



Chanderprabhu Jain College of Higher Studies
& School of Law

CPJ LAW JOURNAL

(LISTED IN UGC CARE)

Peer Reviewed/Refereed Journal

Volume - XII, Issue No. 2, July-2022, ISSN 0976-3562



ज्ञान - विज्ञान
UGC Approved Journal

CPJ LAW JOURNAL

Volume XII, Issue No. 2

July-2022

[Cite as: Volume XII, Issue No. 2, CPJLJ (July- 2022)]

A Journal of CPJ School of Law
(Listed in UGC CARE)

© CPJ School of Law, CPJ, Narela, Delhi.

Subscription: Rs. 400

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means-electronic, mechanical, photocopying, recording or otherwise, without prior written permission.

The articles in this issue may be reproduced and distributed, in whole or in part, by non-profit institutions for educational and research purposes, provided that such use is fully acknowledged.

Published by:

Chanderprabhu Jain College of Higher Studies & School of Law

Narela, Delhi - 110040

Website: www.cpj.edu.in

Disclaimer:

The views expressed by the author(s) in the Journal are their personal and does not necessarily reflect the views of Chanderprabhu Jain College of Higher Studies & School of Law. The Editor and Chanderprabhu Jain College of Higher Studies & School of Law are not responsible for mistakes, if any, and for Copyright violations of any kind.

Changing Paradigms of Animal Rights Jurisprudence in India

Ms. Shivani Sharma & Dr. Vaibhav Goel Bhartiya***

ABSTRACT

Since the beginning of civilization, human has never failed to fight for the recognition of its Rights and State's duty to protect it. Though, basic rights have always been focus of the assemblies of civilized society but rights other than that of humans are never given due importance. Moreover, the states which recognize Animal Rights either lack a proper framework or enforcement mechanism. In a country like India, which has an exclusive legislation regarding protection of animals against cruelty, the enforcement mechanism is so brittle that majority of the offenders go unpunished and those who get booked, make mockery of system by giving a paltry fine ranging from Rs. 10/- to 50/-. However, Indian Judiciary is acting as a ray of light on in this darkness and playing a crucial role in changing the paradigms of Animal Rights Jurisprudence in India.

INTRODUCTION

Humans call themselves 'Civilized' based upon their notion that they have reached on that level of development and organization that can be considered the most advanced. Lost in this delusive contentment, human has turned a blind eye on a fundamental prerequisite of being 'civil' i.e. compassion. Unfortunately, it is still missing in its race and puts a question mark on their self proclaimed status of 'Civilians'. In words of Stephen Kendrick, "Almost every sinful action ever committed can be traced back to a selfish motive. It is a trait we hate in other people but justify in ourselves." Since the inception of time, humans have been in continuous talks about the need of recognition of Human Rights but seldom do the same for rights of other organisms. Moreover, leave no chance to consciously violate their rights, justifying in the name of their never ending selfish motives.

When 'life' came into existence, Planet Earth intended no form of discrimination in favor of any species. Each particle of earth belongs to each and every life that ever exists on it. No single species can claim it as a matter of Right for themselves over

* Prob. Civil Judge (Jr. Div.), Jharkhand Judicial Services, Research Scholar, M.Phil.-Ph.D. (integrated), Sardar Patel Subharti Institute of Law, Swami Vivekananda Subharti University, Meerut, (U.P), E-mail: shivanisharma.law@gmail.com, Mobile: 9639390230

** Professor, Sardar Patel Subharti Institute of Law, Swami Vivekanand Subharti University, Meerut, (U.P), E-mail: Vaibhav.hnlu@gmail.com, Mobile: 8958440240

the others. It belongs to even an insect as much as it belongs to the largest mammal. The ecosystem along with its resources was meant to be used by every being which is evident from the fact that no arrangement ever existed naturally which could give preference to one being over the other. The whole preferential system is created by human himself for its own ulterior motives. Often, humans cite their level of intelligence as the *ratio decidendi* to declare their superiority and justify their acts of bigotry. Whereas, human often discounts the fact that intelligence is subjective. The traits like pre-sensing earthquakes in reptiles/insects/birds, intricate communication system in dolphins and whales, emotional contagion in dogs, echolocation in bats, memorizing sets of numbers better than humans in Chimpanzees etc. are completely absent in humans. Do these traits not fit within the manmade exclusive and exhaustive definition of 'intelligence'?

Whether we choose to believe it or not, the universal truth is that, each organism is different, possesses distinct character traits and no animal is superior/inferior to the other. What one possesses is absent in another. And this is what exactly the beauty and power of nature, where each species is different from the other but needs to inter-depend on each other for survival. Each needs to live harmoniously with each other to maintain the balance and order of nature. Imbalance in one, may lead to destruction of all. Therefore, law of nature teaches us to respect everyone and everything which is present in the world in order to lead a healthy life.

In the present Article, the author makes an attempt to converge down the difference between the ideas of protection of Humans on one side and the protection of animals on the other. The present article critically analyzes the present animal rights jurisprudence by presenting all the laws available on the subject, both at domestic and international level; and then testing its effective enforcement by taking an aid from the available literature. The researcher also aims to throw light on the role played by the Indian Judiciary in development of Animal Rights Jurisprudence.

THE CONCEPT OF 'RIGHTS'

It has not been an easy task to define the term 'Rights'. Many jurists have attempted to define it but still, we lack an exhaustive definition. Each definition by a distinct jurist has its own set of criticism. Thus the area of definition of the term is still grey. The idea of acknowledgement of rights to humans dates way back and since then, human has found himself in the midst of tons of conflicts relating to it. And human goes all leaps and bound just to establish his right. This is how important rights are to human beings.

According to Salmond, "*a legal right is an interest which is protected and recognized by the rule of law.*"¹ Gray describes a legal right as "*that power which the human has, to make a person or persons to do or restrains from doing certain act or acts so far as the power arises from society imposing a legal duty upon the person or persons*"². Rudolf Von

1 John William Salmond, *The Theory of Law*, 1907

2 John Chipman Gray, *The Nature and Sources of Law*, 1909

Ihering stated that “*Legal right is the legally protected interest.*”³ He gave importance to the interest of the people rather than the will of the people. The main objective is to protect the interests of the people and to avoid the conflict between the individual interests.⁴

According to Kant’s theory “*rights is an inherent attribute of the human will*”⁵. The goal is actually to allow the expression of free human will. Austin, Pollock and Holland have defined Rights in light of human will. As per John Locke, “*the basis of the right is the will of the individual*”.⁶ Puchta mentions that the legal rights give power to the person over the object which by means of right can be subjected to the will of the person who is enjoying the right. Holland defined legal right as “*the capacity residing in one human of controlling, with the assent and assistance of the state the actions of others*”.⁷

Looking at the above mentioned definitions by some of the prominent jurists, it can be clearly remarked that all the definitions are only focusing upon the “human will”, “individual’s will”, “person’s will”, “capacity of human”, “power of human”, “human interest” etc. Earlier, the idea of ‘Animal Rights’ was not only faded but was however the reality remains that nonexistent. Concept of Animal Rights was never a concern for any intellectual, for the reason of it being irrational, according to them. Many jurists ignored the idea of recognizing rights of the animals merely on the bases of the rule – “*Rights are preceded by Duties*” and animals can’t perform their duties in order to claim rights. May be the fact that, animals chose to co-exist peacefully without making cloths out of human skin or using human as vehicle is actually performance of their part of the duty, was completely disregarded. As a matter of fact, it is the human that tends to interfere in the peaceful enjoyment of rights of animals and not perform its duty of non-infringement of the right of other beings. Unfortunately, till this date we have not performed our duty of acknowledging rights of our fellow living beings.

INDIA LEGAL FRAMEWORK

India is home to variety of animals ranging from the Indian Lions and Bengal Tigers to the Great Indian Rhinoceros and Elephants. It is good to notice that Animal protection and Welfare here has taken a significant positive growth over the years. Protection of animals and compassion towards them is also mentioned in the Indian

1 John William Salmond, *The Theory of Law*, 1907

2 John Chipman Grey, *The Nature and Sources of Law*, 1909

3 Rudolf Von Ihering, *Der Kampf Ums Retch*, 1872

4 Diva Rai, *Concept of Rights and Duties under Jurisprudence*, [Accessed at 11:40 AM on 15-01-2021] Available from: <https://blog.iplayers.in/concept-of-rights-and-duties-under-jurisprudence/>

5 Immanuel Kant, *Metaphysics of Morals*, 1797

6 Locke, John, *Two Treatises of Government*, Cambridge University Press, 1999.

7 Mohd. Aqib Aslam, *Rights and Duties in the light of Jurisprudence: an Overview*, [Accessed at 11:49 AM on 15-01-2021] Available from: <http://www.legalserviceindia.com/legal/article-1919-rights-and-duties-in-the-light-of-jurisprudence-an-overview.html>

Constitution as a fundamental duty. There also exist several animal welfare legislations like the Prevention of Cruelty to Animals Act 1960, Wildlife Protection Act, 1972, Indian Penal Code, 1860, Motor Vehicles Act, 1978, Drugs and Cosmetics Rules, 1945, Prevention to Cruelty to Draught and Pack Animals Rules, 1965 and Transport of Animal Rules, 1978 etc. at the Central level and legislations regarding cattle protection and cow slaughter prohibition at the State levels.⁸

Section 428 and 429 of the Indian Penal Code provides for punishment of all acts of cruelty like killing, poisoning, maiming or rendering useless of animals. The aforementioned legislations have been enacted to obviate unnecessary pain and suffering of animals and similar legislations continue to be enacted according to changing circumstances. Notwithstanding specific statutes, further protections for animals lie under general concepts like tort law, constitutional law, etc.

The special and primary law regarding protection of animals in India is the Prevention of Cruelty to Animals Act 1960. The objective of the Act is *“to prevent the infliction of unnecessary pain or suffering on animals and to modify the laws relating to the prevention of cruelty to animals.”*

The Act extends to the whole India and came in force on 16th December, 1960. The Act, under Chapter I defines ‘animal’ under Chapter I of the Act as *“any living creature other than a human being”*.⁹ The Act defines ‘domestic animal’ as *“any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose for the use of human or which, although it neither has been nor is intended to be so tamed, is or has become in fact wholly or partly tamed”*.¹⁰ Section 3 of the Act renders duty upon the owner of an animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

According to Chapter II of the Act, the Central Government is empowered to establish AWBI.¹¹ The constitution of the Board is dealt under Section 5 of the Act. Section 9 talks about the following functions of the Board:

1. To give advice to the central government regarding general matters of animal welfare.
2. To keep the law in force in, India for the prevention of cruelty to animals
3. Imparting education and awareness on humane treatment of animals.
4. To give advice to the central government regarding amendments and rules

8 Tarun Kavuri, Overview of Animal Laws in India, Animal Legal and Historical Centre, Michigan State University College of Law, 2020 [Accessed on 15-04-2021 at 3:19PM] Available from: https://www.animallaw.info/filters?topic=All&species=All&type=All&country=24918&jurisdiction=All&combine_op=contains&keyword=&order=title&sort=desc

9 Section 2(a), Prevention of Cruelty to Animals Act, 1960

10 Section 2(d), Prevention of Cruelty to Animals Act, 1960

11 Section 4, Prevention of Cruelty to Animals Act, 1960

5. To encourage of financial assistance, rescue homes and animal shelters for old animals.
6. To give advice to the government on medical care and legislations for animal hospitals.

Under Chapter III titled 'Cruelty to Animals Generally', according to Section 11, the Act enumerates several acts that will amount to animal cruelty and hence will be considered as offence under his Act including abandoning any animal without any reason.¹² Regardless, according to the Act destruction of stray dogs in lethal chambers, dehorning or castration of cattle and extermination of any animal under the authority of law does not amount to cruelty.

Chapter IV of the Act deals with Experimentation of animals. According to Section 14, if the experiment done on any animal is for the purpose of advancement by new discovery of physiological knowledge or knowledge to combat disease, it does not render the experiment s unlawful. Under Section 15, the Act mentions about creating a Committee, for the purpose of controlling and supervising any experiment

12 (1) If any person:

- a) Beating, kicking, overriding, overloading, torturing and causing unnecessary pain to any animal.
- b) Using an old or injured or unfit animal for work (the punishment applies to the owner as well as the user).
- c) Administering an injurious drug/medicine to any animal.
- d) Carrying an animal in any vehicle in a way that causes it pain and discomfort.
- e) Keeping any animal in a cage where it doesn't have reasonable opportunity of movement.
- f) Keeping an animal on an unreasonably heavy or short chain for an unreasonable period of time.
- g) Keeping an animal in total and habitual confinement with no reasonable opportunity to exercise.
- h) Being an owner failing to provide the animal with sufficient food, drink or shelter.
- i) Abandoning an animal without reasonable cause.
- j) Willfully permitting an owned animal to roam on streets or leaving it on the streets to die of disease, old age or disability.
- k) Offering for sale an animal which is suffering pain due to mutilation, starvation, thirst, overcrowding or other ill-treatment.
- l) Mutilating or killing animals through cruel manners like using strychnine injections.
- m) Using an animal as bait for another animal solely for entertainment.
- n) Organizing, keeping, using or managing any place for animal fighting.
- o) Shooting an animal when it is released from captivity for such purpose.

He shall be punishable in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend, to one hundred rupees or with imprisonment for a term which may extend, to three months, or with both.

being conducted on animals, by the central government which will have the power to even prohibit the experiment if necessary.

Section 22 under Chapter V restricts and prohibits any kind of exhibition or training of animals without a prior registration with the AWBI. The Section also prohibits animals from being used for the purpose of performing for entertainment. One of the most disturbing Sections of the Act is Section 28 which states that nothing shall render it an offence to kill any animal *"in a manner required by the religion of any community"*. Earlier, this Section was considered imperative considering the diversity of religions and traditions in India. But this section must be re-looked upon today which keeps lives of millions of living beings way beneath mere rituals created by human for self satisfaction.

Another disturbing aspect of the Act is that the offence of Animal Cruelty is punishable with a mere monetary fine of Rs. 10/- which may extend to Rs. 50/- on first offence. On subsequent offence committed within three years of previous conviction, the amount to be imposed as fine shall be Rs. 25/- which may extend to Rs. 100/- or imprisonment for a period of three months or with both.

- Animal Welfare Board of India

The Animal Welfare Board of India was established in the year 1960 under Section 4 of the Prevention of Cruelty to Animals Act, 1960. It is a statutory advisory body formed for advising the Government of India on the laws about animal welfare.

The 'Animal Welfare Board of India' was originally formed under the Ministry of Food & Agriculture and then was brought under the Ministry of Environment & Forests in the year 1990. It has been working to propagate animal welfare and to make sure that animal welfare laws are followed in India. It is empowered to propose changes to the laws and rules about animal welfare. It also published a new draft of 'Animal Welfare Act' in the year 2011. The 'AWBI' is authorized to grant recognition to animal welfare organizations and is also empowered to offer supervision and guidance to organizations and police, in interpretation and enforcement of the laws related to animals in India.

The AWBI also provides various types of grants to the animal welfare organizations in India including Regular Grant, Cattle Rescue Grant, ABC Program, Provision of Shelter House for looking after the Animals, Provision of Ambulance for the animals in distress and Natural Calamity grant. As recommended by AWBI, the Government of India formed a Committee i.e. CPCSEA. Subsequently, in 2001, the Government passed Rules regarding regulation of breeding and experimentation on animals. The AWBI published a booklet namely '*Circuses -Amusement for the Uncivilized*' about cruelty to animals used in entertainment industry in the year 1964. In the year 2001 it also passed the 'Performing Animals Rules', which were amended in years 2005 and 2012.¹³

13 List of Animal Welfare Organizations in India [Accessed on 11-04-2021 at 5:52 PM] Available on: <https://www.infoqueenbee.com/2016/01/list-of-animal-welfare-organizations-in.html>

- Animal Welfare Bill, 2011

The Animal Welfare Bill, 2011 aims to propose some important amendments in the already existing Act which is meant to protect animals. It has proposed some hard penalties and jail term if anyone inflicts cruelty upon an animal even for self-defense.¹⁴ The punishment may range from a fine starting from Rs. 10,000/- which may extend up to Rs. 25,000/- and punishment up to two years or both. And on a subsequent offence, the fine may be imposed up to Rs. 50,000/- and jail term which could be no less than one year and which may extend up to three years.

Some of the highlights of the Bill are as follows:

- o Section 3 has been more elaborated on the subject of what shall constitute the duty of an owner or a person in charge of an animal.
- o Under section 4, the AWBI is empowered to take up jurisdiction of stray animals as well as ownerless animals. However, it is in indirect conflict with the duty and responsibilities of municipalities, municipal corporations and police given to them under various legislations.
- o Section 17, earlier Section 11 of PCA, which carves out all the acts that shall amount to cruelty has been amended and many more acts like dynamiting or electrifying river streams has been added.
- o Section 28 which talks about sacrificing animals for religion has been omitted.
- o The bill is silent on the responsibility for rabid dogs and on the ownership of stray dogs. An organization named 'Stray Dog free Bangalore' has raised objections against the Bill. It argues that "*there has to be a different policy to handle stray dogs to prevent people from stoning them and then being jailed or fined for the same.*" According to Vatsala Dhananjay,¹⁵ "*This act would override acts like State Municipality Act, the Prevention of Cruelty to Animals Act*".

- Animal Welfare Bill, 2014:

After the leading case AWBI vs. A. Nagaraja,¹⁶ the AWBI proposed a new draft of the Animal Welfare Bill in the year 2014. It incorporated in itself substantially stiff punishments for the act of animal cruelty. However, despite the massive uproar among animal rights activists and organizations, it is still not passed by the Parliament of India,¹⁷ The AWBI along with animal rights activists and many NGOs, appealed to the MoFE to consider the bill and get it enforced by the Parliament as soon as possible considering the hike in incidents of animal abuse recently, such as murder

14 Suitha Rao, Bill silent on rabid dogs, 10-03-2011, Times of India, [Accessed on 15-04-2021 at 4:32 PM] Available on: <https://timesofindia.indiatimes.com/city/bengaluru/bill-silent-on-rabid-dogs/articleshow/7666978.cms>

15 Advocate and Joint Secretary, Stray Dog free Bangalore

16 Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547, ¶72

17 The Hindu, Centre urged to enact Animal Welfare Bill, March 13, 2016, [Accessed on 15-04-2021 at 5:00PM] Available at <http://www.thehindu.com/news/national/centre-urged-to-enact-animal-wwelfare-bill/article8414140.ece>

of puppies in Delhi¹⁸ and Bengaluru,¹⁹ the assault on the police horse Shaktiman²⁰ and the acid attack on a horse in Hyderabad²¹. Regardless, the bill is still in the cold storage.²²

- Animal Welfare Bill, 2016:

On August 5, 2016, a Bhartiya Janta Party MP namely Poonam Mahajan, moved a private member's bill in the Lok Sabha aiming at an amendment to the Prevention of Cruelty against Animals Act, 1960. She stressed up on including harsh and stringent punishments and making all the offences under section 11, cognizable.²³ Over decades, several private member bills have been moved and introduced in parliament.²⁴ However, only 15 bills have been passed till date.²⁵ Today, there is much huge demand for shelving the existing PCA and introducing much more effective animal welfare legislation with harsher punishments and stiff monetary penalties. Regardless of the furor, the Parliament remains dormant and prefers to sleep over the proposed bills while the old and rusted legislation in the form of PCA remains active. This attitude of the Parliament has lead to greater atrocities towards animals. However, public fury against the brutality inflicted up on the animal is blatant at this stage and thus, the Parliament can't ignore it for long.²⁶

-
- 18 Hindustan Times, Man stabs 3 dogs, 1 puppy outside Green Park Station, March 21, 2016, [Accessed on 11-04-2021 at 4:57PM] available at <http://www.hindustantimes.com/delhi-news/man-stabs-to-death-3-dogs-1-puppy-outside-green-park-station/storyUU1oIJeZfZID0DDKxXf2H.html>
- 19 The Times of India, Bengaluru woman kill 8 puppies to teach their mother a lesson, March 22, 2016, [Accessed on 15-04-2021 at 5:18PM] available at <http://timesofindia.indiatimes.com/city/bengaluru/Bengaluru-woman-kills-8-puppies-to-teach-their-mother-a-lesson/articleshow/51513219.cms>
- 20 The Hindu, Police horse 'Shaktiman' dies, April 20, 2016, [Accessed on 15-04-2021 at 5:02PM] available at <http://www.thehindu.com/news/national/Police-horse-Shaktiman-dies/article14247725.ece>
- 21 The Hans India, 50,000 reward for info on pony attackers, May 15, 2017, [Accessed on 15-04-2021 at 5:31PM] available at <http://www.thehansindia.com/posts/index/Telangana/2016-03-25/50000-reward-for-info-on-pony-attackers/216169>
- 22 Abha Nadkarni & Adrija Ghosh, BROADENING THE SCOPE OF LIABILITIES FOR CRUELTY AGAINST ANIMALS: GAUGING THE LEGAL ADEQUACY OF PENAL SANCTIONS IMPOSED, NUJS LAW REVIEW 2017, [Accessed on 15-04-2021 at 5:54PM] available at: <http://docs.manupatra.in/newsline/articles/Upload/1CB73629-1C2A-410C-B437-42A19EC697A5.pdf>
- 23 Humane Society International/India, Mumbai MP Poonam Mahajan Introduces Private Member Bill to Amend The Prevention of Cruelty To Animals Act, 1960, August 5, 2016, [Accessed on 12-04-2021 at 9:27AM] available at <http://www.hsi.org/world/india/news/releases/2016/08/private-member-bill-introduced-to-increase-animal-cruelty-penalties-080516.html?referrer=https://www.google.co.in/>
- 24 PRS Legislative Research, Parliament needs to find its voice, March 2, 2010, [Accessed on 12-04-2021 at 9:12AM] available at <http://www.prsindia.org/media/articles-by-prs-team/parliament-needs-to-find-its-voice-1535/>
- 25 Ibid.
- 26 Abha Nadkarni & Adrija Ghosh, BROADENING THE SCOPE OF LIABILITIES FOR CRUELTY AGAINST ANIMALS: GAUGING THE LEGAL ADEQUACY OF PENAL SANCTIONS IMPOSED, NUJS LAW REVIEW 2017, [Accessed on 15-04-2021 at 5:54PM] available at: <http://docs.manupatra.in/newsline/articles/Upload/1CB73629-1C2A-410C-B437-42A19EC697A5.pdf>

The Wildlife Protection Act was enacted the year 1972 in order to preserve, protect and conserve the wildlife and their habitats in India. Its objective is *“to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country.”* According to the act, ‘animal’ includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs.²⁷ It includes provision for appointment of Director of Wildlife Preservation and Wildlife Warden.²⁸ It also empowers the Government to constitute a National Board of Wildlife with Prime Minister as its Chairperson for the purpose of framing policies, making recommendations to the central government regarding protected areas, carrying out assessment and reviewing the progress time to time at the central level²⁹ and a State Board at the state level.³⁰ It contains sections to deal with illegal killing, prohibit hunting³¹ along with permitting hunting in certain areas to be specified by the Chief Wildlife Warden³² and poaching of wild animals. It incorporates provisions for the protection of specific plants and fauna under Section 17A. It also includes detailed schedules listing endangered or otherwise protected species like Indian one horned Rhinos, Indian Elephants, Black bucks, Giant Squirrel, Golden Cat, Bengal Tigers, Lion tailed Macaque, Leaf Monkey, and Indian Lions etc. The Act empowers the government to set up sanctuaries and national parks in order to conserve the wildlife. The Act lays down penalties like imprisonment which may extend to three years, or with fine which may extend to twenty-five thousand rupees, or with both in case of contravention.³³

Killing an animal is also illegal as well as an offence according to Section 11 of the PCA Act. It is also a cognizable offence according to the Indian Penal Code under Section 428 and 429. Section 428³⁴ states the punishment for the same. It can be both simple or rigorous for a term, which may extend to two years, or with a fine, or with both. Section 429³⁵ deals with the punishment for the crime of the same

27 Section 2(1), Wildlife Protection Act, 1972

28 Section 5A, Wildlife Protection Act, 1972

29 Section 5C, Wildlife Protection Act, 1972

30 Section 6, Wildlife Protection Act, 1972

31 Section 9, Wildlife Protection Act, 1972

32 Section 11, Wildlife Protection Act, 1972

33 Section 51, Wildlife Protection Act, 1972

34 Mischief by killing or maiming animal of the value of ten 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.

35 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.

nature but for the animals with value of Rs. 50/- or upwards. The punishment in for this crime can be imprisonment which may extend to five years or with a fine, or with both.³⁶

Section which remotely relates to protection of animals is Section 378 of IPC which deals with Theft of any moveable property. This section also includes animals within the definition of movable property. The section in itself, under Explanation 4, includes the theft related to animals.³⁷ Section 379 of IPC deals with punishment for 'theft' which may extend to three years of imprisonment or with fine or with both. The complainant regarding the theft of an animal, including pet animals and commercial animals, has the right to file an F.I.R. in the police station. This section of IPC should be read together with the PCA Act of 1960.³⁸

In the Indian Penal Code 1860, intimidation to any person taking care of dogs, is covered under the offence of criminal intimidation under Section 503. The offence is cognizable in nature and anyone who threatens or intimidates any person can be arrested without a warrant.³⁹ Section 504 of the IPC deals with punishment for the same offence.⁴⁰

According to Section 96 of the Act, the state government has the power to make rules regarding the transportation of animals of birds. The state government can also make rules related to the conditions and types of containers in which the animals can be transported. It can also include the seasons, in which this transportation can occur.⁴¹

Section 132 says that it is the duty of the driver to stop the vehicle and remain at stationary position in the event of an accident to a person or an animal. It is further

36 ANIMAL PROTECTION LAWS FOR THE GUIDANCE OF POLICE, HAWOs, NGOs AND AWOs, [Accessed on 16-04-2021 at 6:03PM] available at: <http://www.awbi.org/awbi-pdf/APL.pdf>

37 Explanation 4.—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.

38 Punishment for theft.—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

39 Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

40 Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

41 Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:— (xxvii) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried;

stated that in case of an apprehension by the owner or in charge of the animal that by the vehicle the animal may be alarmed or may become unmanageable, even then the driver may be asked to stop the vehicle and remain stationary until the animal is calm. However, the word 'animal' in this section is exclusive and only includes horses, mules, cattle, elephant, camel, ass, sheep and goat.⁴²

Last year, the PCD 19 Cosmetic Sectional Committee of the Bureau of Indian Standards (BIS) removed the animal tests from the cosmetics testing standards. Following this, the MoHFW has banned the cosmetic testing, and added rule 148-C⁴³ to Drugs and Cosmetics Rules, 1945. It is being considered as the significant victory for the animal rights activists. The definition of "*cosmetics*" under the Rules includes any article intended for use as a component of cosmetic. Hence the ban on animal testing applies to ingredients too. Most recently, in order to further amend the Drugs and Cosmetics Rules, 1945, the MoHFW published a cosmetic testing ban in shape of Rule 135-B. If introduced, the new rule may state that "*No cosmetic tested on animals shall be imported*".⁴⁴

The Prevention to Cruelty to Draught and Pack Animals Rules, 1965 aim at protection and prevention of animals like horses, cattle, camels, mules and asses etc. from unnecessary pain, cruelty, torture, overload, when used for transportation and draw carriages. There are a total of 12 rules chalked out by the legislature. Under Rule 3, a table is drawn regarding the amount of load a particular animal can be allowed to carry. For example, a camel can be allowed to carry only 1000 kg of weight on a two wheeled carriage. Under Rule 4 a maximum weight that an animal can carry without any carriage is mentioned in form of a table. For example, a Mule can carry only 200 kg of weight. Rule 5 talks about maximum number of passengers on an animal drawn vehicle i.e. a total of 4 adult passengers excluding driver and

42 Duty of driver to stop in certain cases. – (1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as 1 [may for such reasonable time as may be necessary, but not exceeding twenty-four hours] – 2 [(a) when required to do so by any police officer not below the rank of a Sub-Inspector in uniform, in the event of the vehicle being involved in the occurrence of an accident to a person, animal or vehicle or of damage to property, or] (b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or 3 * * * * and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address. (2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 184 give his name and address to that person. (3) In this section the expression "animal" means any horse, cattle, elephant, camel, ass, mule, sheep or goat

43 Prohibition of testing of cosmetics on animals - No person shall use any animal for testing of cosmetics.

44 Cosmetics Testing Ban on Animals now Permanent, [Accessed on 04-05-2021 at 11:37AM] available at: <https://www.petaindia.com/blog/cosmetics-testing-banned-on-animals/#:~:text=prohibition%20of%20testing%20of%20cosmetics,Drugs%20and%20Cosmetics%20Rules%2C%201945.&text=The%20removal%20of%20animal%20tests%20from%20the%20standards%20and%20this,MP%20Maneka%20Gandhi%20and%20others.>

children below 6 years of age. Rule 11 talks about the powers of police. Section 9 deals with proper saddling of horses.

It is worth mentioning here that these rules were drawn in the year 1965 when the economic condition of India as a whole was nothing as compared to today. Back then animal carriages were quite common and necessary considering the lack of motor vehicles owned by a common man. But today when we have ample motor and battery operated vehicles, animal carriages must be banned and animals should be treated different than a mere commodity of human, for a change.

As per power conferred by Section 38 of the PCA Act, the central government passed Transport of Animal Rules, in the year 1978. The rules are divided into six different chapter based upon different categories of animals. Chapter II deals with transport of cats and dogs, Chapter III deals with transport of Monkeys, Chapter IV deals with transport of Cattle, Chapter V deals with transport of Equines and Chapter VI deals with transport of Sheep and Goats.

These rules lay down the conditions and surroundings under which animals can be transferred. It requires a health certificate by a registered veterinarian before travel and bars pregnant animals from any kind of transportation. Unweaned litter is not allowed to travel with adults other than their dams and no female is allowed to travel with males. It also prescribes the mandatory directions which are needed to be followed for the purpose of travel. For example, the animals must be well fed and drunk before travel, exercised as late as possible, should be given water and food at given intervals, should be cared for throughout the journey etc.

The Prevention & Control of Infectious and Contagious Disease in Animals Act, 2009 is aimed *"to provide for the prevention, control and eradication of infectious and contagious diseases affecting animals, for prevention of outbreak or spreading of such diseases from one State to another, and to meet the international obligations of India for facilitating import and export of animals and animal products and for matters connected therewith or incidental thereto."*

It provides for appointment of vet offices under section 3 and under section 4, it makes it obligatory to report scheduled diseases. It further talks about the duty to segregate infected animals and prohibition of movement of animals in controlled areas. Furthermore, it deals in vaccination and vaccination certificates for the animals.

CONSTITUTIONAL DUTY

The Indian Constitution is not completely silent on the subject of Animal Rights. Under various provisions, it directly or indirectly deals mentions Animal related Rights and Duties. The following are the provisions:

1. Article 19

The Constitution, under Article 19 (Part III), talks about right to freedom and this provision contains within itself several freedoms. One of such freedom is the right to carry on any profession, occupation, trade or business. If we interpret the letters

of this Article along with its spirit, we can conclude that, it gives freedom to every citizen to choose any occupation, trade or business even if it is related to animals. And if a citizen chooses to do something like taking care of animals or alike as his occupation, he is absolutely protected under this article from any interference and nuisance which may harm any of his owned animal. Though, this article protects animals from harm in a very remote sense, but it has proven to be effective in the past, on several occasions.

Here we should also note that, this article leaves animals' existence as a mere commodity which human can own and gives human the sole right to pursue against the wrongdoer when he is interfering with his right. However, in fact, it is the animal whose rights are being affected even if it is being used as a part of trade and business. It creates a sense of supremacy for the human species.

2. Article 21

Another Article that deals with this subject is Article 21 (Part III). It talks about the right to life and personal life. It is the single provision in the entire constitution which can be and has been interpreted very widely and vastly. It is because of the importance of the right provided by it. It can be interpreted in any direction whenever a vital aspect of the life is being infringed. In the scenario of animal rights and protection also, it provides an effective right. If a person wishes to take care, feed and provide shelter to any animal, he is at full liberty to do so. And no one can interfere with his right. This article indirectly provides protection to animals in care of a person.⁴⁵ But at the same time, it is not limited to it. Animals not in any kind of care can also come within its ambit under the rights to healthy environment and peaceful living, where any person can reach court against acts of violence towards animals.

This right as also been interpreted by the hon'ble Supreme Court of the USA in a way that right to life means right to live with dignity and not mere 'animal existence'.⁴⁶ This view has been adopted by our Indian courts too. But not that the US Court meant it, but this view further downgrades the status of animals and presses that animals' lives lack dignity completely. This view was adopted long ago in the 19th century, but sadly is still being taught with great pride in order to glorify human's right to life and its importance while completely ransacking the sense of dignity out of the lives of other fellow species.

3. Article 48

Constitution of India, under Article 48 (Part IV), obligates the state to organize agriculture and animal husbandry on modern and scientific lines. It also adds that the state shall endeavor to take steps to preserve and improve the breeds of animals

45 ANIMAL PROTECTION LAWS FOR THE GUIDANCE OF POLICE, HAWOs, NGOs AND AWOs, [Accessed on 16-04-2021 at 6:03PM] available at: <http://www.awbi.org/awbi-pdf/APL.pdf>

46 *Munn v. State of Illinois*, 94 U.S. 113 (1876)

along with protecting animals like cows, calves, buffalo, milch and draught cattle against slaughter.⁴⁷

4. Article 48A

In Part IV, the Constitution under Article 48A state that:⁴⁸

“The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.”

This article directly obliges the state to take steps in order to protect forests and its wildlife.

5. Article 51A (g)

Article 51A under clause (g) mentions the duty of every citizen of India to have love and compassion for all the living creatures. This article just like preceding provisions, Article 48 and 48A, are not enforceable by the courts but this does not diminishes its value at all. Both, Article 48A and 51A (g) were inserted in the constitution by the infamous 42nd Amendment Act, 1976. Its intention was to create a sense of obligation in the mind of both state and citizens towards the fellow species living with them. These two articles are the most direct and strongest when it comes to the subject of animal rights.

Moreover, these articles may be enforced by the courts by an active judicial approach. An expansive judicial interpretation, the courts have the power to drag them within the scope and ambit of the Article 21 via vast interpretation as discussed earlier.

6. Article 246

Lastly, Article 246 talks about the division of legislative power between the Centre and State. It jots down the subject-matters upon which centre and state can legislate. For this, the article refers to Schedule VII which comprises of three lists i.e. Centre, State and Concurrent. The three lists lay down several subject matters in form of items upon which the centre and state have sole power to make laws. And then there is concurrent list, where both state and centre can enact laws on the items listed in that list.

Regarding animal rights, the following are the items upon which legislation can be done:

47 Akkiakhand, Legal Personality of Animals [Accessed on 31-07-2020 at 12:54PM] available at:<http://www.legalserviceindia.com/legal/article-364-legal-personality-of-animals.html>

48 Tarun Kavuri, Overview of Animal Laws in India, Animal Legal and Historical Centre, Michigan State University College of Law, 2020 [Accessed on 15-04-2021 at 3:19PM] Available from: https://www.animallaw.info/filters?topic=All&species=All&type=All&country=24918&jurisdiction=All&combine_op=contains&keyword=&order=title&sort=desc

- a. Centre List: the centre list is silent on the subject of animal related legislation.
- b. State List: Item 14 of the State List provides the States with the power to “*preserve, protect and improve stock and prevent animal diseases and enforce veterinary training and practice.*”
- c. Concurrent List: according to this list, both the Centre and the States can legislate on the subject of “*Prevention of cruelty to animals.*” under Item 17 and “*Protection of wild animals and birds*” under Item 17B.

INDIAN JUDICIARY AND ANIMAL RIGHTS

It is unfortunate that human thinks that animals are in existence only for his benefit. He thinks that they have complete right to use and treat animals in whichever way he likes. But fortunately, the law of the land reflects otherwise. Moreover, the courts of our country are leaving no stone unturned in protecting and upholding the rights of innocent animals. Judiciary has gone way far in through its judgments and observations to establish a justice system which is not human centric. These verdicts either mitigated or ended the pain that animals suffer.

The following are some landmark judgments that protected animal rights and uplifted the status of animals in every possible way:⁴⁹

1. People for Ethical Treatment of Animals Vs. Union of India

In the year 2006, an important ruling was passed by the Hon'ble Bombay High Court, wherein it was made mandatory for film makers to obtain a certificate from the Animal Welfare Board of India for any public movie in which any animal has been filmed, stating that the film was made completely in accordance with the Performing Animals (Registration) Rules, 2001. Furthermore, the movie should begin with a disclaimer stating that “*no animals were harmed during the making of the film*”. This judgment definitely was a positive step towards safeguarding animals from exploitation or ill-treatment during the making of the movie. The verdict also prevents animals from other kinds of torture like being exposed to loud, strange noises, cruel treatment or kept without being properly fed.⁵⁰

2. Shri. Ajay Madhusudan Marathe Vs. New Sarvodaya CHS Ltd:

A resident approached the consumer forum against a resolution passed the residential society which prevented dogs from using lifts installed in the building. The society argued that it passed this resolution to prevent spread of diseases. It further argued that a dog is not a consumer; hence it can be prevented from availing such services.

49 7 Landmark Judgements That Were Big Wins for Animal Welfare in India, [Accessed on 09-01-2021 at 12:29PM] Available from: <https://www.thebetterindia.com/52075/animal-welfare-cruelty-law-court-judgements/>

50 Available at: [https://www.casemine.com/judgement/in/5ac5e3d84a93261a672c10b4#:~:text=Peta\)%20India%20v.,Union%20Of%20India,Cruelty%20to%20Animals%20Act%2C%201960.](https://www.casemine.com/judgement/in/5ac5e3d84a93261a672c10b4#:~:text=Peta)%20India%20v.,Union%20Of%20India,Cruelty%20to%20Animals%20Act%2C%201960.)

The Court held that the owner was a consumer, being a member of the society, and the dog belonging to the consumer was registered with the Municipal Corporation and bore a valid Kennel Club of India license. The dog even had a proper Health Certificate by the Bombay Veterinary College which certifies that it is properly vaccinated. Therefore dogs cannot be prevented from using the lifts.⁵¹

3. State of U.P Vs. Mustakeem and Ors:

Goats were being transported for a slaughter house in Uttar Pradesh in a cruel manner which was against the PCA Act, 1960. In an Appeal, the High Court ordered to return the custody of the animals to the owner temporarily while the matter was sub-judice. On appeal against this order, the Hon'ble Supreme Court held that the animals must be confiscated from the owner and housed in a *gaushala*. And the state government will take the responsibility for providing care to those animals until the case is pending. The Court made it crisp clear that "*once an animal was removed from a person's care on grounds of cruelty to his/her charge, the animal would not be returned until the case was resolved.*"⁵²

4. Gauri Maulekhi Vs. Union of India and Ors:

Gadhimai festival is an annual festival of Nepal in which Cattle is sacrificed and a big number of cattle is transported from India illegally. To put a stop to this brutal massacre in the name of religion, Sahastra Seema Bal along with the petitioner drafted some guidelines regarding to animal and cattle markets. Later the Hon'ble Supreme Court, in the year 2014, banned the illegal transport of cattle for the Gadhimai festival, to Nepal. And those guidelines were certified as recommendations by the court to be followed by all those dealing with animal market. The verdict played a crucial role in reducing the number of animal sacrifices.⁵³

5. Nair, N.R. and Ors. Vs. Union of India and Ors:

A notification published by the MoEF was questioned in the Kerala High Court which stated that animals like bears, monkeys, tigers, panthers and lions shall not be exhibited or trained as performing animals for the purpose of entertainment. The HC upheld the notification. Later on, the notification was challenged in the SC, the court held that animals are abused, beaten, starved and caged in order to train them to perform, which amounts to cruelty according to the PCA Act, 1960. The petitioners argued that they have right to carry out any trade or business under article 19(g) of the Constitution which was out rightly rejected by the court stating that right to carry trade and business can't be sustained on suffering of animals.⁵⁴

51 Available at: <https://indiankanoon.org/doc/48829808/>

52 Available at: <https://www.casemine.com/judgement/in/56b49253607dba348ffefad>

53 Available at: [https://www.elaw.org/gauri-maulekhi-v-union-india#:~:text=Union%20of%20India,-Gauri%20Maulekhi%20v&text=A%20community%20member%20filed%20a,Paper%20\(%E2%80%9CCentury%E2%80%9D\)%20](https://www.elaw.org/gauri-maulekhi-v-union-india#:~:text=Union%20of%20India,-Gauri%20Maulekhi%20v&text=A%20community%20member%20filed%20a,Paper%20(%E2%80%9CCentury%E2%80%9D)%20)

54 AIR 2000 Ker 340

Kerala High Court observed that “If human beings are entitled to fundamental rights, why not animals? In our considered view, legal rights shall not be the exclusive preserve of the human beings which has to be extended beyond people thereby dismantling the thick legal wall with human beings all on one side and all non-human beings on the other side.”⁵⁵

6. Animal Welfare Board of India vs. A Nagaraja and Others

The practice of *Jallikattu* was banned by the hon’ble Supreme Court in the year 2014, via a landmark case named, AWBI vs. A. Nagaraja and Others. The practice was held to be within the ambit of cruelty according to the PCA Act. The practice of *jallikattu* invoked Section 3 as well as Section 11 of the Act. Supreme Court holds that “all animal fights incited by human beings are illegal, even those carried out under the guise of tradition and culture.” The Court also issued many guidelines and recommendations regarding the same.⁵⁶

7. Anupam Tripathi vs. Union of India

In this case, Hon’ble Delhi High Court stepped beautifully out of the line and considered dogs as a part of families of their owners. Hon’ble High Court held that Pet Dogs shall be allowed to walk in public parks just like human beings for the purpose of their good health. In furtherance of the same Animal welfare board of India issued guidelines in the year 2016 regarding the same.⁵⁷

8. Narayan Dutt Bhatt vs. Union of India

Uttarakhand High Court in the year 2018 held that, “The entire animal kingdom, including avian and aquatic animals are hereby declared ‘Legal entities’, having corresponding rights, duties and liabilities of a living person”. This judgment is a celebrated one for animal rights activists as a exoneration of their demand of “equality for animals”.⁵⁸

The High Court addressed the issue of “animal cruelty” and extended the rights of a living person to the animal kingdom. In India rights of a living person are mainly enshrined in the Constitution of India. And the rights which are not exclusive to the citizens of India can only be read in favor of animals. For instance, rights under Article 14 or Article 21 are not limited to citizens and are even available for the non-citizen persons. And because animals are “non-citizen” legal persons, these rights can be availed for their benefit.⁵⁹ The judgment also issued directions to the

55 *N. R. Nair v. UOI*, Kerala High Court, 6 June 2000.

56 Available at: <https://indiankanoon.org/doc/39696860/>

57 WP(C) 7731/2014

58 Anish Tore, Decoding Uttarakhand High Court’s judgment on Animal Rights, [Accessed on 18-05-2021 at 12:31PM] Available from: <https://www.downtoearth.org.in/blog/wildlife-biodiversity/decoding-uttarakhand-hc-s-judgment-on-animal-rights-61287#:~:text=On%20July%205%2C%202018%2C%20the,liabilities%20of%20a%20living%20person%E2%80%9D.&text=The%20%E2%80%9CRights%20of%20a%20living,majorly%20comprise%20of%20Constitutional%20Rights.>

59 *Dr. Naresh Agarwal v/s. Union of India*, 2005 (4) AWC 3745

state government “to ensure proper treatment and safety of Stray Animals”. The judgment, talks about the concept of “equality of all species” while referring to the *Isha Upanishad*. The verdict also declares that “The entire animal kingdom... is declared a legal entity having rights...” needing no human confirmation and “persons in loco parentis as the human face for the welfare/protection of animals.”⁶⁰

The Court referred to various previous judgments of the hon’ble Supreme Court in which rights of juristic persons were recognized like in *Hiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & Ors*. The SC stated that juristic persons were created for “*subserving the needs of and faith in society*”. The court also relied upon the judgment of Nagaraja Case where Supreme Court declared that the Prevention of Cruelty to Animals Act must be read in light of freedom from hunger, freedom from pain and injury, fear and distress, physical and thermal discomfort and freedom to express normal behavioural patterns.⁶¹ While declaring the verdict, the court also visited the interpretation of Article 21 done by the SC where “life” was interpreted to include “*all forms of life, including animal life*”.⁶²

9. Vijay Jyoti Bakshi vs Govt. of NCT of Delhi and ors:

Most recently, Delhi HC in a landmark judgment recognized the right of every human to feed the stray dogs. The HC directed that every Welfare Resident Association should form “Guard and Dog Partnerships” in consultation with Delhi Police Dog Squad, so that the stray dogs could be trained for the purpose of protection and yet be friendly with the residents of the societies. Further, the Justice R.N. Midha issued directions on feeding of stray dogs establishing that the street dogs have right to food and the citizens have right to feed them. However, some caution should be taken while feeding the strays and it should not affect the rights of others. The court also observed that there is a need to create awareness among the general public about right to live of animals and hence should be treated with respect, compassion and dignity. It was also observed that animals are sentient beings and hold important value; hence, it is the moral responsibility of every citizen to protect them. It also highlighted the fact that animals may be mute but we as a society speak on their behalf.

Over the years, in India, the trend of animal activism has gained importance in the eyes of judiciary. Judicial activism has certainly teamed up with animal activism due to the efforts of animal activists throughout the country. Recently, the Madras

60 Mrinalini Shinde, Here’s the Problem with Declaring Animals as Legal Beings in India, [Accessed on 31-07-2020 at 12:47PM] available at: <https://www.thequint.com/voices/view/uttarakhand-high-court-declares-animals-legal-beings-questions>

61 Available at: <https://indiankanoon.org/doc/39696860/>

62 Abhiraj Singh, Rights of Animals under the Indian Legal System: Justifiable Amendable Curative Reformative, [Accessed on 31-07-2020 at 12:59PM] available at: <http://www.legalserviceindia.com/legal/article-1203-rights-of-animals-under-the-indian-legal-system-justifiable-amendable-curative-reformative.html>

High Court in the case of *Rangrajan Narsimhan vs. The Chief Secretary and Ors.*⁶³, hinted that it may hold hearing at open places where elephant are being kept captive like Temples, Zoos etc. in a less formal setting. The purpose behind it is to ensure and discern as to how the elephants are being treated. The bench stated that “*sometimes we can't even trust a committee*”. Active steps like these builds hope for a better administration of animal laws.

Many pro-animal steps are being taken throughout the country like increasing the number of protected areas, encouraging animal adoption, establishments of City *Goushalas*, upgrading the status of River Dolphin to City animal of Guwahati, introduction of courses on animal welfare in institutions like JNU, involvement of villagers and tribes in the protection of endangered animals, growing awareness and sensitivity against animal cruelty via NGOs and animal activists etc. after all these efforts the sad part is that since the enactment of the PCA Act, it has not been amended even once. Provisions of the Act have become ineffective with the trivial monetary fines which are in fact leading to infringement of animal rights in disparate forms.

Constant efforts of judiciary and animal activists had also lead the legislature to think upon the subject and pro-animal bills are being considered. More strict penal provisions are being thought upon for a better deterrence. There is a need of paradigm shift in the conscious of humans and it is needed to be realized that the interaction between human being and animals is as important and as worthy of study as Darwin's Theory of evolution. Humans need to stop using the phrase “*Survival of the Fittest*” in wrong and selfish connotation.

63 Meera Emmanuel, Welfare of Captive Elephants: Madras High Court may hold hearing at temples, elephant parks to find out how elephants are being treated, [Accessed on 06-08-2021 at 11:54 AM] Available at: <https://www.barandbench.com/news/litigation/madras-high-court-elephants-temples-elephant-parks>

Social Security to Women Workers in the Unorganized Sector in India: A Critical Analysis

Dr. Sonia Aneja*

ABSTRACT

A vast majority of India's labours force is in unorganized sector. "Unorganized sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten; and "unorganized worker" means a home-based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of the Social Security Act, 2020. The overall picture is one of greater disadvantage for women workers in general and those belonging to unorganized sector in particular. It is very difficult to have distinctive laws for each employment as this will not only result in bundle of laws, but also overlook of one or other of the employment. Therefore there is need of one umbrella legislation that includes everything is basic and common, and gives space for supplementary legislation or rules which can be made as and where any specific of employment demand for it. The present study is aimed to explore the problems of women workers and the implementation of various labor laws especially the Social Security Act, 2020 and to deal with the problems faced by women workers in the unorganized sector.

Keywords: Social Security, Unorganized Sector, Implementation, Legislation, Women.

INTRODUCTION

Women constitute half of the nation's human resource and therefore vital and crucial for the national development. In the socio-economic milieu of the country, role of women within the overall context of human resource development requires their rightful role in the society. In any society, economic position and social status of women are influenced by the extent of their involvement in income earning activities outside the household. Women are socially deprived of status and yet have been venerated as Goddesses. Women are the harder race with a higher life expectancy and yet have an unfavorable sex ratio. These should be treated as paradoxes and not as indicators and averages. India has 406 million women out of the population

* Assistant Professor, Department of Law, University of Jammu, E-mail: soniaaneja01@gmail.com, Mobile: 7006626477

of 844 million and 61.0% of Indian women are illiterates. Women form 89.0% of the informal and unorganized sector. Women's work participation rate is higher in the rural areas, 90.0% of the rural and 10.0% of the urban women workers are unskilled. The discriminatory approach towards women is still deep rooted in our society, even though our constitution guarantees them an equal rights and status.

We have failed to recognize the extensive contribution of women to household and producers of goods and services and helping the growth of national economy as an active workers. Sex difference is linked with unequal distribution of resources towards rights and responsibilities¹. From time immemorial, women in India have been working in the active economic field and indirectly contribute to the economic development. With the changes in the outlook, attitudes and approach towards living, it has now become necessary, by and large, for the families of inadequate income to supplement their requirements through traditional earnings. Women, of course, can fill this gap. Breaking social conventions and religious taboos, they have come forward to meet the challenges enthusiastically. This is, no doubt a healthy development. However, in a country like India, the process of development is bound to be little slow owing to the prevalent illiteracy and age old rigid customs and traditions. The status of women in a society is usually measured in terms of the level of education, employment, income, health as well as role played by them in the family, community and society². The Social Security Act, 2020 provided comprehensive provisions for social security i.e. the measures of protection afforded to employees, unorganized workers, gig workers and platform workers to ensure proper availability of health facilities and to have income security, particularly in cases of old age, unemployment, sickness, by means of rights conferred on them and schemes framed, under this Code.

PRESENCE OF WOMEN WORKER IN UNORGANISED SECTORS

The employment of women in the unorganized sector is divided into nine sectors: agriculture, dairy, small animal husbandry fisheries, social and agro forestry, khadi and village industries, hand looms, handicraft and agriculture. The first five sectors are broadly classified as agriculture and allied occupations. The last four are categorized as the village and small industries sector. Apart from above the definition of "Unorganized sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;³. The number of women in the unorganized sector is many times more than that in the organized sector because of their helplessness due to lack of employment opportunities, limited skills illiteracy, and restricted mobility. Labour laws do not govern the unorganized sector. Hence, it does not

1 R. Poongodi, *Socio Economic Characteristics of Women Construction Workers in Tamil Nadu-Some Evidences*, GRA-Global Research Analysis, International. Volume: I. Issue: 4, Sep-2012, p. 9.

2 Id. at pp. 10-11.

3 Section 2(85) of the Social Security Act, 2020.