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# Human Cruelty against Animals-A Violation of Right

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**ABSTRACT:** India, the seventh largest country in the world, is one of the most bio-diverse regions of the world containing four of the world's 36 biodiversity hotspots. It is home to animals ranging from the Bengal Tigers to the Great Indian Rhinoceros and animal protection and welfare in the country has taken a prominent position over the recent years. Protection of animals is enshrined as a fundamental duty in the Indian Constitution and there exist several animal welfare legislations in India such as the Prevention of Cruelty to Animals Act 1960 and the Wildlife Protection Act 1972 at the Central level and cattle protection and cow slaughter prohibition legislations at the State levels.

The Indian Penal Code (IPC) 1860 is the official criminal code of India which covers all substantive aspects of criminal law. Section 428 and 429 of the IPC provides for punishment of all acts of cruelty such as 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 such as tort law, constitutional law, etc.

**KEYWORDS-**human, cruelty, violation, right, animals

## I. INTRODUCTION

The Constitution of India 1960 makes it the "duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for all living creatures." This Constitutional duty of animal protection is supplemented by the Directive Principle of State Policy under Article 48A that:[1-10]

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

Both the above constitutional provisions were introduced by the 42nd Amendment in 1976. While they are not directly enforceable in Indian courts, they lay down the groundwork for legislations, policies and state directives in furtherance of animal protection at the Central and State levels. Moreover, they may be enforced in courts by taking an expansive judicial interpretation and bringing them within the ambit of the fundamental Right to Life and Liberty under Article 21 which is judicially enforceable.

The primary sources of law in India are the Constitution, statutes (legislations), customary law and case laws. India is a federal union divided into 28 States and 8 Union Territories. The respective States are administered by their own State governments while the Union Territories are federal territories directly governed by the central Government of India. The Parliament of India is the supreme legislative body of the country while Indian States have their respective State Legislatures. Statutes are enacted by the Parliament for the entire country, by the State legislatures for respective States and by the Union Territory legislatures for respective Union Territories. Central laws enacted by the Parliament can be checked and controlled only by the Constitution of India. State laws may be overridden.

In addition to these primary legislations, there also exists a vast body of subordinate legislation like rules, regulations and by-laws enacted by Central/State governments and local authorities such as municipal corporations and gram panchayats (local village bodies). Given the separation of powers in India between the Legislature, Executive and Judiciary branches of government, the three branches are vested with different functions. While the primary responsibility of drafting legislations lies with the legislature, sometimes the responsibility is given to the Executive branch in order to draft legislations known as delegated legislation.



India follows the common law system based on recorded judicial precedents handed down by the British colony. Therefore, it places significant reliance on precedents and case laws in the development of law and jurisprudence. Judicial decisions of higher courts such as the Supreme Court of India and High Courts of different States carry significant legal weight and are binding on lower courts. India is a land of wide religious and cultural diversity. Therefore, some personal laws, local customs, religious texts and conventions which are not against statute, morality, public policy and larger social welfare are also recognized to have a legal character and are taken into account by courts in the administration of justice.

Article 245 of the Indian Constitution holds that subject to the Constitution, the Indian Parliament can make laws for the whole or part of territory of India. Territory of India includes States, Union Territories and other territories such as enclaves within India.

Article 246 lays down the subject-matter of laws made by the Parliament and the State Legislatures. This subject-matter is allocated into three lists contained in the Seventh Schedule:[10-20]

1. The Union List: the Parliament has exclusive power to make laws with respect to the matters enumerated within this list.
2. The State List: State Legislatures have the exclusive power to make laws with respect to the matters enumerated within this list.
3. Concurrent List: both the Parliament and State Legislatures have the power to make laws with respect to the matters enumerated within this list.

In the context of animal rights, the following matters have been allocated in the State and Concurrent List.

Item 14 of the State List provides that the States have the power to “[p]reserve, protect and improve stock and prevent animal diseases and enforce veterinary training and practice.”

In the Concurrent List, both the Centre and the States have the power to legislate on:

1. Item 17: “Prevention of cruelty to animals.”
2. Item 17B: “Protection of wild animals and birds.”

## II. DISCUSSION

The basic cruelty law of India is contained in 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 amend the laws relating to the prevention of cruelty to animals. The Act defines “animal” as any living creature other than a human being.

In accordance with Chapter II of the Act, the Government of India established the Animal Welfare Board of India (AWBI) with some of the following functions:

1. Advising the central government regarding amendments and rules to prevent unnecessary pain while transporting animals, performing experiments on animals or storing animals in captivity.
2. Encouragement of financial assistance, rescue homes and animal shelters for old animals.
3. Advising the government on medical care and regulations for animal hospitals.
4. Imparting education and awareness on humane treatment of animals.
5. Advising the central government regarding general matters of animal welfare.

The Act enumerates different variants of cruelty to animals under Section 11 as the following actions:

- 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. [20-30]
- 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 such as 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.

However, the Act does not consider as cruelty the dehorning/castration of cattle in the prescribed manner, destruction of stray dogs in lethal chambers in prescribed manner and extermination of any animal under the authority of law. This Section provides somewhat of a leeway.

Part IV of the Act covers Experimentation of animals. The Act does not render unlawful experimentation on animals for the purpose of advancement by new discovery of physiological knowledge or knowledge to combat disease, whether of human beings, animals or plants. It envisages the creation of a Committee for control and supervision of experiments on animals by the central government which even has the power to prohibit experimentation if so required. [30-40]

Chapter V covers the area of performing animals. Section 22 prohibits exhibiting or training an animal without registration with the AWBI. The Section prohibits animals such as monkeys, bears, lions, tigers, panthers and bulls from being utilized as performing animals.

An additional leeway provided by the Act is that under Section 28, nothing contained in the Act shall render it an offence to kill any animal in a manner required by the religion of any community.

Considering the diversity of religions and traditions in India, this Section was considered imperative.

Treating animals cruelly is punishable with a fine of Rs. 10 which may extend to Rs. 50 on first conviction. On subsequent conviction within three years of a previous offence, it is punishable with a fine of Rs. 25 which may extend to Rs. 100 or imprisonment of three months or with both. Performing operations like Phooka or any other operations to improve lactation which is injurious to the health of the animal is punishable with a fine of Rs. 1000 or imprisonment up to 2 years or both. The government further has the power to forfeit or seize or destroy the animal. Contravention of any order of the committee regarding experimentation on animals is punishable with a fine up to Rs. 200.



The 42nd Amendment to the Indian Constitution in 1976 was a progressive step towards laying the groundwork for animal protection in India. The constitutional provisions establishing the duty of animal protection have resulted in the enactment of animal protection legislations both at the central and state level, most notable of which being the Prevention of Cruelty to Animals Act 1960. Furthermore, over the years Indian courts have developed a growing legal jurisprudence in animal law.

However, there is still a long way to go in truly developing a solid foundation for animal law in India. The provisions for animal protection in the Indian Constitution remain principles instead of concrete law enforceable in courts. The penalties under the Prevention of Cruelty to Animals Act 1960 for cruelty against animals are simply not strict enough to truly deter crimes against animals. [40-50]The law is not strictly enforced and contains several provisions which provide leeway through which liability can be escaped. Extensive reforms need to take place in this regard to provide a stronger animal protection law for India.

### III. RESULTS

All the living things have right to live on the earth, but sometimes we become cruel towards animals. We have to understand that Animals can't speak but they too have life. Mahatma Gandhi rightly said that "The greatness of the nation is judged by the way it treats its animal". Animal cruelty means when someone hurt animals, causes unnecessary pain or does not take care is called animal cruelty. In India cruelty and inhumanity towards animals are increasing day by day. In Mumbai there was a case in which four men gang raped a dog. We are living in a country where not only women's but animals are also not safe. Animals are used for scientific research in the field of medical, cosmetic industry etc. Hunting animals is another serious problem due to which many endangered species are exhausted. People are becoming greedy and killing them for their selfish purpose.

Animal organization PETA which work for animal's welfare. This organization was launched in 2000, Mumbai. The main motive of this organization is that animals are not for experiments or abuse. There are various other laws initiated by central government and the main law concerning preservation of animal cruelty is "Preservation of cruelty to Animal Act 1960" and "wildlife Protection Act 1972". The Preservation of cruelty Act 1960 was established by the central government to promote animal welfare and to protect animal from unnecessary pain and suffering. Under this act police have all the power to arrest an offender who is involved in illegal activities or even in cruelty against Animals. The wildlife Protection Act 1972 is established for the protection of animals, plants and species. Section 51 of this Act talks about punishment. Any person who is guilty of offence against this act shall be punished and imprisoned for 3 year and fine which extends to twenty five thousands. [45-50]According to survey of state Uniform crime Reporting Programs, out of 28 states 18 states reported that they have received information of animal cruelty offence. There are some important steps taken by Government of India to stop animal cruelty:-

- In 2013 Indian ministry of environment and forest ban captive dolphin show. Dolphins were captured and used for entertainment across the country.
- on 13 Nov 2004, India was the first South Asian country to put ban on the import of animal tested beauty products.
- A leading Indian airline commits to protect shark populations and marine ecosystem. Every year thousands of sharks are killed to meet the demand for shark fin soups. After removing fins sharks are thrown back in the sea to die.
- on 14 Nov 2014, Ministry of Home Affairs orders to stop illegal movement of animal to Nepal. According to Indian government during Gadhimai festival where over 500,000 animals mostly originated from India were to be sacrificed in Nepal.

There are several provisions under the PCA Act, 1960 which provide complete protection to animals against any form of cruelty but are mostly considered outdated, with low penalties. Their lack of implementation has led to an increase in the number of animal cruelty cases. The definition of cruelty is vaguely defined in India's animal protection laws. [41-45]

The writ petition of Sankalp Santosh Golatkar v. Union of India & Ors (2020) was filed in the Supreme Court to modify the penal provisions of the Prevention of Cruelty to Animals Act, 1960. This petition states that over 24,000



cases of cruelty to animals have been registered under the Act from 2012 to 2015. The petitioner has also mentioned the illegal consumption of dog meat that is mostly followed in northeast states. According to the data provided in the petition, every year around 30,000 stray and stolen dogs are brutally killed for their meat in northeastern states like Mizoram and Nagaland.

Currently, several legislations are working to keep a check on brutal treatment against animals. The Government of India has taken measurable steps to ensure better treatment of animals. In 2017, the Central Government banned various forms of entertainment using wild animals and restricted the use of animals in circuses. India became the first South Asian country to ban the use of cosmetic products on animals in 2013 and subsequently banned the import of cosmetic products tested on animals in 2014. India made impressive progress in protecting animals used in scientific research and approved them to use only under certain conditions as per Section 14 of the PCA Act.

In India, it is the fundamental duty of every citizen to have compassion for all living creatures. The Indian Constitution recognises animal rights under Article 51(A)(g) and Article 48(A), that mandate every Indian citizen to show compassion towards animals and wildlife.

1. Article 48A: The state shall endeavour to protect and improve the environment and safeguard the wildlife.
2. Article 51(A)(g): To protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.[35-40]

#### **IV. CONCLUSION**

The Prevention of Cruelty to Animals Act has not been revised since 1960. The culprits can easily get away with killing, maiming, beating a stray animal for a fine of merely fifty rupees. In almost all progressive countries, there are laws to save the animals from the infliction of unnecessary pain and suffering, or in other words, to prevent man from behaving cruelly to animals.

Different countries have adopted different ways to deal with animal abuse, which makes some of them the best countries for animals to live in. Austria is considered one of the best countries for animals that have the most robust anti-cruelty laws. The Austrian Animal Welfare Act, 2004 strictly prohibits pet owners from cropping the ears or tails of their pets, forces farmers to uncage their chickens, and forbids puppies and kittens to be showcased in pet shop windows. Similarly in the United Kingdom, the Animal Welfare (Sentencing) Bill, 2021 after receiving royal assent on 29 June 2021 has now increased the maximum imprisonment for animal cruelty from six months to five years. Also, the fine has been increased from £5,000 to £20,000.

The implementation of strict laws has made some of these countries perform better than India in the Animal Protection Index, 2020. However, India could not perform well due to some of the disgraceful incidents of animal cruelty that happened in some of the states in the past few years. Therefore, it is high time for the central government to amend the existing animal-protection laws since the old provisions have become ineffective in current times.

Some animal-friendly countries in the world

The Universal Declaration of Animal Rights was proclaimed in the UNESCO centre in Paris on 15 September 1978. The primary purpose of the declaration was to recognize that all animals are born equal and have equal rights to live.

Based on the Animal Protection Index, the top five animal-friendly countries are- Austria, New Zealand, Switzerland, United Kingdom, and Chile. However, no country at present offers full protection for animals of all kinds. Some countries are making progress in implementing strict animal welfare laws but still require that all animals live a free and happy life.



Here are some of the countries which have implemented strict animal welfare laws to ensure better protection of their animals.

#### Austria

Austria has the most strict laws about animal rights. The Austrian Animal Welfare Act, 2004 restricts animals to feel pain and fear. The Act states that “animals are creatures under the responsibility of humans” and all animals should be held to a value that is equal to humankind.

#### Switzerland

Switzerland became the first country to constitutionally recognize animals. The provision in the Constitution provides for the protection of ‘the dignity of the creature’. The Switzerland government mandates social animals such as guinea pigs, parrots, and mice to be kept at least in pairs for their well-being. It is illegal under Swiss law to stop a dog from barking and requires every pet owner to attend classes before the adoption of their pets.

#### Netherlands

The Animal Welfare Act of the Netherlands includes farm animals in anti-cruelty laws and duty of care provisions. The Netherlands is the first country in the world to have a political party for the animals, prioritizing the interest of all earth inhabitants with about 80 representatives at European, national, regional, and local levels.

#### Poland

According to Poland’s Animal Protection Act, if anyone finds an abandoned dog or cat shall be required to notify an animal shelter, fire authority or police. Poland also introduced a retirement benefits plan for service dogs and horses in which the government will cover the costs and their lifelong food and medical care after they retire.

The Prevention of Cruelty to Animals Act, 1960, is archaic and fails to safeguard animals because the current penalties are too weak to deter people from abusing animals. Animals used in scientific research are exempted from cruelty considerations. There is a lack of regulations regarding the rearing of farm animals, such as unregulated urban dairy systems which are growing rapidly with poor welfare standards.

Currently, India needs stronger animal-protection laws to prevent cruelties because a measly maximum fine of only fifty or one hundred rupees was inserted into the law more than a half-century ago and it desperately needs to be improved with the current times.

Therefore, the government must strengthen India’s animal-protection laws and ensure that people who abuse animals receive long-term jail, significant fines, and psychological counselling and are banned from having contact with animals. [45-50]

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