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RIGHTS OF ANIMAL: AN INDIAN LEGAL PERSPECTIVE- Arnav Bhardwaj¹**I. INTRODUCTION**

Animals have been part of Indian culture, tradition, religion and socio-economic practices since time immemorial. On the legal front as well, India has since long adopted a welfare approach towards animals, and the primary legislation dealing with cruelty to animals, i.e. PCA Act 1960 is in fact a welfare legislation. In its statement of objects and reasons it expressly mentions ‘promoting measures of animal welfare’² and ‘prevention of infliction of unnecessary pain or suffering on animals’ as its primary objectives. Even the bill pending before the Parliament since 2011, the Animal Welfare Bill, in its nomenclature itself uses the term ‘welfare’. Thus, the Indian legal system agrees to use of animals for various purposes, such as slaughtering for food and scientific experimentation, under the existing socio-economic legal structure, but with regulations for the same.

However, despite legislative measures, the ground reality prima facie remains quite pitiful. One of the primary reasons could possibly be the objectification of animals since ancient times. Animals have been revered, worshipped and been part of Indian mythology and religious stories, nonetheless at the same time they have been viewed as commodities or instruments, to make the lives of human beings simpler and more convenient. There is an overlap of religious theory with the welfare theory on some point.

Although the legal texts claim animal welfare, a vast majority of people would actually fall into Aristotle’s or Aquinas’ religious school of thought, where they believe that

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²Constitution of India 1950, art 48 (Organisation of agriculture and animal husbandry- The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle).

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animals are subservient to human beings. They believe that instilling harm on an animal is not a wrongful act on the animal as such, but rather on the person who is in ownership or possession of the animal. Thus, if person A commits an act of cruelty on a cow, owned by person B, then the wrong committed is not against the cow but against B. If we look at all the jurisprudential philosophies so far, it would be difficult to apply one particular theory in the Indian context. The cross-sectional diversity in India, changes perhaps with every border, whether intra-state or inter-state; hence, the perception of animals and socio-cultural background also changes at a rapid pace. While one particular animal may be revered and worshipped by one section of society, the same animal may not be perceived similarly by another.

While one animal may have pure economic relevance for one section of the society, the same animal may have religious significance for another. Therefore, the jurisprudence behind animal law oscillates in the Indian context, with theories overlapping or converging,³ and sometimes being a concoction of multiple theories. When speaking of not inflicting unnecessary pain or suffering, or about ethical treatment of animals, it is important to first understand what actions or omissions actually amount to unethical treatment or what can be termed as cruelty towards animals, which one is trying to prevent. The key provisions of the PCA Act, which at the outset elucidates on what amounts to 'cruelty' has been discussed, before delving into specific issues.

II. CONSTITUTIONAL DIMENSION

The Constitution of India also contains provisions, which directly or indirectly deal with animals, although they might not be enforceable in a court of law. Article 48¹ under the DPSP forms the basis of all cattle slaughtering laws and rules in India, wherein it is directed to the States to take necessary steps to give importance to cattle life in India. Article 48A makes it the responsibility of the State to protect and safeguard wildlife, therefore all the wildlife protection laws find their genesis in this provision. 'Prevention of cruelty to animals' and 'protection of wild animals and birds'⁴, both fall

³ibid art 48-A (Protection and improvement of environment and safeguarding of forests and wild life – The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country).

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under the Concurrent List of the Seventh Schedule, thereby making it both a State and Union subject.

The burden is constantly shifting between Union and States on the subject of animals, which might be one reason for the issue lacks substantial importance. Likewise, several other bodies have also been given the responsibility to implement schemes for the betterment of animals – such as the Panchayats⁴ have been power, authority and responsibility to implement schemes on animal husbandry, dairying and poultry⁵ and the municipalities have been given the power, authority and responsibility to implement schemes on cattle pounds, prevention of cruelty to animals, and regulation of slaughter houses and tanneries. There are three ways of viewing this: firstly, it gives way to multiplicity of laws on animals in different States; secondly, it also most definitely gives States the freedom to formulate their own laws with respect to protection of animals; and lastly, the responsibility passes through many hands, which could either make each body more responsible for the situation or could result in extensive shifting of responsibilities. Nevertheless, all the rules, regulations and schemes have to be in consistence with the primary legislation PCA Act 1960.

Apart from the DPSP and other provisions which establish responsibility on the State and other legislative bodies, the Fundamental Duties under Part IV of the Constitution bestow a duty upon every citizen “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”.⁷

“Compassion for living creatures” has been viewed and construed by the courts and through several interpretations to mean that living creatures include animals as well, which shall be discussed in due course of this research. Hence it is the “duty of every citizen of the country” to be kind and compassionate towards animals. On many occasions, developing ‘humanism’, as mentioned under Article 51A(h),⁸ has also been interpreted to be not restricted to humans only, but also to extend to animals.

⁴ibid art 51A (h) (to develop the scientific temper, humanism and the spirit of inquiry and reform).

III. PROPERTY STATUS OF ANIMALS

Notwithstanding everything said above, by ⁵and large the Indian laws have for all practical purposes, perceived animals as property. Both the tort law as well as criminal law, dealt with animals much before the independent legislations came to being enacted. Under both the laws, animals have enjoyed nothing more than a mere property status.

India does not have its independent specific legislation for tortious acts, hence the common law practice is what is followed in the Indian context as well. Therefore, perception of animals under the law of tort, remains unaltered for India as well. Animals are considered as ‘means’ under tort by which one person can be held liable for the injury or damages that are caused to another human being. At common law, a person might be liable for damage caused by an animal on one or more of three distinct grounds, namely, ordinary liability in tort, liability under strict *scienter* rule (pertains to liability for animals who do not belong to a dangerous species), and liability for cattle trespass.⁹ Thus, it essentially covers wrongs done to another person using animals, whether it is assault, battery or others.

The focus is on the injury done to another human being, and any injury caused to an animal is not within the purview of tort. Law of tort deals with the liability of a person in possession⁶ or ownership of an animal, and in case of any tortious act what would be the extent of definition of this liability. The question of animal cruelty or treatment of animals as such does not arise. At common law the keeper of an animal was strictly liable, independently of negligence, for “damage done by the animal if the animal was *ferae naturae* (i.e. belonged to a dangerous species)” or the “animal was *mansuetae naturae* (i.e. did not belong to a dangerous species)” and he knew of its vicious characteristics. Furthermore, law of tort also permits killing or injuring of animals in order to protect livestock. In *Cresswell v Sirl*¹¹ certain circumstances, it may be considered lawful for a person to kill or injure an animal belonging to another if this is necessary for protection of his livestock and crops.¹² Therefore, it can be clearly

⁵ *ibid* art 51A (g).

⁶W V H Rogers and others, *Tort* (7th edn, Thomson Sweet and Maxwell South Asian Edition 2007) 727.

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understood that animals for all practical purposes, under the law of tort, are considered nothing more than property, which is the responsibility of its keeper, and in case of any damage caused by the animal or due to the animal, the traditional rule of strict liability would be followed holding the owner liable for its actions.

The word “animal” has been defined under Section 47 IPC, to denote any living creature, other than a human being. Any kind of offence related to animals under the IPC is included under the chapter of ‘Offences against Property’, where again, the animal is considered as property. Section 378 of the IPC deals with the offence of theft, wherein it is stated “Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.”

The section clearly pertains to theft of⁷ property, both moveable and immovable, and explanation 4 expressly states “A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.” Therefore, for the purposes of this section, an animal is considered as moveable property and the offence of theft committed is in fact against the person from whose possession the animal was taken away, and not against the animal as such. This property status of animals in one of the major legislations of the country reflects the general perception towards animals. However, this should ideally be read with the relevant provisions of the PCA Act 1960, so as to interpret it not just as a wrong against the owner or possessor of the animal but against the animal as well.⁸ Sections 428 makes provision for punishment for mischief by killing or “maiming any animal or animal of the value of ten rupees or more.” This section attracts punishment for those committing acts of mischief towards animals, including “killing, poisoning, maiming of animals or rendering them useless.” ‘Poisoning’ is an offence complete by itself even if the injury caused may not have a serious effect.¹⁴ Thus, in essence, it exercise some form of control in preventing or

⁷S K Savaria, *RK Nelson’s Indian Penal Code* (Volume 4, 10th edn, Lexis Nexis Butterworths Wadhwa 2015) 4401.

⁸Indian Penal Code 1860, s 428 (Mischief by killing or maiming animal of the value of ten rupees). (IPC)

penalizing cruelty against animals. However, on the contrary, the expression 'rendering useless' has been given a strict interpretation, where rendering temporarily useless would not be sufficient to make it an offence under this section.¹⁵

Causing of abrasions or scratches on the surface of the skin with *lathi* blows would neither render the animal useless, nor maim it.¹⁶ Such acts would be considered as mischief under section 426, where the punishment imposed is comparatively lesser. Therefore, this provision does not intend to protect the animals from cruelty, but is rather a protection for the one who owns the animal as a property.

The subsequent provision, Section 429⁹ pertains to the same offence "but for animals of higher value of fifty rupees" or more with specific mention of elephant, camel, horse, mule, buffalo, bull, cow or ox, which includes both male, female and young ones of the species. There are three ingredients to be proved against a person, who is charged for the offence punishable under this section:

The accused committed mischief as defined under Section 425,¹⁹ which is primarily a mischief against the property of another.

1. The mischief was committed by killing or maiming or rendering useless;
2. A mischief was committed on the animals including goats of the value of Rs. 50 upwards.

Maiming implies a permanent injury, wounding is not necessarily maiming.²⁰ To constitute maiming, a permanent injury must be inflicted on the animal; but to constitute wounding, the injury need not be permanent. Where a pony's ribs were broken in such a way as to permanently diminish its usefulness and value, it was held that it had been maimed.

Similarly, where the accused poured some nitrous acid into the left ear of a mare and perhaps also into the left eye, which occasioned the immediate blindness of the eye, it was held that the injury done to the eye of the mare, in the said manner, was

⁹ibid, citing *Sukhei Behera v State* (1960) 26 Cut LT 342.

maiming.¹⁰ However, where nearly one-half of the ear of an animal is cut off without impairing its sense of hearing, the injury does not amount to maiming within the meaning of this section.²³ It has been held by the Supreme Court¹¹ of India that the offence created by this section and the one under Section 9¹² read with Section 50²⁵ of the Wildlife Protection Act, 1972 are substantially the same offence; hence, the bar of double jeopardy will operate. Negligence and carelessness towards animals, which may result in injuries or harm to the animals are not included within these sections.

The existence of the requisite intention or knowledge is an essential ingredient to the offence and the accused cannot be convicted unless it is established that the act of killing etc., was with requisite intention or knowledge.²⁷ Therefore, both the sections provide for mischief towards animals, but the offence is primarily against the owner of the animals and not the animal per se. These sections cannot be attracted in cases of regular cruelty towards animals; only aggravated forms of cruelty are included under these provisions. Thus, it reiterates the fact that penalties can be imposed only when the harm caused is to the extent of causing loss or damage to human beings, primarily, and not from the perspective of providing protection to the animals. The animal destroyed must be subject of property.²⁸ These provisions under the IPC are in conflict with the entire principal legislation of PCA Act 1960.

IV. PREVENTION OF CRUELTY TO ANIMALS ACT

Chapter III of the PCA Act deals expressly with¹³ 'Cruelty to Animals Generally', and it consists of three sections— 11, 12, and 13— which contain various acts amounting to treating an animal cruelly.

Section 11 has its own strengths and weaknesses. The section has been objectively understood and analyzed by the researcher as follows:

The provision provides for the punishment and/or imposition of penalty for a wide range of acts from beating, kicking, and torturing an animal to overloading of animals,

¹⁰Wildlife Protection Act 1972, s 9 (Prohibition of Hunting).

¹¹ibid, s 50 (Power of entry, search, arrest and detention).

¹²Ratanlal (n 20) 837, citing *State of Bihar v Murad Ali Khan* (1988) 4 SCC

¹³K D Gaur, *Textbook on Indian Penal Code* (5th edn, Universal Law Publishing Co. 2015) 781.

implied during their transportation. Thus, any person who overloads an animal in any vehicle for transportation, in numbers more than what can be or should be transported in that particular vehicle would be committing an act of cruelty, even though he is not directly inflicting any harm on the animal.

Additionally, it creates a liability on the owner of an animal, to ensure that the animal is not subjected to unnecessary pain or suffering, wherein the owner shall not give any kind of permission to anyone to treat the animal in ways which amounts to cruelty under the section. By using the words ‘unnecessary pain or suffering’, the ambit of the section remains very broad to include even acts or practices, which have not been laid down under the statute, thus providing more protection to animals.²⁹

Prohibits employment of animals in any kind of labour or work, during times when they are not fit to do so. However, the Act does not clarify here about who would decide on the fitness of the animal – whether it would be the discretion of the owner or whether a veterinarian opinion should be obtained to determine the same. The provision mentions about age, disease, infirmity, wound or sore – some of these may be determined by external signs, whereas others may not be. Therefore, establishing the unfit nature of the animal requires more clarity. The provision should also include the act of coercion or forcefully employing an animal in labour, or coercing another person to employ an unfit animal in labour. The section also expressly includes willful and unreasonable administration of injurious drugs or injurious substances. However, one element which might be missing here is the overdose of legitimate drugs to the animal owing to the neglectful or careless conduct of the owner or person in-charge of the animal. Even though, it might not be wilful, negligent conduct should also be made accountable, especially if it renders the animal permanently injured, disabled, or leads to death.

Besides recognizing ‘overloading’ under sub-section (a), sub-section (d)³² specifically aims at transportation of animals, where conveying or carrying of animals, including both the manner in which they are carried as well as the position in which they are carried subjecting them to unnecessary pain or suffering. This has to be followed in accordance with the Transport of Animals Rules, 1978.

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Sub-section (e) recognizes the necessity of movement of the animal, specifying that the dimensions of any cage or receptacle where the animal is kept, should give 'reasonable opportunity for movement'. This leaves scope for a lot of ambiguity because 'reasonable opportunity' is very subjective, and moreover depends on the reasonability of the person in whose confinement the animal is kept.

Mere movement of limbs may be reasonable for one person, while for another it might be anything that does not keep the animal in a statue-like position. Therefore, there is, perhaps, a need to include the word 'natural' – reasonable opportunity for natural movement – of the animal, wherein at least adequate space may be provided for the animal to freely move, not just as per its physical features but also according to his natural characteristics. Appreciatively, the provision also includes companion/domestic animals or pets, and their well-being. Through sub-sections (g) and (h), the statute places responsibility on the owner of such animals wherein they cannot neglect exercise of dogs, chain or tether animals for unreasonable periods of time and ensure to provide the animal with sufficient food, drink and shelter. Violation of any of these responsibilities would amount to cruelty under the Act.

Furthermore, the section does not recognize the possibility of varying degrees of cruelty. Hence, an extreme act of cruelty will be dealt with in the same way as a minor act of cruelty. Since, the punishment is same for all degrees it does not in any way act as a moderator between different acts amounting to cruelty. Therefore, a person who kicks an animal and a person who purposely drops an animal from the top of a building will face similar consequences, if not the same.¹⁴ It is essential to categorize cruelty into more than one degree, rather than having a generalization, so that the impact of law would also be more. However, the provision does marginally tighten the leash on the owner of an animal, by including the imposition of liability for the offence of cruelty in situations when an owner fails to exercise reasonable care and supervision to prevent any of the acts of cruelty mentioned under sub-section (1).

¹⁴ibid s 11(3)(b) (Destruction of stray dogs in lethal chambers or by other prescribed methods).

Furthermore, the section provides for certain exceptions, under which would not attract the punitive measures provided under sub-section (1). The five exceptions provided under sub-section (3) are as follows:

The above-mentioned five exceptions cover a very broad ambit and leave much scope for ambiguity. The exceptions, sans the fourth and fifth, do not specify the purpose or reason under which the exceptions can be invoked. The first exception⁴², only mentions that acts of dehorning, castration, branding or nose-roping should be done in the prescribed manner. However, it does not specify the purpose for which these acts are shall be permitted, thereby leaving room for any person to castrate or brand any animal without adequate reason or purpose, and then claim a defence under the exception. Likewise, exception (c)¹⁵ gives the authorities specified under the Act, permission to exterminate or destroy animals, but at the least, it could have given an illustrative list of situations under which the authorities can take such action, which it has failed to give. This way, the authorities enjoy discretionary power.

The exceptions of experimentation of animals and destruction of animals for food for mankind, are regulated by Chapter IV of the Act and the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, respectively. The language used in the exceptions, however, does not do justice to the objective that the Act aims to achieve. It is very easy to find loopholes and use the exceptions to one's advantage.

The statute also specifically includes the practice of 'cow blowing', traditionally known as *phooka* or *doom dev*, where air is blown into a milch animal's private part to induce more milk. Under Section 12⁴⁶ of the Act, any person who performs *phooka* or *doom dev* or uses any other method, including injecting substances, to increase lactation, or allows another person to perform the same upon any milch animal in his possession would be penalized with a maximum fine of one thousand rupees, which is several times more than the fine imposed for cruelty under Section 11.

¹⁵ibid s 11(3)(c) (Extermination or destruction of any animal under authority of law for the time being in force).

In hindsight, if analyzed, one thousand rupees in the 1960s is an elephantine amount of fine, which today might not be so. However, the discrepancy in the two sections points out the importance given to milch animals over other animals. Any cruelty inflicted on any animal other than cow or milch animals is treated as a lesser offence compared to that inflicted on cows, even if it is a specific kind of offence. While maximum imprisonment in case of the former is three months, only after a subsequent offence, the maximum imprisonment under Section 12 is two years. Therefore, since the commencement of the legislation the penalties imposed have been much higher with respect to one particular class of animals. It is not debated that the punishment under both sections 11 and 12 have not been amended as per the requirement of current times, nevertheless it gives one class of animals an advantage over the others, which seems a tad bit unfair.

Section 13 of the Act permits the destruction of mortally suffering animals. The section specifies three situations under which an animal may be destroyed, if it would be cruel to keep the animal alive in the existing condition. Although the ultimate result of the section is killing of an animal, and might be perceived as in anti-thesis of what the statute is attempting to achieve, it can be comprehended as euthanasia for animals, where the better option between keeping alive in extraordinary pain and death, the latter seems like a more plausible one.

Although for humans, euthanasia is an entirely different and controversial subject, for animals it has been implicitly incorporated in the Act itself, primarily perhaps to relieve the animal from intense pain especially because they do not have the ability to verbally express the same nor can there always be person who would do it on their behalf. The three circumstances under which an animal may be destroyed are:⁴⁷

CONCLUSION

In India, one can safely perhaps without getting into statistical data, which in any case there aren't, in a regular conversation with people around, gauge the societal perspective, value and status that people accord to animals. While the international

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regime focuses more on trade, health of the consumer, and other related issues, and in turn includes animal welfare as one of its components, the Indian scenario is reflective of meek and feeble law. The statutory body entrusted with the responsibility of protecting and promoting animal welfare, AWBI, is also deficient in many ways. Another example of this is the function of the AWBI is to advise the government on necessary amendments to the existing statute. However, there have not been any substantial amendments to the law, with not even an increase in the amounts of fine that are to be levied. The property status of animals still continues in the national context, since the laws related to same under the IPC have not been amended. Most certainly, the awareness about IPC is much more than the PCA Act and hence, the need to amend the former first and remove animals from the category of 'property' might be a befitting beginning that sends out a strong message. The judicial progression although has been a welcoming change, broadening the horizon of animal welfare, to the extent of according animals with fundamental rights.

Whether national or international, the status of animals is largely dependent on the personal perception of each individual, who has been bred inherently with certain value systems. Hence, it may be necessary for a person to unlearn a lot of things that has been instilled into him for ages, and rise above the same – which is the primary challenge. The United Nations may come out with a Convention, the Parliament may amend a law, but how one treats animal is sadly not dependent on this.

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