

CRUELTY TO ANIMALS: PROTECTION DYNAMISM IN INDIAN LEGAL SYSTEM

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INTRODUCTION

Animals are sentient and can suffer. “Animals deserve rights, regardless of how they taste or how convenient it is to experiment on them. Like humans, animals are capable of suffering and have an interest in leading their own lives.”² When it comes to cruelty to animals the first thing which may turn up in our mind is slaughtering. But in fact slaughtering in accordance with the due procedure and laws³ is legal and the pile of animal cruelty or abuse lies with the other plethora of cruel and inhumane acts toward them. There may not be a recognized or a definite definition of cruelty to animals but after the general reading of the Prevention of Cruelty to Animals Act, 1960 (herein after referred to as the ‘PCA Act’) one may interpret it as any act or neglect which may cause infliction of unnecessary pain or suffering to an animal (who is any living creature other than a human being⁴). Some of the many acts of neglect may include the failure to provide the necessary medical attention or food, water or the failure to take any necessary measure which may put the animal through unnecessary pain or suffering. It is also important to remember that animal cruelty is not restricted to cases involving physical harm, causing an animal psychological harm in the form of distress, torment or terror may also constitute animal cruelty.⁵ Animal cruelty can be either deliberate abuse or simply the failure to take care of an animal. It may be called any human activity which infers on any non-human animal suffering, pain or harm for the object or motive being other than that of own self-protection or survival. From the minimal to the atrocious crimes (such as killing and thereafter

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² Issues, PETA India, available at <http://www.petaindia.com/issues/> (last accessed on Jan. 30, 2016, 09:48 p.m.),

³ Prevention of Cruelty to Animals (Slaughter House) Rules, 2001

⁴ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-2, cl.(a) (1960).

⁵ What is animal cruelty, available at <http://www.rspca.org.au/animal-cruelty/what-animal-cruelty> (last accessed on Jan. 30, 2016, 10:12 p.m.),

cooking of a pet⁶, maiming of animals, to rape of animals resulting in their death⁷) all have had and are having their presence in our country. There is no data available on the national level because of the unawareness between the people as well as the officials which results in non-reporting of most of the cases, the unawareness being also the major reason of the non-implementation of these laws.

IMPORTANCE OF ITS PREVENTION AND OF A NEED FOR A PUBLIC POLICY

There is and has been a need of a general public policy to prevent cruelty to animals. Cruelty to animals is a crime; therefore, it is an offence against the society. But it is inhumane of us and dangerous for the civility of our society that such offences mostly are ignored by us, either because of the unawareness among both the offenders and the public, of the laws or because of the insensitiveness of them. For Example: Over loading of cattle and other animals during transportation is a crime which is very common but it goes mostly unnoticed by most people as they are unaware of the preventive laws for such offences and its excruciating consciences for the animals. Crime against animals is against the very meaning of a civil society, justice and the meaning of the right to life given by the constitution under Article 21 and thus, takes us back towards being savages.

Also it is important to converge our attention towards it as those who are violent towards animals mostly result becoming violent towards humans also. This relation has been backed by many worldwide, "In one study, the Colorado Department of Corrections looked at the experiences of 269 sexual offenders, 137 rapists and 132 child sexual abusers. Thirty eight percent of child sexual abusers reported sexual activities with animals, while 68% of rapists had a history of cruelty to animals. The US FBI has also found that a history of cruelty to animals is one of the traits that regularly appear in its computer records of serial rapists and murderers. If India, where it is the Constitutional mandate of every citizen to "have compassion for living creatures", began to take cruelty to animals cases seriously, there would be one more crucial means by which to address and prevent the horrific crimes against women and children currently plaguing the

⁶ Santosh Kumar R.B, Three Students held for killing, cooking pet dog, The Indian Express, available at <http://indianexpress.com/article/india/india-others/3-students-held-for-killing-cooking-pet-dog/> (last accessed on Mar 3, 2016, 8:30 p.m.)

⁷ Two men tie up cow, rape, stab it, The Times of India, available at <http://timesofindia.indiatimes.com/india/Two-men-tie-up-cow-rape-stab-it/articleshow/951733.cms> (last accessed at Jan 30, 2016, 10:27 p.m.)

nation.”⁸ . “ Anyone who has accustomed himself to regard the life of any living creature as worthless is in danger of arriving also at the idea of worthless human lives, wrote humanitarian Dr Albert Schweitzer. Robert K Ressler, who developed profiles of serial killers for the US Federal Bureau of Investigation (FBI), states, ‘Murderers ... very often start out by killing and torturing animals as kids’. Studies have now convinced sociologists, lawmakers and the courts that acts of cruelty to animals deserve our attention. They can be the first sign of a dangerous pathology that threatens humans as well. Animal abuse is not just the result of a minor personality flaw in the abuser but rather a symptom of a deep mental disturbance. Research in psychology and criminology shows that people who commit acts of cruelty to animals don’t stop there; many of them move on to their fellow humans. The FBI has found that a history of cruelty to animals regularly appears in the backgrounds of serial rapists and murderers, and the standard diagnostic and treatment manual for psychiatric and emotional disorders lists cruelty to animals as a diagnostic criterion for conduct disorders.”⁹ “Sixty percent of more than 50 New Jersey families that had received treatment as a result of incidents of child abuse also had animals in the home who had been abused.”¹⁰ Thus it is clearly established that there is colossal need for a proper public policy to prevent cruelty to animals and to ensure animal welfare as it is not only morally required and is our duty but also it has the potential of helping our society also.

THE INTRINSIC VALUE OF ANIMALS

We must emphasize on the *intrinsic* value of animals which against the thinking of considering them as mere objects of property. And also we must emphasize on their welfare so that they are able to live a life at least without pain and agony or in other words so that they are to live like they rightfully deserve and not as a commodity or an object of entertainment. The term intrinsic value means “the value an animal possesses and embodies as an individual being with its own life, its own experiences and feelings, simply because it is alive, regardless of any (added) value this animal may hold for humans. In legal terms, intrinsic value implies that animals have

⁸ Poorva Joshipuria, Delhi gang rape two years on: Shocking levels of animal abuse show India has failed to change, International Business Times, available at www.ibtimes.co.uk/delhi-gang-rape-two-years-shocking-levels-animal-abuse-show-india-has-failed-change-1481008 (last accessed on Feb 2, 2016, 09:43 p.m.),

⁹ People Who Are Violent Towards Animals Rarely Stop There, PETA India, available at <http://www.petaindia.com/issues/companion-animals-2/link/> (last accessed at Feb 3, 2016, 11:49 p.m.)

¹⁰ Elizabeth Deviney, “The Care of Pets Within Child Abusing Families”, IV International Journal for the Study of Animal Problems.321, 321-9 (1983)

interests of their own that must be protected against human actions that are detrimental to the animals' physical and ethological welfare, or otherwise harmful. The permissibility of actions towards animals shall never be taken for granted. The interests of the animals will have to be balanced against the interests of humans, and the balancing should be extricated from the bias towards human interests that has always been our second nature."¹¹ "Animals shall finally be done right as sentient, conscious beings, endowed with positive and negative emotions and interests of their own. These interests can be described in terms of respectful treatment, good welfare, good health, integrity, and - where wild animals are concerned - being left in peace. The ultimate consequence of taking intrinsic value as the central ethical principle is that the use or exploitation of animals can no longer be taken for granted, as if it were a human right. Any infringement on intrinsic value ought to be properly justified. Every way of using animals, traditional or (post) modern, ought to be questioned."¹² We have to realize and enlighten other also with the fact that animals are not merely a property and thus should also not be seen as just the same because "those who insist that animals should not be seen as property might be making a simple and modest claim: *Human beings should not be able to treat animals however they wish.* Their starting point seems to be this: If you are property, you are, in law and in effect, a slave, wholly subject to the will of your owner. Mere property cannot have rights of any kind. A table, a chair, or a stereo can be treated as the owner likes; it can be broken or sold or replaced at the owner's will. For animals, it might be thought, the status of property is devastating to actual protection against cruelty and abuse."¹³

We should make all possible efforts to remove the feeling of Speciesism from our society; speciesism is the assumption of human superiority over other creatures, leading to the exploitation of animals. The Supreme Court of India has observed that "Speciesism is also described as the widespread discrimination that is practiced by man against the other species that is a prejudice or attitude of bias towards the interest of members of one's own species and against those of members of other species."¹⁴

¹¹ Eleanor Evertsen and Wim De Kok, Legal Protection of Animals: The Basics, 5 J. of Animal L, 91 ,91 (2009)

¹² Eleanor Evertsen and Wim De Kok, Legal Protection of Animals: The Basics, 5 J. of Animal L, 91, 95 (2009)

¹³ Cass R. Sunstein, The Rights of Animals: A Very Short Primer, John M. Olin Law & Economics Working Paper No. 157, (Second Series), Chicago Working Papers in Law and Economics

¹⁴ Animal Welfare Board of India v. A. Nagaraja & Ors., CIVIL APPEAL NO. 5387 at *80, (SC May.7, 2014)

THE CONSTITUTIONAL FUNDAMENTAL DUTY TO HAVE COMPASSION FOR LIVING CREATURES AND THE FUNDAMENTAL RIGHT TO LIFE

We live in a civil society or it would be more precise to say that we live in a society which we want to be civil. But such activities or treatment are taking us more and more away from such an objective or such a necessity.

It is our duty to protect and care for animals not only morally but also practically, in fact, the Constitution of India casts a fundamental duty on us to care for all the animals and to have compassion towards them. “It shall be the duty of every citizens of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”¹⁵The Supreme Court of India has held that by enacting Article 51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honored as a fundamental duty of every citizen. Article 51A (g), therefore, enjoins that it is a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for suffering, sympathy, kindness etc.¹⁶ We are humans and thus it is crucial for us to assimilate qualities of humanism in us which does include compassion for all and to prevent unnecessary pain and suffering to any living being, to take care of our environment, our biodiversity and ensure that they are protected. The Supreme Court of India while analyzing the meaning of the term ‘humanism’ in the Constitution of India has said “Article 51A (h) of the Constitution of India says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression “humanism” which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, understand benevolence, compassion, mercy etc. Citizens should, therefore, develop a spirit of compassion and humanism. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51A (h). Both Articles 51A (g) and (h) have to be read into the PCA Act”¹⁷ Apart from the fundamental duties of people towards animals, animals also have rights. “Amongst all the fundamental rights, Article 21 has influenced the development of landscape of

¹⁵ The Constitution of India, Article 51A, Cl.(g)

¹⁶ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others, 8 SCC 534, (SC 2005)

¹⁷ Animal Welfare Board of India v. A. Nagaraja & Ors., CIVIL APPEAL NO. 5387 at *80, (SC May.7, 2014)

human rights in India, the most. In order to draw the content of 'life' under Article 21, the court identifies every basic requirement for guaranteeing dignified life of human being as part of the celebrated provision of the Constitution and made it integral part of the rights framework. A new dimension has been added to the interpretation of 'right to life and personal liberty' by introducing 'negative' as well as 'positive' obligation on the state which covers not only 'duty to restraint' but also of 'duty to facilitate entitlements'.¹⁸

The Constitution of India provides for Fundamental Right of "right to life and personal liberty". This fundamental right is not necessarily restricted only to humans but it should also be interpreted to give the right to life to animals also. This is a critical right which is a key essential element in the basic structure of the constitution and its importance, its authority and supremacy is unquestionable. *"The Supreme Court has held that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word 'life' has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution (emphasis supplied). So far as animals are concerned, in our view, 'life' means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity...Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well...Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering."*¹⁹

THE CURRENT 'PREVENTION OF CRUELTY TO ANIMALS ACT, 1960' PREVAILING FOR ANIMAL WELFARE

I think when it comes to strong laws for the prevention of cruelty to animals or for animal welfare India is having one of the strongest preventive laws in the world which almost cover up all the areas and aspects of animal cruelty, such as, Section 429 of the Indian Penal Code, 1860,

¹⁸ Uday Shankar, Do Animals Have A Right Under Article 21 of the Constitution of India? – Comment on Animal Welfare Board of India Case, Bharti Law Review, Oct. – Dec., (2014), at 65.

¹⁹ Uday Shankar, Do Animals Have A Right Under Article 21 of the Constitution of India? – Comment on Animal Welfare Board of India Case, Bharti Law Review, Oct. – Dec., (2014), at 67.

Prevention of Cruelty to Draught and Pack Animals, 1965, Licensing of Farriers Rules, 1965, Transport of Animals, Rules, 1978, Transport of Animals on Foot Rules, Transport of Animals (Amendment) Rules, Registration of Cattle Premises Rules, Capture of Animals Rules, Slaughter House Rules, The Wildlife Protection Act, 1972 and most importantly the Prevention of Cruelty to Animals Act, 1960 (PCA Act). In order to determine the true nature of the Indian legal stand on such issue we must discuss the PCA Act, The Prevention of Cruelty to Animals Act, 1960 which extends to the whole of India except the state of Jammu & Kashmir.²⁰

This Act replaced the Prevention of Cruelty to Animals Act, 1890, which at that time had become ineffective for attaining the intended objectives of animal welfare due to factual circumstances. The Supreme Court in its recent judgment had observed the various defects that the PCA Act, 1890, which it had with itself due to which the PCA Act, 1960, was enacted, “The existing Act (PCA Act, 1890) has restricted scope as: (1) it applies only to urban areas within municipal limits; (2) it defines the term ‘animal’ as meaning any domestic or captured animal and thus contains no provision for prevention of cruelty to animals other than domestic and captured animals; (3) it covers only certain specified types of cruelty to animals; and (4) penalties for certain offences are inadequate.”²¹ And also in the same judgment the following observations were made as regard to the intention of the legislature while enacting the PCA Act, 1960, “While enacting the PCA Act, the Parliament has evinced its intention to cover the whole field. To examine the same, we have to refer to the Statement of Objects of the Act, Preamble and other relevant statutory provisions, which would indicate that the Parliament wanted a comprehensive act with the object of promoting message of animal welfare and for preventing cruelty to the animals.”²²

Its Chapter II established the ANIMAL WELFARE BOARD OF INDIA (A.W.B.I) by the central government for the promotion of animal welfare generally for the purpose of protecting animals from being subjected to unnecessary pain or suffering, with it itself having the authority to make rules for its functioning. The AWBI has been actively and efficiently working for the past many years in the country to carry out its objectives of animal welfare. The Supreme Court has observed that “Besides declaring certain type of cruelty to animals to be offences and providing necessary penalties for such offences and making some of the more serious of them

²⁰ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-1, cl.(2) (1960).

²¹ Animal Welfare Board of India v. A. Nagaraja & Ors., CIVIL APPEAL NO. 5387 at *90, (SC May.7, 2014)

²² Animal Welfare Board of India v. A. Nagaraja & Ors., CIVIL APPEAL NO. 5387 at *89, (SC May.7, 2014)

cognizable, the Bill (the bill for PCA Act, 1960) also contains provisions for the establishment of an Animal Welfare Board with the object of promoting measures for animal welfare.”²³

Its Section-3 tells about the duties of persons having charge of animals. It reads, “It shall be the duty of every person having the care or charge of any 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.” Thus it imposes a non-delegable duty on any person having charge or care of any animal to take all the reasonable care that it does not suffer from any unnecessary pain or suffering, while its Section-11 covers up the prevention of a large plethora of possible acts of cruelty to animals which are related to unfit employment of animal,²⁴ harmful injection of any substance,²⁵ painful or harmful transportation,²⁶ unfit confinement of animals,²⁷ confinement for unreasonable time,²⁸ the duty of an owner of animal,²⁹ prevention of abandonment,³⁰ unfit sale of the animal,³¹ mutilation of animal,³² unlawful use for entertainment, such as, animal fights,³³ shooting of animals in any competition,³⁴ and most importantly the sub-clause(1)(a)³⁵ of this Section which imposes punishment, for any person, “who beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes, or being the owner permits, any animal to be so treated.” Thus it covers up each and every possible act of any person which may cause an animal unnecessary pain and suffering or if he being the owner permits any such acts to be done to the animal which may cause unnecessary pain and suffering to it. Although it expressly uses some terms like beats, kicks, overloads etc. but it does not mean that it is confined to such activities. It should be interpreted to cover any act which may cause unnecessary pain and suffering to the animal as there is the presence of the term ‘or otherwise’ in it. The meaning of the expression “or

²³ Animal Welfare Board of India v. A. Nagaraja & Ors., CIVIL APPEAL NO. 5387 at *90-91, (SC May.7, 2014)

²⁴ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl.(1)(a) (1960).

²⁵ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(b) (1960).

²⁶ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(c) (1960).

²⁷ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(d) (1960).

²⁸ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(e) (1960).

²⁹ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(g) (1960) and The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(h) (1960).

³⁰ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl.(1)(i) (1960).

³¹ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(k) (1960).

³² The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(l) (1960).

³³ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(m) (1960).

³⁴ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(o) (1960).

³⁵ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-11, cl. (1)(a) (1960).

otherwise” came up for consideration in *Lilavati Bai v. State of Bombay*³⁶, and the Court held that the words “or otherwise” when used, apparently intended to cover other cases which may not come within the meaning of the preceding clause. The Supreme Court of India has held that “Sections 3 and 11, as already indicated, therefore, confer no right on the owners, but only duties, responsibilities and obligations, but confer corresponding rights on animals. Sections 3, 11(1)(a) & (o) and other related provisions have to be understood and read along with Article 51A(g) of the Constitution which cast fundamental duties on every citizen to have “compassion for living creatures”. Parliament, by incorporating Article 51A(g), has again reiterated and re-emphasized the fundamental duties on human beings towards every living creature, All living creatures have inherent dignity and a right to live peacefully and right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering etc. Human life, we often say, is not like animal existence, a view having anthropocentric bias, forgetting the fact that animals have also got intrinsic worth and value. Section 3 of the PCA Act has acknowledged those rights and the said section along with Section 11 cast a duty on persons having charge or care of animals to take reasonable measures to ensure well-being of the animals and to prevent infliction of unnecessary pain and suffering.”³⁷

While chapter IV of this acts deals with the rules and regulation regarding experimentation of animals. It has made a Committee for Control and Supervision of Experiments on Animals under this part.³⁸ It shall be the duty of the Committee to take all such measures as may be necessary to ensure that animals are not subjected to unnecessary pain or suffering before, during or after the performance of experiments on them.³⁹ The objectives of this committee constituted are also specified therein as to achieve various objectives to prevent cruelty to animals during experimentation and there are various rules that have been made which tend to cover almost all areas of cruelty to animals during experimentation⁴⁰. And thus for securing such purposes they are given power like of entry and inspection.⁴¹ It also has power to prohibit the person or institution from carrying on any such experiments either for a specified period or indefinitely, or

³⁶ *Lilavati Bai v. State of Bombay*, SCR 721, (1957)

³⁷ *Animal Welfare Board of India v. A. Nagaraja & Ors.*, CIVIL APPEAL NO. 5387, (SC May.7, 2014)

³⁸ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-15, (1960).

³⁹ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-17, cl.(1) (1960).

⁴⁰ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-17, cl.(2) (1960).

⁴¹ The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-18, (1960).

may all the person or institution to carry on such experiments subject to such special conditions as the Committee may think fit to impose.⁴² Similarly its Chapter V covers all the rules and regulations regarding prevention of cruelty to performing animals. Thus one may say that the PCA Act, 1960, deals with the prevention of majority acts of cruelty towards animals.

THE DEFECT IN THE PCA ACT

But just when everything seems to be great with this Act I may point out the one and the most major defect with this Act, the Act which is also the back bone of most all the other animal welfare laws also and this is the only defect which is a major reason of its ineffectiveness. If a person injects any substance in the body of any milch animal for the purpose of improving lactation it being against the provision of Secion-12 of the PCA Act, he for the first time will be punishable for a fine which may extend to one thousand rupees only or with imprisonment for a term which may extend to two years, or with both, and the animal on which the operation was performed shall be forfeited to the Government. Subsequently moving further the penalty for the acts which are against the provision of prevention of animal cruelty while experimentation is prescribed *as* with fine which may extend to two hundred rupees, and, when the contravention or breach of condition has taken place in any institution the person in-charge of the institution shall be deemed to be guilty of the offence and shall be punishable accordingly. While for a offence which is against the provision of Section-11, the section which embodies the provisions for prevention of animal cruelty in almost all cases is 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.

It is pertinent to mention here that such penalties of fine like ten, fifty, hundred or two hundred are almost equivalent to negligible in the present scenario and neither is that of one thousand rupees is that effective. Such an problem has generated because of the fact of ignorance of the legislation and political powers for some previous decades as it is pertinent to mention here that this Act was made in 1960 when the value of Indian Rupees was comparatively very high (1

⁴² The Prevention of Cruelty to Animals Act, 59, P.C.A Act, Section-19, (1960).

pound being equal to around 13 rupees while today 1 pound is equal to around 94.79 Indian rupees), thus it had the potential of having a deterrent effect in the society at least at that time when it was enacted but at the present time such minimal penalties have become negligible and one may forget about it having a deterrent effect but an offender may not have any problem in taking the risk of paying such fine. *While the Wildlife Protection Act, 1972, is having penalties such as imprisonment upto 7 years the PCA Act with regards to this problem is having a great urge of urgent attention towards this rectification in it.* Therefore the very object of this Act is not being implemented as it is not able to have that deterrent effect in the society to reduce cruelty to animals and to promote animal welfare.

THE LANDMARK JALLIKATTU JUDGMENT

The Jallikattu judgment (**Animal Welfare Board of India v. A. Nagaraja & Ors**) is an landmark recent judgment where the Supreme Court of India held for the rights of the animals breaking all the religious, traditional barriers and banned the large scaled practice of bull cart racing in the southern state of India i.e. Tamil Nadu inspite of the repugnancy(i.e. in conflict or incompatible with) on the concerned matter between provisions of the State Act i.e. the TNRJ Act (Tamil Nadu Regulation of Jallikattu Act, 2009) and the Central Act i.e. the PCA Act. And this judgment was appreciated by many animal welfare organizations all over the world. This was a great significant judgment reflecting the conscience of the judiciary of India and legal system toward the matters of animal welfare.

“Supreme Court observed that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislations are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state of affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of

parent's patriate to take care of the rights of animals, since they are unable to take care of themselves as against human beings.”⁴³

“Justice Radhakrishnan stressed the point that until now the rights that we as a nation bestowed upon animals were merely statutory rights and the time had come for animal rights to be elevated to the status of fundamental rights in the Indian constitution. All animals, all living beings have the right to five freedoms:

1. Freedom from hunger, thirst and malnutrition;
2. Freedom from fear and distress;
3. Freedom from physical and thermal discomfort;
4. Freedom from pain, injury and disease; and
5. Freedom to express normal patterns of behavior”⁴⁴

These five freedoms, as indicated, are considered to be the fundamental principles of animal welfare.⁴⁵ This judgment had provided again in front of the whole nation that there are needs that are required for the welfare of animals. This judgment can be said to be having the potential to be the source of a compassionate society.

“The court spoke of how this uncivilized event violates the Prevention of Cruelty to Animals Act (PCA) and militates the constitutional duty of treating animals with compassion, Article 51 A (g). It also reiterated the expansive reading it had given in the past, to Article 21 (Right to Life), which prohibits any disturbance to the environment, including animals, considered essential for human life. And the apex court went well beyond and delivered a judgment that essentially upholds the right to a dignified life for all animals. Any law that attempts to reverse this carefully evolved jurisprudence cannot stand the test of constitutional propriety”⁴⁶

“Court came to the conclusion that that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honor and

⁴³ Mariamma.A.K, Case Comment on “Animal Welfare Board of India VS. A. Nagaraja & Others, Vol. 2 Issue 1 Journal of Legal Analysis And Research 24, 36 (2015).

⁴⁴ Uday Shankar, Do Animals Have A Right Under Article 21 of the Constitution of India? – Comment on Animal Welfare Board of India Case, Bharti Law Review, Oct. – Dec., (2014), at 67.

⁴⁵ Animal Welfare Board of India v. A. Nagaraja & Ors., CIVIL APPEAL NO. 5387 at *78, (SC May.7, 2014)

⁴⁶ Sruthisagar Yamunan, Taming bulls, maming rights, The Times of India, available at <http://timesofindia.indiatimes.com/india/Two-men-tie-up-cow-rape-stab-it/articleshow/951733.cms> (last accessed on Feb 29, 2016, 08:02 p.m.),

dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

The dicta laid by the court shows fruitful results as the Himachal Pradesh High Court⁵⁰ banned animal sacrifice in the state and the court held, “Sacrifice causes immense pain and suffering to the innocent animals. The innocent animals cannot be permitted to be sacrificed to appease the god/deity in a barbaric manner. Compassion is the basic tenet in all religions. The practice of animal sacrifice is a social evil and is required to be curbed.”⁴⁷

RECOMMENDED SOLUTIONS FOR BETTER IMPLEMENTATION OF THE LAWS FOR ANIMAL WELFARE

THE NEED FOR MORE EFFECTIVE PENALTIES

As already discussed earlier the negligible penalties of the PCA Act and some other animal welfare laws are posing serious problems for effective implementation of the objectives of these laws. “Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.”⁴⁸ “G. Dowlath Khan, an inspector with SPCA(Society for Prevention of Cruelty to Animals) for the past 33 years, said outdated legal provisions, the abysmally low fine amount and a shortage of inspectors had resulted in increased cruelty towards animals of late”⁴⁹ Thus there remains to be an urgent need for amended and more effective laws from the legislatures.

⁴⁷ Mariamma.A.K, Case Comment on “Animal Welfare Board of India VS. A. Nagaraja & Others, Vol. 2 Issue 1 Journal of Legal Analysis And Research 24, 41 (2015).

⁴⁸ Animal Welfare Board of India v. A. Nagaraja & Ors., CIVIL APPEAL NO. 5387 at *85, (SC May.7, 2014)

⁴⁹ P. Oppili, Cruelty to animals on the rise, The Hindu-Chennai, available at, www.thehindu.com/news/cities/chennai/cruelty-to-animals-on-the-rise/article5076494.ece (last accessed on Feb 29, 2016, 08:06 p.m.),

AWARENESS AMONG GENERAL PUBLIC

It is only possible to prevent animal cruelty with the support of general public and after all regardless of its seriousness only when a matter is of great interest among the public then only the politicians take the necessary measures towards such matters. And for that purpose the people must be aware of not only seriousness the matters of animal cruelty but also with those incidences which they may face in daily life but are aware of. They should be aware of some of the general laws. For example a person should know about the violation of law which they may face in front of them in day-to-day basis. For example a person should know when an animal is being transported illegally and in conditions which may put him through fatal pain and suffering as it is a common and a visible practice. Which have been dealt in the provisions of Transport of Animals Rules, 1978, its Rule 56(c) specifically stipulates that no goods vehicle shall carry more than six cattle. Therefore, the Rule 56 specifically provides for precautions including having one attendant for every six cattle and also padding around the sides should be used and anti-slippery material should be used. People should be aware of the some principles laid down by the courts in some of the judgments in order to broaden their thinking like how courts have observed that that birds have right to fly.⁵⁰

Similarly laws relating to slaughter houses which are also related to incidents that they may also face in daily life. Like as per the provision of Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, an animal cannot be slaughtered except in recognized or licensed houses⁵¹(which are only very few in each state at present) for the purpose but still a slaughtering in non-recognized and non-licensed is going on at an large scale and also it prescribes how an animal can't be slaughtered in a slaughter house in front of the sight of other animals⁵² being also an ignored incident mostly.

⁵⁰ Abdulkadar Mohamad Azam Sheikh v. State of Gujarat., SPECIAL CRIMINAL APPLICATION No. 1635 at *15, (Guj. May.12, 2011)

⁵¹ The Prevention of Cruelty to Animals Act (Slaughter House) Rules, 2001, Section-3, (1960).

⁵² The Prevention of Cruelty to Animals Act (Slaughter House) Rules, 2001, Section-6, cl. (1) (1960).

AWARENESS AMONG OFFICIALS AND PROFESSIONALS

The police authorities and people associated with the activities (such as transportation, etc.) involving animals must be aware of the various laws. Awareness among the police officials is indispensable for the implementation of these laws. These laws are needed to be followed and implemented strictly but there is lack of such knowledge at present about these laws. In India, where there are such paltry penalties for cruelty to animals, most police are not familiar with laws designed to protect animals and refuse to even register complaints of animal abuse.⁵³ In an incident where a truck transporting animals illegally was caught following facts were observed, “As per prescribed norms for transporting cattle, water and food should be provided to them while in transit. But none of the trucks intercepted had followed this, Mr. Prasanna said. Another glaring violation is the absence of a certificate from a veterinarian before the cattle are transported from one place to another.”⁵⁴

Furthermore I think that awareness among lawyers, advocates and Law enforcer is another necessary requirement which needs to be fulfilled, Awareness not only about the laws but also about the need of their urgent attention toward the matters. Most of the law schools in India don't include animal laws in their syllabus thus neither do they teach them and most of the lawyers also are neither aware nor interested in practicing animal law or related cases. They should not be ignoring such field for those which are more money prosper. Just like a medicine for a disease can be searched only when the doctors and researchers work a lot in that field, same as for the making and implementation of better laws for prevention of cruelty towards animals the support of advocates and other people related to the field of law is required. “G. Dowlath Khan, an inspector with SPCA (Society for Prevention of Cruelty to Animals) for the past 33 years, said that though there are provisions in the Prevention of Cruelties to Animals Act to punish offenders, a complainant also has to include provisions of the Indian Penal Code in order for severe action to be taken against an

⁵³ Poorva Joshipuria, Delhi gang rape two years on: Shocking levels of animal abuse show India has failed to change, International Business Times, available at www.ibtimes.co.uk/delhi-gang-rape-two-years-shocking-levels-animal-abuse-show-india-has-failed-change-1481008 (last accessed on Feb 2, 2016, 09:43 p.m.)

⁵⁴ P. Oppili, Cruelty to animals on the rise, The Hindu-Chennai, <http://www.thehindu.com/news/cities/chennai/cruelty-to-animals-on-the-rise/article5076494.ece> (last accessed on Feb 29, 2016, 08:06 p.m.)

offender. However, since there is little awareness or interest amongst law enforcers, there is hardly any implementation of the law, he said.”⁵⁵

ENACTMENT OF THE DRAFT ANIMAL WELFARE ACT, 2011

The Animal Welfare Board of India has drafted an Draft Animal Welfare Act which has covered almost all of the necessary rectification that are to be made in the present PCA Act, 1960, thus it should be brought into force by the parliament in place of the PCA Act as soon as possible. Currently the penalty for cruelty to animals is between Rs 10 to 50 for the first offence, which may go up to Rs 100 for a subsequent offence or up to three months in prison. The draft Bill, if passed in its current form, would result in the penalty for cruelty to animals being between Rs 10,000 and 25,000 or imprisonment for up to two years – or both – for a first offence. For a subsequent offence, the penalty would be between 50,000 rupees and one lakh rupees and imprisonment for one to three years. It also recognizes various rights of the animals. It also has provision regarding the establishment of state animal welfare board which would highly help in the implementation and enforcement of the laws made in this draft. Its Section-14 reads Each State Animal Welfare Board shall ensure that the Act and the Rules framed under this Act are given widespread publicity in the State, and that due and adequate training is provided to all government officers who are required to enforce the provisions of this Act and the Rules made there under. However some may say that there is ambiguity relating to experimentation of animals, I think that this draft bill is the need of the time which should be enacted at the earliest without any further a due.

⁵⁵P. Oppili, Cruelty to animals on the rise, The Hindu-Chennai, <http://www.thehindu.com/news/cities/chennai/cruelty-to-animals-on-the-rise/article5076494.ece> (Last accessed on Feb 29, 2016, 08:06 p.m.),

CONCLUSION

I think India as a nation has recognized the importance of the issue and has opted to take steps to prevent such acts. When we will look at the Constitution of India, then one may interpret how animals must be protected from any cruelty and protection of them from it is our duty. As already mentioned there are plethora of laws which have been enacted by the legislature for animal welfare which reflects their submission or recognition to the seriousness of the issue. Thus one may say that in comparison to the many of the countries the stand of the 'Legal System' in India is strong against any cruelty to animals and promotes animal welfare. And in the cases where there really has been cruelty to animals the Indian judiciary has heard and held for the rights of the animals. But the real and major problems exist in the implementation and some defects in these laws as regards the present time. However there are many cases which do arise but the judiciary will only be able to hear a case and the laws and legal provisions for animal welfare would only be effective when a case is at least filed or brought up. As already discussed earlier the unawareness of the laws on the issue among the latent masses as well as concerned professionals and police are the major reason for the non-implementation of these laws. This problem needs to address as soon as possible. Such non-implementation is the biggest obstacles that India is facing right now with regards ensuring animal welfare. There is also need of amendment of some provisions of the laws as be effective with the changed time support for which is becoming visible. But at last one may say that even though there are loop holes rights now present in the 'Indian Legal System' with regards to this issue but with its current stand and if the various recommendations and problems are given the deserved consideration and appropriate steps are taken in accordance with them or any other measures which may solve the following aforesaid problems then steps one may conclude by saying that there will be a hope for a better future for non-humans to live a life with dignity, like they deserve. After all, we must use our conscience and make all possible efforts to adhere to the words which were given by the 'Father of our Nation' i.e. Mahatma Gandhi, who said, "The greatness of a nation and its moral progress can be judged by the way its animals are treated."⁵⁶

⁵⁶ Humane Education, Humane Educator for the World, 41 Animal Citizen (July-Sept.), 60, 60 (2012)

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