

Animal protection laws in India and one right approach: an analysis

Abstract

Animal Protection Law is the older and more established field of law in India since ancient times. There are many ways to measure this, such as at the constitutional level, which shows environmental law's seniority and success. Even the Constitution of India has also addressed the environment and the typical phrasing is anthropocentric. For example, we have various laws and organization which work for the protection of non-human for example; the religious teachings text like Hinduism, Sikhism, Jainism, Buddhism, Christianity and Islam has also addressed various provisions for the welfare of non-human through its teachings. Still the non-humans suffer because they have no specific court to address their grievances, further, the laws and various decisions of the judiciary also changes with the change of the circumstances depending upon the situation, which sometimes, is not always favourable for the non-humans. It is stressed in this paper that the laws on animals should be strictly followed and the concept of one right Approach must be followed. The laws and state welfare must include the welfare of both human beings and the non-humans. The Human and the Environment should fit in legal paradigm for Anthropogenic. The Protection of Animals, non-human is essential for the survival of Human Being.

Keywords: Protection of animals, non-humans & animal laws and rights

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Introduction

Animal Protection Law is the older and more established field of law in India since ancient times. There are many ways to measure this, such as at the constitutional level, which shows environmental law's seniority and success. Most Constitutions address the environment and the typical phrasing is anthropocentric. For example, we have various laws and organization which work for the protection of non-human for example; the religious teachings text like Hinduism, Sikhism, Jainism, Buddhism, Christianity and Islam has also addressed various provisions for the welfare of non-human through its teachings. In Hinduism it teaches that the 5 significant elements (space, air, fire, water, and Earth) that constitute the environment are all derived from prakriti, the primal energy. Each of these elements has its own life and form; together, the elements are interconnected and interdependent. They worship the plants, animals and the nature for the prosperity, similarly, in Sikhism, it encourages people to respect and live in harmony with the environment, including animals and plants. The Sikh Holy Scripture states, "Air is the Guru, water is the father and Earth is the great mother. Day and night are like two nurses who look after us" it has also given importance to holy water.

As per Jainism, the ancient Jain principle teaches that all of nature is bound together, and says that if one does not care for nature one does not care for oneself. Self-restraint. An important Jain principle is not to waste the gifts of nature, and even to reduce one's needs as far as possible. In Buddhism, it inspires ecological mindfulness to address the loss of biodiversity. It seeks wisdom through adherence to the Five Precepts, the pursuit of the Noble Eightfold Path, and the understanding of karma. Buddhists find themselves in harmony with nature by acknowledging the interdependence of all forms of life. In Christianity, it has also considered that we come from the earth and that we will return to the earth: 'ashes to ashes, dust to dust'. 'Then the Lord God formed man of dust from the ground and breathed life into his nostrils the breath of life and man became a living being'.

Although we have various codified laws which are available for the protection of non-humans still the judiciary in India has given

different views from time to time which create suspicion in the mind of the general public in India whether the laws have been practically used for the welfare of non-human or not. Moreover, non-humans cannot speak for their rights so only human have to be considerate for non-humans, otherwise the existence of human being shall also be in question. Let us discuss the prevalent laws in India which are available for the protection of non-humans. The Indian Penal Code (IPC) 1860 is the official criminal code of India, which covers all substantive aspects of criminal law. Sections 428 and 429 punish all acts of cruelty, such as killing, poisoning, maiming, or rendering useless animals. However, Indian Penal Code is not the only law governing animal welfare; with changing circumstances, much similar legislation have also been enacted. Even notwithstanding a particular statute, further protections for animals lie under general laws such as tort law, constitutional law, etc.

The constitution of India 1950

Our Indian Constitution under Article 51-A(g) (Directive Principle of State Policy) 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." Then, Article 48A of our Indian Constitution provides that the State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country. The 42nd Amendment (1976) introduced the above-mentioned constitutional provisions. However, one being fundamental duty and the other DPSP are not directly enforceable in Indian courts, but they lay down the groundwork for legislation, policies, and state directives concerning animal welfare at both the Central and state levels. One must also know that these can be made enforceable somehow, by taking an expansive judicial interpretation and bringing it within Article 21 of the Indian Constitution.

Indian penal code, 1860

Indian Penal Code has various provisions to protect the animals, however, these provisions are too weak to give strength for the

protection to the animals. For example, the protection of stray dogs must also be included as government is unable to provide shelter to the stray dogs. Recently, two incidents had happened where the stray dogs were killed when they were being fed by the people on the road side in December 2022, the court held that the dogs was not killed intentionally as dogs are not human being so no one is liable. Moreover, the question comes, then why do we have stray dogs on roads? If we have no laws and no protection for them. The following laws are available under Indian Penal Code, 1860:

Section 428 of the Indian penal code

It deliberates that the punishment for killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards is simple or rigorous imprisonment for up to two years, or with a fine, or with both.

Section 429 of the Indian penal code

It deliberates that the punishment for killing, poisoning, maiming, or rendering useless any animal or animals of the value of fifty rupees or upwards (which automatically includes all cattle/beasts of burden) are simple or rigorous imprisonment for up to five years, or with a fine, or with both.

Animal welfare laws

The wildlife protection act (1972)

The act Prohibits injury to any wild animal or trees under section 39. Under this statute, “animals” include amphibians, birds, reptiles, mammals, and their young. In the case of birds and reptiles, even their eggs are included in this category. Exceptions are classified as “vermin” as defined in Section V (Vermin are small wild animals (e.g., rats) that carry disease and destroy plants and food). Each state has its own list of non-human animals considered vermin. Punishment- The penalty for the person guilty of an offense under this Act is imprisonment for a term of three years, or with a fine of twenty-five thousand rupees, or both. In a second offense, the term of imprisonment will be seven years with a fine of ten thousand rupees.

The prevention of cruelty to animals Act, 1960

The definition of cruelty is under Section 11 (a) to (o). This includes (but is not limited to):

- I. cruelty against the person’s pet
- II. inhumane slaughter
- III. inhumane transportation
- IV. inhumane living conditions (even for animals destined for slaughter)
- V. Tail docking
- VI. Ear docking.

Stray dogs are protected under the Prevention of Cruelty to Animals Act, 1960, and under Rules enacted under Section 38 of the Act. The offender will have to pay a fine, extending to fifty rupees. If it is the case of a second offense, he will be fined not less than twenty-five rupees but which may extend to one hundred rupees or imprisonment for up to three months or both. Any illegal killing or cruelty towards an animal should be reported to the local police station, and an First Information Report must be filed against the offender. If the animal is a wild animal not defined as “vermin” by the state, or if the person is killing or injuring an animal defined as vermin in an illegal/inhumane

way, simply refer to The Wildlife Protection Act (1972) and the Prevention of Cruelty to Animals Act (1960). Besides these many laws in India, animal suffer cruelty. Moreover, many animals are used for testing.

Animal testing in India: legal or illegal

In India, the use of animal experimentation for cosmetic products is banned. Still, animal experimentation for drugs is not banned in India, as there is a belief that pharmacology cannot be learned without animal experimentation so, the animals are important for new developments in the field of medicine. The animals used for drug testing are rabbits, sheep, mice, guinea pig, albino rats, monkeys, frogs, primates, etc. The ban also applies to the ingredients of the product. Did you know that India is the first country to ban animal testing in South Asia, proving that our country is against animal testing and it has very strict laws?

Judicial decision

There are various Indian judicial decisions where sometimes the welfare of animal view has been taken and sometimes it is ignored in the case of stray dogs. Recently, the Bombay High Court held that while quashing a case against a Swiggy delivery person who had accidentally mowed down a stray dog while delivering a food parcel (*Manas Mandar Godbole vs State of Maharashtra*) however, as per the provisions of the Indian Penal Code (IPC) penalising rash driving and endangering the life would not apply in a case where an animal is the victim.

As per the fact of the case, the petitioner-applicant was 18 years of age at the relevant time, when he was on his way to deliver a food parcel. The complainant was feeding some stray dogs on the streets of the plush Marine Drive area in Mumbai. The dog suddenly came in front of the motorbike of the applicant, due to which, it was injured and later died.

The applicant also fell down and was injured in the accident. The complainant then filed a complaint against the applicant. The police lodged a first information report (FIR) against him invoking Sections 297 (*rash driving*), 337 (*endangering human life*) and 429 (*Mischief by killing or maiming cattle, etc. of any value or any animal of the value of fifty rupees*) of the IPC. The Police also invoked Sections 184 (*driving dangerously*) of the Motor Vehicles Act and section 11A and B (*treating animals cruelly*) of the Prevention of Cruelty to Animals Act.

No intention

The Bench noted that there was no intent whatsoever of the petitioner to cause the death of the dog which crossed the road when he was on his bike, en route to deliver a food parcel.

“Nothing is shown by the prosecution to show that the petitioner was driving beyond the speed limit stipulated on the said road. The incident shows that the dog crossed the road, as a result of which, the petitioner’s bike due to sudden braking, skidded and as such the petitioner sustained injuries on his person in the said incident and the dog got injured and later succumbed to the same,” the bench noted.

Therefore, no offences as alleged in the FIR are made out against the petitioner and the same cannot sustain in law, the judges opined.

It pulled up the Police for registering the FIR ‘without applying its mind.’

“How Sections 279, 337, 429 could have been applied to the case in hand, even from a bare perusal of these Sections, defies logic. **The**

police being the custodian of law, need to be more circumspect and cautious whilst registering FIRs and of course later, whilst filing chargesheet,” the bench held. With these observations, the judges quashed the FIR.

In another case, where the division bench of Justices **Revati Mohite Dere** and Justice **Prithviraj Chavan** said that though animal lovers consider their pets as their child but they are not human beings.

“While Section 279 speaks about whoever drives any vehicle so as to endanger human life, Section 337 speaks about endangering human life. No doubt, a dog/cat is treated as a child or as a family member by their owners, but basic biology tells us that they are not human beings. Sections 279 and 337 pertains to acts endangering human life, or likely to cause hurt or injury to any other person,” the bench held in the order pronounced on December 20, 2022.

Thus, the said provisions will have no application to the facts of this case since the essential ingredient necessary to constitute the offences were missing, the Court opined.

“The said sections do not recognize and make an offence any injury caused otherwise than to human being. Thus, insofar as the injury/death caused to the pet / animal is concerned, the same would not constitute offences under Sections 279 & 337 of the Indian Penal Code,” the bench ruled.

Considering that the police had lodged the said prosecution despite no offence having been disclosed, the judges directed the State Government to pay costs of ₹20,000 to the petitioner, which shall have to be recovered from the salary of the concerned officers responsible for lodging the FIR and later approving filing of the charge sheet.

Conclusion

After discussing the laws and various decisions which changes with the change of the circumstances, it can be concluded that the

laws on animals should be strictly followed. The concept of one right Approach must be followed. The laws and state welfare must include the welfare of both human beings and the non-humans. The Human and the Environment should fit in legal paradigm for Anthropogenic. The Protection of Animals, non-human is essential for the survival of Human Being. I quote the teachings of Guru Granth Sahib, the holy text of Sikhs, it states that human should not consider themselves important than animals, because we all are equal on this planet earth. It means even a human being, an ant, a bee, and every creature on earth is equal to human being. God does not discriminate in providing sunlight; air etc. between a human being and an ordinary creature. Moreover, everyone is contributing to create the balance in the environment. In Sikhism, it is emphasised that everything is a creation of the Almighty and hence, we are no one, to give more importance to ourselves than the non- humans.¹⁻⁵

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None.

Conflicts of author

The author defects there is no conflict of interest.

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