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THE PLIGHT OF ANIMAL ABUSE

“Almost all of us grew up eating meat, wearing leather, and going to circuses and zoos. Many of us bought our beloved “pets” at pet shops, had guinea pigs, and kept beautiful birds in cages. We wore wool and silk, ate McDonald’s burgers, and fished. We never considered the impact of these actions on the animals involved. For whatever reason, you are now asking the question: Why should animals have rights?” - Ingrid E. Newkirk, PETA President

ABSTRACT

Cruelty and exploitation of animals in India are on the ascent and larger part of individuals is not aware of the guidelines set up by the legislature to shield these voiceless animals from such inhumanity. The question that arises whether an alteration to the current Prevention of Cruelty to Animals Act, 1960 is vital. The Act, which was introduced quite a few years earlier, gives an approach that was satisfactory during that time however it should be reevaluated now regarding the sufficiency and the liability enforced. This requires examination whether the criminal punishment and the arrangements for accepting bail as given under Section 11 of the Act are adequate in current times, considering absence of proportionality between the offense and the penalty given for it.

INTRODUCTION

Animals are an indispensable part of human life. They are co-accomplices of man. They make man's life simple and agreeable by providing them with huge numbers of facilities like transportation and other products like dairy items, butter, wool etc. Animals are great mates to forlorn people as they are used in psychological treatment under animal assisted therapy. They are vital part of environmental framework. They help keep up balance in ecology and their essence is a pointer that life is acceptable. Regrettably, man has been abusing and misusing

animals. Animal abuse or cruelty is a socially unacceptable behavior that intentionally causes unnecessary distress, suffering or pain, and/or death of an animal.¹

Humans have a duty to value our fellow creatures not as tools, but as sentient beings capable of consciousness and able to have lives that are good or bad for them.² Animals also share similarities with humans in genetic, developmental, and environmental risk factors for psychopathology.³ As rightly said by Justice Rajiv Sharma said, “All the animals have honor and dignity. Every species has an inherent right to live and is required to be protected by law. The rights and privacy of animals are to be respected and protected from unlawful attacks. The animals should be healthy, comfortable, well nourished, safe, able to express innate behavior without pain, fear and distress. They are entitled to justice. The animals cannot be treated as objects or property.”⁴

The issue of animal cruelty and the need to excogitate on the subject has gained significant importance in the recent times. Animal exploitation across India uncovers the loopholes in our nation's laws for prevention of animal cruelty. Several horrific incidents of animal cruelty are reported every year.

A saddening state of affair, recently an 18 to 20 months pregnant elephant was killed in Kerala by the villagers who served her pineapples stuffed with crackers. The elephant was roaming in the village in search of food and locals fed food stuffed with crackers to the tusker while it was walking on the streets. The elephant suffered serious injuries on the tongue and in the mouth but the tusker did not harm anyone and stepped in the Vellliyar river. The forest department brought two elephants to take the dead body of pregnant tusker out of the river as it died standing in the river. A PIL was filed in Supreme Court by Advocate Awadh Bihari Kaushik against such an inhumane act of the villagers. In April, 2020 another elephant was accounted to have been killed along these lines in Kollam district, Kerala.

¹ Animal abuse and youth violence. OJJDP Juvenile Justice Bulletin.NCJ. 2001;www.ncjrs.org/html/ojjdp/jjbul2001_9_2/contents.html.): 188677

² Christine M. Korsgaard, American Philosopher and Professor of Philosophy at Harvard University.

³ Gregory NG (2004) *Physiology and behavior of animal suffering*. Oxford, U.K.: Blackwell Science. p280

⁴ Karnail Singh & Ors vs State Of Haryana, 2019 SCC OnLine P&H 704.

This shows extreme absence of humankind and regard for the life of these voiceless beings. Such activities of exploitation point towards their unsettled and callous natures. People who can deliver such agony on the innocuous and defenseless deserve no place in the eyes of public.

LEGAL STATUS OF ANIMALS

Earlier in India, there were no specific provisions in regards to the legitimate status of animals in the country. Lawful or juristic people are made by law and perceived as a legal entity, having different personality, legitimate identity, obligations and rights. They incorporate private firms, non-administrative or government associations, trusts and societies, other than others. The remarkable decision by the Punjab & Haryana court comprising of a single judge bench in the case of *Karnail Singh & Ors. V. State Of Haryana* held that the “*entire animal kingdom including avian and aquatic species has a “distinct legal persona with corresponding rights, duties, and liabilities of a living person.”*”⁵

The court explained the concept of legal persona by quoting Professor Christopher Stone, “*...that legal personality plays an important part in making a thing count in the eyes of the law. The conferral of legal personality upon right less objects or beings carries with it legal recognition that those objects or beings have “worth and dignity” in their own right. Until we attribute personality to a right less entity, we are likely to be unable to conceive of it as “anything but a thing for the use of ‘us’ – those who are holding rights at the time.”*”

The court additionally gave bearings going from the measure of burden permitted to be pulled by different animals as per the sort of carriage being pulled to the number of riders per carriage. The court also examined into the part of animal wellbeing, featuring the requirement for fluorescent reflectors in carriages, certificate of unladen weight of vehicles. Further, restricting the utilization of spike or other sharp tackle on the animals, no individual be allowed to keep in any animal utilized to draw vehicles and order to the veterinary specialists of Uttarakhand to treat any homeless animals brought to them.

Subsequent to referring to a plenty of cases, the court presumed that, “*the multiplicity of animal beings with whom we share our world deserve to be treated not as means to human ends, but as ends in themselves. The shelter of the legal umbrella would also provide more effective*

⁵Ibid

*protection of animal interests than is available under current animal welfare law. As legal persons, animals could be recognized as parties to legal actions, because they would have the independent standing that they currently lack.”*⁶

The court also held that the citizens of the state are the people *in loco parentis*, who has duty to ensure animal protection. Such rulings that give legitimate identity to the voiceless creatures will keep on ascending in the coming occasions.

ANIMAL PROTECTION LAWS IN INDIA

The Indian Judiciary and the legal system have assumed a colossal job in forming the system of animal law and rights in India and the inescapable need to ensure them. As stated in Constitution of India, “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”⁷ Article 48 states that, “the State shall endeavor to organized 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 milk and draught cattle.”⁸ There are organizations like PETA (People for the Ethical Treatment of Animals), Animal Welfare Board of India for protection of animals against exploitation. We additionally have a couple of enactments set up including The Prevention of Cruelty to Animals Act, 1960 (which was altered in 1982) and The Wildlife (Protection) Act, 1972, with proposed alterations in line.

THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

The Prevention of Cruelty to Animals Act, 1960, was authorized with the object to forestall the infliction of pointless agony and cruelty against animals. The Act vests each person with the obligation to take due care so as to guarantee the protection of animals.

The major loophole in the Act is that the perpetrator only has to pay a mere amount of Rs.50 according to the current status quo which needs an amendment as the perpetrator keeps on committing the crime and keeps on paying the fine.

⁶Jane Nosworthy, *The Koko Dilemma A Challenge to Legal Personality*. Southern Cross University Law Review(1998).Available at <http://classic.austlii.edu.au/au/journals/SCULawRw/1998/2.pdf> (accessed on 16.06.2020)

⁷ Article 51 (G) of the Constitution of India

⁸ Article 48 of the Constitution of India, 1950

The PCA, 1890 had a restrictive scope as it was applicable to urban areas within municipal limits. Also, it defined the term ‘animal’ as any domestic or captured animals which clearly means that it excludes animals other than domestic and captured animals⁹ from its ambit, such as, stray animals, who actually face the maximum amount of ill-treatment. Also, very few specific cruelties against animals¹⁰ are protected and the penalties enumerated under it are also inadequate.¹¹

HISTORY-

PCA came into existence due to the efforts of Rukmini Devi Arundale.¹² In 1952, a bill (private members bill) was introduced in the Rajya Sabha to replace the existing PCA, 1890 in order to overcome its inadequacies.¹³ It was then her passionate speech in the Rajya Sabha in 1954 which emphasized on the need and importance of protecting animals due to which Prime Minister Nehru had to set up a committee to look into the matter and draft a complete legislation on that issue.¹⁴ The Prime Minister further requested Rukmini Devi to withdraw her bill and guaranteed her that his government would make a proper legislation in order to protect animals and their rights.¹⁵ This led to the enactment of PCA.

EXTENT AND RELEVANCY-

Despite the fact that PCA being all encompassing in nature, its execution on the ground has been a failure. Animal killings were reported on various occasions. One such incident was that Jose

⁹ The Prevention of Cruelty to Animals Act, 1890, §2(1); *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, 32,

¹⁰ For instance, under the PCA, 1980, wilful administration of injurious drugs to animals and failure to provide sufficient food, drink and shelter were not offences which are offences under §11 of the PCA, 1960. Under the current Act, the owner of an animal is required to provide such animal with adequate food and drink, under §11(h). However, under the PCA, 1890, the only requirement was that such animal may not suffer by reason of thirst or starvation. This shows that while animals under the current Act are required to be adequately and sufficiently nourished, under the previous Act, only starvation due to absolute neglect, would have amounted to cruelty.

¹¹ The Prevention of Cruelty to Animals Act, 1890 (The penalties for any of the offences outlined by it did not exceed 100 rupees or a prison term, duration of which was one month or a maximum of three months in cases of subsequent offences).

¹² Gopalkrishna Gandhi, *The woman who said no: How Rukmini Devi chose dance over presidency*, HINDUSTAN TIMES, March 4, 2016, available at <http://www.hindustantimes.com/columns/the-woman-who-said-no-how-rukmini-devi-chose-dance-over-presidency/story-5OKAXIRON46d8QfiUX1QWI.html> (Last visited on May 4, 2017) (Rukmini Devi was a Theosophist, Dancer, Choreographer and Teacher of Bharatnatyam, Founder of Chennai's iconic Kalakshetra, a nominated member of the Rajya Sabha, Champion of animal rights, and the first Chair of the Animal Welfare Board).

¹³ Chinny Krishna & Maneka Gandhi, *Rukmini Devi and Animal Welfare in RUKMINI DEVI ARUNDALE, 1904-1986: A VISIONARY ARCHITECT OF INDIAN CULTURE AND THE PERFORMING ARTS* 67-70 (2005).

¹⁴ *Id.*

¹⁵ *Id.*

Maveli, a social worker was captured for seven public killings of animals yet every time he escaped by paying the immaterial fine of 50 rupees, as given under the Prevention of cruelty to Animals Act. This case was exceptionally censured by the animal welfare organizations and it was simply after the mediation of Supreme Court that the peril was brought to a rest. Use of animals in the name of religion has prompted a contention among human and animal interests. For the sake of religious practices, animals are frequently exposed to superfluous torment and languishing. One such contention went to the front regarding the well-established act of Jallikattu, in Southern India in the name of tradition. It is a customary practice of taming bull, sorted out during the celebration of Pongal. The activity includes a test wherein, the bull should be subdued by people with their hands. To make the procedure significantly all the more stimulating, the bulls are frequently burned and punctured to make them more belligerent. In 2017, the Supreme Court in the case of *Animal Welfare Board Of India v. A. Nagaraja & Ors*,¹⁶ observed the act as brutal to animals, restricted it.

The insignificant fines given under the PCA Act collapses as a hindrance. The penalty ought to be proportionate with the magnitude of the offenses given under the Act. Also, there lies lack of awareness among the public about the current laws which makes apathetic towards different cases of exploitation of animals occurring around them.

Indeed, even the law implementation authorities are not cautious enough to apply the provisions of the law. Because of absence of awareness, police officers neglect to comprehend the reality of such offenses. An essential change in the manner in which we see the presence of animals can be seen by awareness programmes. There has also been an effort within the judiciary to raise awareness about the importance of the animal rights issue and about the need to improve and amend the already existing animal rights laws an example of which is the ‘Training of Trainers’ workshop that was organized in 2016 by the National Judicial Academy to discuss ‘Landmark Judgments in Animal Welfare.’¹⁷

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

¹⁷ Nasir, Paiker. 2016. National Judicial Academy, Special Event—2, Training of Trainers Workshop to Build Master Trainers on Prevention of Cruelty to Animals Act, 1960 (27th–28th January 2016), Programme Report, 6p. Available at: http://www.nja.nic.in/Concluded_Programes_2015-16/SE-2%20Programme%20Report.pdf (accessed on 15 June, 2020).

CONCLUSION

The extent of the PCA and its understanding by different courts has been analyzed, just to reason that provisions of enactment in India are ineffectual and the punishments recommended by it neither offer satisfactory security to animals, nor hinder acts of animal exploitation. It is important to perceive the status of animals as persons, in order to empower the bringing of common suits for their sake, through the affirmation of the State's situation as custodian or sentinel of animals.

Legal activism including dynamic investment of different lawyers, Judges and animal rights organizations can be exceptionally successful in satisfying the reason for the current laws. Dynamic media inclusion corresponding to violations against animals, trailed by live discussion of experts can help in spreading data for a bigger scope. With these endeavors, we can guarantee that non-human species are mitigated from their hopeless conditions as only then justice is done to them.

In this way, suggested changes are required to the PCA. Firstly the monetary compensation that is paid if you violate any law under PCA needs to be increased because people keep on committing the crime and continue paying the fine. The punishment needs to be made strict considering the seriousness of the laws that are violated. There is no proportionality between the offence committed and the punishment given. PCA is considered quiet ineffective due to the kind of punishment it imposes on the individuals who violate law and requires an amendment considering the gravity of the situation.