is kind to the creatures of God is kind to him.”

2. Before Independence

In the pre-independence time, not much generosity was shown towards animals. They were hunted on a large scale as it became a popular sport at that time. King used to go with some of his soldiers for hunting. Then, the practice of drug testing of animals was introduced in British India which caused the death of numerous animals. In the 18th and 19th centuries, wildlife was

⁴ Wildlife Protection Act, 1972, §2(1), No. 53, Acts of Parliament, 1972 (India).

⁵ Prevention of Cruelty to Animals (PCA) Act, 1960, § 2(a), No. 59, Acts of Parliament, 1960 (India).

badly affected when a large number of forests were cleared to improve the infrastructure.

By the efforts of Colesworthey Grant who was an animal rights activist, animal testing was regulated by the act called Animals Act of 1876. In 1861, he established a society in Calcutta which was against animal cruelty. It was named Prevention of Cruelty to Animals (SPCA). He was supported by various Indian leaders. The main achievement of this society was that its attempt to bring regulations on animal experimentation succeeded in the form of the Cruelty to Animals Act of 1876.

3. After independence

Much development was noticed in the status of wildlife in India after independence. Various national parks and wildlife sanctuaries were constructed to conserve endangered animals. Wildlife (Protection) Act of 1972 came into force. Along with it, different states laid down their separate regional acts for wildlife conservation. For example: The Tamil Nadu Wild Elephant Preservation Act, 1973, the Assam Rhinoceros Preservation Act, 1954, etc. Multiple initiatives were started but the implementation of these initiatives did not fulfill the goals that were needed.

Animal rights and the Indian Penal Code (IPC), 1860:

There are various sections in the IPC, 1860 which protect the rights of animals. Some of them are as follows:

1. Section 428 states that if any person kills, gives poison, or maims any animal worth ten or more rupees, he is liable to be punished for committing such an act.⁶
2. Section 429 is an extension of the previous Section. It says that if any person kills, gives poison, or maims any animal, which particularly includes elephant, camel, horse, mule, buffalo, bull, cow, or ox, worth fifty or more rupees, is liable for punishment for committing such an act.⁷
3. Section 378 talks about theft. If any person moves someone's movable property out of his possession without taking permission from him to do so, such person is said to commit theft.⁸ Animals also come under the ambit of movable property in this Section. Section 79 mentions the punishment that must be accorded for the crime of theft.

⁶ Indian Penal Code, 1860, § 428, No. 45, Acts of Parliament, 1860 (India).

⁷ Indian Penal Code, 1860, § 429, No. 45, Acts of Parliament, 1860 (India).

⁸ Indian Penal Code, 1860, § 378, No. 45, Acts of Parliament, 1860 (India).

Animal rights and the Indian Constitution:

Indian Constitution is not only the guardian of Indian citizens but also of various other objects which includes animals also. Various provisions are there in the Constitution of India which ensure the protection and welfare of animals.

1. Article 51A (g) talks about the fundamental duty of every citizen to take every possible step to protect the environment and also to improve it. The term environment includes wildlife also. It also directs every person to have compassion for other living creatures.⁹
2. Article 48 mainly focuses on the agriculture and animal husbandry sector. It states that it is the responsibility of the State to organize both these sectors such that they can extract maximum benefit by using the new technology and science. Further, it must focus on preserving the breeds and also improving them. The State shall also prohibit cow or calf slaughtering.¹⁰
3. Article 48A casts a duty upon the State to make attempts to protect the environment i.e. forests and wildlife of the nation and also improve it.¹¹

Animal rights and the PCA Act, 1960:

The Prevention of Cruelty to Animals (PCA) Act, 1960 lay down regulations to prevent any kind of suffering or pain to animals and to protect their rights. It gives out punishment in the form of a fine and in some cases even imprisonment.

Chapter III of the PCA Act, 1960 deals with “Cruelty to animals generally”. In Section 11 of this Act, various acts are mentioned which are punishable and punishment may be fine ranging from Rs. 10 to 25 for the first time. If the act is repeated within 3 years of the occurrence of the first one then the punishment of fine ranging from Rs. 25 to 100 or imprisonment for a term of a maximum of three months or both.

- Section 11(1) (a) of the Act states that inflicting unnecessary pain to any animal is a punishable crime. Anyone who does it or as an owner permits someone to do it is liable to get punished. Unnecessary sufferings mainly include beating, kicking, over-riding, over-driving, or over-loading any animals or other acts of similar nature.¹²

⁹ INDIA CONST. art. 51-A, cl. g, inserted by the Constitution (Forty- Second Amendment) Act, 1976.

¹⁰ INDIA CONST. art. 48.

¹¹ INDIA CONST. art. 48-A, inserted by the Constitution (Forty- Second Amendment) Act, 1976.

¹² Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(a), No. 59, Acts of Parliament, 1960 (India).

- Section 11(1) (b) talks about the precaution that one needs to follow before employing any animal for any work or purpose. If any person employs any animal in a work which must not be employed in that work due to its age or any disease or any other cause, the employer is liable to get punished.¹³
- Section 11(1) (d) talks about the necessary precautions that one must follow while carrying or conveying any animal. If such an act of carrying or conveying is done in such a manner that it caused unnecessary pain to the animal, then the person doing this act is liable to get punished.¹⁴
- Section 11(1) (e) states that if any person keeps any animal in a cage or any other receptacle such that the animal is not able to even move reasonably because of the dimensions of the receptacle, the person is liable to get punishment.¹⁵
- Section 11(1) (f) states to punish any person who keeps any animal chained for an unreasonable period.¹⁶
- Section 11(1) (h) of this Act states that a person is liable to be punished if he, being the owner, does not provide sufficient food, drink, or shelter to the animal that he owns.¹⁷
- Section 11(1)(i) states that a person is liable to get punishment if he abandons any animal, without any valid reason, in such a situation in which he is likely to suffer pain either due to starvation or thirst.¹⁸
- Section 11(1)(j) states that a person is liable to be punished if he, being the owner, intentionally permits his animal to go to any public place like the street knowing the fact that the animal is affected by any contagious or infectious disease. Secondly, the owner will also be liable if he permits the diseased or disabled animal that he owns to die in any street and that too without any proper reason.¹⁹
- Section 11(1)(o) of this Act states that if any person either endorses or takes part in any shooting match in which animals are used for shooting purpose, is liable to get punished.²⁰

¹³ Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(b), No. 59, Acts of Parliament, 1960 (India).

¹⁴ Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(d), No. 59, Acts of Parliament, 1960 (India).

¹⁵ Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(e), No. 59, Acts of Parliament, 1960 (India).

¹⁶ Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(f), No. 59, Acts of Parliament, 1960 (India).

¹⁷ Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(h), No. 59, Acts of Parliament, 1960 (India).

¹⁸ Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(i), No. 59, Acts of Parliament, 1960 (India).

¹⁹ Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(j), No. 59, Acts of Parliament, 1960 (India).

²⁰ Prevention of Cruelty to Animals (PCA) Act, 1960, § 11(1)(o), No. 59, Acts of Parliament, 1960 (India).

Animal rights and the Wildlife Protection Act, 1972:

Wildlife Protection Act, 1972 was brought into force to conserve animals, birds, plants, and other matters related.

1. Section 38J of this Act prohibits teasing, molesting, or injuring any animal. In addition, no person, by noise or any other means shall disturb the animals. Further, the ground of the zoo shall not be cluttered by people.²¹
2. Section 16(c) of this Act defines hunting as in what activities it includes. According to it, to hunt means to capture, kill, poison, snare or trap any wild animal or attempting to do it. In addition, hunting includes injuring or destroying, or taking any body part of any animal. In case, if there is any wild bird or reptiles, damaging or disturbing their eggs is also considered as hunting.²²

Any person who is found to be guilty of committing the above-mentioned act i.e. hunting is to be punished with an imprisonment of 3 to 7 years and a fine of Rs. 25,000.

3. Section 9 of this Act prohibits the hunting of any wild animal which is mentioned in Schedule I, II, III, and IV of this Act. The exception to this rule is provided under section 11 and section 12 of the same Act.²³
4. According to Section 38 of the Act, both the Central as well as the State Government have the power that they can declare any area 'restricted' as a national park, wildlife sanctuary, etc. Under the Wildlife Protection Act 1972, it is prohibited to carry out any industrial activity in these areas.²⁴
5. Section 48A of this Act states that a person shall give his consent to transport any wild animal or animal article or plant or its derivative only after taking permission to do so either from the Chief Wildlife Warden or any other officer who is authorised by the State Government in this behalf.²⁵

Laws regulating testing and experiment on animals:

The use of a large number of animals for experimenting purposes is another form of violation of animal rights. A huge number of animals are used for this purpose which causes the death of numerous animals. They also suffer pain during this process. These animals mostly include

²¹ Wildlife Protection Act, 1972, §38J, No. 53, Acts of Parliament, 1972 (India).

²² Wildlife Protection Act, 1972, §16(c), No. 53, Acts of Parliament, 1972 (India).

²³ Wildlife Protection Act, 1972, §9, No. 53, Acts of Parliament, 1972 (India).

²⁴ Wildlife Protection Act, 1972, §38, No. 53, Acts of Parliament, 1972 (India).

²⁵ Wildlife Protection Act, 1972, §48A, No. 53, Acts of Parliament, 1972 (India).

mice, guinea pigs, monkeys, rabbits, etc. The cosmetic industry is one among those industries which use animals for experimentation in a large number which amounts to grave cruelty. In India, Drugs and Cosmetics Rules (Second Amendment) 2014 came as a solution to this problem. This Act prohibited animal testing for cosmetic products.

Attitude and approach of judiciary:

Judiciary is one of the three basic pillars of any democratic nation. In a nation, the judiciary is the one who recommends the government to adopt a progressive approach while framing laws. In addition, the judiciary also keeps an eye on the offenders of the laws. In 1954, it was observed by the Supreme Court of India that animal sacrifice for religious activities is essential to practice one's religion. The Court observed that the Constitution of India under Article 25 protects such sacrifices.

Further, in *Ratilal Panachand Gandhi and Ors. v. State of Bombay and Ors.*²⁶, the Court observed that religion is not just an opinion. It is a doctrine or belief. It is not always having an internal existence. Sometimes, it is expressed in the actions of a person. The performance of these religious acts to execute any religious belief is also a part of that religion.

Later, in the case of *Sardar Syedna Taher Saifuddin Sahib v. State of Bombay*,²⁷ the Supreme Court gave a judgement completely in contradiction to the previous one. It stated that the religious practices that involve the sacrifice of either humans or animals, in some way or other, are dangerous to the well-being of the community at large. The State has the authority to intervene in such detrimental practices by making any rule or legislation. It can either regulate such practices or completely stop them.

The jallikattu case:

Then in 2014, a landmark verdict came in ***Animal Welfare Board of India v. A. Nagaraja & Ors.***²⁸ In this case, the Supreme Court stated that the term "life" used in Article 21 of the Constitution of India is also applicable to animal life. Therefore, Article 21 provides animals the right to live with honour and dignity. Keeping in mind this wide interpretation of Article 21, the Supreme Court observed that to protect the right to life of animals, practices, and sports like jallikattu, bullock-cart racing, etc. must be banned. The Supreme Court further stated,

²⁶ *Ratilal Panachand Gandhi v. State of Bombay and Others*, (1954) AIR SC 388.

²⁷ *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*, (1962) AIR SC 853.

²⁸ *Animal Welfare Board of India v. A. Nagaraja & Ors.*, (2012) AIR SC 1077.

“Parliament was expected to make a proper amendment of the PCA Act to provide an effective deterrent to achieve the object and purpose of the Act and for violation of Section 11, adequate penalties and punishments should be imposed. Parliament, it was expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, to protect their dignity and honour.” The Tamil Nadu Registration of Jallikattu Act, 2009 was found to be inconsistent with the Prevention of Cruelty to Animal Act, 1960.

Karnail Singh and Ors. v. State of Haryana²⁹

Another landmark judgement came in the case of Karnail Singh and Ors. v. State of Haryana in which the Punjab and Haryana High Court gave animals the status of legal persons. In this case, the main question which was raised was regarding the welfare of cows but the judgement was equally applicable for all animals, birds, and aquatic species also. Justice Rajiv Sharma observed that even animals possess honour and dignity. Every species(s) of animals has the right to live and this right has to be protected by law. One must respect the rights and privacy of animals and protect them from unlawful attacks.

Justice Rajiv Sharma further clearly mentioned “The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Haryana are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.” The doctrine of “parens patriae” means that the state owns the responsibility to protect those who are not able to protect themselves on their own. Earlier, the scope of this doctrine was only restricted to humans but after this judgement, it also included non-humans.

The Bombay High Court, in People for Ethical Treatment of Animals (PETA) v. Union of India³⁰, gave an important verdict stating that it is must to receive a Non-Objection Certificate from the Animal Welfare Board before using or casting any animals in films. This judgement helped in controlling and preventing the exploitation of animals when they were used during filming or training on the set of any movie.

In N.R Nair v. Union of India³¹, firstly the Kerala HC and then the SC declared that it is not permissible to use monkeys, bears, tigers, panthers and, lions as performing animals to gain

²⁹Karnail Singh and Others v. State Of Haryana, (2019) SCC ONLINE P&H 704.

³⁰People for Ethical Treatment of Animals (PETA) & Anr. Petitioners v. Union of India & Ors., (2005) SCC ONLINE BOM 997.

³¹N.R Nair and Others v. Union of India and Others, (2001) AIR SC 2337.

profits. The practice of using these animals as performing animals leads to the illegitimate smuggling and subsequent mistreatment of these creatures, caning, beating, whipping, etc., which contravene Section 22 of the PCA Act, 1960.

Where are we lacking?

In India, numerous laws are present, as mentioned above, which specifically protect the rights of the animals. However, effective implementation of these laws is not done due to which exploitation of animal rights is still happening. Secondly, along with time, animal cruelty cases increased but no amendment was done in the laws to make them effective enough to deal with the present-day situation. For example – PCA Act was enacted in 1960 but after that, it has not been amended even once. In addition, the fine or penalty imposed for violation of any offence under the PCA Act is very low. Even most of the provisions are non-cognizable.

Therefore, new laws should be made and the earlier ones should be amended for protecting animal rights. The other most important problem is the implementation of laws. Most of the laws fail because they only remain on the paper level and are not implemented effectively on the ground level. If the poor implementation will prevail, there is no use in making good and stringent laws. Therefore, good and stringent laws along with proper and effective implementation can solve the problem of animal cruelty prevailing in India and it should be the area of focus.

Conclusion:

Animals are known as the best companions of human beings. The irony of the situation is that they often have to face grave cruelties from humans themselves. There are some recent horrific cases of animal cruelty in which humans fed the animals some explosives which resulted in the death of those innocent animals. For example – People killed a pregnant elephant in Kerala, a pregnant cow in Himachal Pradesh, and a jackal in Tamil Nadu without any cause.

The need of the hour is to have stringent laws and effective implementation mechanisms so that the chances of their violation become less. Nowadays, there are various animal welfare organizations which ensure the protection of animals from cruelties and raise their voice if they came across any incident which violates animal rights. The working ability of such organizations needs to be improved. The Government should help these organizations to grow so that even if animal rights are violated in any remote place, these organizations can stand for

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animals. Many people in India are not aware of animal rights. They should be made aware so that they do not violate these rights and also protect them if anyone else is violating them. Combine efforts of the government, animal welfare organizations, and people will lead to a better condition of animals in our country.

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