

CRUELTY TO ANIMALS  
AN ANALYSIS OF THE REGULATORY FRAMEWORK IN INDIA



Dissertation submitted to National Law University and Judicial Academy, Assam

in partial fulfilment for award of the degree of

MASTER OF LAWS/

ONE YEAR DEGREE PROGRAMME

Submitted by

Dolly Gupta

SF0219005

LL.M 2<sup>nd</sup> Semester

2019-20

Supervised by

Mr. Chiradeep Basak

Assistant Professor of Law

National Law University and Judicial Academy, Assam

August, 2020

## **SUPERVISOR CERTIFICATE**

This is to certify that DOLLY GUPTA is pursuing Master of Law (LL.M.) from National Law University and Judicial Academy, Assam and has completed her dissertation titled “CRUELTY TO ANIMALS: AN ANALYSIS OF THE REGULATORY FRAMEWORK IN INDIA” under my supervision. The research work is found to be original and suitable for submission.



Date: 17-08-2020

MR. CHIRADEEP BASAK

Assistant Professor of Law

## DECLARATION

I, DOLLY GUPTA, pursuing Masters of Law (LL.M.) from National Law University and Judicial Academy, Assam, do hereby declare that the dissertation titled “CRUELTY TO ANIMALS: AN ANALYSIS OF THE REGULATORY FRAMEWORK IN INDIA” is an original research work and has not been submitted either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.



Date: 17-08-2020

DOLLY GUPTA

SF0219005

## **ACKNOWLEDGEMENT**

Apart from the efforts of oneself, the success of any project depends largely on the encouragement and guidance of many others. I take this opportunity to express my gratitude to the people who have been instrumental in the successful completion of this paper.

I would first like to thank Chiradeep Basak, Assistant Professor of Law, NLUJAA, who have been very supportive throughout the completion of this paper. He consistently allowed this paper to be my own work but steered me in the right direction whenever he thought I needed it. Without his encouragement and guidance, this paper would not have materialized. I am sincerely grateful to him for constructive criticisms and illuminating views on a number of issues related to this paper.

I would like to express my profound gratitude to the participants of this research for their valuable time and effort in helping me out with study. I humbly acknowledge their contribution. I am also thankful to my friends for providing me with unfailing support and continuous encouragement throughout the process of research and writing of this paper.

Lastly, I would like to thank my parents for their never-ending support throughout the journey of life that made me capable enough to write this paper.

## PREFACE

On one hand, we all agree that it is morally wrong to inflict “unnecessary” pain and suffering on animals; on the other hand, we routinely use them in all sorts of context that cannot ever be considered as necessary. Reasons for the exploitation of animals are sometimes rooted in the history; we have been exploiting animals for so long that we simply continue doing so by force of habit alone. Some reasons are rooted in culture and religion; we uncritically subscribe to various belief systems that proclaims humans as “superior”. Some reasons are economic; animal exploitation is a billion-dollar industry, and human beings appear to be able to justify most actions that result in monetary gain. One thing, however, is clear that law and legal systems have been primary culprits in facilitating the exploitation of animals by conferring upon them the status of “property” and using notions such as “doctrine of necessity.”

However, there is a growing consensus that issues of animal cruelty are a pervasive concern and this is reflected not just in public attitude, but also in the legislative action both on the national and international plane. Plethora of laws has been formulated to extend better protection to animals. The judiciary as well has firmly asserted that animals are indeed right bearing entities. Despite this, the plight of the animal continues to exist.

The researcher therefore, in this paper seeks to analyse the regulatory framework for the protection of animals as it exists, and the inherent defect in such laws.

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2018- The Prevention of Cruelty to Animals (Pet Shop) Rules

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Serial No.	List of Abbreviations	Expansions
1.	ATS	Antarctic Treaty System
2.	AWBI	Animal Welfare Board of India
3.	AWO	Animal Welfare Organisation
4.	CBD	Convention on Biological Diversity
5.	CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
6.	CCAS	Convention for the Conservation of Antarctic Seals
7.	CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora.
8.	COE	Council of Europe
9.	COP	Conference of Parties
10.	CPAIT	Convention for the Protection of Animals in International Transport
11.	CPCSEA	Committee for the Purpose of Control and Supervision of Experiments on Animals
12.	DPSP	Directive Principles of State Policy
13.	EC	European Commission
14.	EFSA	European Food Safety Authority
15.	EU	European Union
16.	FSSAI	Food Safety and Standards Authority of India
17.	FVO	Food and Veterinary Office
18.	GATT	General Agreement on Tariffs and Trade
19.	HSI	Humane Society International
20.	IAEC	Institutional Animal Ethics Committee
21.	ICPA	International Convention for the Protection of Animals
22.	IWC	International Whaling Commission
23.	MoEF&CC	Ministry of Environment, Forests and Climate Change
24.	MoHFW	Ministry of Health and Family Welfare
25.	NGOs	Non Governmental Organisation

26.	NOC	No Objection Certificate
27.	OIE	The World Organisation for Animal Health
28.	PCA	Prevention of Cruelty to Animas
29.	PETA	People for Ethical Treatment of Animals
30.	PPMs	Production and Processing Methods
31.	SPCA	Society for the Prevention of Cruelty to Animals
32.	SPS	Sanitary and Phytosanitary Measures
33.	TBT	Technical Barriers to Trade
34.	TFEU	Treaty on the Functioning of European Union
35.	U.K.	United Kingdom
36.	UDAR	Universal Declaration of Animal Rights
37.	UDAW	Universal Declaration of Animal Welfare
38.	UDHR	Universal Declaration of Human Rights
39.	UGC	University Grants Commission
40.	UN	United Nations
41.	UNESCO	United Nations Educational, scientific, and Cultural Organisation
42.	UTs	Union Territories
43.	WTO	World Trade Organisation

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# CHAPTER 1

## Introduction

*“We call them dumb animals, and so they are, for they cannot tell us how they feel, but they do not suffer less because they have no words.” - Anna Sewell*

### 1.1 Introduction

Insensitivity towards the sufferings of animals is inherent in human behaviour. Despite the natural right of all living entities to live a decent life, animals are treated with utmost cruelty and are exploited to satisfy human greed. Animals struggle every day for their lives. They are captured, battered, and forced to perform for human entertainment in circuses; they are kept under inhumane conditions in small, overcrowded cages to be slaughtered and served as food for mankind; in the name of scientific research, they are brutally tormented, poisoned, blinded, and much worse. All these are nothing but instances of animal cruelty.

Animal cruelty, therefore, can be understood as a conduct detrimental to animals, ranging from accidental neglect to deliberate killing. It refers to the infliction on an animal of physical pain, misery, or death. Often the word ‘animal cruelty’ and ‘animal abuse’ are used synonymously; however, the former is also a legal term which is used to denote acts of animal abuse that are contrary to the law. Animal cruelty is a form of animal abuse, where the term ‘abuse’ implies for a bad reason or for misuse, and ‘cruelty’ means for cruel behaviour and attitude. It may refer to any human action which infers distress, suffering or harm to any non-human animal for purposes or motive other than for self-defence or survival. The term “animal cruelty” is not just restricted to physical harm but also means causing psychological harm to an animal in the form of terror, distress or torment.<sup>1</sup> Animal abuse includes acts of violence against pets. More particularly, it encompasses within its fold those acts where specific gain to human being is involved, such as killing them for consumption, fur and body parts.

In India alone, despite the adoption of a vast number of animal welfare legislation, from the minimal to most barbaric and brutal crimes against animals have had its presence and

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<sup>1</sup>Nikhil Yadav, *Cruelty to Animals: Protection Dynamism in Indian Legal System*, 2(3) JCIL1, 1 (2016)

continues to exist. Such crimes include pouring of hot tar on street dogs,<sup>2</sup> killing and thereafter cooking of a pet,<sup>3</sup> gang rape of animal resulting in its death,<sup>4</sup> etc. There have been a total of 24,353 reported cases of cruelty to animals from 36 Indian states within the time frame of 2012-15.<sup>5</sup> However, in reality instances of cruelty outnumber the total reported cases. Most of the cases are not reported due to the lack of awareness among the public and officials. With the outbreak of the Covid-19 pandemic, an increase in these cases has been witnessed in the recent times. Due to misconceptions and fear triggered by false circulation of information, several pet animals have been abandoned in cruel and unethical ways, and around 6000 chickens were also buried alive.

Animals are also subjected to immense cruelty in slaughterhouses. They are raised and slaughtered for their meat, eggs and milk, and are forced to undergo greater misery than any other organized exploitation of animals. In India, millions of buffalo calves are killed as soon as they are born. In addition to this, around 120 million meat and 500 million poultry animals suffer greatly from the time they are dispatched for slaughter till they die, while millions other large animals are made to work for 7-10 years before being slaughtered.<sup>6</sup> They are transported in the most inhumane ways in overcrowded trucks and trains. They are treated merely as a commodity and handled in crude and primitive ways at the slaughter. Sharp sticks are forced into the anus or vagina of the animals, front leg of young buffaloes are broken and swung around their neck, pigs are repeatedly stabbed and heads of cattle are smashed for casting. Stunning is not practised.<sup>7</sup>

Inherent in the scope of the definition of animal cruelty are two forms of animal abuse which can be primarily categorised into the following:

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<sup>2</sup>Julian Robinson, *Road kill: Construction workers in India build a STREET over a sleeping dog that dies in agony after burning tar is poured over it and a roller flattens it*, MAIL ONLINE, June 14, 2018, <https://www.dailymail.co.uk/news/article-5843285/Road-kill-Construction-workers-India-build-STREET-sleeping-dog.html> (last visited Apr. 15, 2020, 8:32 AM)

<sup>3</sup>Santosh Kumar R B, *3 students held for killing, cooking pet dog*, THE INDIAN EXPRESS, May 9, 2015, <https://indianexpress.com/article/india/india-others/3-students-held-for-killing-cooking-pet-dog/> (last visited Apr. 15, 2020, 9:10 AM)

<sup>4</sup>Leena Dhankar, *Pregnant goat dies after being allegedly gangraped by 8 men in Haryana*, HINDUSTAN TIMES, July 29, 2018, <https://www.hindustantimes.com/india-news/pregnant-goat-dies-after-being-gangraped-by-8-men-in-haryana/story-JIFvxZgoPAePsZ4SVz7RbJ.html> (last visited Apr. 15, 2020, 9:15AM)

<sup>5</sup>Cruelty to Animals, Government of India, Ministry of Environment, Forest and Climate Change, (2016) (Apr. 15, 2020, 10:10AM), <http://www.indiaenvironmentportal.org.in/files/file/Cruelty%20to%20Animals.pdf>

<sup>6</sup>S. Abdul Rahman, *Animal Welfare Issues and Perspectives in Developing Countries* (Apr. 16, 2020, 8:40 AM) <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.523.9412&rep=rep1&type=pdf>

<sup>7</sup>*Id.* at 10

- **Passive Cruelty:** this involves cases of neglect or omission. It is typified by instances of negligence, in which the brutality is not the conduct itself but a lack of action. Examples of neglect include dehydration, starvation, parasite infestation, insufficient housing under adverse weather conditions, not seeking medical advice when required, etc.
- **Active Cruelty:** It is also called as animal cruelty by commission. It includes deliberate infliction of violent and harmful actions on an animal which causes immediate pain and suffering and results in injury or death of the animal. Example of active cruelty includes dismemberment, hitting, shooting, etc.

### **Types of Animal Cruelty**

Cruelty against animals can take place in varied forms. These include:

- **Simple Neglect:** it includes failing to provide one or a few animals with basic necessities, such as adequate feed, water, housing or medical treatment generally due to ignorance.
- **Gross Neglect:** it is also called malicious, wilful or cruel neglect. It means intentionally or knowingly withholding depriving an animal or group of animals of the food or water required for preventing dehydration or starvation.
- **Animal Hoarding:** it refers to collecting and owning a huge proportion of animals but failing to supply minimum necessities such as sufficient feed, proper sanitary facilities, and medical treatment. It also includes failure to act on the worsening state of animals. Inhumane transport of a large number of animals, keeping them in an environment that is uncondusive and poor, starving them to death are all examples of animal hoarding.
- **Organized Abuse:** this refers to blood sports such as bullfighting, fire bull, bear baiting, dog fighting, cockfighting, etc. Bullfighting has often been condemned by animal rights activists as such acts of entertainment causes severe pain, stress and a slow, torturous death of bulls. In Soria, Medicnaceli, Spain, fire bull also referred to as “Toro Jubilo” or “Toro de Fuego” is a festival synonymous with animal cruelties. Pitch balls are tied to bull’s horns during this festival and set on fire. For hours, the bulls are left to burn and later released into the streets with severe injuries to their body parts. Bear-baiting activity involves the worrying or tormenting of bears. Specially trained pit bull terriers are set upon tethered bears, which are unable to defend

themselves as their teeth and claws are removed. The term “bear baiting” is also used to refer to practice where bears are hunted by enticing them to a planned killing spot by using bait. Animals are pitted against each other in a barbaric and senseless fight in dog fighting and cockfighting events solely for entertainment and gambling. Dog fights result in severe injury or death of the dogs involved in such events. Such fights can last for several hours until one animal dies or quits. In the gruesome sport of cockfighting, chickens are put in a ring and are forced to fight to death for onlookers’ “amusement.”

- **Ritualistic Abuse:** religion and superstition have, in some ways, played crucial roles in leading humans to do great harm to innocent creatures both big and small. Animal sacrifice in the name of religion has been prevalent since centuries. India’s Kamakhya Temple is a notable example of a popular tourist destination where goats and pigeons are sacrificed ritualistically. In addition to this, elephants play a pivotal role in religious processions and as work animals. Ritualistic slaughter of animals according to Islamic law, also called as Halal forbids the stunning of animals before their throats are slit open. The animals thus, gasp and fight for their last breath, struggle to stand while the blood drains from their neck.
- **Forced Breeding:** forced breeding is another example of animal cruelty, where animals are turned into voiceless commodities and are forced to mate indiscriminately without any regard to their health, temperament, feeling or well-being. In puppy mills, female dogs are forcibly bred at every heat cycle, leaving no time for recovery. When their weak bodies can no longer reproduce litter, they are considered as a drain and destroyed, thrown away on the streets or killed.
- **Animal Sexual Assault (Bestiality):** bestiality is defined as an attraction, affinity or sexual attraction towards non-human animals by a human being. Using animals for sexual gratification despite being considered as a sin against nature by most people and as awful and disgusting it may sound, the issue has raised alarm across the globe.
- **Genetic Manipulation:** genetic engineering or manipulation is performed by injecting several hundred gene copies into an animal’s fertilized egg.<sup>8</sup> It is most commonly practiced upon farm animals. Growth genes are injected into fish, cows, sheep, chickens and pigs in order to make either the altered animal grow at a faster pace, or to increase productivity, or to produce leaner meat. However, there are

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<sup>8</sup> Michelle K. Albrecht, *Genetic Engineering of Domestic Animals: Human Prerogative or Animal Cruelty*, 6 Animal L. 233, 241 (2000)

generally 98% chances of failure and this can result in adverse effects on the overall health and well-being of the animal concerned. It can result in the development of painful and uncomfortable characteristics in animals.

The primary reason for continued exploitation of animals in the manner stated above is because animals have always been regarded as a property owned absolutely by human beings, and thus, allowed to be treated instrumentally, as a means to human ends, and subject to their slightest desire. Since historical times, law has always protected the rights of the owner to use animals for their own ends. In addition to this, several other non-legal factors have contributed to the prolonged disinterest in the field of animal welfare. This includes the insensitivity towards concern for other living entities, whether animals or otherwise, which characterizes much of the human race, and the profound public apathy seen in dealing with most of the social ills. Added to this attitude are the very significant economic considerations that result from the profitability of animal breeding, sale, trapping, slaughtering, keeping, eating, etc; and perhaps the most reprehensible is the lack of support from governmental authorities to efficiently enforce the laws that exist.

Notwithstanding the legislative inertia created by the sum total of these factors, some development to limit animal cruelty has been made. Legislations have been enacted, both at international and national level, which at least in theory is meant to rectify some of the most flagrant abuses.

The purpose of this paper is to survey the position of animals in India in the light of the legislative and judicial measures, to identify those areas where steps have been taken to restrict the inhumane treatment of animals, to highlight the key areas where the problem persists, and to suggest potential ways of improvement. To this end, the paper has been divided into the following chapters:

The **first chapter** gives a brief introduction of what the term “animal cruelty” encompasses, its kinds and types. It brings into light a few instances of animal cruelty in India and explores the reason behind such continued exploitation. The chapter also elucidates the statement of problem, aims, objective, scope and limitations of the study, the research hypothesis, analysis of literature, and methodology chosen for conducting the research.

In the legal discourse a pertinent question that always arises during any discussion on animal matters is ‘whether animals are rights bearing entities’. The assumption of human superiority,

has always resulted in the interest of nonhuman animals being given little to no legal consideration since they are merely treated as property under law. In the **second chapter**, therefore, a discussion of the changing status of animals as elucidated in the writings of various thinkers from the ancient times is made to justify that animals are sentient beings, entitled to basic rights just as humans. It proposes the elimination of property status and the granting of moral and legal personhood to animals. The status of nonhuman animals as recognised under the Indian legislative framework and interpreted by the judiciary is also highlighted.

Having established that animals are right bearing entities, the next chapter, i.e. the **third chapter**, provides an analysis of the various international conventions, protocol, treaties and agreements, made out to protect animals from inhumane treatment and ensure its welfare. Since animals are universal subject of concern, the efforts of policy makers on international platform are studied first. Considering that European Union standards on animal welfare are among the world's highest, and that it can provide effective guidance in the formulation and reworking of the legislative framework in India, **fourth chapter** of the paper sets out the regulatory provisions as it exists in European Union for the welfare and protection of animals.

Animal welfare concerns in India, have not just been raised to the status of fundamental law, but are increasingly being seen with a human rights approach. Indian Constitution is perhaps the first Constitution to outline concrete provisions relating to the welfare of animals. Thus, in the **fifth chapter**, thrust has been laid upon the study of various constitutional measures framed for the protection of animals in India. Additionally, the chapter highlights how judgements have elaborated on, and made use of these provisions to not just afford better protection to animals but to also make sure that their rights are duly recognised.

The **sixth chapter** is makes an elaborate analysis of the comprehensive set of national legislations adopted in India for protecting animals from unnecessary cruelty and suffering. More particularly, the provisions of Central Prevention of Cruelty to Animals Act, 1960, the rules made under it, and a number of additional legislations that have been enacted to address specific animal welfare concerns have been analysed. On the basis of the discussion made in the third chapter, a discussion on the good regulatory framework of the European Union that can be incorporated into the Indian legislative scheme so as to afford better protection to animals has been made.

The **seventh chapter** examines the judicial response in India on issues pertaining to animal cruelty. The chapter highlights the text of relevant judgements within the time frame of 2010-2020 with a view to analyse how the judgements have elaborated on, and made use of the constitutional and legislative measures mentioned in the aforementioned chapters to ensure that animals in India are not treated as a 'property' but as beings entitled to certain basic rights, including the right to be treated humanely at the least.

Any research work stands without full enclosures unless the public opinion is analysed. With an objective to find out the opinion of general public on issues of animal cruelty and to assess the grass root reach of the legislative policies, an empirical study which was conducted has been discussed in the **eighth chapter**.

The combined efforts of the effective administrative mechanism, strong judiciary and vigilant masses can only lead to life synchronized with compassion for animals which will ultimately save our mother earth from the losses of the valuable species gifted by nature. Thus, finally, based on the research in the eighth chapter, all the subjects of the research topic, that had been studied are examined and concluded in the **ninth chapter**. Means to streamline the existing regulatory framework for effective implementation of laws pertaining to animal protection is also discussed. To conclude, the researcher through this work has tried to submit that animals too have a right to be protected. In their protection lies our survival and growth, as remarked by father of the nation Mahatma Gandhi ji, *"The greatness of a nation and its moral progress can be judged by the way its animals are treated."*

## **1.2. Statement of Problem**

An understanding of the issues concerning animal cruelty is of seminal importance. In the years of human existence, animals have played a significant role in shaping human culture. They have contributed to the human society in a plethora of ways, and have extensively benefitted the mankind. Despite this, they are continuously exploited and treated in inhumane ways because they are mute spectators, incapable of raising their voice against this cruelty. It is necessary that we recognize that animals are sentient beings, deserving of the right to live a life of intrinsic worth. It is equally important to acknowledge and strengthen animal welfare so as to ensure not just the well-being of an animal but also to protect human health and environment. To this end, it is necessary to evaluate and analyse the efficiency of legislative framework in protecting animals.

### **1.3. Aims**

The aim of this paper is to analyse and evaluate the prime cause for continued exploitation of animals and ever expanding instances of animal cruelty in the country. It seeks to establish that animals are right bearing entities. It also seeks to comprehensively study the international regulatory framework and national laws in force, and evaluate its effectiveness in protecting the welfare of animals. It also seeks to analyse the judicial stand on the subject matter of this research.

### **1.4. Objectives**

The objectives of this paper are as follows:

1. To study and evaluate the issues concerning animal cruelty in India and public opinion regarding the same.
2. To evaluate the evolution of property status of animals to justify that animals are sentient beings, deserving of the rights to live a life of respect, intrinsic worth, and dignity.
3. To evaluate the principles of animal welfare and rights as recognised under the international regulatory framework.
4. To study the regulatory framework adopted in European Union as a basis for evaluating the status of legislative regime adopted in India for the protection of animals.
5. To undertake an analysis of the laws pertaining to animal protection in India and assess its efficiency in meeting the objectives set out.
6. To study the judicial response in matters pertaining to animal cruelty.
7. To establish whether the existing regulatory framework is sufficient in protecting animals from cruelty.
8. To make recommendations to streamline the existing regulatory framework

### **1.5. Scope and Limitations**

The paper comprehensively deals with the issues pertaining to animal cruelty in India and public opinion regarding the same. It discusses the meaning of animal cruelty, its types and kinds. It highlights how the treatment of animals as a property under law has been a prime



cause for disregarding animal rights and interests for a long time. It establishes that animals are sentient beings, entitled to certain basic rights, in the light of the evolving status of animals as seen in the writings of various thinkers and the decisions of the judiciary. It briefly discusses the provisions of various international regulations on animal protection as well as its potential limitations. The study is restricted to the provisions of the international regulations which particularly manifest the principles of humane treatment of animals. It highlights the notable animal protection laws of the European Union. It specifically analyses the constitutional provisions, the national legislative framework and its limitations, as well as the judicial response in India towards the protection of animals. Within the sphere of the anti-cruelty statutes in India, the paper particularly focuses on the legislations adopted at the Central level for the protection of animals used for draught and recreation, farm animals, experimental animals, and companion animals. The paper neither analyses the State legislations nor does it deal with the presentation and examination of legislative and judicial framework with regard to wild animals in India. In the light of the findings of the empirical study, it discusses the key areas where the problem still persists and suggests measures to streamline the existing legislative framework.

The researcher has taken sincere efforts to collect relevant, updated and accurate data both from secondary sources as well as the respondent. But during the study, certain problems were faced which requires to be highlighted. These include:

**1.Lack of library resources and availability of books:** Due to the outbreak of the Covid-19 pandemic, the efforts of the researcher to obtain authentic sources have seriously been undermined. The researcher had limited access to books on the subject and therefore had to rely mostly on the data available online.

**2.Lack of previous work on the subject:** Despite there being a substantial and indeed surprising abundance of both international and national law on matters pertaining to animal cruelty, there have been relatively little work done on the subject that examines them in a systematic manner. In the Indian scenario, while work on wildlife laws is still prevalent, no work has been done to analyse the more general anti-cruelty statutes.

**3. Lack of free contact with other Faculty Members:** While research is mainly an individual endeavour, the tremendous benefit in consulting a group of scholars cannot be stressed enough. Due to the outbreak of Covid-19 pandemic, the researcher was unable to follow an open and consultative approach during the course of her research. In addition to

making the study less comprehensive, the restricted contact with other faculty members has deprived the researcher from knowing multiple viewpoints and credentialed views on the subject matter.

## **1.6. Literature Review**

### **1.6.1. Blattner<sup>9</sup>**

The article is an all-inclusive and systematic evaluation of the international law pertaining to animal matters. First, the article addresses why animal matters should be regulated, and thereafter sets forth the prospective national and international policy options to further animal interests. It determines the merits and demerits of the international law in governing animal matters on the basis of the evaluation of existing international and regional law, such as international conventions, treaties, declarations, customary international law, case law and practice of international organisations, each of which is discussed briefly. The most significant contribution of the article is that it lists out alternatives such as labelling, subsidization, etc that can be adopted to combat the potential limitations of international law in regulating animal matters.

### **1.6.2. Gandhi, Hussain & Panjwani<sup>10</sup>**

The book is a compendium of legislative material on animal-related laws. It contains Acts, relevant provisions of a number of statutes, the rules and orders passed thereunder, the legislative framework and the rules pertaining to animals adopted by States in India, as well as the decisions of the judiciary. The Indian Standards pertaining to housing and transportation of various species of animals have also been provided. These materials have been fairly divided into four parts, namely the central laws, state laws, material and cases, and general standards.

Under Part I, the Central Acts, rules and orders along with their subsequent amendments wherever applicable are reproduced systematically. Brief comments explaining simply either the provisions of the section or its interpretation by the Court have been mentioned at a few places. These explanations are, however, meant only for academic discussion and do not suggest opinion of the authors. Part II contains the legislative framework on a range of issues

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<sup>9</sup>Charlotte E. Blattner, *Global Animal Law: Hope beyond Illusion: The Potential and Potential Limits of International Law in Regulating Animal Matters*, 3 Mid-Atlantic J. on L. & Pub.Pol'y 10, 23-40 (2015)

<sup>10</sup> MANEKA GANDHI, OZAIR HUSSAIN & RAJ PANJWANI, *ANIMAL LAWS OF INDIA*, 5-126 (5<sup>th</sup> ed. 2013).

pertaining to animals and birds, such as sacrifices, slaughtering, transportation, improvement, etc, adopted by different States. The compilation is helpful in analysing and comparing the position of animals as it exists in different States. Part III enlists various national policies, guidelines and documents, certain international documents, and judgements delivered by Courts with respect to enforcement of animal laws. However, the judgments so cited are not updated references and the book is merely a compilation of the bare acts and policies.

### **1.6.3. Mitra<sup>11</sup>**

The book comprehensively deals with the laws pertaining to animal rights and welfare as it exists in India. It is divided into nineteen chapters. Each chapter seeks to aptly discuss the position of animals as it prevails within the legislative framework. It discusses the meaning of animal rights, the position of animals under the criminal and tort law, the position of animals on the highway along with the Scierter rule. It also discusses the international regulatory regime with respect to animals. The book elaborately discusses the constitutional provisions for the protection of animals, various legislative frameworks adopted to address specific animal welfare issues, such as slaughter, preservation of cattle and its improvement, prevention of cruelty, experimentation, transportation, trade, conservation of wild animals, animal sacrifice, performing animals etc. The analysis of judicial decisions on each of these topics is noteworthy. The role of judiciary and the authorities established under various Acts for the protection of animals in India has also been discussed. In addition to this, the laws on meat products and shops, labelling laws, etc have also been enumerated in the light of consumer protection and animal welfare. With summaries of latest cases and important legal provisions on animals, the book provides a strong and concise interpretation of animal rights and laws in India.

### **1.6.4. Nadkarni & Ghosh<sup>12</sup>**

The paper is a noteworthy evaluation of the Prevention of Cruelty to Animals Act, 1960. It briefly explores the historical context and intent of the Act, and discusses then-existing societal emergencies that contributed to the promulgation of such legislation. It discusses the approach adopted by the courts to give effect to the constitutional provision mandating animal protection and implementation of the Act. Furthermore, the deficiencies in the liability

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<sup>11</sup> P.P. MITRA, AN INTRODUCTION TO ANIMAL LAWS IN INDIA, 40-147, (1<sup>st</sup> ed. 2019)

<sup>12</sup> Abha Nadkarni & Adrija Ghosh, *Broadening the Scope of Liabilities for Cruelty Against Animals: Gauging the Legal Adequacy of Penal Sanctions Imposed*, 10 NUJS L. Rev. 2, 3-32 (2017)

imposed by the Act are also analysed. The article also discusses the possible amendments that can be introduced in the Act and how by introducing a civil liability regime animal can be better protected.

#### **1.6.5. Neumann<sup>13</sup>**

The article is a remarkable analysis of the 1978, Universal Declaration of Animal Rights setting out in fourteen articles, the fundamental rights for animals. It discusses the sources and the factors that influenced the adoption of the original 1978 Declaration and the specific changes that were incorporated in its 1989 revised version. It explores the scope as well as the reason for the failure of the Declaration to meet its anticipated effect or outcome. The article has been advantageous in scrutinising the provisions of the Declaration and to assess its future impact in the field of animal rights.

#### **1.6.6. Stevenson<sup>14</sup>**

The review report is a part of the study conducted by EBRD in collaboration with FAO to identify concrete ways of enhancing and encouraging animal protection policies and higher standards, and to recommend in the country of its operation measures to raise awareness on the matter. It thoroughly studies the legal structure that relates to animal protection in the European Union and a number of countries outside Europe. It elucidates the legislative framework for the protection of farm animals (on-farm, during transit and at slaughter) adopted in European Union, and the manner of its implementation in some of the member states. It also discusses the legislative provisions concerning the beef, pork and poultry production systems adopted in six countries outside Europe with a view to draw a comparative analysis of legislative framework and the manner of its implementation. In addition to this, it provides an extensive analysis of the animal welfare standards adopted by four international organizations, namely the FAO, OIE, COE and the IFC, including the private standards established by major food businesses and animal welfare organizations. The paper solely focuses on welfare standards for the protection of animals used in the food sector.

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<sup>13</sup> Jean-Marc Neumann, *The Universal Declaration of Animal Rights or the Creation of a New Equilibrium between Species*, ANIMAL LEGAL & HISTORICAL CENTER, (May. 13, 2020, 10:20AM), [https://www.animallaw.info/sites/default/files/lralvol19\\_1\\_91.pdf](https://www.animallaw.info/sites/default/files/lralvol19_1_91.pdf)

<sup>14</sup> Peter Stevenson, *Review of Animal Welfare Legislation in the Beef, Pork, and Poultry Industry*, FOOD AND AGRICULTURE ORGANISATION OF THE UNITED NATIONS (Jul. 04, 2020, 11:58PM), <https://www.animallaw.info/sites/default/files/faostudy.pdf>

### 1.6.7. Sykes<sup>15</sup>

In modern international law, issues relating to animal welfare have emerged as dominant concern. The paper comprehensively discusses the position of animal welfare in international legal principles taking into consideration the differences in culture and the heterogeneity of international society. The historical root in various global cultures of the obligation to protect animal welfare is highlighted. Important aspects, such as the recognition of moral principles in international law against animal abuse, universality of the issue of protection of animals from suffering and cruelty, etc have also been analysed. More particularly, it evaluates the standards of humane treatment adopted under the Canadian law. The paper has definitely helped to identify the broad variety of international animal protection provisions and claims.

### 1.6.8. Tarabout<sup>16</sup>

A fundamental duty “*to have compassion for living creatures*” was introduced by the 42<sup>nd</sup> Amendment to the Constitution of India. The present article analyses how this provision is translated into actual judicial practice and how the notion of compassion applies to animals, which are merely treated as property or things under the Indian legal system. The article mainly emphasises on how the term compassion has been interpreted and applied by the judiciary in India. A discussion of the legal status of animals in the light of the judicial decisions is also made. It specifically analyses the position of animals in India.

A review of the existing literature on the subject matter although has been very helpful in understanding the growing global concern on animal welfare issues and how the international legislative bodies have made persistent effort to minimize animal cruelty and suffering, the existing studies merely elucidates the legislative provisions without an analysis of its defects. While extensive studies on animal welfare legislation adopted by European Union have been done, very limited work has been with regard to the Indian scenario. Moreover, within the Indian legal structure, most literature has dealt only in brief with the anti-cruelty statutes, and where they have been discussed at length, the focus has primarily been on the Central Prevention of Cruelty to Animals Act, 1960. Moreover, none of the literature examines the potential gaps in the legal structure and enforcement mechanism which has majorly contributed to the rising instances of animal cruelty in India.

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<sup>15</sup>Catherine Sykes, *The Beasts in the Jungle: Animal Welfare in International Law*, DALHOUSIE UNIVERSITY (2011) (May.18, 2020, 2:07PM),

[https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1023&context=llm\\_theses](https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1023&context=llm_theses)

<sup>16</sup> Giles Tarabout, *Compassion for Living Creatures in Indian Law Courts*, 10(6) Religions. 1, 8-18 (2019)

Further, most empirical research has been done in the field of wildlife laws in India. Understanding of public attitude on issues on animal cruelty is very pertinent if any change in the legal system at all is desired.

### **1.7. Research Hypotheses**

In the present study, the researcher seeks to prove the following hypothesis:

1. Animals are sentient beings entitled to the basic right to live a life of intrinsic worth, respect and dignity.
2. The anti-cruelty statutes in India are weak because of inherent defects and ineffective enforcement.

### **1.8. Significance of the Study**

Animals have been celebrated in our live and culture from the very beginning. Yet, in recent times, India has become synonymous with the lack of regard and resulting ill-treatment of animals. Blatant violation of international principles to have respect for all forms of life, lack of effective deterrence measures has earned India an international repute for failing the cause of animal rights. With growing recognition of animal sentience, countries across the world are adopting stricter regulations, while the conditions of animals in India continue to remain in a poor state. The protection of animals is a key concern, but law and legal systems have facilitated the exploitation of animals by conferring upon animals the status of property and treating it as an entity capable of being used for human ends and needs.

Since this paper discusses the various legal issues pertaining to animal cruelty, including the challenges related to animal welfare, its relevance in our contemporary times cannot be undermined under any circumstance. The paper at hand aimed at creating a first of its kind compilation of various documents on ‘animal welfare’, like ‘status of animals’, ‘entitlement of animals to rights’, ‘regulatory framework for the protection of animals’, ‘judicial decisions’, ‘public attitude towards various animal welfare issues’, and ‘challenges and recommendations’.

### **1.9. Research Methodology**

The present research work includes both doctrinal and empirical studies. The doctrinal work deals with literature relating to the protection of animals and the acknowledgment of their

rights. Secondary sources like journals, articles, online databases, and reports have been used for the study. Various literatures on international conventions, regional agreements, work of international organizations on animal welfare, constitutional and legislative measures have also been examined. Since the paper primarily focuses on an analysis of regulatory measures on animal cruelty in India, the Prevention of Cruelty to Animals Act, 1960, and the rules made thereunder is studied distinctly.

As a mere study of secondary material cannot prove to be very beneficial, the researcher, therefore, has undertaken an empirical study to identify the grass-root deficiencies leading to increasing peril to animals. This study has also been conducted to ascertain the awareness amongst people as well as, to sketch out the drawbacks existing in the implementation of the laws related to the protection of animals.

The researcher has adopted the questionnaire method as a data collection tool. The questionnaire has been formulated in the form of Google Doc and administered to the general public from non-legal backgrounds as well as the legal background, including students, advocates, teachers, and other employees. The questionnaire contained both basic and legal questions to analyze the response in light of the socio-legal perspective.

The Bluebook 19th edition has been adopted for citing various references used in the study.

## CHAPTER 2

### Property Status and Evolution of Animal Rights

*“Our treatment of animals will someday be considered barbarous. There cannot be perfect civilization until man realizes that the rights of every living creature are as sacred as his own.”* – Dr. David Starr Jordan

At the 2012 annual meeting of the American Association for the Advancement of Science, a group of experts deliberated on the recognition of the rights of dolphins. It was stated that dolphins must be treated as non-human persons whose right to life and liberty should be respected.<sup>17</sup> It was argued that they must be conferred with the same ethical considerations as humans as they possess sufficient intelligence and are self aware.<sup>18</sup> On July 7, 2012, the Cambridge Declaration on Consciousness<sup>19</sup> was signed to recognize the fact that nonhuman animals are conscious beings. Despite such awareness, a classification between human and nonhuman animals is made under law. Nonhuman animals are classified as property and lack legal personhood, whereas human beings are conferred the status of “persons” with the right to own property and to enjoy all the rights accompanying this status, including the right to own certain nonhuman animals. This view is supported by the belief that humans are morally superior beings and as a result entitled to use animals.

This Chapter seeks to study the underlying ideas that lead to conferring upon nonhuman animals the status of property in law and also how it has evolved over time. It seeks to justify the stand that just like humans, nonhuman animals are also right bearing entities and any distinction between the two on the grounds of rationality, intelligence, self-awareness, etc is not tenable. The fact that animals are sentient being is sufficient for recognising them as legal persons entitled to certain basic rights. It seeks to evaluate how in India, the judiciary has taken a step ahead in recognising animals as legal persons.

#### 2.1. Historical Beliefs underlying the Idea of Property Status of Nonhuman animals

- **Early Philosophy**

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<sup>17</sup>John von Radowitz, *Dolphins are ‘people’ say scientist*, BELFAST TELEGRAPH (February 20, 2012),<https://www.belfasttelegraph.co.uk/news/world-news/dolphins-are-people-say-scientists-28716960.html> (last visited May.12, 2020, 7:30AM)

<sup>18</sup>*Id.*

<sup>19</sup> Brian Hoffstein, *Non-Human Consciousness Exists Say Experts. Now What?*, FORBES (July 30, 2012),<https://www.forbes.com/sites/singularity/2012/07/30/non-human-consciousness-exists-say-experts-now-what/#20187e4078e9> (last visited May.12, 2020, 7:45AM)



Steven M. Wise argues that for 4,000 years a legal wall separated human beings and nonhuman animals. While legal personhood is confined to the human side of the wall, legal things are restricted to the other side.<sup>20</sup> In law, a “person” is entitled to certain rights and obligations whereas a thing can be owned as a property.

Western legal theory concerning the status of nonhuman animals is founded upon a combination of religious and secular philosophy. The biblical interpretation of the separate categories of humans and nonhuman animals is based on the premise that God granted man dominion over all nonhuman animals, and dominion is to be understood as ownership.<sup>21</sup> Many traditional Western secular thought regard nonhuman animals as being categorically different from humans, which they usually defend on the grounds that they inferior to humans in terms of their capacities. Some philosophers also justify harming nonhuman animals on the ground of their inferior status and that in any case, human interest must prevail.

Aristotle justified the differential status conferred on humans and nonhuman animals on the ground that humans possess life, a sense of perception and the ability to reason. He concluded that since nonhuman animals are irrational and are controlled by their instincts, it is only fair that they should be used for human purposes.<sup>22</sup> His views were eventually incorporated into religious doctrines. For instance, St. Thomas Aquinas, a Catholic theologian, argued that humans were made in the image of God and possessed rationality and prudence and which is why it is natural to understand life as a hierarchy with humans at the top as masters over nonhuman animals.<sup>23</sup>

- **Cartesian Dualism**

Descartes argued that since nonhuman animals lack linguistic capability, they cannot be treated as sentient being. According to him, reason needs consciousness which is demonstrated by language. Had it not been for their nature of origin, nonhuman animals would have been classified as robots. This view is also known as Cartesian dualism. It holds that non-human animals are inherently different and categorically inferior to humans and

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<sup>20</sup> Courtney Holdron, *The Case for Legal Personhood for Nonhuman Animals and the Elimination of their Status as Property in Canada*, UNIVERSITY OF TORONTO (2013)(May. 10, 2020, 10:20AM) , [https://tspace.library.utoronto.ca/bitstream/1807/42864/1/Holdron\\_Courtney\\_L\\_201311\\_LLM\\_thesis.pdf](https://tspace.library.utoronto.ca/bitstream/1807/42864/1/Holdron_Courtney_L_201311_LLM_thesis.pdf)

<sup>21</sup>*Id.* at 7

<sup>22</sup>*Id.*

<sup>23</sup>*Id.* at 8

therefore the only concern that humans have for them is who they belong to, what roles they serve and how harm to non-human animals will affect other humans.<sup>24</sup>

- **Modern idea of property rights**

Thomas Hobbes idea that the State is an outcome of contract served as basis for exclusion of nonhuman from moral considerations. According to him, life prior to establishment of the political state was nasty, brutish and short. Since, everyone was constantly a threat, any action taken for the protection of oneself was justified. However, it was eventually realized that such a state of affairs was not beneficial and thus people agreed among themselves to form a political state, where they would give up some freedom in exchange for security. Therefore, in his view, agreement amongst rational people to act in a certain way amounts to morality. However, nonhuman animals cannot be a party to the agreement as they are not rational and thus, they remain in the original state of nature, which implies that humans have the right to use them.<sup>25</sup>

- **Immanuel Kant**

The view that nonhuman animals are machines was rejected by Immanuel Kant. He held the opinion that animals are sentient and could suffer. However, since they are not rational or self-aware, human beings owed no moral obligation to them and because they are excluded from the moral community, they can be used to serve human purposes. According to him, there are two types of beings, persons and things. Human beings are considered as person as they are self-governing, rational in their action and can decide what is right and wrong, whereas nonhuman animals are regarded as things.<sup>26</sup>

- **Development in the Idea of Property Status of Nonhuman Animals**

The above mentioned values and philosophies led to nonhuman animals being conferred the status of property under law. However, social pressure to impose limits on the harm caused to nonhuman animals later developed in Western society. Although, these measures marked a positive change in terms of development of legal protection for nonhuman animals, yet they were insufficient to protect their interests.<sup>27</sup> It is in response to the work of Jeremy Bentham that stronger laws for welfare of animals were created. Bentham advocated the idea that for a

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<sup>24</sup>*Id.*

<sup>25</sup>*Id.* at 9

<sup>26</sup>*Id.* at 10

<sup>27</sup>*Id.*

being to have moral significance, sentience is the only required characteristic. The ideas that attached importance to language, self-awareness and ability to reason were denied by him. His ideas led to the greater recognition and support for the 19th CE animal welfare movement.<sup>28</sup>

It is argued by Gray Francione that the welfare position of nonhuman animals is the existing contemporary paradigm. What is meant by this welfare position is that use of nonhuman animals for human purposes is permissible, but there is a moral and legal duty to treat them humanely and to prevent causing unnecessary suffering to them.<sup>29</sup>

- **Charles Darwin**

His ideas marked a significant progress in the way nonhuman animals were viewed as. In his work, *On the Origin of Species* and *The Descent of Man*, he confirmed that there are no categorical distinction between humans and nonhuman animals and that there is no such thing as uniquely human characteristics.<sup>30</sup> According to him, the difference between the two is of degree and not kind. He argued that nonhuman animals possess the ability to form general concepts and abstract thoughts. Darwin's discoveries and further studies supported the view that nonhuman animals live in complex social systems and possess the ability to process information relevant to their life circumstances. Research on nonhuman animals have also confirmed that they possess intelligence, are self-aware, have the ability to reason, mourn for deceased companion and family members, have intricate linguistic capabilities, shows signs of pain, produce similar biological and physiological reaction as humans when subjected to pain and act altruistically. These findings led to the development of animal rights movement in the 1960s.<sup>31</sup>

In Oxford, a group of scholars, including Richard Ryder, started to see the sort of cruelty nonhuman animals were subjected to and considered it as unacceptable. Ryder became an advocate for the rights of nonhuman animals. Influenced by the work of Ryder, Peter Singer in his writings, *Animal Liberation* advocated the idea there is no rational justification for measuring ethically acceptable behaviour simply by counting humans. He brought to greater public attention, Ryder's definition of speciesism, which refers to discrimination against nonhuman animals on the grounds of morally irrelevant distinction that they are not a

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<sup>28</sup>*Id.* at 11

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*

<sup>31</sup>*Id.* at 12

member of human species. Principle of equal consideration of interest should according to him, include nonhuman animals because they share the most significant interest that deserves to be considered, which is sentience.<sup>32</sup>

## **2.2. Justification for granting Moral and Legal Personhood to Nonhuman Animals.**

It is generally assumed that human beings are superior to nonhuman animals and therefore it is morally justified to give more weightage to the interest of human beings in comparison to that of nonhuman animals. It is stated that the distinctions between humans and nonhuman animals entitle humans to legal personhood as these differences are morally important characteristics for determining one's entitlement to personhood, and rights.<sup>33</sup>

However, it is argued that such a ground of distinction is not justified and that there are no such morally relevant characteristics unique to human beings. Characteristics, such as linguistic abilities, intelligence and rationality are not sound justification to deny nonhuman animals the status of moral and legal personhood as they also possess these characteristics in varying degrees.<sup>34</sup> Any arguments that supports human's entitlement to a superior status on the ground that nonhuman animals do not exhibit these characteristics to the same extent as humans is not justified, as it establishes human capacities as a standard. Be it mentioned here that not even humans possess these characteristics in equal degrees, for instance, children and incompetent persons do not possess the same degree of rationality, intelligence, etc as competent adults and yet, they are entitled to moral personhood. Thus, it follows that any being that possess these characteristic to a minimum level is entitled to moral personhood. Studies in this field, as has already been specified in the preceding section is a sufficient proof that nonhuman animals exhibit these characteristics to a greater capacity that the minimum level and therefore, they that they should be included in the moral community.

To disregard nonhumans on the ground of rationality isalso not justified. There is no scientific proof to show that nonhuman animals are not rational beings. In fact, nonhuman animals do exhibit many similar emotional responses as humans and also possess the ability to think. Further, the applicability of "rationality" as a decisive factor is itself not tenable. The term is used in many senses, for some it refers to the ability to see and respond to relationships, while for others it refers to possession of capabilities of introspection and self-

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<sup>32</sup>*Id.*

<sup>33</sup>*Id.* at 18

<sup>34</sup>*Id.* at 19

awareness, and the ability to engage in self-analysis. Neither definition of the term results in a characteristic that differentiates between humans and nonhuman animals morally. Further, nonhuman animals possess the ability to see and respond to relationships as evidenced by the fact that this is the way they learn. Moreover, their behaviour is influenced by their past experiences. The definition therefore, cannot be distinguishing ground between humans and nonhuman animals.<sup>35</sup>

Any argument that support human's entitlement to moral consideration on the ground that they possess linguistic abilities and are therefore superior is not justified.<sup>36</sup> It is argued that there are substantial evidences to show that nonhuman animals also possess these abilities. For instance, chimpanzees possess the ability to learn and teach other chimpanzees sign language. Dolphins were also discovered to use labels in natural communications to address social companions by assigning different clicks to them. It is also obvious that some nonhuman animals understand certain signals, or possess linguistic abilities that humans do not understand. Therefore, to disregard nonhuman animals right to moral considerations on such a ground is fundamentally flawed.

It is argued that sentience itself is a sufficient condition for acceptance of nonhuman animals as moral beings, entitled to value and respect. Sentience here refers to the ability to feel pain and suffering and experience subjective sensations. Mark Rowlands is a proponent of this view. According to him, possession of sentience implies that nonhuman animals have interests. Interests here imply the desire, preference or want to continue to live. A sentient being certainly has an interest in life as sentience is a means to the end of continued existence. The feeling of pleasure and pain are also interest for them as it is something that others or their own actions can help or hinder. Thus, any argument that only humans or beings with similar self-awareness have an interest in continuing to live is baseless. The presence of sentience in nonhuman animals is a clear indication of their interests, which indeed entitles them the right to be counted as moral person. As moral beings, their interest should be equally considered.<sup>37</sup> This principle of equal consideration of interest has also been advocated by Peter Singer in *Animal Liberation*. According to him, excluding nonhuman animals from any consideration of interest based solely on species is committing

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<sup>35</sup>*Id.* at 21

<sup>36</sup>*Id.* at 23

<sup>37</sup>*Id.* at 26

speciesism.<sup>38</sup> Speciesism, according to Richard Ryder, is an unjustified discrimination against nonhuman animals, a form of prejudice that shows selfish disregard to the interests and sufferings of others. Singer's view is also supported by Angus Taylor's claim that the moral community should be characterised as comprising of all those beings whose interests should be taken into account in the same way as our similar interests. His view does not suggest that all beings actually have the same interests, but what is being meant is that interest of that being as a member of the moral community are entitled to same consideration as the interest of humans.<sup>39</sup>

The principle of equal consideration of interest does not however imply that it is illegitimate at certain times to give preference to the interests of some beings over others. It simply implies that like cases should be treated alike, thereby justifying the stand that all sentient beings, regardless of their species, have the right to have their interest considered.<sup>40</sup>

Ryder's theory of painism also justifies sentience as a sufficient characteristic for having one's interest considered and be treated alike. Painism builds on the idea that it is unfair to cause suffering to others, and all things having the capability to experience suffering must be included within the scope of morality. The main goal of painism is to enhance the individual happiness of all entities capable of experiencing suffering by trying to minimise their individual pains.<sup>41</sup> He defines the capacity to feel pain as the ability to experience any kind of suffering including cognitive, sensory or affective suffering. This capacity entitles a nonhuman animal for moral personhood and justifies the claim that their pain needs to be equally considered like that of any other being capable of experiencing pain regardless of species. Excluding nonhuman animals from moral considerations because they are not human is to be guilty of speciesism.<sup>42</sup>

It is also argued that a being with limited degree of self-consciousness is deserving of respect irrespective of its ability to reason about moral principles.<sup>43</sup> If an entity has the capacity to act in accordance with its preferences then it deserves to be treated with respect. Therefore, nonhuman animals that are aware of pain and sufferings are morally important and are thus entities that deserve the corresponding rights and respect flowing from personhood. Since it

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<sup>38</sup>*Id.*

<sup>39</sup>*Id.*

<sup>40</sup>*Id.* at 27

<sup>41</sup>*Id.*

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

sentient nonhuman animals can be said to be moral persons, this gives them the right not to be treated as property. The status of nonhuman animals as property cannot be maintained because as members of the moral community they are entitled to equal consideration of interest, and the property status in such a case is inconsistent. If nonhuman animals remain the property of humans, the principle of equal consideration will have no practical application as their interest will always be considered far less important than that of their owners. Sentient nonhuman animals are entitled to legal personhood as their interests are morally significant and are capable of being represented in law. The principle of equal consideration of interests requires that they be represented in law.

### **2.3. Status of Nonhuman Animals in India**

With the enactment of the PCA Act in 1960, India began its efforts to promote animal welfare and ensure animal safety. There has been a sustained movement in the country toward animal welfare since. It is evidenced by the creation of the Animal Welfare Board in 1962 and the growing importance of AWOs. As a result of these events, considerable change has been made, as seen in the implementation of numerous legislation and regulations such as those related to the care of performing animals and the prohibition of cosmetic animal testing. The intervention of the judiciary in relation to animal welfare and protection issues has also increased with the expansion and evolution of the debate. Indian courts have generally adopted liberal and welfare-oriented approaches to these matters.

In **Narayan Dutt Bhatt v. Union of India and Ors.**<sup>44</sup>, the Court held that, “*animals cannot be treated merely as a property. The animals including avian and aquatics have a right to life and bodily integrity, honour and dignity.*<sup>45</sup> *Compassion must be shown towards all living creatures. Animals may be silent but we as a society must speak for them. Animals should not suffer pain or agony. Animal abuse also causes them psychological distress. Every animal in Hindu Mythology is associated with God. Like humans, animals breathe and have emotions. They need food, shelter, medical care, etc.*”<sup>46</sup>

In **Karnail Singh and Ors.v. State of Haryana**<sup>47</sup>, the Court recognized, “*all animals in the animal kingdom, including avian and aquatic species as legal entities having a distinct*

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<sup>44</sup> Narayan Dutt Bhatt v. Union of India &Ors, MANU/UC/0431/2018

<sup>45</sup>*Id.*

<sup>46</sup>*Id.*

<sup>47</sup>Karnail Singh and Ors. v. State of Haryana, (2019) S.C.C. OnLine 704

*persona with corresponding right, duties and liabilities of a living person.*<sup>48</sup> *All the citizens throughout the State were declared to be person in loco parentis (responsible for a child in the absence of a parent) as the human face for the protection and welfare of animals.*<sup>49</sup>

It is argued that legal personality plays a significant role in making things count in the eyes of law. Conferring legal personality on rightless objects or beings brings with it legal recognition that these objects or beings have worth and dignity in their own right. Until a rightless entity is attributed personality, anyone holding right at the time would conceive it as nothing but a thing for its own use. The paradox is that we may be reluctant to extend legal personality to nonhuman animals because of our inability to value them. However, until we grant them the rights, we will never be able to rightfully recognise their intrinsic worth and dignity. Granting rights to new entities usually seems an absurd idea before the move is actually made, as we generally have the notion that rightlessness of rightless beings to be natural and not a legal convention that works in favour of any status quo. It is never easy to try and change the status quo. However, persistence is essential because the term “person” is not merely a descriptive label but it carries a certain moral standing which is essential to enable us to look at animals as beings worthy of the basic rights which is otherwise taken as granted. Law can indeed play a pivotal role in shaping society’s attitude towards animals. It can promote the development of compassionate and less exploitative social attitudes and ensure that interests of nonhuman animals are better protected than under the prevailing system.

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<sup>48</sup>*Id.*

<sup>49</sup>*Id.*



## CHAPTER 3

### International Legal Regime and Animal Welfare

International conventions are the principal means to protect and safeguard the plight of animals on the international plane. They not just create obligations but also impact the development of action plans by the nation states in the field pertaining to the welfare of animals. There are two factors that have influenced the introduction on animal matters in the international discourse, first being the nature of problem and second the nature of animal.<sup>50</sup> The nature of the problem assumes a central position as either the interest of multiple states is concerned or the issue is a matter of concern of the international community. Therefore, it implies the internationalization of how animals are reared, slaughtered, handled, bred, etc. On the other hand, the nature of animal is another important factor, as animals may either be migratory or considerably moved by humans. These two factors are closely linked as it brings forth the global character of issue: global goods require global regulation.<sup>51</sup>

International conventions for protection of animals exist with regard to a range of issue. It can be briefly discussed as follows:

#### **3.1. International Convention for the Regulation of Whaling.**

Introduced as early as in 1946, the Convention is one of the foremost international legislation addressing welfare of animals. It was adopted as a means to promote the conservation of whale stocks for the orderly development and benefit of the whaling industry. At present, it has 88 parties. It includes a Schedule and obligation under it applies to “factory ships, land stations, whale catchers and to all waters in which whaling is prosecuted.”<sup>52</sup>

The IWC is the main institutional body established under the Convention. It is entrusted with the function to maintain and increase the stocks of whale and for this purpose, undertake activities such as researching, examining, gathering and reviewing scientific evidence and methods.<sup>53</sup> It is empowered to adopt legislations and make recommendations on the use and protection of whale stocks and other related matters. Although no specific guidelines have been adopted under the Convention or the Schedule to address issues related to welfare, but the IWC is empowered under Article 5(1) (f) to monitor the devices that may be used for

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<sup>50</sup>Blattner, *supra* note 9, at 23

<sup>51</sup>*Id.* at 24

<sup>52</sup> PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 592( 2<sup>nd</sup> ed. 2003)

<sup>53</sup>*Id.*

hunting, implying the recognition of humane considerations.<sup>54</sup> It has also been actively engaged in research related to techniques used for hunting, with a view to promote the development of humane methods of hunting whales, so that the pain and suffering inflicted at the time of death can be reduced. It has also from time to time issued recommendations to restrict the use of inhumane methods. Thus, use of cold-grenade harpoon for commercial hunting was banned in 1981 and instead, use of harpoons that exploded on contact with the target was encouraged, to reduce the time of death.<sup>55</sup> Given the threatening decline of whales and the resulting worldwide protests, IWC priorities have gradually shifted from preserving whaling to protecting and, eventually, preserving whales by establishing moratoria on whales.<sup>56</sup>

**Comments:** The IWC has consistently struggled to develop an effective protocol for the regulation of whaling despite its comprehensive goals and theoretically sound framework. Although the Commission's role in bringing to global attention the plight of whales has been very instrumental, certain rules have left it unable to implement its own regulations. The opt-out clause, for example, allows a country that disagrees with a specific IWC regulation to suspend its enforcement in all member states for three months, and to exclude itself entirely from the regulation by merely filing a timely objection. Clearly, this clause represents the conventional principle of international law that a sovereign State is bound only to that which it has expressly agreed. The clause, in fact, has granted *carte blanche* authority to whaling countries to disregard the rules imposed by the IWC, rather than to face potentially adverse consequences. Member States have historically used this provision to circumvent quotas otherwise applicable, deny classification of whaling stocks where it could potentially decrease whaling operations and to disregard humane killing standards imposed by the IWC. In addition to this, under IWC Rules and the moratorium, hunting of whales is prohibited merely for commercial purposes, not scientific research. Such an exemption has undermined IWC regulations and rendered the conservation decisions ineffective as countries are permitted to conduct lethal research on whales, and utilize its meat in any manner as long as it is not exported outside the researching country. Further, the enforcement of the Convention is left entirely in the hands of the Member States. There exists no procedure or mechanism through which the IWC can issue sanctions directly for violation of the Convention or monitor the activities of whaling ships in the water under its auspices. As a consequence,

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<sup>54</sup> Sykes, *supra* note 15, at 96

<sup>55</sup> *Id.*

<sup>56</sup> Blattner, *supra* note 9, at 25

unregulated whaling activities and misleading reporting occur without the Commission's knowledge.

### **3.2. Convention on International Trade in Endangered Species of Wild Fauna and Flora.**

It is an international instrument governing the international trade in specimen of listed species.<sup>57</sup> It was formulated in response to unregulated international wildlife trade, which threatened the survival of over-exploited species.<sup>58</sup>

Currently, approximately 5,800 species of animals are protected from over-exploitation through international trade under the treaty and its appendices. Three different level of protection, depending upon the level of endangerment is established under the Convention.<sup>59</sup> Red Panda, for instance, is considered threatened with extinction and affected by trade and is therefore protected under Appendix I which provides the highest level of protection.

The Convention establishes a licensing system based on permits and certificates, to regulate the trade of species covered under it. A prerequisite for issuance of such documentation is that the Managing Authority authorised by the State concerned must be “satisfied that the specimen will be so prepared and shipped as to reduce the risk of injury, damage to health or cruel treatment.”<sup>60</sup>

The Parties are conferred with the responsibility to ensure that, “all living specimens during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.”<sup>61</sup> It is also provided that if specimens are seized in compliance of the provisions of the Convention, they can be put in a rescue centre, which refers to “an institution designated by the Managing Authority to look after the welfare of living specimens.”<sup>62</sup>

A draft resolution was submitted by the Gambian delegation at the 1983 COP to CITES, proposing that the mandate requiring “risk of cruel treatment” to be reduced during the preparation and shipment of animals be extended to include the way in which the wild animals are captured, and where cruel and painful devices for trapping specimens are used,

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<sup>57</sup> ULRICH BEYERLIN & THILO MARAUHN , *INTERNATIONAL ENVIRONMENTAL LAW*, 184 (2011)

<sup>58</sup> Sykes, *supra* note 15, at 90

<sup>59</sup> Blattner, *supra* note 9, at 26

<sup>60</sup> CITES. art.3(2)

<sup>61</sup> *Id.* art.8(3)

<sup>62</sup> *Id.* art.8(4)(b) and 8(5)

export permits must not be granted. This proposal was, however, not adopted because of it being outside the scope of the Convention, but the discussions on this matter led to the formulation of a new Convention, namely the Convention for the Protection of Animals.

**Comments:**The Convention only guarantees in theory, a fairly humane treatment of specimens of protected species. Accomplishing such a goal in reality is actually difficult, especially because of the insufficient technical training of the custom officers and other officials, so as to allow them to either identify protected species or to comprehend that, in a specific case, the treatment of animals is not meeting their adequate welfare needs. Moreover, Article 3(2)(c) and Article 4 stipulates the conditions under which export permit may be granted for transportation of live wildlife protected under the Convention. It states that the exporting State must assure that in preparation and shipping of any living specimen, the risk of injury, damage to health or cruel treatment is minimized. This condition is usually met by simply adhering to the shipping requirements stipulated by the International Air Transport Association. However, the Parties have failed to explicitly define as to what falls within the ambit of cruel treatment. In addition, by focusing solely on international dimension to deal with more local concerns, the Parties have failed to expand the welfare concern for the capture and management of wildlife during domestic transit. Moreover, although the Convention has been effective in protecting endangered species, non-endangered species, and more specifically domesticated animals have been overlooked.

### **3.3. Antarctic Treaty System**

Animals in the Antarctic region are protected under a comprehensive body of treaties under the ATS.<sup>63</sup>In 1964, the first formal extension made to the Treaty was the **Agreed Measures for the Conservation of Antarctic Fauna and Flora**. It sets out guidelines for the treatment of Antarctic flora and fauna, and introduces measures to designate “specially protected areas” and to list “specially protected areas” as requiring extra protection. It also introduces a permit system which allows only a specific numbers of mammals and birds to be killed or captured for particular purposes deemed appropriate by Antarctic management.<sup>64</sup>

In 1991, the **Protocol on Environmental Protection to the Antarctic Treaty** was adopted. It is also known as the Madrid Protocol. It identifies Antarctica as a “natural reserve, devoted to

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<sup>63</sup> Helena Ellinor Widolf, *Animal Rights and the Antarctic Treaty System*, HUMAN ECOLOGY FORUM, (May.10, 2020, 5:58PM), <https://www.humanecologyreview.org/pastissues/her92/92widolf.pdf>

<sup>64</sup>*Id.* at 62

peace and science” and lays out guidelines for the protection of environment.<sup>65</sup> It contains six annexes. Annex II of the Protocol primarily deals with protection of faunal species.<sup>66</sup> Under Article 3 of the annex, taking or harmful interference with Antarctic mammals and birds is prohibited, except in accordance with a permit which may be granted only under special circumstances, such as for scientific study, educational purposes or for providing specimens to museums, zoological and botanical gardens. Permits for species of native animals and birds, designated as “specially protected species” under the annex may only be granted under exceptional circumstances. The annex also contains guidelines on the number of animals that may be taken and the conditions under which they may be taken.<sup>67</sup> It provides that all mammals and birds shall be taken in a manner that involves least degree of pain and suffering practicable.<sup>68</sup>

The **CCAMLR** primarily deals with the conservation of Antarctic marine life. It has adopted the ecosystem based management approach with the objective to ensure rational use and conservation of different marine species and to maintain the integrity of the marine environment.<sup>69</sup> To promote the protection of marine living resources and ensure fisheries management in the South Ocean, the CCAMLR has adopted a comprehensive set of conservation measures.<sup>70</sup>

Since the 1960s, seal hunting has raised considerable international controversies. In response to the rising concerns over commercial exploitation of seals and the inhumane conditions under which they slaughtered, in 1972, the **CCAS**, also known as the “Antarctic Seals Convention” was adopted. Article 3 (1) states that the Convention includes an Annex of measures taken by the Parties and specifies that the Parties may adopt “other measures with respect to the conservation, scientific study and rational as well as humane use of seal resources.”<sup>71</sup> The Scientific Committee on Antarctic Research is empowered under Section 7 (a) of the Annex to recommend measures to ensure that seals are killed or captured in a manner that is quick, painless and efficient. At the same time, it directs the Parties to consider

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<sup>65</sup>*Id.* at 59

<sup>66</sup>*Id.*

<sup>67</sup>*Id.*

<sup>68</sup> Sykes, *supra* note 15 , at 93

<sup>69</sup>*About CCAMLR*, Commission for the Conservation of Antarctic Marine Living Resources (May.12, 2020, 10:04AM), <https://www.ccamlr.org/en/organisation>

<sup>70</sup>*Conservation Measures*, Commission for the Conservation of Antarctic Marine Living Resources (May.12, 2020, 10:04AM), <https://www.ccamlr.org/en/conservation-and-management/conservation-and-managment>

<sup>71</sup>*Convention for the Conservation of Antarctic Seals (1972)*, British Antarctic Survey (May. 12, 2020, 1:23 AM), <https://www.bas.ac.uk/about/antarctica/the-antarctic-treaty/convention-for-the-conservation-of-antarctic-seals-1972/>

the recommendations of the Committee while adopting rules relating to killing and capturing of seals.<sup>72</sup> Section 7 (b) prohibits the Parties from killing or hunting seals, except for scientific research, provided that they are taken in a limited amount. In addition to this, the research must be consistent with the aims and principles set forth in the Convention, including studies relating to effectiveness of sealing methods from the perspective of management and utilizing Antarctic seal resources humanely and rationally for conservation purposes.<sup>73</sup>

**Comments:** The mandates of ATS limit all human activities within the Antarctic region. Thus, it is within the ambit established by the legal provisions under the ATS that all human-animal interaction in Antarctic and sub-Antarctic regions must function. However, very little reference is made of Antarctic animals within the Treaty itself. For example, under Article IX, contracting parties are required to meet to exchange information, consult together and make recommendation with respect to the measures for preservation and conservation of Antarctica living resources to their Governments. It is perhaps the only statement within the entire Treaty containing a reference to the management of Antarctic animals. The Treaty does not stipulate any guidelines on how the preservation or conservation of the ‘living resources’ must be approached, or what essential factors must be considered in formulating such measures. Moreover, reference to Antarctica’s native wildlife as ‘living resources’ shows that during the formulation of the Treaty, native wildlife was viewed mainly as exploitable goods for human beings. Any recognition that existed beyond this framework at that time was not considered significant or appropriate enough to consider within the Treaty. This language is still used under the Treaty as well as within the Treaty System.

Even though, the restrictions placed under the Agreed Measures prevent the killing of animals and birds belonging to a particular species, protection of individual animals belonging to these groups cannot be assured as they runs the risk of being selected by permit-holders. Thus, the survival of individual animals is dependent upon the selection of permit-holders, and not because right to life has been granted to such animals. The right of individual animals to life has not been incorporated under the permit system introduced by the Agreed Measures.

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<sup>72</sup>*Annex*, Convention for the Conservation of Antarctic Seals (May 12, 2020, 1:45 AM), [https://www.ats.aq/documents/recatt/Att076\\_e.pdf](https://www.ats.aq/documents/recatt/Att076_e.pdf)

<sup>73</sup>*Id.*

Moreover, the major thrust of the Madrid Protocol is not on the regulation of exploitation to environment but on environmental protection. It explicitly states that activities causing harm to the distribution, productivity of species or species population must be avoided, and that activities that may cause further risk to endangered species or population of those species must be prevented. The threat to the lives of individual animals is yet again not recognised. However, the permit system under the Protocol is significant in terms of rights of individual animals. It places restriction on handling of animals, and thereby acknowledges the experiences of individual animals, as stress caused during handling is mainly experienced on the individual level. Article 3(6) requires all native mammals and birds to be taken in a manner that involves the least degree of pain and suffering practicable. This imposes an obligation upon the permit-holders to give due consideration to the pain of animals while conducting any research activity. While the killing of animals under specified conditions is permitted under the Protocol, by implementing measures that seek to minimize pain and suffering, the sentience of animals has been generally recognised. Nevertheless, this does not afford animals with their just entitlements.

In addition to this, while under the CCAMLR, favourable provisions for the conservation of marine animals are stipulated, its main purpose is to control commercial fishing. Marine animals are referred to as “living resources” under the Convention, thus, treating it not as individuals with their own rights, but merely as exploitable entities.

Further, under the CCAS no favourable change in terms of animal rights was introduced. Instead, it was step backward in the realm of animal rights and welfare as it permitted the harvesting of certain specified species and number of seals on which restriction was already imposed by the Agreed Measures.

### **3.4. United Nations Convention on Biological Diversity**

It is a multilateral treaty and was acceded at the Rio "Earth Summit".<sup>74</sup> The Convention has been widely supported and has 193 parties. Its adoption signalled a paradigm change in the sphere of animal protection. Its provisions are motivated by the aim of promoting a balance between development and the need to preserve biological diversity through sustainable and equitable resource utilization. Therefore, it is commonly understood that instead of protecting different species of animals, it sees biodiversity in its entirety, with all its constituent parts.

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<sup>74</sup>United Nations, *Convention on Biological Diversity* (May. 21, 2020, 8:10 AM), <https://www.cbd.int/doc/legal/cbd-en.pdf>

However, the principles of humane treatment of individual animals can be said to be implicitly recognised, as the Convention affirms a commitment to show respect for life, especially non-human life. In its preamble, the CBD upholds “the intrinsic value of biological diversity” and acknowledges its instrumental value for human purposes.<sup>75</sup> Since biodiversity is an abstract term, it has been suggested that the terminology be interpreted to imply that intrinsic value exists in all those entities whose diversity the Convention aims to protect.<sup>76</sup>

In addition to this, in 2004, the COP to the CBD adopted the “Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity.”<sup>77</sup> The Guidelines requires the participation of various stakeholders to ensure effective enforcement of the Convention’s objectives and urges Parties to “promote more efficient, ethical and humane use of components of biodiversity.”<sup>78</sup>

**Comments:**The CBD, which seeks to encourage environmental conservation and the biodiversity found therein, does not apply specifically to the wellbeing of individual animals. Although the environmental viewpoint of the importance of wildlife as part of habitats is well known, there is still little emphasis on the living conditions and killings of individual animals by humans worldwide. Under the provisions of the CBD, the question of animal is never once dealt with and is, at best an incidental consideration in the corpus of decisions taken by its Members to facilitate the enforcement of the Convention.

### 3.5. Universal Declaration of Animal Rights

Inspired by the Declaration of Human Rights of 1948 and with a view to recognize fundamental rights of animals, the UNESCO proclaimed the UDAR on October 15, 1978. The UDAR is premised on scientific progress and human conclusions in addressing their relationships with other species must derive from this progress. Based on scientific progress, it proposes moral code built on reverence for life in its universality.<sup>79</sup>

The Preamble of the Declaration recognizes the natural rights of animals to live. It states that the very prerequisite of coexistence is an acceptance by the human beings of other animal species’ right to live. The sheer denial of these inherent rights results in considerable harms to

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<sup>75</sup>Sykes, *supra* note 15, at 92

<sup>76</sup>*Id.* at 93

<sup>77</sup>Secretariat to the Convention on Biological Diversity, *Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (2004)*(May.12, 2020, 10:10AM) , <https://www.cbd.int/doc/publications/addis-gdl-en.pdf>

<sup>78</sup>*Id.* at 18

<sup>79</sup> Neumann, *supra* note 13, at 96



nature and encourages crime against animals at the hands of human beings. It goes on to state that a man's respect for another men and his respect towards animals are interlinked.<sup>80</sup> Humans from their very childhood must be "taught to observe, understand, respect and love animals."<sup>81</sup>

The Declaration, under Article 1 affirms that "all animals are born with equal claim on life and the same rights to existence."<sup>82</sup> It summarizes the Declaration's core philosophy, i.e., all species equally have an inherent right to life. This was a huge breakthrough since previous treaties and charters and treaties had never confirmed this right before.

Article 2 affirms that "all animals are entitled to respect". Although the term 'respect' has not been defined, Article 2(2) states that extermination and exploitation of "other animals" infringes the right. Notably, the Article also states that "man as an animal species shall not arrogate to itself the right to exterminate or inhumanely exploit other animals."<sup>83</sup> It states that it is the responsibility of human beings to use his knowledge for the welfare of animals.<sup>84</sup> The Declaration forbids mistreatment of animals and grants them the right not to be subjected to inhumane acts. It states that, "if an animal is to be killed, it must be instantaneous and without distress".<sup>85</sup>

With respect to wild animals, the prerogative to live in their natural environment, be it land, water, or air, free from any interference and the right to procreate is affirmed under the Declaration. Any deprivation of this liberty is viewed as a violation of the right, even if it is for educational purposes.<sup>86</sup> With respect to the right of domesticated animal, it states that such animals are entitled to live and grow at a natural pace and under such conditions and freedom that is unique to their species. Interference of any kind by man for its own benefit is considered as a violation of this right.<sup>87</sup> The Declaration affirms the right of animals chosen as companions "to complete their natural life span"<sup>88</sup> and declares the "abandonment of an animal as a cruel and degrading act."<sup>89</sup> It states the rights of animals used in transport, agriculture and other works by human beings, and declares that "all working animals are

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<sup>80</sup>Neumann, *supra* note 13, Appendix A, Universal Declaration of Animal Rights, 1978, at preamble

<sup>81</sup>*Id.*

<sup>82</sup>*Id.* art. 1

<sup>83</sup>*Id.* art.2(2)

<sup>84</sup>*Id.*

<sup>85</sup>*Id.* art.3

<sup>86</sup>*Id.* art.4

<sup>87</sup>*Id.* art.5

<sup>88</sup>*Id.* art.6(1)

<sup>89</sup>*Id.* art.6(2)

entitled to a reasonable limitation of the duration and intensity of their work and to the requisite nutrition and rest.”<sup>90</sup> Where any research or experimentation involves physical or mental suffering to the animal involved, it directs the use and development of replacement techniques.<sup>91</sup> The Declaration condemns the rearing, transporting, killing, etc of animals used in food industry in a manner that causes suffering,<sup>92</sup> and prohibits the exploitation and use of animals in exhibition and shows or for amusement of human beings.<sup>93</sup>

Biocide, or in other words, any act that involves the deliberate killing of animals is declared as a “crime against life”,<sup>94</sup> while, killing in large numbers of wild animals or the destruction or pollution of their natural environment is genocide, and constitutes a “crime against the species.”<sup>95</sup> The Declaration states that deceased animals must be treated respectfully, and also condemns the display, except for educational purposes, of violent scenes involving animals in movies and television.<sup>96</sup> Further, it proclaims that “the rights of animals, like human rights, should enjoy the protection of law,”<sup>97</sup> thereby, acknowledging the need for a regulatory framework to safeguard the rights of animals so set out under it. It also recognises the affirmative role of defenders of animal rights movement and states that, “they should have an effective voice at all levels of government.”<sup>98</sup>

However, due to constant criticism regarding the vagueness of the language used in the 1978 Declaration, especially under Article 9, the need to adopt a more scientifically precise, consistent and stringent legislation was felt. Therefore, a revised version of Declaration, which is shorter and represents fundamental changes, was adopted on October 21, 1989.<sup>99</sup>

Having recalled that “all living beings possess natural rights,” the revised text reaffirms the fundamental principle of equal rights of all species to life, but at the same time acknowledges that “any animal with a nervous system has specific rights.”<sup>100</sup>

In addition to reaffirming the various other rights set out under the 1989 Declaration, the revised text signifies an important step forward as it asserts the right of animals to be

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<sup>90</sup>*Id.* art. 7

<sup>91</sup>*Id.* art. 8

<sup>92</sup>*Id.* art. 9

<sup>93</sup>*Id.* art. 10

<sup>94</sup>*Id.* art. 11

<sup>95</sup>*Id.* art. 12

<sup>96</sup>*Id.* art. 13

<sup>97</sup>*Id.* art. 14 (2)

<sup>98</sup>*Id.* art. 14(1)

<sup>99</sup> Neumann, *supra* note 13, at 100

<sup>100</sup>*Id.* Appendix B, The Universal Declaration of Animal Rights (1989 version), at preamble

recognised as legal persons under law. Article 9 explicitly states that “the specific legal status of animals and their rights must be recognized by law” and that “the protection and safety of animals must be represented at the level of governmental organisation.” The right to well-being has also been implicitly recognised under the new text. For example, Article 5(1) affirms the right of an animal dependent on man to proper maintenance and care. In addition, the text also states that all forms of animal breeding and use must respect the species-specific physiology and behaviour.<sup>101</sup> The revised text, in light of the immense cruelty meted out to wild animals prohibit the “hunting and fishing activities practiced as a pastime” and their use “for reasons that are not vital.”<sup>102</sup>

Under the revised Declaration, the provision of the earlier text which under Article 9 provided that “where animals are used in the food industry they shall be reared, transported, lairaged, and killed without the infliction of suffering” has been removed. Thus, under the revised text no provision on slaughtering of animals for human consumption is made. However, use of animal for food is not forbidden, but is implicitly permitted; the inference can be drawn from combined interpretation of Article 3(2) which states “if it is necessary to kill an animal”, and Article 5(3), which recognises “all form of breeding”.

The text of the revised Declaration is more succinct and specific on some issues. For instance, the provisions of the former Declaration contained in articles 5, 6, and 10 have been cumulated in a more detailed and consistent manner under the revised text into a single article, i.e. Article 5.

Two additional texts, “The Spirit of the Universal Declaration of Animal Rights” and “The Biological Foundation of the Universal Declaration of Animal Rights” complement the revised Declaration.<sup>103</sup>

**Comments:** The language used in the Declaration is vague. It extends specific rights to animals with nervous systems, but the plausible reason for limiting rights in this manner is not justified. Further, although it states that “animals are entitled to respect”, the term “respect” has not been defined. It is also ambiguous with respect to the notion of killing animals for food. Further, because it has not been acceded by any international organization, it has limited practical scope and legal authority. Nevertheless, the Declaration marks a

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<sup>101</sup>*Id.* art.5(3)

<sup>102</sup>*Id.* art.4(2)

<sup>103</sup>*Id.*

significant milestone on the long path of redefinition of relationship between humans and animals and of animals' legal status. For the first time, the Declaration proposed a moral code for humans.

### 3.6. International Convention for the Protection of Animals

The International Committee for Convention for the Protection of Animals proposed the ICPA on April 4, 1988.<sup>104</sup> The Convention includes a number of clearly specified statutory guidelines, organizational and implementation provisions; a number of relevant protocols dealing with particular animal protection concerns in greater detail; and annexes or appendices setting out particular standards of treatment and forbidden devices.<sup>105</sup>

A list of fundamental principles is enshrined under Article 1. It states that “both humans and animals co-exist within an inter-dependent ecosystem and share an evolutionary heritage and that human, as moral beings are obligated to behave reasonably towards animals.”<sup>106</sup> It also states that animals should not be “unnecessarily killed or subjected to cruelty or unnecessary suffering.”<sup>107</sup> Article 2 contains definitions of key terms used in the Convention while subsequent articles emphasise on important areas of animal welfare concern in general.<sup>108</sup> Article 3, for instance, provides that all necessary measures “to minimize and control the capture or killing of wildlife” must be taken. Article 4 provides that scientific methods of environmental management should be adopted with a view to reduce damage to wildlife and ensure the conservation of wildlife habitat. Article 6, requires Parties to take all necessary measures during the transportation of animals “to prevent cruelty and to reduce the suffering to the minimum.” Article 7, deals with the plight of companion animals and requires Parties to take necessary measure to “protect companion animals from cruelty” and ensure that they are given the needed care.<sup>109</sup> The Protocols, namely, “Companion Animal Protocol, Protocol for the Care of Exhibited Animals, Protocol for the Taking of Wild Animals, and Protocol for the International Transportation of Animals”<sup>110</sup> deals more comprehensively with the obligations enshrined under various provisions of the Convention.

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<sup>104</sup>*International Convention for the Protection of Animals*, ANIMAL LEGAL & HISTORICAL CENTER (May.15, 2020, 9:07AM), <https://www.animallaw.info/treaty/international-convention-protection-animals>

<sup>105</sup> M. J. Bowman, *The Protection of Animals under International Law*, 4 Conn. J. Int'l L. 487, 498 (1989)

<sup>106</sup>ICPA, *supra* note 79, at art.1

<sup>107</sup>*Id.* art.1(2)

<sup>108</sup>*Id.*

<sup>109</sup>*Id.* art.7

<sup>110</sup>ICPA, *supra* note 73

**Comments:**The Convention marks a considerable progress in the area of international policy and legal concern for animals. However, the Convention primarily seeks to establish an international community for issues with regard to animals and the terms of the treaty and its protocols are limited to such animal welfare matters as is practicably attainable at a given time. Moreover, it has not yet been ratified. Private parties and NGOs do not possess the capacity to call for negotiations of a treaty, and the task has to be undertaken by a nation state. But due to the negative condition of much of the global economy, the consideration and adoption of this Convention has faced severe setbacks.

### 3.7. Universal Declaration of Animal Welfare.

The WSPA advocated the initial text of UDAW in June 2000, at the Animals 2000 World Congress held in London.<sup>111</sup> Fundamental changes were introduced in the proposed declaration by the Intergovernmental Conference on Animal Welfare held in Manila in March 2003<sup>112</sup> and the meeting of a five-nation Steering Committee in San Jose in November 2005.<sup>113</sup>

The Declaration acknowledges that “animals are living, sentient being and therefore deserve due consideration and respect”.<sup>114</sup> It refers to the work of the OIE as a significant source of “global standards for animal welfare,”<sup>115</sup> and the internationally recognized “Five Freedoms”<sup>116</sup> and the “Three R’s”<sup>117</sup> as guiding principles for the use of animals and its welfare.<sup>118</sup>

It sets forth the following four principles:

- Animal welfare should be a shared goal for all States.
- States should take all necessary measures to discourage cruelty and minimize the suffering of animals.

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<sup>111</sup> Miah Gibson, *The Universal Declaration of Animal Welfare*, 16 Deakin L. Rev. 539, 541 (2011)

<sup>112</sup> *Id.* at 541

<sup>113</sup> *Id.* at 542

<sup>114</sup> *Id.* Appendix 1, *The Universal Declaration of Animal Welfare*, at 559

<sup>115</sup> *Id.* at preamble

<sup>116</sup> The ‘Five Freedoms’ originated in the Brambell Report in 1965 and later was published by the UK’s Farm Animal Welfare Council in 1979. They have been slightly adapted since their formulation. It refers to the freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behaviour as internationally recognized principles of animal welfare.

<sup>117</sup> The ‘Three Rs’ refer to the guiding principles recognized internationally for the use of animals in science. These include reduction in numbers of animals, refinement of experimental methods and replacement of animals with non-animal techniques.

<sup>118</sup> Gibson, *supra* note 111, Appendix 1, *The Universal Declaration of Animal Welfare*, at preamble

- Measures should be taken at both national and international level to improve the prevailing animal welfare standards in States. In addition to this, each member state should in accordance with the principles of the Declaration, care and treat animal in humane and sustainable manner.
- Animal welfare standards should be further developed and elaborated to address various issues relating to farm animals, companion animals, draught animals, etc.

One of the advantages of UDAW is that sets a benchmark to which the countries must adhere while formulating or developing its own animal welfare laws.<sup>119</sup> Although the Declaration does not lay down specific animal welfare requirements or define what is meant by cruel treatment, its principles lays down guidelines for countries that do not have any policies or legislation in place for the welfare of animals. The UDAW is proposed to be adopted by the UN. If it gains acceptance by the UN, it will not just enable countries to review its animal welfare policies and legislations but also to improve the same. It would also exert political and moral pressure on countries without any regulations on animal protection to adopt the same.<sup>120</sup>

**Comments:**The Declaration, however, does not set any specific standards, nor expressly forbids any practices involving animals. Rather, it uses the conventional terminology of ‘humane treatment’. With respect to the use of animals, it stipulates that the Five Freedoms ‘provide valuable guidance’, but the Declaration does not enforce any restriction on treatment beyond the scope of these freedoms. It seeks only to reduce animal suffering, instead of urging against it in its entirety. In addition, the Declaration states in its Preambular section that ‘human animal use may have great benefits for human beings,’ suggesting that animal welfare programs should be planned with the potential effects on human interests in mind. The Declaration’s wording gives no suggestion that nation states would be required to enact laws that protect animal rights, irrespective of the advantages or disadvantages that these laws would create for human beings.

The language used in the Declaration is too ambiguous to bring about any substantial change in the existing legislative framework concerning animal welfare adopted by countries across the world. The UDAW follows ‘animal welfare theory’ and outlines principles, rather than

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<sup>119</sup>*Id.* at 550

<sup>120</sup>*Id.* at 551

setting strict animal welfare requirements and enforcing responsibilities on signatories to make sure that such standards are met.

It is doubtful that any legislative instrument explicitly modelled on the UDAW would be acceptable to the States. Reason being, the rights asserted under the Declaration are articulated in highly bald and unqualified words, without any exceptions and limitation on public health, safety, order and the like which are generally found in human rights treaties. In certain places, this creates an outcome which even from an animal welfare perspective seems questionable. For example, under Article 6(1), the right to complete their natural life span has been conferred upon all companion animals, presumably irrespective of any suffering involved. Further, under the Declaration, the definition of the term ‘animal’ has not been provided. This creates an ambiguity as to whether or not the right to procreate guaranteed to all wild animals under Article 4 also applies to all classes of animals, including disease-bearing and crop-devouring insects and the like.

Nevertheless, the Declaration has been significant in drawing attention to the general problem of animal abuse and in setting out many of the main areas of concern.

### **3.8. OIE Standards for the Welfare of Animals**

The OIE, i.e. the “World Organization for Animal Welfare”, is one of the most important organisations in terms of successfully promoting animal interest. This international institution is entrusted with the task of consolidating the regulations on animal health and to enhance their welfare worldwide.<sup>121</sup> Established in 1924 with the avid aim to globally combat animal diseases, the organization had grown to include 182 member countries by 2018.<sup>122</sup> Today, the OIE disseminates scientific knowledge and information on sanitary practices, publishes codes and manual on specific facets of animal health.<sup>123</sup> Its animals health standards are duly referred to by the WTO.

The goal of the organisation is to achieve transparency in matters pertaining to animal diseases as it exists worldwide; to collect, evaluate and spread scientific knowledge on animal disease prevention, to foster international cooperation and to provide technical assistance in animal disease control; to safeguard international trading in animals and its products; to strengthen the legal structure and resources of veterinary services of the State; to adopt

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<sup>121</sup>Blattner, *supra* note 9, at 35

<sup>122</sup>*About us*, OIE (Jul.12, 2020, 11:36PM) , <https://www.oie.int/about-us/>

<sup>123</sup> Sykes, *supra* note 15, at 104

ascientific approach to advance welfare of animals and to better guarantee the safety of animal food products.<sup>124</sup>

The OIE formed ad hoc groups to establish international standards and animal welfare guidelines. Consequently, two important codes were devised, namely, the Terrestrial Animal Health Code and the Aquatic Animal Health Code.

The **Terrestrial Animal Health Code** establishes requirements for the care of animals used or retained for scientific study, companion animals and farm animals. It is aimed at ensuring in external trade the health and safety of terrestrial animals and its products.<sup>125</sup> It seeks to control the spread of diseases without imposing unnecessary restriction on trade and therefore, requires the veterinary authorities of both the state of import and export to enforce the detailed measures set out under it. It thus, regulates trading practices and points down the screening methods to be followed prior to export<sup>126</sup> Since 2005, it also addresses certain animal welfare concerns, such as those related to the transportation, slaughter, experimentation, killing for food and for the purpose of controlling diseases, management of street dogs population, standards for livestock production systems (broiler chickens, dairy cattle), etc.<sup>127</sup>

The following principles incorporated under the Code as a guiding tool for the member states on matters relating to the welfare of animals:

- Animals contribute significantly to the well being of the people, they are used by human beings for science, entertainment, recreation, agriculture, and this use entails an ethical responsibility for ensuring the welfare of animals to the maximum extent possible.
- The “Three Rs”<sup>128</sup> offer useful guidance on issues relating to animal experimentation.
- Health and welfare of animals are critically related.
- The internationally “Five Freedoms”<sup>129</sup> are significant in the field of animal welfare.<sup>130</sup>

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<sup>124</sup>*Objectives*, OIE ( Jul.12, 2020, 11:34PM), <https://www.oie.int/about-us/our-missions/>

<sup>125</sup> Jessica Vapnek & Megan Chapman, *Legislative and regulatory options for animal welfare*, FAO (Jul.12, 2020, 11:51PM), <http://www.fao.org/3/i1907e/i1907e01.pdf>

<sup>126</sup>*Id.*

<sup>127</sup>Dr. Sarah Kahn & Dr. Mariela Varas, *OIE animal welfare standards and the multilateral trade policy framework*, WTO (Jul. 12, 2020, 11:55PM),

[http://www.oie.int/fileadmin/Home/eng/Animal\\_Welfare/docs/pdf/Others/Animal\\_welfare\\_and\\_Trade/A\\_WTO\\_Paper.pdf](http://www.oie.int/fileadmin/Home/eng/Animal_Welfare/docs/pdf/Others/Animal_welfare_and_Trade/A_WTO_Paper.pdf)

<sup>128</sup>*Supra* note 117



Similarly, the **Aquatic Animal Health Code** lays down standards for enhancing the health and welfare of marine animals and farm-raised fish, and regulates the use in aquatic animals of antimicrobials.<sup>131</sup> It also sets out the safety measures that must be adopted to ensure the health and protection of marine animals, and deter the transmission of pathogens through foreign trade of such animals and their products, without establishing unnecessary restriction on trade.<sup>132</sup> The Code establishes welfare standards for farmed fish, relating to their transport, stunning, killing for food and to control the spread of diseases.<sup>133</sup>

Its first Global Conference on Animal Welfare, held in 2004, gathered governments, livestock producers, NGOs, consumers, etc., from all over the world, which led to the adoption in 2005 of several standards covering key aspects of animal welfare.<sup>134</sup>

Acknowledging the failure of the Member States to implement the standards, the second conference entitled “Putting the Standards to Work” was held in Cairo, in 2008.<sup>135</sup> Participants at this conference endorsed a set of recommendations and considerations. The most substantial result of the conference was that the participants:

- acknowledged that welfare of animals needs to be considered in tandem with social and economic development, and therefore considered as necessary, the pragmatic application of OIE standards tailored to the financial condition and capacities of the Member States;
- acknowledged OIE as a leading reference organization internationally for the development of international standards of animal welfare;
- voiced concern over failure of certain private standards to adhere to the OIE standards for animal welfare;
- recommended the OIE members to enact or amend legislation, where appropriate, to prevent animal cruelty, and also legislation providing a legal basis for compliance with OIE animal welfare standards;
- and urged OIE members to promote the adoption of a declaration on the welfare of animals by the UN.

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<sup>129</sup>*Supra* note 116

<sup>130</sup>Vapnek & Chapman, *supra* note 125, at 14

<sup>131</sup>*Aquatic Animal Health Code*, OIE (Jul. 12, 2020, 12:02AM), <https://www.oie.int/standard-setting/aquatic-code/>

<sup>132</sup>*Id.*

<sup>133</sup> Kahn & Varas, *supra* note 127, at 3

<sup>134</sup>*Id.* at 4

<sup>135</sup>*Id.*

Such policy statements reflect the willingness of the OIE and its member to harmonize and enforce animal welfare standards set out in the Code, taking into consideration socio-economic developmental needs.<sup>136</sup>

More recently, the Organisation has set up regional offices to raise awareness on matters pertaining to the welfare on animals and to that end, promotes the adoption of a more localized plan of action where possible.

Although these regional policies are not enforceable, they do govern the international trade between countries in the given geographical area of animals and its by-products. For example, in 2008, through OIE regional representation, 31 member states of the “Asia, Far East and Oceania (AFEO)” agreed to the Regional Animal Welfare Strategy (RAWS). The goal of the Strategy is to make AFEO a “region where the welfare of animals is respected, promoted and incrementally advanced, simultaneously with the pursuit of progress and socioeconomic development”. It seeks to ensure that all sentient animals used or kept by human beings are duly cared for, and that the various standards and guidelines on animal welfare issues such as those relating to the transport, handling, and killing of farm animals as stipulated by the OIE, are duly adhered.

**Comments:** Nonetheless, the OIE is not the ideal institution for resolving the complicated issue of the standards of animal life vis-a-vis the socio-economic implications of reducing animal use. Reason being that the OIE takes a comprehensive and a scientific approach for the setting out standards, and while animal health issues are largely dependent on scientific facts, issues of animal welfare is not. Animal welfare issues are not science-based decision, but public policy decisions. An organization focused on science ought not to be allowed to establish norms for the environment. Instead the branch of scientific knowledge must apprise the legislative body of the existing reality and the potential implication in future of a certain measure.

An analysis of the standards on transportation of live animals set out by the Organisation indicates that these default standards are not sufficient. The standard lays down no requirements as to number, restrictions, required inspections or operational limitations. Instead, it reads like a checklist of issues that needs to be considered if one wishes to engage

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<sup>136</sup>Vapnek & Chapman, *supra* note 125, at 15

in transportation of live animals. While the list may be beneficial for policy makers, it is not an explicit norm that regulates or forbids activities detrimental to animal welfare.

### **3.9. World Trade Organisation Agreements**

The international trading mechanism of the WTO is intended to eliminate restrictions to foreign trade by developing and implementing rules regulating market access.<sup>137</sup> Its purpose is to enable the conduct of trade in a fair and safe manner.

OIE is recognised as the WTO reference organisation for setting animal health standards and zoonoses. Although, animal welfare is not expressly addressed in the WTO agreements, there exists a significant link between health and the welfare of animals. For example, the prevention and control of zoonotic diseases also has a significant effect on animal welfare.<sup>138</sup>

The WTO trade system addresses animal welfare in so far as it relates to animal health, under the following agreements:

Under the **GATT**, the principles of “most favoured nation” and “national treatment” are set out under Article I and Article III respectively. These articles require “like products” from all WTO member states to be given the same treatment and prohibit the discrimination between products that are imported and those that are domestically or locally produced.<sup>139</sup> However, the definition of the term “like products” is not provided, and it is therefore required to be interpreted according to the facts of a particular case.

The GATT itself allows for a number of exceptions to these principles under Article XX (a-j). The Article permits imposition of measures in restriction of trade in certain situations, provided that such measures must not be “a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail”, or “a disguised restriction on international trade.”<sup>140</sup> Out of all the exceptions listed in the said Article, paragraphs (a), (b) are of particular relevance to safeguard the welfare of animals.

Paragraph (a) refers to measure “necessary to protect public morals.” This provision can certainly be used by importing countries to impose animal welfare measures and the same would not be inconsistent with the principles of GATT, if a clear connection between the

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<sup>137</sup>*Id.*

<sup>138</sup> A.B. Thiermann & S. Babcock, *Animal Welfare and International Trade*, 24(2) Rev. sci. tech. Off. int. Epiz 747, 747 (2005)

<sup>139</sup> Kahn & Varas, *supra* note 127, at 5

<sup>140</sup> Beyerlin & Marauhn, *supra* note 57, at 426

measure and animal health is missing. Such an exception can potentially be utilized to rationalize a measure based on ethical concern for animals.<sup>141</sup>

Paragraph (b) refers to measures “necessary to protect human, animal or plant life or health.” This exemption provides the most suitable ground to justify welfare measures related to animals in so far as it is “necessary” and enables the protection of “animal life or health.” Be it noted that a measure is not considered “necessary” if an alternative measure consistent with other provisions of GATT is available. Further, application of such measure is also limited within the territory or jurisdiction of the country enacting it.<sup>142</sup> This proviso providing for animal health has been widely interpreted by some scholars to include animal welfare.<sup>143</sup> The term ‘animal welfare’ has however not been explicitly stated under this section. It is a reasonable inference that “animal health and life can be inclusive of animal welfare.” But this again would involve a clear connection between the two which must be scientifically established. If a measure for the improvement of the welfare of animals point towards the safeguarding of its health, and the correlation between animal health and particular animal welfare guideline can be established through scientific research, it would be appropriate to include animal welfare guideline in Article XX (b).<sup>144</sup>

However, for a complete interpretation of the GATT, it is also necessary to consider the rulings of relevant WTO dispute settlement panels. For example, the WTO Appellate Body in EC-Asbestos, 2001 emphasised that while determining the ‘likeness’ of a product held that *“the nature and extent of competitive relationship between products is an important factor. The manner of production may have may have an impact on consumer preferences and, thus, on the competitive relationship between these products.”* In a future arbitration, such an interpretation could result in declaring that animal products produced under ‘low welfare’ and in ‘high welfare’ system are not ‘like’ in the context of GATT, and therefore, imposition of for instance, animal welfare certification could be considered valid.<sup>145</sup>

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<sup>141</sup>Thiermann & Babcock, *supra* note 138, at 749

<sup>142</sup>*Id.*

<sup>143</sup>*Id.*

<sup>144</sup>*Id.*

<sup>145</sup> Kahn & Varas, *supra* note 127, at 6

**The SPS Agreement** deals with “food safety and animals and plant health standards.” It deals with the implementation of “sanitary and phytosanitary measures” for the protection of the following<sup>146</sup>:

- i. threats to the life of humans and animals alike posed by additives, pathogens, toxins or the presence in their food of disease-causing organisms;
- ii. risk to survival of human beings due to diseases borne by plants or animal;
- iii. threat to the existence of animal or plant that may be caused due to pests, diseases, or disease-causing organism;
- iv. health of wild animals and fish.

It also entails the application of SPS measures to contain or prevent further harm to a country due to import, development or transmission of pest. However the application of SPS measure relating to animal health safety is limited to preservation of animals within the importing country’s territory. The OIE, the International Convention on Plant Safety and the Codex Alimentarius Commission, more popularly known as the “Three Sisters” are recognised by the SPS Agreement as the point of reference for developing international standards with regard to health of animals and zoonotic diseases; plant health and food safety respectively.<sup>147</sup> It also allows members to adopt their respective SPS standards, which must, however, be based on science. Such standards should be limited in so far as it is essential to protect the life and health of human beings, plants and animal. The factors that need to be considered for the assessment of risk have also been specified. The Parties may either use the existing international standards, or carry out scientific risk assessment, or in the light of scientific uncertainty, apply precautionary approach to set out the SPS measures.<sup>148</sup> Animal health is certainly of immense significance in determining animal welfare.

**The TBT Agreement** deals with product standards in general. Any trade restrictive measure in order to be valid under the Agreement, must have a legitimate objective, must be non-discriminatory in relation to “like products”; and must not be a disguised trade restriction.<sup>149</sup>

The Agreement enables the preparation, adoption and implementation of specific regulations to meet a legitimate objective, such as the protection of life or health of animal or plant or the environment. However, list of what is considered as a legitimate objective is not exhaustive

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<sup>146</sup>*Id.*

<sup>147</sup>*Id.*

<sup>148</sup>Beyerlin&Marauhn, *supra* note 57, at 431

<sup>149</sup>Thiermann& Babcock, *supra* note 138, at 750

and, given the growing concern for animal welfare in the contemporary world perhaps it could now be interpreted to cover animal welfare protection.<sup>150</sup> In Shrimp-Turtle case (in which, the USA decided to ban the importation of shrimp from some Asian countries on the pretext that endangered sea turtles were also trapped in the shrimp nets), the Appellate Body supported the view that *“the old texts can be read differently in the light of modern concerns. The words ‘exhaustible natural resources’ used in Article XX (g), were drafted more than 50 years before the decision of the Appellate Board, and therefore must be read by a treaty interpreter in the light of contemporary issues of the environmental protection and conservation.”*<sup>151</sup> In its report, the Body stated that *“from the perspective of the goal of sustainable development enshrined in the preamble of the WTO Agreement, the generic term ‘natural resources’ must not be construed as a static term, instead it must be interpreted in the light of its evolutionary definition.”*<sup>152</sup> This acknowledgement supports the contention that a contemporary interpretation of the word “animal health” should incorporate with its fold animal welfare as well. Thus, animal welfare could be regarded as a “legitimate objective” of the Agreement.

Under WTO rules Governments cannot ban the importation of a product based on its non-product-related “PPMs” (those that have a marginal implication on the final product), but producers could provide details on (including animal production methods that meet high welfare standards) during product marketing, which would allow informed choices to be made by private markets, buyers and investors.<sup>153</sup>

In EC- Asbestos, 2001, the Appellate Body emphasised that taste and habits of consumers are important factors in determining whether two or more products are “like”.<sup>154</sup> Thus, if consumer tastes and habits (which generally favour ‘animal friendly products’) are given greater consideration, it can certainly pave the way for animal welfare measures and recognition under the WTO jurisprudence that two animal-derived products, although having

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<sup>150</sup>*Id.*

<sup>151</sup>*Id.*

<sup>152</sup>*Id.*

<sup>153</sup>*Id.*

<sup>154</sup> Peter Stevenson, *The World Trade Organisation Rules: A Legal Analysis of Their Adverse Impact on Animal Welfare*, ANIMAL LEGAL & HISTORICAL CENTER (Jul.15, 2020, 11:35AM), <https://www.animallaw.info/article/world-trade-organisation-rules-legal-analysis-their-adverse-impact-animal-welfare>

similar physical characteristics, are not ‘like’ if consumers perceive them as distinct because one is humanely produced and the other is produced in a cruel manner.<sup>155</sup>

**Comments:** However, the GATT rules act as a major deterrent to measures intended to enhance animal welfare. Article 10 of Council Directive 1999/74 / EC highlights the degree of EU concern that its ban on battery cages might result in imported battery eggs undermining its own producers. Under Article 10 of the Directive, the ban on cages starting in 2012 is required to be reviewed in 2005, having taken into account a number of factors, including the result of the WTO negotiations. Accordingly, the EU may decide not to go forward with its own cage ban unless the WTO rules have been revised to prevent cheap battery egg imports from undermining its farmers. Such pattern can indeed reiterate in future whenever a WTO Member decides to set improved standards of welfare. The fact that a under the GATT, Member State can prohibit a cruel system of rearing within its own territory under but cannot possibly ban the importation animal products raised in that system in other countries, acts as a strong disincentive for the former country to continue with a prohibition of that system within its own territory.<sup>156</sup> Apparently, it essential to revise or reinterpret GATT rules in order to ensure that rules on trade liberalisation do not undermine progress on animal welfare and other ethical issues.

Further, there is a need to expand the general exceptions laid down in GATT Article XX (b) so that WTO Members can take trade-related measures to “protect welfare of animals”. Members under the said Article are empowered to take necessary measures “for the protection of animal health or life.” ‘Welfare’ is a wider concept than ‘health’. Many would interpret the measures essential to “protect animal health” as being restricted to measures intended to “prevent the spread of animal diseases.” Adding the term “welfare of animals” to the said Article would clarify the stand that Member States are allowed to take measures in restriction of trade to protect the well-being of animals, such as measures to discourage abusive rearing or slaughter practices.<sup>157</sup> What is widely considered ‘welfare’ issues can also have a detrimental impact on the animals’ ‘health’. For instance, hens kept in battery cages cannot move freely and endure high levels of osteoporosis as a result. Infact, by the time they

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<sup>155</sup>*Id.*

<sup>156</sup>*Id.*

<sup>157</sup>*Id.*

are slaughtered, several battery hens actually have broken bones. These are clearly concerns relating to "health."<sup>158</sup>

Thus, it appears that although under the WTO jurisprudence the need to accommodate legitimate concerns other than trade liberalisation is slowly gaining prominence, no real solution can be achieved until the WTO recognized that it is appropriate for its Members to make a distinction between products on the basis of PPMs (subject to necessary safeguards) in their import and marketing regulations.<sup>159</sup>

### 3.10. Council of Europe

Founded in 1949, the Council has since the 1960s been one of the top global institution promoting the welfare of animals.

The Council's Consultative Assembly, in 1961, proposed that the transportation of animals across nations must be regulated by a treaty. Accordingly, the Council adopted the CPAIT in 1968. Acknowledging the importance of animal welfare and their immense contribution towards the well-being and living standards of humans, the Council subsequently enacted a number of additional Conventions. These include the following:

**European Convention on the Protection of Animals kept for Farming Purposes** lays down standards for housing and management of farm animals, particularly those used in intensive stock-farming systems. It aims to protect such animals from the infliction of unnecessary suffering or injury, and confers upon the Parties the responsibility for inspecting the health status of animals and the technical equipments used in intensive stock-farming systems.<sup>160</sup> In 1992, a Protocol to the Convention by way of an amendment was adopted, thereby, extending the Convention's application to the animal breeding through genetic engineering.<sup>161</sup>

**European Convention for the Protection of Animals for Slaughter** aims to harmonize and humanize slaughter practices in Europe.<sup>162</sup> The Convention requires the humane treatment of

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<sup>158</sup>*Id.*

<sup>159</sup>*Id.*

<sup>160</sup>*European Convention for the Protection of Animals kept for Farming Purposes*, COUNCIL OF EUROPE PORTAL (Jul.17,2020, 6:10PM), <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/087>

<sup>161</sup>*Protocol of Amendment to the European Convention for the Protection of Animals kept for Farming Purposes*, COUNCIL OF EUROPE PORTAL (Jul. 17, 2020, 6:37PM), <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/145>

<sup>162</sup>*European Convention for the Protection of Animals for Slaughter*, COUNCIL OF EUROPE PORTAL (Jul.19, 2020, 8:40AM), <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/087>



animals in slaughterhouses and obliges the parties to ensure that no animals are handled brutally; no harm is inflicted on any sensitive body parts of the animal; appropriate equipment is used for the unloading of animals; animals that are not slaughtered are laired and cared for immediately upon arrival; required facilities are provided for.<sup>163</sup> The Convention also sets out guidelines for slaughter operation, such as it mandates prior stunning of animals; provides for the use of pistol, electro narcosis or gas for stunning of large animals; prohibits the use of pole-axe, hammer or puntilla; prohibits the suspension or restriction of movement of large animals prior to stunning; where exceptions to the Rules apply, such as in case of ritual slaughter, emergency slaughter, etc, the Convention mandates the slaughtering of animals in way which causes unnecessary pain or suffering must be prohibited.<sup>164</sup>

**European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes** aims at reducing the number of experiments as well as the extent of experimental animals. It confers upon the parties the obligation to ensure that where alternatives to experiments on animals are available, the same is adopted.<sup>165</sup> It seeks to harmonise the introduction of national schemes with a view to ensure that animals are treated humanely, and that where procedure that may cause discomfort, suffering, pain or permanent harm to an animal are inevitable, they are kept to a minimum. It lays down special rules for dogs and cats and encourages the use of marking techniques that causes minimal discomfort.<sup>166</sup> In 1998, a Protocol by way of amendment to the Convention was adopted, thereby, enabling the Parties to update the technical Appendices in the light of evolution of scientific knowledge and changing circumstances through a simplified procedure.<sup>167</sup>

**European Convention for the Protection of Pet Animals** is a framework convention adopted to protect the well-being of animals kept as pets. Keeping or possession of animals as pets in contravention to the international legal instruments on wildlife conservation is prohibited under the Convention. It prohibits the causing of any unnecessary pain, suffering

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<sup>163</sup>*Id.*

<sup>164</sup>*Id.*

<sup>165</sup>*Explanatory Report to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes*, COUNCIL OF EUROPE PORTAL (Jul.19, 2020, 12:24PM), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800ca438>

<sup>166</sup>*Id.*

<sup>167</sup>*Explanatory Report to the Protocol of Amendment to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes*, COUNCIL OF EUROPE PORTAL (Jul.18,2010,12:38PM),<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cce41>

or distress to pet or stray animals, and condemns the abandonment of pets. In addition to this, detailed guidelines on keeping, breeding, training, etc of pet animals are prescribed.<sup>168</sup>

**European Convention for the Protection of Animals during International Transport (Revised)** is based on the principle for purposes of animal welfare, slaughter of animals in the country of origin is preferable, and that all species of animals must be treated humanely.<sup>169</sup> The Convention lays down general welfare requirements of live animals in international transport. It applies to all vertebrate animals, including circus animals.<sup>170</sup> It covers a variety of transport-related topics concerning animals, such as those relating loading and unloading; vehicle design; fitness for transport; handling; veterinary checks; and certification. It also stipulates specific provisions for transportation of animals by land, air, sea and rail. It mandates during emergency situations, where killing of animals becomes necessary, they must be killed by a competent person in a manner that no additional suffering is caused to them. It provides for technical protocols that can be amended following a streamlined process, thus promoting their updating in the light of acquired scientific evidence and experience.<sup>171</sup>

**Comments:** The COE Conventions mentioned above are guided by the fundamental principle that animals can certainly be used for the well-being of humans, but it is the ethical duty of human beings to make sure to the extent possible that animals' well-being are unnecessarily jeopardised. However, there are practical difficulties in enforcing these Conventions, reason being that Member States may opt not to join or ratify it, and even those who choose to ratify it, may incorporate their own provision. . Nevertheless, they have had a major impact on the evolution of animal welfare legislation in Europe as it acts as a guiding tool for the adoption and implementation of legislations with regard to animal welfare by the EU Member States.

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<sup>168</sup>*Explanatory Report to the European Convention for the Protection of Pet Animals*, COUNCIL OF EUROPE PORTAL (Jul. 18, 2020, 4:12PM), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800ca43a>

<sup>169</sup>*Explanatory Report to the European Convention for the Protection of Animals during International Transport (Revised)*, COUNCIL OF EUROPE PORTAL (Jul.18, 2020, 10:05AM), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d380e>

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

It can thus, be concluded that within the international community, there appears to be a growing consensus that animals ought to be a subject of international legal control, and such control must at the least ensure that animals must not suffer needlessly.

## CHAPTER 4

### Regulatory Framework for the Protection of Animals in European Union

Welfare standards in EU for the protection of animals are among the highest in the world. Its animal welfare legislation is applicable in twenty-seven countries and encompasses a wide range of animal species. Over the last 40 years, the EU has formulated a vast array of progressive animal welfare legislation. Starting in 1974, the first legislation concerning the slaughter of animals was adopted, and gradually legislation on the transport of animals and animal production of various kinds were enacted..

This chapter discusses some of the legislative and enforcement measures adopted by the EU for the protection and welfare of animals.

#### 4.1. Legislative Measures

##### 4.1.1. Treaty on the Functioning of European Union.<sup>172</sup>

Under the TFEU, animals are recognised as “sentient beings”. A set of core principles which must be respected by the Members of EU are listed under Title II of the Treaty. Article 13 (part of Title II) stipulates that the EU and its Member States must duly consider to the animal welfare requirements when planning and implementing EU policies in for example, agriculture or internal market, transport, research and technological development, etc.<sup>173</sup> The EC has clarified the importance of the provision by placing animal welfare on an equal footing with other main values listed under the same heading, such as promoting gender equality, ensuring social security, protecting human health, fighting discrimination, promoting sustainable growth, ensuring protection of consumers and protecting personal data.

The Article, however, provides clear limitation on EU actions in areas where member states have legislation or customs, particularly in relation with “religious rites, cultural traditions or regional heritage.”<sup>174</sup> Consequently, EU action is excluded when it comes to important issues such as bullfighting or use of animals in shows and competitions, either because they are not

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<sup>172</sup>*Consolidated Version of the Treaty on the Functioning of the European Union*, C 326 Official Journal 47, 53-55 (2012) (Jul.10, 2020, 8:20AM), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:EN:PDF>

<sup>173</sup>*Id.* part one, Title II, article 13

<sup>174</sup>*Id.*

related to a given EU policy and/or because they form part of a broad exception provided for in Article 13 TFEU.

In fact, the Article does not include a legal framework for the EU to operate on animal welfare. Including this dimension within the context of a list of relevant EU policies is a responsibility. Consequently, most EU animal welfare legislations are based on either farmed animal production or the internal markets or laboratory animals, where the Union has a legal reason to act.

#### **4.1.2. Legislative Framework for the Welfare of Farm Animals.**

With respect to the protection of farm animals, legislative measure covering all aspects of production, right from farming itself to standards for transportation and killing has been adopted.

Farming activities are regulated by five “directives”, while transportation and slaughter of animals are governed by “regulations”. The difference between the two is that, in the EU legal order, ‘directives’ are required to be translated by Member States into their own national legal framework, whereas ‘regulations’ set common standards which apply directly to citizens and businesses, without being translated into national legislations, provided that sanctions are established by the Member States within their national legal order. Moreover, Member States are empowered to move beyond the basic rules set out in the EU directive, while they cannot do so in case of regulations.

The EU has enacted a general umbrella directive covering all farmed species, four particular directives covering cattle, pigs, laying hens and chickens for meat production (broilers), and two regulations on transport and slaughter covering all species of animals reared for food have been adopted for regulating farming activities. These can be discussed as follows:

##### **4.1.2.1. General Farm Animals Directives**

**Council Directive 98/58/EC** concerning the protection of animals kept for farming purposes was adopted on July 20, 1998.<sup>175</sup> The object of the Directive is to ensure the application of the guidelines set out under the “European Convention for the Protection of Animals Kept for Farming Purposes” in the EU law. The core provisions of the Directive are set out under

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<sup>175</sup>*Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes*, L 221 Official Journal 23, 23-27 (1998) (Jul. 5, 2020, 9:33AM), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998L0058>

Article 3. It confers upon EU Member States responsibility “to ensure that all appropriate welfare measures are taken by owners or keepers for animals under their care, and that no unnecessary pain, suffering or injury is caused to such animals.”<sup>176</sup> It further prohibits “restriction on the movement of animals in a manner that causes unnecessary pain or suffering.” It states that, “where an animal is tethered or confined continuously or periodically, the space suitable to its physiological and ethological needs must be provided according to existing experience and scientific knowledge.”<sup>177</sup>

General requirements for the welfare of all farmed species are set out in the Directive, such as:

- To deter any distress to animals, it requires regular inspection to be carried out.<sup>178</sup>
- It requires immediate handling and conferment of appropriate medical treatment to sick or injured animals, and where it is considered essential, suitable arrangement for keeping them in isolation must be made.<sup>179</sup>
- It requires adequate management of the air quality and temperatures suitable to the animal.<sup>180</sup>
- It prohibits the housing of animals in building with permanent darkness or under artificial lighting. It states that provision for artificial lighting must be made where the available natural light is inadequate to fulfil the “physiological and ethological needs” of the animal.<sup>181</sup>
- It states that requisite arrangements for the protection of animals kept outdoors from extreme weather, predators and health risk must be made.<sup>182</sup>
- It states that all equipments necessary for the maintenance of the welfare of animals to be inspected regularly, and if defects are found, they must be promptly rectified or, if that is not feasible, suitable action for safeguarding animals’ health and well being must be taken.<sup>183</sup>

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<sup>176</sup>*Id.* art.3

<sup>177</sup>*Id.* annex, para 7

<sup>178</sup>*Id.* annex, para 1

<sup>179</sup>*Id.* annex, para 4

<sup>180</sup>*Id.* annex, para 10

<sup>181</sup>*Id.* annex, para 11

<sup>182</sup>*Id.* annex, para 12

<sup>183</sup>*Id.* annex, para 13

- It states that the nutritional needs of animals must be met. They must be given a wholesome diet, suitable to their age and species, in sufficient quantity. Access to feed at appropriate intervals and suitable water supply must be provided.<sup>184</sup>
- It prohibits the subjecting of animal to breeding procedures which causes or is likely to cause injury or suffering.<sup>185</sup> Additionally, it states that only such animals which by reasons of its genotype or phenotype are considered be fit for farming purposes must be kept..<sup>186</sup>
- Sufficient number of staffs with the necessary expertise, experience and professional qualifications must be employed for taking care of animals.<sup>187</sup>

#### 4.1.2.2. The Laying Hens Directive

The **Council Directive 1999/74/EC**<sup>188</sup> stipulates “minimum standards for the protection of laying hens.”

Under the Directive three different farming systems, namely “unenriched cages”, “enriched cages” and “alternative systems” are defined. Cages without provisions for “enrichment materials,” such as nest, perch and litter which allow the hens to display their normal pecking and scratching behaviour are described as unenriched cages/barren battery cages. Within these cages, the space given for each hen (minimum 550cm<sup>2</sup>) is so limited that the hens can barely move. The Directives banned the use of such cages in the EU as from January 1, 2012.<sup>189</sup> In comparison, enriched cages are bigger in size (minimum 750 cm<sup>2</sup> per hen) and are equipped with enrichment materials.<sup>190</sup> The use of such cages is allowed as long as appropriate provisions for space, enrichment materials and claw-shortening devices are made. Alternative systems are “non-cage systems such as barn or free range (including organic production) which offer even greater space than the enriched cages.”

The Directive stipulates certain additional conditions for housing of free-range hens. It states that such barns and indoor housing must have at least “one-third of the ground surface of the

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<sup>184</sup>*Id.* annex, para 14

<sup>185</sup>*Id.* annex, para 20

<sup>186</sup>*Id.* annex, para 21

<sup>187</sup>*Id.* annex, para 1

<sup>188</sup>*Council Directive 98/58/EC 19 July 1999 laying down minimum standards for the protection of laying hens*, L 203 Official Journal 53, 53- 57 (1999) (Jul. 10, 2020, 10:30AM)

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:203:0053:0057:EN:PDF>

<sup>189</sup> art.5(2)

<sup>190</sup>*Id.* chapter III, art.6

house covered in litter, with provisions for minimum 250 cm<sup>2</sup> of littered area per hen”,<sup>191</sup> and “a maximum stocking density of 9 hens per m<sup>2</sup> of usable area.”<sup>192</sup> These requirements came into effect on January 1, 2007.<sup>193</sup> Specific requirements extend to free-range hens under EU egg labelling regulations.

The Directive is related to EU egg marketing legislation which mandates the marking of eggs and egg packs on the basis of the production system.<sup>194</sup> The legislation sets out specific code for each egg type, thereby enabling consumers to identify the farming method. Further, the legislation requires the marking farming method on the outer surface of the egg pack in a manner that is clearly legible and easily recognisable. It prescribes the use of terms such as “free-range eggs”, “barn eggs”, “eggs from caged hens”, or “organic eggs” for the purpose of labelling the egg pack. The legislation also stipulates the welfare standards to be achieved for the usage of such terms.<sup>195</sup>

The Annex to the Directive enlists some operational requirements with respect to sound and light levels, inspection, etc. The Directive forbids mutilation of all forms. However, if beak trimming is considered necessary to prevent feather pecking and cannibalism, the Member States are authorised to permit it, provided that it is performed by qualified staff on chickens of less than 10 days old only.<sup>196</sup>

#### 4.1.2.3. The Broiler Directive

Broilers are chickens reared for meat. Standards for the “protection of chickens raised for production of meat” are embodied in **Council Directive 2007/43/EC**.<sup>197</sup> The Directive introduced the concept of “animal-based indicators.” It is not applicable to free range farmed chickens; those reared organically or extensively indoors; farms with less than 500 chickens, hatcheries, and holdings that only have breeding stocks of chickens.<sup>198</sup>

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<sup>191</sup>*Id.* art.4(1)(1)(e)

<sup>192</sup>*Id.* art.4(1)(4)

<sup>193</sup>*Id.* art.4(1) & (2)

<sup>194</sup> Peter Stevenson, *European Union Legislation on the Welfare of Farm Animals*, COMPASSION IN WORLD FARMING (Jul.27, 2020, 6:12PM), <https://www.ciwf.org.uk/media/3818623/eu-law-on-the-welfare-of-farm-animals.pdf>

<sup>195</sup>*Id.* at 13

<sup>196</sup> Hens Directive, *supra* note 155, annex, point 8

<sup>197</sup> *Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production*, L 182 Official Journal 19, 19-28 (2007) (Jul. 27, 2020 7:16PM), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2007%3A182%3A0019%3A0028%3AEN%3APDF>

<sup>198</sup>*Id.* art.1



Some of the key provisions set out in the Directive are as follows:

- The maximum stocking density is set at 33kg/m<sup>2</sup>. However if the required welfare conditions are met, Member States have the possibility of extending it to a maximum of 39 kg/m<sup>2</sup>,<sup>199</sup> and if further additional conditions are met together with consistently low mortality rates, a maximum of 42kg/m<sup>2</sup> may be allowed.<sup>200</sup> “Stocking density” here refers to the “total live weight of chickens present at the same time in a house per square meter of usable space.”<sup>201</sup>
- The Directive includes a range of provisions for addressing welfare issues resulting from industrial broiler production, such as it mandates “all persons in charge of chickens to be sufficiently trained,”<sup>202</sup> “all chickens to have permanent access to dry and friable litter on the surface,”<sup>203</sup> and “all chickens to be inspected twice a day.”<sup>204</sup>
- The Directive mandates all drinkers to be placed and maintained in such a manner as to prevent spillage;<sup>205</sup> arrangement for either continuous feed supply or meal feeding for chickens are made. Additionally, it requires chickens to not be deprived of their feed for more than 12 hours before the expected slaughter time.<sup>206</sup>

The Commission Regulation of 2008 confers further legal protection to certain broilers in terms of the marketing requirements for poultry meat.<sup>207</sup> Indicating the farming method used for the production of poultry meat is not mandatory, but it can be specified voluntarily, provided that two conditions are met: (i) only certain labelling terms as defined under the legislation is used for denoting the type of farming; (ii) poultry are reared under certain specified standards for the production of meat.<sup>208</sup>

For example:

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<sup>199</sup>*Id.* art.3

<sup>200</sup>*Id.* art.3 and annex V

<sup>201</sup>*Id.* art.2(1)(i)

<sup>202</sup>*Id.* art.4

<sup>203</sup>*Id.* annex I, para 3

<sup>204</sup>*Id.* annex I, para 8

<sup>205</sup>*Id.* annex I, para 1

<sup>206</sup>*Id.* annex I, para 2

<sup>207</sup>*Commission Regulation (EC) No. 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing standards for poultry meat*, L 157 Official Journal 1, 46-87 (2011) (Jul. 28, 2020, 3:21PM), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2008R0543:20110624:EN:PDF>

<sup>208</sup>*Id.* art.11

Chicken meat sold as “free range” must be obtained from chickens who are “housed indoor with a stocking density of maximum 13 chickens per 1 m<sup>2</sup>”;<sup>209</sup> that have “continuous accessibility to open-air runs comprising of an area covered largely by vegetation not less than 1 m<sup>2</sup> per chicken for at least half of their lifespan during the daytime;”<sup>210</sup> and that are “not killed until the age of 56 days or later.”<sup>211</sup> The third factor is particularly important since most broilers today are genetically chosen to grow rapidly that they attain their required weight for being slaughtered at 40 days of age or less, which results in substantial harm to the health of the birds. By using slower growing broiler genotypes, the problems can be significantly minimised.

Further, the legislation stipulates that higher rearing standards must be adopted in comparison to “free range”, where the meat is to be sold under the “traditional free range” label. More particularly, the indoor housing stocking density must be limited to 12 birds per 1m<sup>2</sup>, but where mobile houses are used, it can be extended to 20 birds per 1 m<sup>2</sup>.<sup>212</sup> Additionally, chickens must be kept in a poultry house with maximum 4800 chickens,<sup>213</sup> they must have continuous access to open-air runs comprising of an area primarily covered by vegetation of at least 2 m<sup>2</sup> per chicken during the daytime from at least 6 weeks of age;<sup>214</sup> must be of a “slow growing breed and of 81 days during slaughter.”<sup>215</sup> Meat labelled as “extensive indoor” or “barn reared” must be derived from chickens stocked at an average of fifteen birds but not exceeding 25 kg live weight per m<sup>2</sup>;<sup>216</sup> and slaughtered at the age of 56 days or older.<sup>217</sup>

#### 4.1.2.4. The Pigs Directive

The EU legislation on pigs is embodied in **Council Directive 2008/120/EC**.<sup>218</sup> It was adopted in December 18, 2008 consolidating the earlier Directives of 1991 and 2001. It defines “minimum standards for the protection of pigs.”<sup>219</sup>

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<sup>209</sup>*Id.* annex V, para (c)

<sup>210</sup>*Id.*

<sup>211</sup>*Id.*

<sup>212</sup>*Id.* annex V, para (d)

<sup>213</sup>*Id.*

<sup>214</sup>*Id.*

<sup>215</sup>*Id.*

<sup>216</sup>*Id.*

<sup>217</sup>*Id.*

<sup>218</sup>*Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs*, L 47 Official Journal 5, 5-13 (2009) (Jul 27, 2020, 12:10AM)  
, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:047:0005:0013:EN:PDF>

Inhumane aspects of industrial livestock production, such as “tethering of sows and use of sow stalls” are prohibited. While the ban on tethering of sows has been in effect from January 1, 2006,<sup>220</sup> obligation on group housing of sows during their reproductive stage has been mandated from January 1, 2013. Earlier, female sows could be confined in individual pens with no provision for moving or turning around throughout the gestation period, but now group housing of breeding females are mandatory. However, use individual stalls are still permitted to enable the service, farrowing and the lactation period.<sup>221</sup>

Generally, intensively reared sows are fed in a manner that satisfies only their nutritional needs and not their hunger. Therefore, the Directive requires pregnant sows to be fed with high-fibre and energy intensive food in sufficient quantity.<sup>222</sup> This provision became effective on January 1, 2003.

Detailed space requirements for both categories of pigs, i.e. breeding sows and fattening pigs are set out in the Directive.<sup>223</sup> For all pigs, provisions for access to destructible and rooting materials in sufficient quantity, such as straw, hay, wood, mushroom compost, etc., must be made to enable the pigs to express their innate manipulation and foraging behaviour.<sup>224</sup>

Keeping of pigs on fully slatted floors are prohibited. The Directives require 1.3 square meters of continuous solid floor to be provided for each pregnant sow, of which maximum of 15% must be reserved for drainage openings.<sup>225</sup> The Directive banned routine tail-docking since 2003. It permits for tail docking only when there is evidence of damage to the tails of other pigs. Nonetheless, all steps available to avoid tail biting and other vices have to be taken before resorting to such a practice.<sup>226</sup> This is a significant legislative development, as it allows farmers to change the conditions in which pigs are housed, instead of resorting to routine tail-docking

Tooth clipping and grinding are permitted only when there is proof of injury to the teats of sows. As with tail-docking, the Directive specifies that other steps to prevent piglets from damaging the teats of the sow must be taken prior to carrying out such procedure, and that

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<sup>219</sup>*Id.*

<sup>220</sup>*Id.* art.3(3)

<sup>221</sup>*Id.* art.3(4)

<sup>222</sup>*Id.* art 3(7)

<sup>223</sup>*Id.* art 3(1)

<sup>224</sup>*Id.* art.3(5)

<sup>225</sup>*Id.* art.3(2)(a)

<sup>226</sup>*Id.* annex I, chapter I, para.8

insufficient environmental condition or management structures must be modified for this purpose.<sup>227</sup>

The Directive forbids the surgical castration of pigs by means requiring tearing of tissues.<sup>228</sup> Nonetheless, in many EU countries pigs are routinely castrated without anaesthesia or pain relief and this also includes tissue tearing. Therefore, in 2011, the “European Declaration on Alternatives to Surgical Castration of Pigs” was adopted.<sup>229</sup> The Declaration specified that pigs should not be surgically castrated without prolonged analgesia and/or anaesthesia from Jan 1, 2012 and surgical castration of pigs should be completely phased out from 2018.<sup>230</sup>

Weaning of pigs below 28 days of age from the sow is prohibited, except where it would be detrimental to health of the dam or the piglet.<sup>231</sup> However, the Directives permit the weaning of piglets up to seven days provided that they are transferred to a thoroughly washed and isolated housing away from the place where the sows are housed, to prevent the spread of diseases.<sup>232</sup>

#### 4.1.2.5. The Calves Directive

**Council Directive 2008/119/EC** lays down “minimum requirement for the protection of calves.” Consolidating the earlier legislation enacted in 1991 and 1997, it was introduced on 18 December 2008.<sup>233</sup> The most important contribution of the Directive in the field of calf welfare is that it bans the veal crate system,<sup>234</sup> effective from December 31, 2006.<sup>235</sup> It mandates keeping of calves from eight weeks of age in groups. However, if, on grounds of ill health or behaviour, a calf is required to be kept in isolation for proper care, it may be kept in a single pen, if approved by a veterinarian.<sup>236</sup> Even though the Directive permits a calf to be kept in an individual pen, it requires the size of the pen to be sufficiently wide enough to

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<sup>227</sup>*Id.*

<sup>228</sup>*Id.*

<sup>229</sup>Stevenson, *supra* note 194

<sup>230</sup>*Id.* at 9

<sup>231</sup>Pigs Directive, *supra* note , annex I, chapter II, para. C.3

<sup>232</sup>*Id.*

<sup>233</sup>*Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves*, L 10 Official Journal 7, 7-11 (2009) (July.5, 2020, 8:30AM), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:010:0007:0013:EN:PDF> (July.5, 2020, 8:30AM)

<sup>234</sup>*Id.* art.3 & annex I, para 11

<sup>235</sup>*Id.* art.3

<sup>236</sup>*Id.*

enable the calf to turn around.<sup>237</sup> Thus, the Directive imposes a complete ban on the use of veal crates.

The importance of keeping calves in groups is recognised in the Directive. It states that as calves are herd-living species, an environment conducive to their needs is beneficial. The same has been recognised scientifically. Therefore, they should be reared in groups.<sup>238</sup> Annex I of the Directive stipulates general standards for the housing and welfare of calves. For instance, it mandates the keeping of temperature, gas concentration, within limits that are suitable to the calves; it prohibits keeping of calves in permanent darkness; requires all calves to be fed with appropriate diet, etc.<sup>239</sup> From January 1, 1998,<sup>240</sup> the Directive prohibits tethering of calves<sup>241</sup>, and feeding them with all-liquid, iron-deficient diet.<sup>242</sup>

In addition to the aforementioned provisions, the use of bovine somatotrophin (BST), also known as Bovine Growth Hormone, which refers to “a genetically-engineered version of the dairy cow’s own growth hormone, administered to increase milk yield in dairy cows” is prohibited under the EU law.<sup>243</sup> The administration of such hormones result in foot disorders, mastitis, production related diseases, etc.

#### 4.1.2.6. The Transport Regulation

**Council Regulation (EC) No 1/2005**<sup>244</sup> is applicable to the transport in connection with an economic operation of all live vertebrate animals. The underlying objective of the legislation is to ensure that no animal is transported in a manner which is likely to cause injury or undue suffering to the animal.<sup>245</sup> Key features of the legislation are as follows:

It is a detailed legislation, but most of technical requirements it stipulates are for terrestrial farmed animals, while certain administrative requirements also applies to other species.

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<sup>237</sup>*Id.*

<sup>238</sup>*Id.* Recital 7

<sup>239</sup>*Id.* annex I

<sup>240</sup>*Commission Decision 97/182/EC of 24 February 1997 amending the Annex to Directive 91/629/EEC laying down minimum standards for the protection of calves*, L 76 Official Journal 30, 30-31 (1997) (Jul.5, 2020, 8:43AM), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997D0182:EN:HTML>

<sup>241</sup> Calves Directive, *supra* note , annex I, para 8

<sup>242</sup>*Id.* annex I, para 11

<sup>243</sup>*Council Decision of 17 December 1999 concerning the placing on the market and administration of Bovine Somatotrophin (BST) and repealing Decision 90/218/EEC*, L 331 Official Journal 71, 71-72 (1999)(Aug.5, 2020, 2:50PM), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999D0879:EN:HTML>

<sup>244</sup>*Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97*, L 3 Official Journal 1, 1-32 (2005) (Jul.10, 2020, 6:27PM)

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:003:0001:0044:EN:PDF>

<sup>245</sup>*Id.* art.3

The administrative requirement mandates the obtaining of necessary authorisation by the transporters and a certificate of competence by the drivers and attendants. It mandates all vehicles used for transportation of animals, where the duration of the journey exceeds eight hours, and livestock vehicles to obtain prior approval. Further, where animals are traded between two member states or are exported to a third country, and the duration of the journey exceeds eight hours, the legislation stipulate additional administrative procedure, such as the “journey log”, to be followed.

The technical rules cover different transport aspects, such as the fitness of animal to undertake the journey (animals that are weak or sick, or are unable to walk without assistance, or are females at the end of their gestations, etc are not considered fit for transport), the efficiency and standard of transportation in relation to means and practices (loading, unloading, space allowances, etc).

The legislation sets forth standards for treatment of animals. It prohibits suspension of animals using mechanical means as well as lifting or dragging them by the ears, horns, legs, tails or fleece during transport, loading and unloading.<sup>246</sup> It lays down precise rules for the minimum space allowance and maximum transit duration for certain species. For example, transportation of pigs and horses for more than twenty-four hours without rest is forbidden. It requires all such animals to be allowed to rest after being unloaded, watered and fed for twenty four hours before they can be transported again. The legislation requires certain additional arrangements to be made for journeys exceeding eight hours as it poses a greater risk to the welfare of animals. For example, it requires vehicles carrying main livestock species, such as horses, cattle, pigs, etc., to be equipped with a ventilation system for controlling temperature, along with watering devices and a satellite navigation system.

#### **4.1.2.7. The Slaughter Regulation**

The Slaughter Directive contains a set of detailed, fairly inclusive provisions for welfare of animals during slaughter.<sup>247</sup> It is applicable to animals and poultry both.<sup>248</sup> It mandates stunning of all animals, including poultry before slaughter.<sup>249</sup>

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<sup>246</sup>*Id.* annex 1, chapter III, point 1.8

<sup>247</sup>*Council Directive 93/119/EC of 22 December 1993 on the Protection of Animals at the Time of Slaughter or Killing*, L 340 Official Journal 1, 21-34 (2007)(Aug. 2, 2020, 7:55PM), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1993L0119:20070105:EN:PDF>

<sup>248</sup>*Id.* art.5

<sup>249</sup>*Id.*

From January 1, 2013, the Directive has been superseded by a new Slaughter Regulation.<sup>250</sup> All killing and related operation of animals bred or kept for food production, wool, skin, fur, or for controlling the spread of diseases comes within the ambit of the new Regulation.<sup>251</sup> The term “related operations” has been defined to mean operation like handling, lairaging, restraint, stunning and bleeding.<sup>252</sup>

The fundamental objective of the Regulation is to make sure that “no unnecessary pain, distress, or suffering is caused to an animal during killing and related operations.”<sup>253</sup> It mandates that “killing and related operations conducted by persons with the required level of competence without causing any avoidable pain, suffering or distress to the animals.”<sup>254</sup> It confers upon the slaughterhouse operators the obligation to make sure that only persons with a certificate of competence are permitted to carry out slaughter operations.<sup>255</sup> It confers upon the Member States the obligation to make sure that training courses for personnel involved in the killing and related operation are made available and upon completion of the final examination, certificate of competence are granted.<sup>256</sup>

Further, the Regulation also confers upon the slaughterhouse operators the duty to formulate SOPs;<sup>257</sup> provide for monitoring procedure;<sup>258</sup> to make sure that the welfare provisions are duly adhered to, and for this purpose appoint an animal welfare officer.<sup>259</sup>

It mandates stunning prior to slaughter of all animals and poultry.<sup>260</sup> Stunning is a process that is deliberately induced leading to the loss of consciousness and sensibility without pain, or immediate death.<sup>261</sup> Based on the species and contexts in question (human consumption or not), a list of approved methods of stunning has been provided. The methods have been described and in some cases, the Regulation has added strict specifications to these methods, such as minimum currents to be used to stun animals using the electrical method. A

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<sup>250</sup>*Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing*, L 303 Official Journal 1, 1-30 (2009)(Aug. 5, 2020, 8:10PM), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:303:0001:0030:EN:PDF>

<sup>251</sup>*Id.* art. 1

<sup>252</sup>*Id.* art. 2

<sup>253</sup>*Id.* art. 3

<sup>254</sup>*Id.* art. 7

<sup>255</sup>*Id.*

<sup>256</sup>*Id.* art. 21 & annex IV

<sup>257</sup>*Id.* art. 6

<sup>258</sup>*Id.* art. 16

<sup>259</sup>*Id.* art. 17

<sup>260</sup>*Id.* art. 4

<sup>261</sup>*Id.* art. 2

significant exception to this requirement has been provided in the Regulation itself<sup>262</sup>. In the context of ritual slaughter, it permits slaughtering of animals without prior stunning, provided that it is performed in a slaughterhouse. This implies that throats of animals are slit open while they are fully conscious. However, Member States are empowered to adopt stricter rules in this context.

No matter how effective a stun may be, animals tend to regain consciousness after a certain time. They usually die from the loss of blood except when the stun leads to instant death. Therefore, it is necessary for animals to be bled after stunning. Accordingly, it is vital that the throats of animals are promptly severed after being stunned, as a prolonged period between the two operations may render an animal conscious prior to death. Having regard to this, the Regulation's mandates requiring stunning to be followed by a procedure that causes death (such as bleeding) as soon as possible is significant.<sup>263</sup>

In addition, the legislation demands that meat imported from third countries into the EU be preceded by an attestation certifying that the standards at least equal to those of the EU have been met.<sup>264</sup>

## **4.2. Enforcement Measures**

### **4.2.1. Role of Member States**

The responsibility to ensure due enforcement of the EU legislation is conferred upon the competent authorities of the Member States. It is mandatory for Member States to provide necessary technical guidance and operational arrangements for the due enforcement of both the EU Directives and Regulation, and to set up suitable mechanism of sanctions.

The Member States, therefore, plays a significant role in implementing the legislations by undertaking key activities such as disseminating information to the stakeholders about new rules, setting forth technical and legal guidelines, and training of its officials. To monitor the progress of the implementation, Member States are also required to build a suitable reporting system. The competent authorities of the Member States are required to allocate the requisite human and financial resources to carry out proper checks.

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<sup>262</sup>*Id.* art.4(4)

<sup>263</sup>*Id.* art.4

<sup>264</sup>*Id.* art.12



#### **4.2.2. Role of European Commission**

**FVO Audits:** A system of audits has been established by the Commission, with respect to EU farm animal welfare legislations. These are routinely performed by experts from the FVO of the “Commission’s Health and Food Safety Directorate General.” Several areas of the EU legislation, relating specifically to food safety, plant and animal health are covered under the FVO assessments. The audits are intended to verify that required measures to enforce the EU rules have been prepared and adopted by the Member State. In this way, competent authorities can detect and identify non-compliances and take necessary remedial action.

Specifically inspecting or sanctioning an individual institution do not fall under the ambit of legal authority conferred upon the Commissions’ experts. Their audits require visits to establishments, which are not meant to assess a particular case but to use it as a sample that may represent a general circumstance. To this end, the FVO has a special team of experts devoted to EU animal protection legislation performing about one audit each month. Additionally, certain other audits, such as those relating to food safety in slaughterhouses are carried out by other FVO team of experts, which also evaluates animal welfare rules pertaining to stunning of animals.

Where failure in the Member State’s inspection system is found by the experts from the Commission, a number of follow-up actions are adopted to resolve the issue through a continuous dialogue. However, the Commission might well decide to initiate legal proceedings, where a Member states repeatedly fails to address certain issues.

Over time, in the field of animal welfare, its enforcement activities have been intensified. It now carries out study visits, and also organises meeting to enhance the coordination and dialogue between the competent authorities.

**Reports of Member States on inspections:** Member States are required to report on their activities relating to farm and transport inspection to the Commission. Furthermore, the Commission is also authorised to call for additional data from the Member States to verify the enforcement of relevant EU legislations.

**Reports of individuals or NGOs on non-compliance:** The EC is not authorised to interfere in individual cases of non-compliance because the competent authorities of the Member State concerned are given sole responsibility for dealing with these matters. Nevertheless, after receipt of an accusation of systematic violations of EU legislation as a consequence of

persistent failure by Member States to enforce such EU laws, the Commission is allowed to call for more information from the concerned competent authorities and take requisite action to ensure compliance.

**Legal proceedings and sanctions:** Pursuant to Article 258 of the Treaty<sup>265</sup>, the EC is authorised to initiate an infringement procedure against a Member State if it appears that the competent authority of the State concerned has failed to implement the EU rules. Nonetheless, this process must be based on sufficiently accurate and credible data obtained either from the FVO official mission report or from organizational or individual complaints.

Where the EC considers that a Member States has failed to fulfil its obligation under the Treaties, an opportunity to the State concerned to give its statement is provided before any reasoned opinion on the matter is given.<sup>266</sup> Despite that, if the State fails to comply with the opinion, within the stipulated period, the EC is authorised to bring the matter before the EU Court of Justice. The EC decision to initiate infringement proceeding against a Member States is discretionary, and it may consider using any other way to achieve more effective enforcement. Legal proceedings, typically take a long period of time and considerable resources from both the parties. Therefore, before resorting to this final step, an attempt to resolve most issues through other means is taken. The Court, may nevertheless, possibly impose financial sanctions on the State concerned, if an when the matter is brought before it.

**Supporting role of the EC:** In order to ensure due compliance, it is necessary that the various stakeholders as well as the officials are made aware of the EU rules on animal welfare. This prime responsibility of raising awareness is conferred upon the Member States. However, the Commission has also taken several vital measures to increase awareness on welfare of animals. For instance, the EC has initiated the “Better Training for Safer Food” programme, which relates training of official staffs from the Member States and candidate countries in “food and feed law, animal health and welfare and plant health rules.” Moreover, to acquaint the countries outside EU, more particularly, the developing countries with the EU requirements, specific training sessions under the programmes are also organised. In 2014, the first e-module on animal welfare was made available. In addition, the EC has taken measures to increase knowledge among veterinary practitioners on animal welfare in collaboration with the Federation of Veterinarians of Europe. Various conferences are

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<sup>265</sup>Treaty on the Functioning of the European Union, *supra* note 145

<sup>266</sup>*Id.* art.258

regularly organised by the EC in order to disseminate information pertaining to animal welfare among the key stakeholders, such as the farmers, traders, slaughterhouse operators, AWO, etc. The EC organised two Global Webinars on animal welfare, in 2013 and 2014, respectively in collaboration with the World Veterinary Association. Over 300 veterinarians and students from 50 different countries attended these webinars.

In the EU, the EFSA has been established to render independent scientific advice in matters of food safety. Upon the request of the EC, it may also be required to give scientific opinion on matters of animal welfare. These opinions contribute significantly in a number of ways to better implement EU rules on animal welfare. The bulk of EU legislation has been drawn upon scientific data. The regular scientific opinions provided by the EFSA enable the stakeholders to adopt appropriate measures to implement the laws in the light of the enhanced scientific and technical knowledge. Moreover, by involving stakeholders in their work, the EFSA increasingly contribute towards widening the animal welfare debate beyond the scientific community, and increasing awareness among the various actors. In addition to this, the EFSA also provides information on matters relating to better implementation, such as procedures for monitoring the stunning of animals.

It may thus be concluded that under the EU, comprehensive and advanced set of legislative and enforcement measures exists to ensure welfare of animals.

## CHAPTER 5

### Constitutional Position of Animals in India

The Indian Constitution is the supreme law of the land. It is the framework within which all other laws are set. It defines with certainty the fundamental political code, rights and duties of citizens, directive principles of state policy, procedure, structures and powers of governmental institutions. It is widely regarded as a 'living document'- dynamic and constantly evolving with changing times. While the Indian Constitution came into force on Jan 26, 1950, specific provisions for the protection of animals were incorporated much later with the introduction in 1976 of the Constitution 42<sup>nd</sup> Amendment Act. Courts in India have time and again interpreted the various provisions of the Constitution so as to confer upon animals certain rights and consequently confer duties upon humans towards non-human animals.

The sanctity of animal life as recognized and protected under the constitutional framework, can be explained with reference to the following:

Federal Structure	Fundamental Rights	Directive Principles of State Policy	Fundamental Duties
<ul style="list-style-type: none"><li>• Schedule VII</li><li>• Schedule XI</li><li>• Schedule XII</li></ul>	<ul style="list-style-type: none"><li>• Article 21</li><li>• Article 19(1)(g)</li><li>• Article 25(1)</li></ul>	<ul style="list-style-type: none"><li>• Article 48</li><li>• Article 48A</li></ul>	<ul style="list-style-type: none"><li>• Article 51A (g)</li><li>• Article 51A(h)</li></ul>

#### 5.1. Animals under the Indian Federal Structure

The Indian Constitution under Article 245 confers powers upon the Union Parliament to make laws, subject to the provisions of the Constitution, for all or part of the Indian Territory, including the States, UTs and other territories, such as enclaves within India. Under Article 246 the power to legislate on a subject-matter has been divided between the Union Parliament and State Legislatures into three lists contained in Seventh Schedule:

**Union List (List I):** with respect to matters enumerated within this list, the exclusive power to legislate rests with the Union Parliament

**State List (List II):** the authority to legislate on matters enumerated under this list vests with the State Legislatures.

**Concurrent List (List III):** the authority to legislate on matters mention in this list vests with both the Parliament and Legislatures of State.

In the context of animal rights, the following matters have been allocated under the Schedule VII:

According to List III, both the Parliament and the State Legislatures have the power to legislate on matters pertaining to “prevention of cruelty to animals;”<sup>267</sup>“protection of wild animals and birds;”<sup>268</sup> “prevention of the transmission of diseases that are infectious or contagious or pests affecting people, animals or plants from one State to another.”<sup>269</sup>

According to List II, the State Legislature is empowered to legislate on matters relating to “safeguarding of stock, its preservation and improvement; veterinary training and practice.”<sup>270</sup>

In addition to the above, the Constitution per the Schedule XI empowers the Panchayats (local and self government) to make laws pertaining to “animal husbandry, dairying, poultry;<sup>271</sup>and fisheries.”<sup>272</sup> Further, as per Schedule XII Municipalities may undertake certain duties pertaining to “cattle pounds; prevention of cruelty to animals;<sup>273</sup> and regulation of slaughterhouses and tanneries.”<sup>274</sup>

## 5.2. Fundamental Rights

**Article 21** guarantees to every person the fundamental right to life. Article 21 is at the core of the fundamental rights and has received broad interpretation from time to time. The horizons of this right have been expanding ever since to encompass not only the different ramifications of ‘life’ but also species other than human beings within its scope. The term ‘life’ has been interpreted to include the right to live a quality life, right to health, right to shelter, right to

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<sup>267</sup> INDIA CONST. art.246, list I, entry 17

<sup>268</sup> *Id.* entry 17B

<sup>269</sup> *Id.* entry 29

<sup>270</sup> *Id.* list II, entry 15

<sup>271</sup> *Id.* art. 243G, entry 4

<sup>272</sup> *Id.* entry 5

<sup>273</sup> *Id.* art.243W, entry 15

<sup>274</sup> *Id.* entry 18

live with human dignity, right to privacy etc. Parallely, the judiciary has expanded the scope of 'person' to include, alongside humans beings, non-human animals within its fold.

In **RamlilaMaidan** Case, the Apex Court held that, *“the Constitution speaks not solely for the protection of human right. The catena of judgements iterates the need to preserve and protect man as well as animals, all creatures, plants, rivers, hills and environment. Our Constitution, on one hand, professes for collective life and responsibility and on the other, individual rights and responsibilities.”*<sup>275</sup>

In interpreting the Cattle Trespass Act, 1871, the Gujarat High Court acknowledged that *“like humans, cattle have life in them, and that even an animal has a right claim to not be deprived of its liberty except in accordance with law. Several enactments have recognised animal rights.”*<sup>276</sup>

In the landmark judgement of **Animal Welfare Board of India v. A. Nagaraja**,<sup>277</sup> the Apex Court expanded the scope of Article 21 so as to include within its ambit animal life. It held that *“ ‘life’ in the context of animals does not mean mere survival or existence or being of instrumental value for humans, but a right to live with some intrinsic worth, honour and dignity. The fundamentally recognized freedom for animals, such as, freedom from hunger, thirst and malnutrition, fear and distress, physical and thermal, etc must be elevated and equated with the rights guaranteed to the citizens of India under Part III of the Constitution.”*

In **MuhammadbhaiJalalbhaiserasiya v. State of Gujarat and Ors.**,<sup>278</sup> the Gujarat High Court held that, *“ holding birds in cages is akin to illegally confining birds, and is a violation of the right of birds to live in free air and sky. The illegally confined birds must, therefore, be released in the open sky or air.”*

Under **Article 19(1)(g)**, “the right to practice any profession, or to carry any trade, business or occupation” is guaranteed to all citizens. However, this right is not absolute, but is subject to “reasonable restrictions” embodied in Article 19(6).

The Kerala High Court, in **N.R. Nair v. Union of India and Ors.**,<sup>279</sup> iterated that, *“carrying on any activity, be it commercial or otherwise, is not permitted under Article 19(1)(g),if*

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<sup>275</sup>RamlilaMaidan Incident v. Home Secretary, Union of India and Ors., MANU/SC/0131/2012

<sup>276</sup>MahisagarMatajiSamajSeva Trust v. State of Gujarat and Ors., MANU/GJ/0160/2012

<sup>277</sup>Animal Welfare Board of India vs. A. Nagaraja and Ors., MANU/SC/0426/2014

<sup>278</sup>MuhammadbhaiJalalbhaiserasiya v. State of Gujarat and Ors., MANU/GJ/1492/2014

<sup>279</sup>N.R. Nair v. Union of India and Ors., AIR 2000 Ker 340

*it results in infliction of unnecessary pain and suffering on animals. Banning the exhibition or training of animals was not violative of Article 19(1)(g). Such an abhorrent and pervasive practice aimed at pure amusement cannot be treated as a 'trade' or 'business' in the interests of the general public in the way that it is included in Article 19(1)(g) of the Indian Constitution."*

The Indian Constitution guarantees to all persons equally "freedom of conscience and the right to profess practice and propagate religion."<sup>280</sup> This entails the right to exhibit one's beliefs and ideas by such over acts as are permitted or prescribed by one's religion. However, this right is subject to State regulation imposed "to secure public order, health and morality".<sup>281</sup> Any legislation, restricting religious practices, passed by a competent legislature in the interest of public order and the like, falls within the ambit of the States' regulating power. Therefore, religious practices, such as human or animal sacrifice in a way deleterious to the well-being of the community at large can be restricted, regulated or completely banned by the State.<sup>282</sup> Protection under Article 25 must be confined to practices which form an integral or essential part of religion.<sup>283</sup>

In the case of **Hanif Quareshi**,<sup>284</sup> the Apex Court rejected the contention of the petitioner that the challenged legislation barring cow-slaughter unconstitutionally interfered with their free exercise of religion. It was held that, "*cow sacrifice on Bakr Id day is not sanctioned in Islam. Such overt act is not obligatory for a Muslim to exhibit his religious beliefs and ideas, but is optional.*"

The Hon'ble High Court of Tripura, in **Subhas Bhattacharjee v. The State of Tripura**,<sup>285</sup> iterated that, "under Article 25(1), in the light of 'other fundamental rights' a religious practice can be restricted. While, traditionally, 'other fundamental rights' had always been interpreted in the context of human beings, the Court in the instant case extended the scope of the term to encompass right available to animals as well. The Court, therefore, held that, "*since act of animal sacrifice does not fall squarely within the ambit of doctrine of necessity, it contravenes Article 21 and can therefore, be prohibited under Article 25(1). The tradition of*

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<sup>280</sup> INDIA CONST. art.25

<sup>281</sup> Ratilal Panachand Gandhi v. The State of Bombay, MANU/SC/0138/1954

<sup>282</sup> Sardar Syedna Taher Saifuddin Sahib v. State of Bombay, AIR 1962 SC 853

<sup>283</sup> Durgah Committee, Ajmer and Anr. v. Syed Hussain Ali and Ors. AIR 1961 SC 1402

<sup>284</sup> Mohd. Hanif Quareshi and Ors. v. The State of Bihar. MANU/SC/0027/1958

<sup>285</sup> Subhas Bhattacharjee vs. The State of Tripura and Ors., MANU/TR/0215/2019

*animal sacrifice 'lacks the essence of economic, commercial, political or secular character' and cannot be protected under Article 25(1)."*

In **Ramesh Sharma v. State of Himachal Pradesh and Ors.**<sup>286</sup>, critical observations concerning the animal sacrifice and the right under Article 25 to practice or follow a religious belief were made. The Court clearly iterated that, *"the killing of animals cannot be regarded as central to a religious belief and practice. Only those practices, elimination of which can lead to a profound change in the nature of religion or belief can be regarded as essential or integral. No fundamental change in the character or belief of the Hindu religion would result if sacrifice of animal is banned, as flowers, fruits, coconuts, etc can be used to make offerings in the temple. Under the constitutional mandate, the State is duty bound promote the general welfare of people and animals, as well as their health and safety. There is a need to replace rituals having their basis in the early civilizations with new rituals based on reasoning and scientific temper. In modern era, superstitions have no faith. Consequently, the right to freedom of religion would not be compromised if the tradition of sacrificing animals were stopped."*

### **5.3. Directive Principles of State Policy**<sup>287</sup>

The DPSP enshrined in Part IV represents the socio-economic objectives that the nation is expected to attain. These are built to direct the nation's future by mandating three branches of the administration, i.e., legislative, judiciary, and executive, to enforce these principles. The following provisions form the foundation of State policies on animal welfare in India:

Article 48 confers upon the State the duty to take steps "to preserve and improve the breeds of cow, calves and other milk and draught cattle, and to prohibit their slaughter." Further, Article 48A, which was added by the 42<sup>nd</sup> Amendment Act, 1976, specifically confers upon the State the duty to "safeguard the wildlife of the country."

In **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat**,<sup>288</sup> *"the challenge to the constitutional validity of the Bombay Animal (Preservation of Gujarat Amendment) Act, 1994, which imposed a complete ban on the slaughtering of cows and calves and their progeny as being violative of Article 19(1) (g) of the Constitution was rejected, on the ground that, Article 48 calls for a complete prohibition on the slaughter of cows and its progeny,*

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<sup>286</sup> Ramesh Sharma v. State of Himachal Pradesh and Ors., (2014) S.C.C. OnLine 4679

<sup>287</sup> INDIA CONST. part IV

<sup>288</sup> State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, AIR 2006 SC, 847



*including those that have been rendered useless due to sickness or old age. Under Article 37, the State is duty bound to apply the DPSP when enacting a law. The ban on slaughter of cow progeny imposed by the Act is, in the interest of general public within the meaning Article 19(6) of the Constitution and therefore valid.”*

**In T.N. Godavaram Thirumulpad v. Union of India,**<sup>289</sup> the Court directed, *“the State Government to give full effect to centrally sponsored scheme for saving wild buffalo. The Government's plea of shortage of funds to implement various wild buffalo conservation programmes was considered as untenable.”*

**In Bhartiya Govansh Rakshan Sanverdhhan Parishad v. Union of India and Ors.,**<sup>290</sup> recognising the plight of bovine population, the Court directed, *“the Central Government to enact laws at the national level to prohibit the slaughtering, import/export of cow and calf, and selling of beef and beef products in consonance of the power conferred under Entry 17 and 17B of the Concurrent List, and held that, the State Government is duty bound to protect the cattle by augmenting its financial capacity. Recognising the dire need to construct shelter homes to protect the abandoned cows, the Chief Secretary was to ensure release of sufficient funds for the construction of shelters such as goshalas throughout the State of Himachal Pradesh.”*

#### **5.4. Fundamental Duties**<sup>291</sup>

In 1976, the 42nd amendment to India's constitution added a new section listing various fundamental duties that the citizens were to observe. This Part was incorporated on the recommendations of the Swarn Singh Committee, thereby bringing the Indian Constitution in line with Article 29(1) of the UDHR.<sup>292</sup> Though in the courts these duties are unenforceable, they are often used in interpreting the constitution and other matters. Indian citizens are under an obligation “to protect and improve the natural environment and to have compassion for living creatures;”<sup>293</sup> and “to develop scientific temper, humanism and the spirit of inquiry and reform.”<sup>294</sup> These provisions have been regarded as the “magna carta of animal rights

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<sup>289</sup>T.N. Godavaram Thirumulpad v. Union of India, AIR 2012 SC 1254

<sup>290</sup>Bhartiya Govansh Rakshan Sanverdhhan Parishad v. Union of India and Ors., MANU/HP/0697/2016

<sup>291</sup> INDIA CONST. part IV-A, art. 51A

<sup>292</sup> Art. 29(1) of the UDHR provides: “Everyone as duties to the community in which alone the free and full development of his personality is possible”.

<sup>293</sup> INDIA CONST. part IV-A, art. 51A (g)

<sup>294</sup> INDIA CONST. part IV-A, art. 51A (h)

jurisprudence in India.”<sup>295</sup> The term compassion implies concern for suffering, sympathy kindness, etc. The principles of humanism as iterated in Article 51A(h) highlights the need to look after the welfare and wellbeing and the duty to prevent infliction of pain or suffering on animals.<sup>296</sup>

In **Mahisagar’s case**<sup>297</sup>, the Court held that, “*the term ‘animal’ has been defined under the PCA Act, 1960 to mean ‘all living creatures other than a human being.’ Thus, Article 51A (g) enjoins upon all citizens the obligation to have compassion towards animals, birds, reptiles and even small insects.*”

A review of the foregoing provision and the judicial dictum in various cases reflects the progressive measures towards the foundation of greater animal protection in India. However, there is still a long way to go in developing a solid foundation for animal law in the country.

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<sup>295</sup> *Supra* note 277

<sup>296</sup> *Id.*

<sup>297</sup> *Supra* note 276

## CHAPTER 6

### Regulatory Provisions for the Protection of Animals in India

As seen in the preceding chapter, animal sentience is implicitly recognised and echoed in country's Constitution, which enshrines the principle of "non violence" and mandates all citizens to "have compassion for living creatures." The Central Government has also taken several legislative initiatives to ensure animal welfare in India. These can be discussed as follows:

#### 6.1. The Prevention of Cruelty to Animals Act, 1960

The PCA Act, 1960 was promulgated largely because of Rukmini Devi Arundale's efforts.<sup>298</sup> To replace the then existing PCA, 1890, and in order to address its shortcomings, a private member's bill in the Rajya Sabha was introduced by her in 1952. It was after her passionate and enthusiastic speech drawing the attention towards the necessity of animal welfare that a committee was set up by PM Nehru to examine the matter and devise a detailed regulation.<sup>299</sup> This laid the groundwork for the PCA Act to be enacted.

The earlier PCA, 1890 was superseded by the PCA Act, 1960. The older Act had limited scope. It extended its application to urban areas within municipal borders only.<sup>300</sup> The term "animal" was also very narrowly defined to include "domestic or captured animals."<sup>301</sup> Other animals, such as stray animals who suffer extreme brutalities and inhumane treatment, non-domesticated birds, etc, were outside the scope of the Act. Various forms of animal cruelty were not regulated under the Act, and also the penalties prescribed under it were insufficient.

Thus, with the intent to address the inadequacies and deficiencies of the earlier Act of 1890 and "to prevent the infliction of unnecessary pain or suffering on animals,"<sup>302</sup> the PCA Act, 1960 was formulated. For the very first time, provisions for the protection of experimental animals and those used as performing animals were introduced.<sup>303</sup> It also established the AWBI, a legislative body conferred with the responsibility of promoting the protection and welfare of animals and to advise the Central Government on the same.<sup>304</sup> One of the most

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<sup>298</sup>Nadkarni & Ghosh, *supra* note 12, at 518

<sup>299</sup>*Id.*

<sup>300</sup>*Id.*

<sup>301</sup>*Id.*

<sup>302</sup> The Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India)

<sup>303</sup>Nadkarni & Ghosh, *supra* note 20, at 519

<sup>304</sup>Prevention of Cruelty to Animals Act, 1960, *supra* note 302, sec. 4, 9

important provisions of the Act is that it confers upon the person in charge or care of animals to take all reasonable measures to ensure its welfare.<sup>305</sup>

- **Scope and Application**

The Act contains six chapters. Chapter III provides a list of acts which shall be considered as “treating animals cruelly”<sup>306</sup> and prescribes penalties for the same. It renders beating, kicking, over-riding, over-loading, torturing; treating or being an owner, permitting any animal to be treated in a manner that causes unnecessary pain or suffering as a punishable offence. Employing or permitting an animal to be employed in any work or labour for which it is unfit by reason of its age, disease infirmity, etc, also is an act of cruelty towards animals. Unreasonably or wilfully administering any injurious substance or drugs to animals; transporting animals in a manner that causes them distress; confining them in small cage or receptacle where they cannot move; tying an animal for an unreasonable time with a short or heavy chain or cord; being an owner, neglecting to exercise or causing to exercise any dog that is habitually chained up or kept in close confinement; failure on the part of the owner to provide animals with sufficient food, drink or shelter; abandoning any animal without any reasonable cause; being an owner, wilfully allowing an animal infected with contagious disease to go at large or to die in any street; having in possession without any reasonable cause any animal suffering in pain due to mutilation, starvation, or ill-treatment; mutilating or killing animals in an unnecessarily cruel manner; using them solely for the purpose of entertainment, etc., are all offences under the Act.

The Act under Chapter IV regulates animal experimentation. It states that “performance of experiments on animals for the purpose of advancement by new discovery physiological knowledge or of knowledge which will be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants is not prohibited and is lawful.”<sup>307</sup> The Central Government, however, is empowered to constitute a Committee to regulate and supervise the experiments on animals.<sup>308</sup> It shall be the responsibility of the Committee to make guidelines and take all appropriate steps to ensure that animals are not subject to unnecessary pain or suffering at any time during the conduct of such experiments. In particular, it shall ensure that experiments on animals are

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<sup>305</sup>*Id.* sec.3

<sup>306</sup>*Id.*sec.11

<sup>307</sup>*Id.* sec.14

<sup>308</sup>*Id.* sec.15

conducted under the influence of anaesthetics by qualified persons, with due care and humanity.<sup>309</sup>

Chapter V sets out rules relating to performing animals. It states that no individual shall be allowed to “exhibit or train any performing animal unless he is registered in compliance with the provisions of the Act.”<sup>310</sup> The term ‘exhibit’ has been defined as “any entertainment to which the public are admitted through sale of tickets” and ‘train’ means “train for the purpose of any exhibition.”<sup>311</sup> However, the under the Act the Court is duly authorised to restrict or prohibit such act, if on the receipt of a complaint by a police officer, it is found that the animal is subjected to “unnecessary pain and suffering.”<sup>312</sup>

- **Exceptions**

However, the acts such as dehorning of cattle, castration or nose-roping or branding of an animal in a manner prescribed by the law is not considered unlawful under the legislation.<sup>313</sup> In addition to this, the Act permits the confining of stray dogs to lethal chamber or their destruction in any other prescribed method.<sup>314</sup> Furthermore, killing of animals for preparation as food for mankind in a manner that does not causes unnecessary pain or suffering<sup>315</sup> or killing or extermination of any animal under the authority of law is also permissible.<sup>316</sup> “Killing of any animal in a manner required by the religion of any community” is not an offence under the Act.<sup>317</sup> Training of animals for bonafide military or police purposes or the exhibition of any animals so trained as well as keeping of animals in zoological garden or by any society or association for educational and scientific purposes is permissible.<sup>318</sup>

- **Penalty**

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<sup>309</sup>*Id.* sec.17

<sup>310</sup>*Id.* sec.22

<sup>311</sup>*Id.* sec.21

<sup>312</sup>*Id.* sec.24

<sup>313</sup>*Id.* sec.11(3)(a)

<sup>314</sup>*Id.* sec.11(3)(b)

<sup>315</sup>*Id.* sec.11(3)(e)

<sup>316</sup>*Id.* sec.11(3)(c)

<sup>317</sup>*Id.* sec.28

<sup>318</sup>*Id.* sec.27

The Act imposes a scant penalty of rupees ten to mere rupees fifty which may at the maximum may extend to either a fine of rupees hundred, three months imprisonment, or both..<sup>319</sup>

**Comments: Animal sentience is not formally recognised** under the legislation but is nevertheless implicit in its provisions. The Act has the very objective of “preventing the infliction of unnecessary pain or suffering on animals,” thereby acknowledging the capacity of animals to suffer. In addition, the capacity of animals to undergo both physical and mental suffering is also recognised. For instance, Section 9(e) of the Act mandates elimination of unnecessary pain or suffering, be it physical or mental to the extent possible before slaughter.

However, there are several limitations. The Act **promotes speciesism**, which is the idea that “humans are superior beings therefore, deserve more rights than animals, and sometimes also at their expense.” This is reflected by the fact that under the Act, rights of animals are still subservient to that of human interests under the doctrine of necessity. For instance, experimentation on animals is permitted under the Act under specified conditions and is not stringently regulated. Moreover, killing animals for food is also permissible. Further, the **punishment prescribed under the Act is grossly inadequate**. It is neither proportional to the seriousness of the offence committed nor are they sufficient to prevent the commission of such inhumane acts. A fine of mere fifty rupees to a maximum of one thousand rupees for acts that may result in death or cause severe injury or extreme discomfort to animals is not justified. Offenders get away easily without having to face serious consequences, thereby resulting in repeated cases of animal abuse. Prescription of such scarce penalties is reflective of the fact that under the Act, human interests is considered superior and that the interest of animal are not worthy of being protected at the cost of inconvenience to humans.

Additionally, while any person who is aware of the conduct of an offence under the Act may file a complaint, it is only sections 11(1)(l), (n), (o) and section 12 that allow a police officer to detain an offender without warrant. In other words, **most of the crimes under the Act are non-cognisable** for which it is “mandatory to obtain a warrant from the Magistrate before arresting the accused / offender” and, as a result of this and other relevant procedural obstacles concerning such classification, efficacious actions cannot be taken. The Act was enacted with the aim of ensuring that animals are not subjected to any unnecessary harm, but due the non-cognisability status of majority of the offences, the objects cannot be

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<sup>319</sup>*Id.*sec.11(1)

successfully achieved. Animal activists struggle to bring to accused to justice because whenever a case of animal cruelty is reported, action is rarely taken by the police because the offences are generally non-cognisable. In Indian criminal jurisprudence, the status of cognisable offences is conferred upon simple offences such as keeping a lottery office but an offence that cause actual suffering to an entity is not given the same status. Thus, on the basis of severity of the offence, it is pertinent change the non-cognisability status of the offences enlisted under section 11 of the Act.

**Most of the offences under Section 11 are classified asailable offences.** Furthermore, the very purpose of granting bail is lost due to the low penalty prescribed under the Act. It is considered that under the criminal justice system, bail is granted only in cases of crimes that are not grave. However, under section 11 there is no classification between offences and therefore, what offence is considered to grave or ordinary cannot be determined. Thus, under the Act bail is granted for all the offences, thereby completely negating the purpose of having any deterrent effect. Therefore, it is necessary to differentiate between the offences enumerated under section 11 to address both cognisability and bailability aspect.

Further, although the Act prohibits abandonment of animals without any reasonable cause, but what constitutes a ‘reasonable’ cause of abandonment is unclear. It authorises the culling of stray dogs as long as it is not achieved through injecting strychnine or other needlessly cruel manner. Be it noted that culling is a highly ineffective method of controlling the spread of diseases or other zoonotic diseases and must be immediately stopped. The exceptions outlined under the Act are also not in line with its objectives.

## **6.2. Protecting Animals used for Draught and Recreation**

### **6.2.1. The Prevention of Cruelty to Draught and Pack Animals Rules, 1965<sup>320</sup>**

The Ruleslays down provisions for the protection of “draught and pack animals” from inhumane treatment when used to draw carriages loaded with people or goods. It specifies the maximum load for certain draught and pack animals. No individual is allowed to cause any animal specified under the Rules to carry a load beyond the permissible limits.<sup>321</sup> A

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<sup>320</sup>*The Prevention of Cruelty to Draught and Pack Animals Rules, 1965*, ANIMAL WELFARE BOARD OF INDIA (May. 17, 2020, 12:23AM),

[http://awbi.in/awbi-pdf/Draught\\_and\\_Pack\\_Animal\\_Rules\\_1965\\_English.pdf](http://awbi.in/awbi-pdf/Draught_and_Pack_Animal_Rules_1965_English.pdf)

<sup>321</sup>*Id.* Rule 3 & 4

maximum of four persons, excluding the driver and children below the age of 6 years can be permitted to ride on a vehicle drawn by any animal specified under the Rules.<sup>322</sup>

Rule 6 set out the certain common standards for the use of such animals. It states that an individual is not permitted to use any animal for drawing any vehicle or carrying on any load:

- Over an aggregate duration of nine hours a day;
- Constantly for more than five without a break or rest;
- During the period between 12 p.m. and 3 p.m. in any territory where the temperature surpasses 37 degree celsius.

The Rules prohibit keeping in harness of such animals after work.<sup>323</sup> Use of sharp tackle or equipments that results in bruises, abrasions, swelling or extreme pain to the animal, in order to control or cause an animal to draw any vehicle, or for the purpose of driving or riding an animal is prohibited.<sup>324</sup> Saddling of horses in a manner that causes them discomfort is also prohibited.<sup>325</sup>

In case any person causes an animal to carry or draw weight beyond the limit specified in contravention of the provisions of the Rules, the police officer or any other person so empowered the Board or the State Government is authorised under Rule 11 to order such person to move the animal or vehicle or both to the nearest weighbridge in order to assess the weight of the load.<sup>326</sup> Where such person refuses to cooperate, the vehicle or the animal or both can be taken to the weighbridge by the authorities themselves.<sup>327</sup> Upon determination of the weight, the owner or person in charge is to be given a signed written statement about the weight and any other relevant information to the owner or person in charge.<sup>328</sup>

### **6.2.2. The Prevention of Cruelty to Animals (Licensing of Farriers) Rules, 1965.<sup>329</sup>**

These Rules were adopted to ensure that draught, pack or carriage animals such as, buffaloes, horses, mules, donkeys, etc, which require shoeing are not made to undergo needless pain at

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<sup>322</sup>*Id.* Rule 5

<sup>323</sup>*Id.* Rule 7

<sup>324</sup>*Id.* Rule 8

<sup>325</sup>*Id.* Rule 9

<sup>326</sup>*Id.* Rule 11(1)

<sup>327</sup>*Id.* Rule 11(2)

<sup>328</sup>*Id.* Rule 11(3)

<sup>329</sup>*The Prevention of Cruelty to Animals (Licensing of Farriers) Rules, 1965*, ANIMAL WELFARE BOARD OF INDIA (May. 18, 2020, 10:19 AM), [http://awbi.in/awbi-pdf/\(LICENSING%20OF%20FARRIERS\)%20RULES,%201965.pdf](http://awbi.in/awbi-pdf/(LICENSING%20OF%20FARRIERS)%20RULES,%201965.pdf)



the hand of unlicensed farriers. The Rules therefore require “any person carrying on the business of shoeing cattle” to be compulsorily licensed.<sup>330</sup> The licensing authority is empowered to issue a license subject to the following requirements:

- A written application is submitted to the licensing authority with all the requisite details, such as name, place of business, qualifications for the licence, etc.<sup>331</sup>
- The applicant must be 18 years of age, trained in cattle shoeing or carrying on the farrier business for at least two years before the entering into force of these Rules.<sup>332</sup>
- The applicant must be a fit and proper person.<sup>333</sup>
- The applicant must be equipped with appropriate tools and equipments, such as hand hammer, pincers, drawing knife, etc for the purpose of its business.<sup>334</sup>

On fulfilment of above mentioned requirements, the licence is granted for a period of two years, which may be renewed from time to time.<sup>335</sup> The Rules requires the exercise of “reasonable degree of care and skill in the shoeing of cattle”<sup>336</sup>, in the absence of which, the licensing authority has the power to cancel the licence<sup>337</sup>.

### **6.2.3 The Performing Animals Rules, 1973<sup>338</sup>**

The Rules lay down guidelines for registration of persons desiring to engage in the training or exhibition of performing animals. According to Rule 2(b) ‘performing animals’ are defined as “any animal which is utilized with the end goal of entertainment to which the public is conceded through the sale of tickets.” Subsequent Rules have been adopted to lay down the general criteria for grant of registration and other associated matters.

### **6.2.4. The Performing Animals (Registration) Rules, 2001 (as amended in 2002)<sup>339</sup>**

The Registration Rules 2001 as amended in the year 2002, lays down the following provisions with respect to performing animals:

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<sup>330</sup>*Id.* Rule 3

<sup>331</sup>*Id.* Rule 5

<sup>332</sup>*Id.* Rule 4

<sup>333</sup>*Id.* Rule 6

<sup>334</sup>*Id.*

<sup>335</sup>*Id.* Rule 7

<sup>336</sup>*Id.* Rule 9

<sup>337</sup>*Id.* Rule 10

<sup>338</sup>*Performing Animal Rules, 1973*, ANIMAL WELFARE BOARD OF INDIA, (May.18, 2020, 4:00 PM), <http://awbi.in/awbi-pdf/PERFORMING%20ANIMALS%20RULES,%201973.pdf>

<sup>339</sup>*Performing Animals (Registration) Rules, 2001*, ANIMAL WELFARE BOARD OF INDIA (May.18, 2020, 04:30PM), [http://awbi.in/awbi-pdf/PERFORMING%20ANIMALS%20\(REGISTRATION\)%20RULES,%202001.pdf](http://awbi.in/awbi-pdf/PERFORMING%20ANIMALS%20(REGISTRATION)%20RULES,%202001.pdf)

- Performing animals have been defined under the Rules to mean an “animal which is used at or for the purpose of any entertainment including a film or an equine event to which the public are admitted.”<sup>340</sup>
- The Rule requires any person desiring to exhibit or train a performing animal to apply for registration to the Central Government or any other authority conferred with such powers within thirty days of the entering into force of the Rules.<sup>341</sup> Registration under the Rules is compulsory.
- To ensure the well-being of the performing animals, the Rules require the owner to give prior intimation to the prescribed authority before hiring out or lending such animals for use in movies. Such application must contain the requisite details, such as the type, age, physical health, nature and duration of performance, method of training, certificate of fitness and ownership.<sup>342</sup>
- To ensure the welfare of performing animals, the prescribed authority is empowered to impose certain terms and conditions on the owner for the grant of registration,<sup>343</sup> such as the owner having in possession ten or more performing animals, must have a veterinarian as a regular employee;<sup>344</sup> an injured, sick or pregnant performing animal must not be made to perform;<sup>345</sup> animals must not be exposed to burning fire or to fire accidents;<sup>346</sup> horses must not be kept in close proximity while shooting scenes involving loud noises or explosives;<sup>347</sup> equines must not be made to walk on hard surfaces without being shod;<sup>348</sup>, etc.
- To ensure that horses are transported under safe conditions, the Rules prohibit the tying of horses in a manner that causes them discomfort while travelling. It requires the person causing a horse to be transported, to ensure that the horses are given adequate supply of water and food. In addition to this, the vehicle used for such purposes must preferably have rubber mats and should be adequately ventilated.<sup>349</sup>

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<sup>340</sup>*Id.* Rule 2(h)

<sup>341</sup>*Id.* Rule 3

<sup>342</sup>*Id.* Rule 7

<sup>343</sup>*Id.* Rule 8

<sup>344</sup>*Id.* Rule 8(i)

<sup>345</sup>*Id.* Rule 8(viii)

<sup>346</sup>*Id.* Rule 8(xiii)

<sup>347</sup>*Id.* Rule 8(xiv)

<sup>348</sup>*Id.* Rule 8(xvi)

<sup>349</sup>*Id.* Rule 8(xxv)

- A monthly report in the specified form with respect to the health, deaths and births of performing animals, duly certified by a veterinary doctor is required to be submitted to the prescribed authority.<sup>350</sup>
- The Rules prohibit the “training or exhibition of such performing animals as has been specified by the Central Government by notification in the Official Gazette.”<sup>351</sup> Accordingly, a ban has been imposed on the use of bears, monkeys, tigers, panthers lions<sup>352</sup> and later, bulls as performing animals.
- The designated authority has been given the power of inspection to ensure that the conditions under which the registration is issued are properly complied with.<sup>353</sup> In the event of non-compliance with such conditions, the prescribed authority has the power to suspend or cancel the registration, or issue directions as it deems appropriate for animal welfare.<sup>354</sup>

#### 6.2.5. Other Provisions

Display of animal cruelty and abuse in movies is forbidden under the **Cinematograph Act, 1952 and Rules**. This legislation also forbids the showing of scenes of abuse, brutality and horror solely for the purpose of human entertainment, and use of animals in movies without authorisation from the AWBI. It mandates the shooting of films using animals in the presence of a Wildlife Inspector. Section 5B of the 1952 Act prescribes the guiding criteria for certifying films. It states that there must be no needless portrayal of scenes showing cruelty or abuse of animals. Rule 21(3)(bb) of the “Cinematograph (Certification) Rules of 1983”, incorporated in 1997 stipulates that any application for certification of a film for public display must be followed by a written declaration by the producer stating that no harm was inflicted to the animal used in the making of films produced in India.

**Comments:** The Draught and Pack Animals Rules does any specific provisions for the welfare of such animals. It only outlines the maximum loads for certain species of draught and pack animals and a few general animal welfare standards. It neither sets forth its objective in clear and precise terms nor does it define the term ‘draught and pack animals’.

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<sup>350</sup>*Id.* Rule 12

<sup>351</sup>*Id.* Rule 13

<sup>352</sup> *Ban on Exhibition/Training of Five Performing Animals*, ANIMAL WELFARE BOARD OF INDIA (May. 21, 2020, 10:42 AM), <http://awbi.in/awbi-pdf/BAN%20ON%20EXHIBITION-TRAINING%20OF%20FIVE%20PERFORMING%20ANIMALS.pdf>

<sup>353</sup>*Id.* Rule 14

<sup>354</sup>*Id.* Rule 16

One has to draw inference from the title of the legislation as to its contents. It does not contain any explicit prohibition on the use of sick, pregnant or young animals for drawing carriages or load. Further, the legislation also faces the brunt of ineffective enforcement. There's a widespread use of spiked bits to control horses despite the explicit prohibition on their use under Rule 8.<sup>355</sup> Likewise, the practice of illegally shoeing animals by inadequately trained and unlicensed people is common in India. No penalties for failure to adhere to the Rules are prescribed.

With respect to the legislative measures for the protection of animals used for recreational purposes, the affirmative steps taken by the government to prohibit the organisation of animal fights and the use of certain species in performances need to be applauded. However, the legislative efforts have been impeded due to the lack of effective enforcement. Animals are blatantly exhibited, trained and forced to perform in circuses without the AWBI's consent. The use of unregistered animals for performances in circuses is widespread in India. The Investigative Report of PETA India on "Animals in Indian Circuses" is illustrative of this fact.<sup>356</sup>

Despite the legislative protection, the plight of working animals in India continues to exist. Approximately 1.1 million working horses, donkey and mules are used to sustain livelihoods for people in India. Lack of awareness among the owners on the health and welfare concerns, and the needs of their animals jeopardises the life of many animals. In addition, poverty among working animal owners and social-cultural perceptions often poses obstacles to progress.

### **6.3. Protection of Animals during Transport and Slaughter**

#### **6.3.1. The Transport of Animal Rules, 1978 (as amended in 2001).<sup>357</sup>**

The Rules along with its subsequent amendment in 2001, lays down guidelines for transportation of different species of animals from one place to another, whether by rail, road, inland waterway, sea or air.

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<sup>355</sup> Press Trust of India, *Take steps to stop use of the thorn bits on animals: PETA India to Environment Ministry*, BUSINESS STANDARDS , June 27, 2018, [https://www.business-standard.com/article/pti-stories/take-steps-to-stop-use-of-thorn-bits-on-animals-peta-india-to-environment-ministry-118062700940\\_1.html](https://www.business-standard.com/article/pti-stories/take-steps-to-stop-use-of-thorn-bits-on-animals-peta-india-to-environment-ministry-118062700940_1.html)(last visited Jul. 10, 2020, 11:07PM)

<sup>356</sup>*Animals in Indian Circuses a PETA Investigative Report*, PETA (Jul. 10, 2020, 8:12AM), [https://www.petaindia.com/wp-content/uploads/2013/09/IndiaCircusReport\\_A4\\_72.pdf](https://www.petaindia.com/wp-content/uploads/2013/09/IndiaCircusReport_A4_72.pdf)

<sup>357</sup>*Transport of Animals, Rules, 1978*, ANIMAL WELFARE BOARD OF INDIA (May.21, 2020, 8:14AM), <http://awbi.in/awbi-pdf/TRANSPORT%20OF%20ANIMALS,%20RULES,%201978.pdf>

It is divided into the following nine chapters, each dealing with necessary measure that needs to be adopted to “prevent the infliction of unnecessary pain and suffering on animals” and ensure its humane treatment during transportation:

- **Dogs and cats:** Chapter II of the Rules sets out guidelines for the transport of all breeds of dogs and cats. It requires that every consignment for transport must be accompanied by a valid health certificate, obtained from a qualified veterinary surgeon indicating that the animals are fit to travel and do not possess any infectious disease like rabies.<sup>358</sup> It prohibits the transport of dogs and cats in advanced pregnancy stage.<sup>359</sup> Appropriate arrangements for their treatment and management should be made if they are to be transported for a long distance.<sup>360</sup> Food and water must be supplied at regular intervals, etc. In addition to this, if they are to be transported by air, their cages must be thoroughly washed and disinfected<sup>361</sup> and for international transportation, they must be placed in pressurized compartment with controlled temperature.<sup>362</sup>
- **Monkeys:** Chapter III of the Rules sets out measures of care that needs to be taken in the transportation of monkeys, from the trapping area to the nearest rail-head, from one trapping area to another or to the nearest airport and by air. The Rule requires that length of the journey be as short as possible and factors causing stress to monkeys should be reduced to the minimum<sup>363</sup>. Pregnant and nursing monkeys, unless permitted by the Central Government must not be transported.<sup>364</sup> It states that suitable wooden or bamboo cages, with adequate ventilation, water and food receptacles must be provided.<sup>365</sup>
- **Cattle:** Likewise, under Chapter IV provisions for the transportation of cattle (cows, bulls, buffaloes, etc) by rail are specified<sup>366</sup>. It states that cattle must be adequately fed and given water before loading; adequate arrangement for feed, fodder, water and ventilation must be made; at least one attendant must be available in every wagon

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<sup>358</sup>*Id.* Rule 4(a)

<sup>359</sup>*Id.* Rule 5

<sup>360</sup>*Id.* Rule 8(e)

<sup>361</sup>*Id.* Rule 10(a)

<sup>362</sup>*Id.* Rule 10(c)

<sup>363</sup>*Id.* Rules 17(2), 34

<sup>364</sup>*Id.* Rules 19(a), 36

<sup>365</sup>*Id.* Rule 23(1)(a), 23(1)(c), 40(1)

<sup>366</sup>*Id.* Rule 46

carrying cattle<sup>367</sup>; lactating cattle must be milked twice a day and sufficient quantity of milk must be given to the calves to drink<sup>368</sup>, etc.

- **Equines:** Chapter V of the Rules lays down provisions relating to transport of equines (horses, mules and donkeys) by rail, road or sea<sup>369</sup>. It states that adequate arrangements for food, water, veterinary first-aid equipment and ventilation should be made; appropriate ramps and platforms must be used for loading and unloading<sup>370</sup>; passenger or mixed trains should only be used for transit<sup>371</sup>; measures must be taken to lower down the temperature of wagons carrying equines during extremely hot weather<sup>372</sup>, etc.
- **Sheep and goats:** Chapter VI of the Rules applies to transportation of sheep and goats by rail or road where the length of the journey exceeds six hours.<sup>373</sup> It requires transportation of sheep and goats in separate compartments, but in case the lots are small, they can be separated using a special partition<sup>374</sup>; keeping of rams and young male and female stock in the same compartment is prohibited<sup>375</sup>; sufficient arrangement for food and fodder must be made; facilities for water must be provided at regular intervals; to avoid injury to animals, padding material, such as straw, of not less than 5cm thick should be placed on the floor<sup>376</sup>; provisions for sufficient space and ventilation must be made, etc.
- **Poultry:** Chapter VII applies to transportation of poultry. The term ‘poultry’ has been defined to include “day old chicks and turkey poults, chickens, ducks, etc.”<sup>377</sup> The Rules lay down certain general conditions for the transportation of poultry by rail, road or air.<sup>378</sup> It states that thoroughly cleaned and sterilised containers must be used; exposure of poultry to sunlight, rain or direct blast of air must be prevented; transportation in temperature exceeding 25 degree Celsius or falling below 15 degree Celsius is prohibited, etc.

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<sup>367</sup>*Id.* Rule 55(b)

<sup>368</sup>*Id.* Rule 55(j)

<sup>369</sup>*Id.* Rule 57

<sup>370</sup>*Id.* Rule 60

<sup>371</sup>*Id.* Rule 61(a)

<sup>372</sup>*Id.* Rule 61(c)

<sup>373</sup>*Id.* Rule 64

<sup>374</sup>*Id.* Rule 67(c)

<sup>375</sup>*Id.* 69

<sup>376</sup>*Id.* Rule 71

<sup>377</sup>*Transport of Animals (Amendment) Rules, 2001*, ANIMAL WELFARE BOARD OF INDIA (May.21, 2020, 8:14 AM), [http://awbi.in/awbi-](http://awbi.in/awbi-pdf/TRANSPORT%20OF%20ANIMALS%20(AMENDMENT)%20RULES,%202001.pdf)

[pdf/TRANSPORT%20OF%20ANIMALS%20\(AMENDMENT\)%20RULES,%202001.pdf](http://awbi.in/awbi-pdf/TRANSPORT%20OF%20ANIMALS%20(AMENDMENT)%20RULES,%202001.pdf)

<sup>378</sup>*Id.* Rule 77

- **Pigs:** Chapter VIII of the Rules lays down provisions for the transportation of pigs by rail or road where the duration of transit exceeds six hours. the term ‘pig’ has been defined to include piglets, hogs, hoglets and other animals belonging to the family of pigs.<sup>379</sup> It states that adequate facilities for first-aid, food and water must be made; during travel, the floor must be padded with material such as straw of not less 5cm thickness; male and female stock must be kept in separate compartments, etc.
- **Miscellaneous matters:** Chapter IX deals with miscellaneous matters. It states that any person transporting animals is required to obtain a valid certificate from an authorised person, officer or AWO indicating that all the applicable Central and State Acts, Rules and orders related to the said animal has been duly adhered to and that the animal is being transported for legitimate purposes.<sup>380</sup> The permit or authorisation is subject to cancellation in the event of failure to comply with the provisions laid down under the Rules for the transportation of animals.<sup>381</sup>
- **General conditions of transport**<sup>382</sup>:
  - i) Animals to be transported must be in good health and condition. A veterinary doctor must examine them to ensure that they are not suffering from any infectious disease and are fit to undertake the journey
  - ii) Any animal that is unfit, sick, newborn, blind, exhausted or have given birth during the preceding seventy two hours or is likely to give birth during the journey must not be transported.
  - iii) Pregnant and very young animals during travel are not to be mixed with other animals. Besides this, it is also necessary to keep separately diseased animals which are transported for treatment.
  - iv) During the transport, animals of different classes must be kept separately and before loading, tranquilisers may be administered to troublesome animals.

### **6.3.2. The Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, 2001<sup>383</sup>**

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<sup>379</sup>*Id.* Rule 85

<sup>380</sup>*Id.* Rule 96

<sup>381</sup>*Id.* Rule 98

<sup>382</sup>*Id.* Rule 98

<sup>383</sup>*Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, 2001*, ANIMAL WELFARE

BOARD OF INDIA (June.06, 2020 1:27PM),

[http://awbi.in/awbi-pdf/\(TRANSPORT%20OF%20ANIMALS%20ON%20FOOT\)%20RULES,%202001.pdf](http://awbi.in/awbi-pdf/(TRANSPORT%20OF%20ANIMALS%20ON%20FOOT)%20RULES,%202001.pdf)

The Rules were adopted with a view to prevent cruelty on animals transported on foot. It is applicable in cases where the distance of transit is 5 km or exceeds 5 km.<sup>384</sup> The Rules mandate that the following provisions to be adopted in their transit:

- All animals to be transported must be in good health and condition.<sup>385</sup> The term ‘animal’ has been defined under Rule 2(a) to mean livestock and includes cattle, equines, goat, sheep, pig, etc.
- All animals must be accompanied with a valid health certificate from a veterinary doctor indicating that the animal is fit to be transported, is vaccinated and is not suffering from any infectious disease.<sup>386</sup>
- Transportation on foot of newly born animals with unhealed navel, animals that are blind or suffering from any disease or have given birth in the last seventy two hours or is likely to give birth during the transit is prohibited.<sup>387</sup>
- The Rule mandates the transport of animals within their farm social group which must be formed a week before the transit.<sup>388</sup>
- Owner must ensure suitable watering facilities en route and provide for veterinary first aid equipment.<sup>389</sup>
- Adequate provision for feed and fodder must be made.<sup>390</sup>
- The Rule forbids the use of whip or stick or application of chillies or other substances to any body part of animals to compel it to walk or to accelerate its speed of walking.<sup>391</sup>
- During transit, an animal can only be tied by means of a rope covered with sufficient cushioning around its legs. The Rule forbids the tying of animals by its nose, all legs or any other body part other than its neck<sup>392</sup>.
- Transportation of animals on for before sunrise or after sunset<sup>393</sup>, during heavy rain, thunderstorms or extremely dry or sultry conditions<sup>394</sup> is prohibited. Also, the Rules

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<sup>384</sup>*Id.* Rule 3

<sup>385</sup>*Id.* Rule 4(1)

<sup>386</sup>*Id.* Rule 4(2)

<sup>387</sup>*Id.* Rule 5

<sup>388</sup>*Id.* Rule 6

<sup>389</sup>*Id.* Rule 7, 9

<sup>390</sup>*Id.* Rule 10

<sup>391</sup>*Id.* Rule 11(1)

<sup>392</sup>*Id.* Rule 11(2)

<sup>393</sup>*Id.* Rule 12(1)

<sup>394</sup>*Id.* Rule 12(3)



specify the distance, time, rest interval and temperature beyond which an animal cannot be made to walk.<sup>395</sup>

- Regardless of the weather, transportation of animals such as draught and pack animals without shoes on rough asphalt, bitumen-coated or metal paths, etc is prohibited.<sup>396</sup>
- Where a an offence in contravention of the Rules is committed by a person, the police officer or any other authorised person is empowered to require such person to take the animal to the nearest Magistrate.<sup>397</sup>

### **6.3.3. The Prevention of Cruelty to Animals (Slaughter House) Rules, 2001<sup>398</sup>**

- The Rules defines ‘slaughterhouse’ as a duly recognised or licensed place where ten or more than ten animals are slaughtered every day.<sup>399</sup> The term ‘slaughter’ has been defined as killing of any animal for food. It also includes the process and operations that are used to prepare the animals for slaughter.<sup>400</sup>
- Under the Rules, slaughtering of animals within a municipal area is permitted only in duly recognised or licensed slaughterhouses.<sup>401</sup> Slaughtering of animals which are pregnant, or have given birth in the last three months, or is under 3 months of age is not permitted.<sup>402</sup> A valid certificate by a veterinarian stating that the animal is fit for being slaughtered is mandatory. The Central Government is empowered to appoint authorities to determine the number of animals that can be slaughtered in a day, taking into account the capacity of the slaughter house and requirement of the local population.<sup>403</sup>
- The Rules require that arrangements be made in each slaughterhouse for resting areas of appropriate size, with adequate ramps for direct unloading of animals, and overhead protective shelters. The resting area must also have suitable facilities for feeding and watering of animals.<sup>404</sup>

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<sup>395</sup>*Id.* Rule 12(2)

<sup>396</sup>*Id.* Rule 13

<sup>397</sup>*Id.* Rule 14(1)

<sup>398</sup>*The Prevention of Cruelty to Animals (Slaughter House) Rules, 2001*, ANIMAL WELFARE BOARD OF INDIA (Jun.10, 2020,7:12PM) [http://awbi.in/awbi-pdf/\(SLAUGHTER%20HOUSE\)%20RULES,%202001.pdf](http://awbi.in/awbi-pdf/(SLAUGHTER%20HOUSE)%20RULES,%202001.pdf)

<sup>399</sup>*Id.* Rule 2(c)

<sup>400</sup>*Id.* Rule 2(b)

<sup>401</sup>*Id.* Rule 3(1)

<sup>402</sup>*Id.* Rule 3(2)

<sup>403</sup>*Id.* Rule 3(3)

<sup>404</sup>*Id.* Rule 4

- The Rule states that depending on the class of animals to be slaughtered, sufficient holding area with suitable facilities for food and water must be provided.<sup>405</sup> In addition to this, for animals suffering from any contagious disease, infection, sickness, etc, separate isolation pens with all the essential requirements must be made.<sup>406</sup>
- The Rule requires lairage of sufficient size with adequate facilities for watering and post-mortem inspection to be built in every slaughterhouse. It must be constructed in a manner so as to protect animals against heat, cold and rain. Animals are to be kept separately, depending on their class and type, for 24 hours before slaughter to rest in these lairages.<sup>407</sup>
- The Rule forbids killing of animals in the presence of other animals and thus, require slaughter halls to have a separate section of sufficient size for slaughtering of individual animals. Administration of any drug, chemical or hormone to animals prior to slaughter is prohibited. However, in case an animal is suffering from any specific disease or ailment, administering of such drug for its treatment is lawful.<sup>408</sup>
- The Rule mandates separate space to be provided in every slaughterhouse for stunning of animals prior to slaughter, bleeding and dressing of the carcasses.<sup>409</sup>
- The Rule prohibits dressing of carcasses on the floor and mandates immediate arrangement for disposal of hides or skins to be made.<sup>410</sup>
- The Rules require only duly licensed or authorised person, above 18 years of age to be engaged in slaughterhouse. Persons suffering from any infectious disease must not be allowed to slaughter an animal.<sup>411</sup>
- The slaughterhouses are subject to inspection once in every six months. Such inspection can be carried out by the AWBI or the State Animal Welfare Board or a duly authorised and qualified veterinarian.<sup>412</sup>
- On the basis of the inspection report, where it is found that the provisions laid down in the Rules have not been complied with, appropriate action including legal proceedings can be initiated.<sup>413</sup>

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<sup>405</sup>*Id.* Rule 4(6)

<sup>406</sup>*Id.* Rule 4(5)

<sup>407</sup>*Id.* Rule 5

<sup>408</sup>*Id.* Rule 6

<sup>409</sup>*Id.* Rule 4(4)

<sup>410</sup>*Id.* Rule 4(9), 4(10)

<sup>411</sup>*Id.* Rule 8

<sup>412</sup>*Id.* Rule 9(1)

#### 6.3.4. The Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011<sup>414</sup>

The FSSAI is the authority entrusted with the duty to lay down “standards for food articles and to regulate their manufacture, storage, distribution, sale and import.” It is also to ensure availability for human consumption of greater quality of safe and nutritious food. The authority in August, 2011 adopted the aforementioned Regulation, which apart from mandating the authorisation of food businesses, under Schedule 4 -Part IV<sup>415</sup> lays down specific provisions on hygiene and sanitary practices to be followed by businesses dealing in meat and meat products. The provisions are pertinent to the issues of animal welfare during slaughter and transportation for slaughter.

- **Slaughterhouse:** All slaughterhouses prior to their establishment are required to obtain a NOC from the concerned local authority, and a valid license under the 2011 Regulations. In addition to this, the Regulation stipulates that all slaughterhouses must be situated at a sanitary location and connected to a meat market. The premises of the slaughter house must have resting yard, slaughter hall, etc; separate facilities for slaughtering different species, various slaughter methods, stunning animals, and isolation pens for keeping animals suspected of contagious or infectious diseases.<sup>416</sup> It forbids an animal from being slaughtered in the presence of other animals.<sup>417</sup>
- **Transportation of Animals before Slaughter for Food:** The Regulation stipulates certain general conditions that should be adhered to, such as it mandates that animals to be transported for slaughter must be of a good health, duly certified as to not suffering from any diseases that is infectious or ectoparasitic, fit, not in the advanced stages of pregnancy, etc. It mandates adequate partition arrangement to be made to ensure separate transportation of large and young animals, light and heavy animals, animals from different pens, and adult male and female stock. It prescribes the use of covered Lorries for transporting animals in extreme climatic conditions. It mandates that animals be handled humanely and with care during transit, that sufficient space be given for lying or standing, etc. It requires suitable ramps covered with straw, and

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<sup>413</sup>*Id.* Rule 9(2)

<sup>414</sup> Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations 2011, FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA (Jul.20, 2020, 9:29AM), [https://www.fssai.gov.in/upload/uploadfiles/files/Licensing\\_Regulations.pdf](https://www.fssai.gov.in/upload/uploadfiles/files/Licensing_Regulations.pdf)

<sup>415</sup>*Id.* at 97

<sup>416</sup>*Id.*

<sup>417</sup>*Id.* at 98

cleats at interval be provided so as to prevent animals from slipping during loading and unloading. It states that where the journey exceeds 12 hours, animals must be transported by railways.<sup>418</sup>

- **Slaughter and Stunning:** More precise regulations relating to slaughter are provided for in the 2011 Regulation. The regulation provides that animals should be slaughtered first by being stunned and then exsanguinated. It stipulates the use of any of the three methods, i.e., CO<sub>2</sub> asphyxiation, mechanical concussion and electro narcosis for slaughtering and also prescribes the conditions under which these should be carried out.<sup>419</sup> With respect to poultry as well, the Regulation mandate prior stunning and use of humane methods for slaughter. Slaughter equipments must be properly maintained at all facilities to ensure quick slaughter of chickens.<sup>420</sup> No exemptions or exception for religious slaughter has been provided for in the regulation.

**Comments:** Although the aforementioned legislations have contributed significantly in mainstreaming the welfare of farm animals by regulating the manner in which they are transported and slaughtered, a number of problems still persist. The internationally recognised Five Freedoms for animals are recognised only in theory, and has no practical implication. For various species of farm animals, strong animal welfare standards are still lacking. The worst forms of confinement such as “sow stalls, farrowing crates, and cages for egg laying hens” are not prohibited. In addition, the “stocking density for the rearing of broiler chickens” is also not restricted. Moreover, The Rule that animals must be slaughtered in recognised or licensed slaughter houses only does not apply to purely rural areas not falling within the purview of municipalities or other local authorities.

According to the FSSAI website, there are only about 4000 registered slaughterhouses in India. Because of the absence of sufficient number of legal slaughterhouses that can cater to the consumer demands, the Government has failed to monitor and shut down a number of illegal abattoirs where animals are handled and killed in crude and inhumane ways. According to Times of India report, as of February 2020, the State of Uttarakhand had no

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<sup>418</sup>*Id.* at 101

<sup>419</sup>*Id.* at 102

<sup>420</sup>*Id.* at 104

functional legal slaughterhouses at all.<sup>421</sup> The effective enforcement of laws even is registered slaughterhouses is absent. The mandatory provision both under the Slaughterhouse Rules, 2001 & the FSS Regulations, 2011 to stun animals prior to slaughter are blatantly violated. Animals are electrocuted and skinned alive, they are hoisted on hooks upside down in fully state, and are forced to move towards slaughter hall by administering electric shock.<sup>422</sup>

#### **6.4. Protecting Animals used in Scientific Research**

In addition to the provisions contained in Chapter IV of the PCA Act, 1960, the following legislations regulate experiments on animals in India:

##### **6.4.1. The Breeding of and Experiments on Animals (Control and Supervision) Rules, 1998 (as amended in 2001 and 2006)<sup>423</sup>**

The CPCSEA is a statutory committee constituted by the Government of India under Section 15(1) of the PCA, 1960 to regulate, control and supervise animal experimentation in India. The Committee is conferred with the responsibility to make sure that animals are not subjected to unnecessary pain or suffering at any stage of experimentation. Its main functions are to register establishment involved in experimentation or breeding of animals, set up IAECs in the registered establishments, approve Animal House Facilities for small and large animals on the basis of inspection reports conducted by it, authorise experiments involving use of large animals, facilitate the importation of animals for experimental use, take action in the event of violation of any legal norm/stipulation and hold training programs, conference and workshops.

In order to ensure humane and responsible used of animals in research and education, the “Breeding of and Experiments on Animals (Control & Supervision) Rules, 1998 (amended in 2001 and 2006)”<sup>424</sup> was formulated. The CPCSEA has facilitated the development of a shared forum for recourse and dialogue among scientist, policy makers and animal activists through which it works for humane and sustainable solutions in the use of animals in research.

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<sup>421</sup>Prashant Jha, *Uttarakhand: PIL seeks ban on entry of animals for slaughter*, TOI, 2020, <https://timesofindia.indiatimes.com/city/dehradun/uttarakhand-pil-seeks-ban-on-entry-of-animals-for-slaughter/articleshow/74300063.cms> (last visited Jul.10, 2020, 12:30PM)

<sup>422</sup>Maanvi, *Livestock Electrocuted, Skinned Alive at Ghazipur Slaughterhouse*, THE QUINT, Aug 17, 2016, <https://www.thequint.com/news/india/livestock-found-to-be-electrocuted-at-ghazipur-slaughterhouse-delhi-slaughterhouse-monitoring-committee> (last visited Jul.10, 2020, 12:44PM)

<sup>423</sup> MANEKA, *The Breeding of and Experiments on Animals (Control and Supervision) Rules, 1998*, *supra* note 10, at 102.

<sup>424</sup>*Id.*

- The Rules mandates the registration of establishments prior to conduct of animal experimentation and breeding.<sup>425</sup>
- It mandates that records be maintained in all licensed animal house facilities. Such register must contain details concerning the number, age, species, gender and other related specificities of animals used for experiments.<sup>426</sup>
- The Rules stipulates housing conditions for animal house facilities. It specifies that animal houses must be located in a peaceful, traffic-free atmosphere; the premises must be kept clean and hygienic; cages and stables used for keeping animals must be of a sufficient size so as to avoid discomfort and overcrowding of animals; animals must be looked after by trained and experienced attendants; detailed guidelines for accommodation, feeding, care of different organisms for use in animal experimentation as specified by the CPCSEA must be adhered to, etc.<sup>427</sup>
- It requires approval to be taken from Institutional Animal Ethics Committee and the CPCSEA before carrying out any experiment on animals. While granting such permission, the Committee is empowered to enforce conditions as appropriate to ensure that animals are not subjected to excessive pain and distress at any stage of experimentation.<sup>428</sup>
- It stipulates the conditions for conduct of experiments. It states that experiments on animals must be carried out by a duly qualified person with utmost care and humanity; for any experimental procedure, first consideration must be given to animal lowest on the phylogenetic scale (i.e. with the least degree of sentience) capable of producing scientifically accurate results; experiments should be designed in a manner that ensures 95% chance of success using minimum number of animals; where alternatives other than experiments on animals are available, full consideration must be given to it; anaesthesia must be administered if severe operative procedure are to be performed; animals must be painlessly destroyed while under the influence of anaesthesia where in the course of experiments they are injured in a manner that their recovery would involve pain and suffering, etc.<sup>429</sup>
- Administering of euthanasia is permitted under the Rules only under specified conditions, such as when the animal is paralyzed and is unable to perform its natural

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<sup>425</sup>*Id.* Rule 3, 4

<sup>426</sup>*Id.* Rule 6

<sup>427</sup>*Id.* Rule 7

<sup>428</sup>*Id.* Rule 8

<sup>429</sup>*Id.* Rule 9

functions, has been left with a recurring pain due to the experimental procedure and shows clear signs of pain and distress, and in cases where ending the life of such experimental animal is necessary to safeguard the life of human beings and other animals.<sup>430</sup>

- The Rules forbids the conduct of experiments for illustration and public demonstration.<sup>431</sup> It also prohibits repetition of experiments whose findings are considered to be definitive without any clear reason.<sup>432</sup>
- It confers upon person engaged in animal experimentation the moral responsibility to ensure the welfare of the animals after their use in experiments. Investigators are entrusted with the responsibility of rehabilitation and aftercare of animals after experimentation.<sup>433</sup>
- It specifies that animals for experimentation must be acquired from registered breeders only. Nonetheless, in cases of non-availability, after obtaining a written permit from the competent authority, these animals can be procured from alternative legal sources.<sup>434</sup>
- The Rules also specifies the conditions for undertaking contract research<sup>435</sup>, compositions of IAEC<sup>436</sup> and power of CPCSEA to suspend or revoke registration of any establishment.<sup>437</sup>

#### **6.4.2. Clinical Trials and the Drugs and Cosmetics Rules, 1945<sup>438</sup>**

Under the **Drugs and Cosmetics Rules, 1945** clinical trials are compulsory for obtaining a license before producing or importing or selling a new drug in India. Clinical trials are governed in compliance with Schedule V of the Rules which was adopted in 1988. Under the **Drugs and Cosmetics (IInd Amendment) Rules, 2005**, clinical trial is defined as “systematic study of pharmaceutical products on human subjects, in order to determine the clinical, pharmacological and/or adverse effects for the purpose of evaluating its safety and efficacy”. The fundamental guiding principle of preclinical research is that, despite the disparity between humans and animals, it is always possible to estimate the safety of a new

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<sup>430</sup>*Id.* Rule 9 (ff)

<sup>431</sup>*Id.* Rule 9 (h), 9 (i)

<sup>432</sup>*Id.* Rule 9 (l)

<sup>433</sup>*Id.* Rule 9 (cc)

<sup>434</sup>*Id.* Rule 10

<sup>435</sup>*Id.* Rule 12

<sup>436</sup>*Id.* Rule 13

<sup>437</sup>*Id.* Rule 14

<sup>438</sup> MITRA, *Clinical Trials and the Drugs and Cosmetics Rules, 1945*, *supra* note, at 145

drug and predict its future effectiveness and mode of action for the outcomes of the pharmacodynamics (quantitative study of the effects of drugs and used to prevent overdoses in humans), pharmacokinetics (used for assessing the effectiveness and toxicity of a drug) and toxicology (study of drug toxicity on experimental animals under varying condition) studies of the drug in animals and in vitro.

However, the MoHFW issued two Gazette Notifications which comprised amending the Drugs and Cosmetics Rules so as to ban testing of cosmetics products and ingredients on animals and disallow the import of animal tested cosmetic into the country, respectively. India became the first country in South Asia to impose such a ban. Accordingly two new rules were incorporated by amending the Drugs and Cosmetics Rules, 1945:

- Rule 148-C which prohibited the use of animal for testing of cosmetics by any person.
- Rule 135-B which banned the import of cosmetic tested on animals after the commencement of Drugs and Cosmetics (Fifth Amendment) Rules, 2014.

#### **6.4.3. Other Provisions**

- Experiments on animals have also been discontinued in several schools. The CBSE imposed a ban on the killing of frogs, rats and earthworms for biological test from March 2002 in all schools affiliated to it.
- The Establishment of Medical College Regulation was amended in 2013 to ban the use of vivisection in medical education. It mandated the use of computer assisted modules for imparting knowledge and skills where animal experimentation in the curriculum was recommended.
- The Pharmacy Council of India revised the 1991 Education Regulations in 2014, to prohibit the use of animals for pharmacy education purposes.
- The UGC vide its Notification dated August 1, 2014 banned experimentation and dissection of animals for life sciences courses and allied disciplines both at the Undergraduate and Postgraduate levels, except for research. It mandated the use of digital alternatives, charts, models, etc for the purpose of demonstration. It also mandated the setting up of Dissection Monitoring Committees in all institutions providing higher education so as to ensure strict compliance of instructions pertaining to the use of animals for research purposes only.



**Comments:**The legislation certainly encompasses the principles of Three Rs iterated under various international conventions and provides for regulation of experiments using animals. However, animals used in experiments are neither protected under the anti-cruelty provisions of the PCA Act, 1960, nor the 1998 Rules mandate the protection of animals from unnecessary pain and suffering (albeit it can be imposed as a prerequisite for experimental authorisation). The legislation, therefore, does not render complete protection to animals used in experiments from suffering. This was illustrated by a report published in 2003 by the “Animals Defenders International and the U.K. National Anti-Vivisection Society,”<sup>439</sup> based on the inspection of 467 Indian laboratories conducted by CPCSEA. It stated that there are significant deficiencies in the governance of the animal testing industry in India and that in majority of the facilities, animals are kept in deplorable, filthy and unhygienic conditions. It highlighted the lack of sufficient critical analysis of proposals for the use of animals in experiments, management systems to ensure complete transparency and legal enforcement, implementation of animal welfare policies, etc.<sup>440</sup>The report states several cases of misconduct, neglect and lack of use of available non-animal methods.

However, the cosmetic ban is reflective of the political will in the country to ensure animal welfare in the field of experimentation. Further, provisions under the 1998 Rules, mandating registration of establishments carrying out animal experimentation is illustrative of the willingness of the Government to undertake responsibility in making sure animals are protected from ludicrous experiments. Additionally, the ban on vivisection in medical institutions is indicative of the growing acceptance of the notion of animal sentience.

## **6.5. Protecting Companion Animals**

### **6.5.1. The Prevention of Cruelty (Capture of Animals) Rules, 1979<sup>441</sup>**

The Rules were adopted to ensure that birds and other animals are not treated cruelly during its capture. It allows the use of only net method to capture birds for sale, export or any other purpose.<sup>442</sup> To capture other animals, the Rule permits the use of sack and loop method

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<sup>439</sup>*Animal Experimentation in India*, Animal Defenders International & National Anti-Vivisection Society(2003), (Apr 30, 2020, 10:30AM), <http://www.navs.org.uk/downloads/animalexperimentsinindia.pdf>

<sup>440</sup>*Id.*

<sup>441</sup>*The Prevention of Cruelty (Capture of Animals) Rules, 1979*, ANIMAL WELFARE BOARD OF INDIA (May 21, 2020, 11:21AM), [http://awbi.in/awbi-pdf/PREVENTION%20OF%20CRUELTY%20\(CAPTURE%20OF%20ANIMALS\)%20RULES,%201979.pdf](http://awbi.in/awbi-pdf/PREVENTION%20OF%20CRUELTY%20(CAPTURE%20OF%20ANIMALS)%20RULES,%201979.pdf)

<sup>442</sup>*Id.* Rule 2

only.<sup>443</sup> However, where by reason of size, nature of situation or circumstances, an animal cannot be captured by using sack and loop method, tranquiliser guns or any other method that makes the animal insensitive to pain before capture can be used.<sup>444</sup>

### **6.5.2. The Animal Birth Control (Dogs) Rules, 2001 (as amended in 2010)<sup>445</sup>**

These Rules were adopted with a view to control dog population and thereby implement sterilization and vaccination of stray/ community dogs. Following provisions are laid down under the Rules:

- It classifies dogs into two categories, i.e., pet dogs and streets dogs.<sup>446</sup> The responsibility for controlled breeding, immunisation, sterilisation and registration of pet dogs is conferred upon the owner, whereas street dogs are required to be sterilised and immunised by participation of AWO, private individuals and local authority.<sup>447</sup>
- It requires the local authorities to set up a Committee for the planning and management of dog control programmes in accordance with the Rules.<sup>448</sup>
- It confers upon the Committee functions of providing guidelines for transportation, shelter, vaccination and release of sterilised vaccinated or treated dogs; increasing public awareness, seeking support and funding; issuing guidelines from time to time to pet dog owners and commercial breeders; getting a survey conducted by an independent agency to ascertain the number of street dogs; taking measure for monitoring dog bite cases with to determine the reason and area of dog bite and whether it was from a stray or a pet dog.<sup>449</sup>
- It confers upon the Committee the duty to monitor advances in research in both national and international sphere concerning the control and management of stray dogs, development of vaccines and methods of cost effective sterilisation and vaccination, etc.<sup>450</sup>
- It requires the Committee to bring to public notice by announcements and advertisements of the activities undertaken by it.

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<sup>443</sup>*Id.* Rule 3

<sup>444</sup>*Id.*

<sup>445</sup> MANEKA, *The Animal Birth Control (Dogs) Rules, 2001*, *supra* note 10, at 121.

<sup>446</sup>*Id.* Rule 3(1)

<sup>447</sup>*Id.* Rule 3(2), 3(3)

<sup>448</sup>*Id.* Rule 4, 5

<sup>449</sup>*Id.* Rule 5

<sup>450</sup>*Id.* Rule 5(g)

- The Rules permits the use of sodium pentathol for putting to sleep seriously ill or severely injured or rabid dogs in a painless manner after obtaining due authorisation by the Committee. Use of any other method is strictly prohibited.<sup>451</sup>
- The Rules confer upon the local authority the obligation to establish sufficient number of dog pounds, animal kennels and shelter and make provisions for dog van equipped with ramps, a driver and two train dog catchers for capturing and transportation of stray dogs. In addition to this, the authorities are also required to provide ambulance-cum-clinical van as a mobile sterilization and immunization center, incinerators for disposal of carcasses and to ensure that shelters or pounds are repaired periodically.<sup>452</sup>
- It lays down the guidelines for capturing, sterilisation, immunisation and release of dogs and mandates the use of humane methods for capturing dogs.<sup>453</sup>
- It requires all stray dogs to be sterilized, vaccinated and subsequently released into the same area from where they were captured.<sup>454</sup>
- It requires captured dogs to be taken to the dog kennels managed by AWOs.<sup>455</sup> These kennels must be kept clean and have adequate ventilation, natural lighting, separate housing facilities for adult males, females and puppies, and adequate space for suitable housing and free movement of dogs. The Rule requires adequate arrangements for food and water to be made for dogs while in captivity.<sup>456</sup>
- It requires all sick dogs to be properly treated in hospitals run by SPCA or other institutions prior to their sterilization and vaccination.<sup>457</sup> It also forbids the sterilisation of pregnant female dogs until they have released their litter.<sup>458</sup>
- For the purpose of identification, the Rule requires ears of all sterilised or immunised dogs to be clipped or tattooed prior to release. Branding of dogs is prohibited.
- The Rules permits administering of euthanasia in a humane manner under prescribed circumstances, such as when the dog is incurably ill or mortally wounded. However, performance of such procedure in the presence of another dog is prohibited.
- The Rules requires a dog suspected of having rabies to be captured and transported to a dog pound and placed in an isolation ward. The dog must then be inspected and if

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<sup>451</sup>*Id.* Rule 5(b)

<sup>452</sup>*Id.* Rule 6

<sup>453</sup>*Id.* Rule 7

<sup>454</sup>*Id.* Rule 7(3)

<sup>455</sup>*Id.* Rule 7(6)

<sup>456</sup>*Id.* Rule 7(8)

<sup>457</sup>*Id.* Rule 7(6)

<sup>458</sup>*Id.* Rule 7(9)

found to be suffering from rabies must be kept isolated until it dies naturally. However, if it diagnosed with some other disease, it must be handed over to AWOs for proper treatment and rehabilitation.

- The Rules mandates registration of breeders with the AWBI.

### **6.5.3. The Prevention of Cruelty to Animals (Dog Breeding and Marketing Rules) Rules, 2017<sup>459</sup>**

Thousands of dogs are bred in inhumane conditions without sufficient medical treatment. Quite commonly unweaned puppies below the age of 2 months are sold to unassuming buyers without authorization or documentation. Female dogs continually inseminated, affecting not just their health but also the well being of born puppies. Thus, to regulate the practices of the breeding industry these Rules were adopted. Salient features of the Rules are as follows:

- The Rules mandate that a registration certificate from the State Board be obtained for the operation or continuation of any breeding activity, ownership, or housing of dogs to have them bred and selling of dogs and pups. Every breeder is required to have such a certificate displayed at the premises used for breeding of dogs, and keep the premises open for inspection.<sup>460</sup>
- The Rules lay down the requisites for being registered as a breeder. Firstly, the individual must be of the age of majority, sound mind and not disqualified from contracting, or must be a duly registered company, corporation, or association of persons.<sup>461</sup> Secondly, the breeder must not be convicted of an offence relating to animals under the PCA Act, Wildlife (Protection) Act or any other law in force.<sup>462</sup>
- The Rules confer upon the breeder the duty to make sure that pups under the age of eight weeks are not sold; dogs over six months are sterilized before sale; dogs and pups are sold for experimental purposes only to person registered with the CPCSEA; dogs are sold to licensed pet shops for lawful activities; etc.<sup>463</sup>

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<sup>459</sup>*The Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017*, ANIMAL WELFARE BOARD OF INDIA (Jul.11, 2020, 5:18PM),

<http://awbi.in/awbi-pdf/Dog%20Breeding%20and%20Marketing%20English.pdf>

<sup>460</sup>*Id.* Rule 3

<sup>461</sup>*Id.* Rule 4

<sup>462</sup>*Id.* Rule 4(b)

<sup>463</sup>*Id.* Rule 8

- Any pup that is not sold within six months is required to be rehabilitated through an AWO.<sup>464</sup>
- The breeder is mandated to ensure that the standards and requirements provided under the Rules are duly complied with.<sup>465</sup>
- The Rules have two schedules. While Schedule I lays down the format for the application of registration, the second schedules lays down detail guidelines for the care and upkeep of animals in the breeding establishment.
- Part I of the Second Schedule stipulates the facilities that must be provided by a breeder in an establishment. These include adequate size kennels with proper ventilation, temperature, lighting and cleanliness; proper housing facilities; adequate supply of wholesome food, fresh and clean drinking water; fenced are for exercising dogs, etc.
- Part II of the Second Schedule stipulates the breeding criteria and techniques to which breeders must conform. These include ensuring that no dog is bred unless it is healthy, mature, eighteen months old and is certified to be healthy by a veterinarian at least ten days before mating; female dogs are not forced to give birth in two consecutive breeding seasons; use of artificial or unethical methods such as artificial insemination and rape stands to impregnate dogs are prohibited; female dogs are not forced to produce more than five litters of pups during her lifetime; female dogs over eight years if age are not mated; only out breeding or line breeding mating techniques are used, etc.
- The Rules strictly prohibit any form of mutilation, tail-docking, marking, colouring, de-clawing, use of artificial means to modify a dog's appearance, etc. Use of breeding techniques such as in breeding and incest breeding is also prohibited. Administering of euthanasia to dogs simply because they can no longer reproduce or cannot be sold, and hence are not economically viable is also illegal.
- Part III of the Second Schedule sets out the standards for maintaining the physical and mental well-being of dogs. These include ensuring a clean, healthy and safe atmosphere with sufficient opportunities for socialisation, prompt vaccination and de-worming, veterinary care services, etc.

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<sup>464</sup>*Id.* Rule 8(6)

<sup>465</sup>*Id.* Rule

- Standards for housing are set out in Part IV of the Second Schedule. It states that facilities for housing dogs must be sturdy, secured, kept in good condition; cleaned and sanitised regularly; equipped with disposal and drainage facilities, and basic amenities such as potable running water and electricity. In addition to this, the indoor housing facilities must be sufficiently ventilated and illuminated; equipped with fire detection devices and extinguishers, and such temperature as is needed to ensure the safety and well-being of the dog breed, etc.
- Every breeder is required to maintain records of the animals housed in the establishment including the dogs being used for breeding and the dogs for sale. Records of each individual dog containing such details as breed, name and number, date of birth, etc are also required to be maintained.<sup>466</sup> A report is required to be filed by the breeder to State Board annually.<sup>467</sup>

#### **6.5.4. The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017<sup>468</sup>**

The MoEF&CC adopted these Rules to prevent cruelty to animals and ensure animals that are seized or abandoned are treated with care. Some of the key features of the Rules are as follows:

- Where as a result of commission of an offence under the provisions of the PCA Act or the Rules laid down therein, an animal is seized; the Magistrate is empowered to direct such animals to be housed at an SPCA, infirmary, pinjrapole, AWO or Gaushala while the litigation is pending.<sup>469</sup>
- The Rules confer upon the authority seizing the animals, the duty to ensure that such animals are inspected, identified and marked. However, use of injurious methods or hot/cold branding for marking of the animal is prohibited.<sup>470</sup>
- The costs for the transport, treatment and maintenance of animal pending litigation is required to be determined by the Magistrate on the basis of minimum prescribed rate affixed by the State Board for the care and maintenance of particular species of animal. However, if the cost is not provided for a certain animal, the magistrate is

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<sup>466</sup>*Id.* Rule 9

<sup>467</sup>*Id.* Rule 11

<sup>468</sup>*The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, ANIMAL WELFARE BOARD OF INDIA (Jul.10, 2020, 8:10AM), <http://awbi.in/awbi-pdf/Care%20and%20case%20Property%20Rules%202017%20English.pdf>*

<sup>469</sup>*Id.* Rule 3

<sup>470</sup>*Id.*

empowered to fix the same on the basis of input provided by the jurisdictional veterinary officer.<sup>471</sup>

- The Magistrate is empowered to direct the accused and the owner of the seized animal to execute a bond of the amount so determined for the care and maintenance of the animal, within a period of three days with sureties. If the accused and owner fails to do so, the animal is to be forfeited to the infirmary, pinjrapole, SPCA, AWO or gaushala. Execution of additional bond with sureties may also be called for or if a vehicle is involved in an offence, it can be held as a security. However, if the owner and the accused have no means to furnish the bond, the Magistrate is required to direct the local authority to incur the expenses and recover the same as arrears of land revenue.<sup>472</sup>
- The Magistrate is also empowered to direct the local authority to incur the expenses for the care and maintenance of an animal where an offence under the PCA Act is committed but the accused/owner is not known. In such cases the right of ownership over the animal is deemed to be forfeited.<sup>473</sup>
- Under the Rules, the relinquishment of ownership, whether otherwise or voluntarily has no bearing on any criminal charges against the offender or the owner.<sup>474</sup>
- Under the Rules, if the accused is convicted or pleads guilty, his ownership over the seized animals is required to be forfeited and turned over to the entity already in custody of such animals for proper adoption or other disposition. However, if the accused is found to be innocent, the seized animal must be returned to the accused or the owner. The remaining portion of the bond amount also has to be returned to the executor.<sup>475</sup>
- The Rules debar a person from the adoption of an animal, if he has previously been found guilty of committing an offence under the PCA Act or any State Cattle Preservation Act.<sup>476</sup>

#### **6.5.5. The Prevention of Cruelty to Animals (Pet Shop) Rules, 2018<sup>477</sup>**

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<sup>471</sup>*Id.* Rule 4

<sup>472</sup>*Id.* Rule 5

<sup>473</sup>*Id.* Rule 6

<sup>474</sup>*Id.* Rule 7

<sup>475</sup>*Id.* Rule 8

<sup>476</sup>*Id.* Rule 9(3)

<sup>477</sup>*The Prevention of Cruelty to Animals (Pet Shop) Rules, 2018*, ANIMAL WELFARE BOARD OF INDIA (Jul. 09, 2020, 12:08PM),

<http://awbi.in/awbi-pdf/Pet%20Shop%20Rules%202018%20-%2027%206%202019%20English.pdf>

Animals transported and sold to satisfy the pet shop industry's demand are held in barbaric conditions. Usually, full health care are refused to these animals; puppies soon after birth are separated from their mothers; birds, hamsters are crammed in small cages without sufficient food and water.<sup>478</sup> In addition to this, animals are also subjected to the harmful practice of mutilation in the form of de-beaking, feather plucking, tail-docking, etc.<sup>479</sup> Approximately 40% of the animals die in captivity or while being transported. Pet shops often blatantly sell wild animals, thereby grossly violating the Wildlife Protection Act, 1972.<sup>480</sup> Animals are treated merely as a commodity in pet shops and are treated with unthinkable cruelty at the hands of owners of pet shops.

After a series of representation made by HSI India and PFA highlighting the plight of animals in pet shop industry, the MoEF&CC adopted the Pet Shop Rules, 2018, with a view to regulate the rampant cruelty meted out to animals in the pet shop industry and to set standards for animal housing and care. The Rule contains the following key provisions:

- In the absence of a registration certificate issued by the State Animal Welfare Board concerned, the Rules bar all persons from establishing or running a pet shop or dealing in pet animals. Persons having in operation pet shops at the commencement of these Rules are also required to obtain the registration certificate within sixty days. In case of failure to obtain such registration within the stipulated time, the Rule authorises the State Board and the SPCA to seal the shop and confiscate the pet animals and to hand them over to an AWO recognized by the Board.<sup>481</sup>
- The Rules authorise the State Board to issue pet shops a certificate of registration to pet shops upon receipt of an application for registration along with the requisite fees of five thousand rupees. However, the registration so granted is subject to cancellation if upon inspection by a State Government appointed veterinarian, it is found that the pet shop fails to adhere to the requirements specified under the Rules.<sup>482</sup>
- Establishment of pet shops on any temporary or make shift arrangement; close to factories, other industrial establishments; and within hundred meters from butcher shops are prohibited.<sup>483</sup>

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<sup>478</sup>*Government of India notifies new pet shop rules*, HUMANE SOCIETY INTERNATIONAL (Jul. 09, 2020, 12:12PM), <https://www.hsi.org/news-media/india-issues-new-pet-shop-rules-091218/>

<sup>479</sup>*Id.*

<sup>480</sup>*Id.*

<sup>481</sup>The Prevention of Cruelty to Animals (Pet Shop) Rules, 2018,*supra* note Rule 3(1)

<sup>482</sup>*Id.* Rule 4

<sup>483</sup>*Id.* Rule 6(2), 6(7)



- All pet shops displaying or housing pet animals are required to have proper ventilation, smoke detectors and fire-fighting equipment and an enclosed area for keeping animals infected or suspected of being infected with infectious disease.<sup>484</sup>
- Pet shops are required to provide enclosures or aviaries or rooms of a sufficient size and space, with appropriate flooring and drainage facilities.<sup>485</sup>
- The Rules confer upon the pet shop owners' responsibility to make sure that pet animals are accommodated in a setting ideal for its specie, are provided adequate food in consistence with their dietary requirement and age.<sup>486</sup>
- The Rules also set down guidelines for care of animals. These include ensuring that the pets are supplied with safe drinking water at all hours, the containers used for feeding and watering are kept clean, animals belonging to the same breed and age group are housed in the same enclosures, pets are left in the shop at night-time under the care of requisite number of attendants only, etc.<sup>487</sup>
- It is the duty of pet shop owner to ensure that the necessary legal procedure is followed for the importation of live animals and exotic breeds of birds and animals.<sup>488</sup>
- Selling of underage or un-weaned animals and birds is prohibited.<sup>489</sup>
- The State Board is empowered to conduct an inquiry where it receives a complaint alleging failure on the part of the owner of a pet shop to comply with the Rules. The Board may delegate such powers upon the local authority or the SPCA. If a pet is discovered to be diseases in the course of the inspection, or in distress, the inspecting authority may necessitate the owner of such pet shop to confer the requisite medical treatment and submit the health report within seven days. However, if the inspecting authority is not satisfied with the progress in matter, such animals are to be confiscated and sent to a shelter house run by AWO registered with the Board for proper treatment and care. The costs for the treatment and care of such animals are required to be paid by the pet shop owner.<sup>490</sup>
- The State Board is empowered to issue a show cause notice to the pet shop owner in the event of any violation during the course of inspection.<sup>491</sup> However, if it is not

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<sup>484</sup>*Id.* Rule 6(7)

<sup>485</sup>*Id.* Rule 6

<sup>486</sup>*Id.* Rule 7

<sup>487</sup>*Id.*

<sup>488</sup>*Id.* Rule 15

<sup>489</sup>*Id.* Rule 7(15)

<sup>490</sup>*Id.* Rule 9

<sup>491</sup>*Id.* Rule 9(5)

satisfied with the response received or if no response is received within the specified time, the registration of such pet shop may be cancelled. The Board is required to and communicate the reasons for its decision to the owner of pet shop in writing.<sup>492</sup>An appeal within thirty days of the receipt of the SPCA or Board's decision can be made by the owner of the pet shop.<sup>493</sup>

- Every owner of a pet shop, so licensed is required to submit to the State Board an annual report, providing the requisite on the total number of animals sold, traded, bartered, brokered, given away, boarded, exhibited, died or euthanize, during the previous year.<sup>494</sup>

**Comments:**The aforementioned legislations no doubt contain comprehensive provisions for the welfare and protection of companion animals, but there are certain defects which need to be addressed. For instance, there is an incongruity between the Central PCA Act, 1960 and the 2001 ABC (Dogs) Rules. The former authorises the culling of stray dogs under certain circumstance, while the latter makes it illegal to cull stray dogs in any manner whatsoever. It offers no scientific method for vaccination drive and stabilising the country's canine population. It contains no provision for re-immunization of dogs and completely disregards stray animals afflicted with fatal diseases and rabies. With respect to pet dog owners, the legislation does not prescribe a detailed duty of care. Moreover, seeing the plight of stray dogs in various parts of the country, it can certainly be concluded that the legislation is not effectively enforced. Of an estimated sixty million, hardly ten percent of India's dogs have been sterilized and immunized.<sup>495</sup>

Although positive steps have been towards controlling pet trade in India, by mandating compulsory registration of pet shop owners and dog breeders, the effectiveness of these measures has been undermined as it relies on self-reporting.

Further, although the housing of case property animals in shelter institutions such as those run by SPCA is compulsory during the pendency of litigation, the conditions in which these shelter homes lie raises serious doubt as to its adequacy is ensuring the welfare of animals, let

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<sup>492</sup>*Id.* Rule 9(6)

<sup>493</sup>*Id.* Rule 11

<sup>494</sup>*Id.* Rule 12

<sup>495</sup>Coomi Kapoor, *A bizarre and unscientific policy is behind the menace of stray dogs all over India*, THE INDIAN EXPRESS, July 31, 2020, <https://indianexpress.com/article/opinion/columns/stray-dogs-india-coronavirus-pandemic-6524760/> (last visited, Aug. 10, 2020, 11:32AM)

alone proper maintenance. The shelter homes usually lie in shambles with no upkeep and unhygienic conditions, owing to paucity of funds.<sup>496</sup>

## **6.6. Policy Options for India Based on the Evaluation of European Union Animal Welfare Legislations**

- The EU has been particularly pragmatic in incorporating animal welfare in its legislative sphere. Its activities are based on the recognition that animals are sentient beings. Animal sentience is formally recognised under the EU Founding Treaty. While the inclusion of fundamental duty to have compassion for living creatures implicitly echoes the affirmative attitude of the Government towards animal welfare, a more formal recognition of animal sentience under the Indian Constitution can go a long way in better protecting and ensuring welfare of animals.
- The EU lays down comprehensive standards for the protection of egg laying hens. Based on scientific evidence with regard to the detrimental effect of barren battery cages on the health and well-being of egg laying hens, the use of such cages has been banned in the region. In India, at presents no prohibition on any type of cages for egg-laying hens has been adopted. The Government should, therefore, take steps to phase out the use of such severely restrictive and cruel cages.
- EU Directives also provide comprehensive standards for the welfare of broiler chickens. It sets out the maximum stocking densities goes into details about the environment of rearing of chickens. In India, while various guidelines with regard to poultry have been produced by the concerned Department, but they focus more on bio security and health, rather than animal welfare. No limitation as such is prescribed on the stocking density of broiler chickens. The Government, should therefore, consider adopting of a more comprehensive policy setting out maximum stocking densities, for the welfare of broiler chickens.
- The worst forms of confinements, such as veal crates and sow stalls have been systematically phased out under the EU legislations. Surgical castration of pigs has also been abandoned. In India, at present no such animal welfare provisions have been adopted. The Government, should, therefore take steps to phase out such inhumane practices.

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<sup>496</sup>NeerajBagga, *SPCA shelter home lies in shambles*, THE TRIBUNE, March 21, 2018, <https://www.tribuneindia.com/news/archive/amritsar/spca-shelter-home-lies-in-shambles-561007> (last visited Aug.10, 2020, 12:33AM)

- The mere enactment of wide array of laws is not in itself sufficient to achieve the desired objective. Unless, endeavours to encourage the implementation of such rules and regulations are not made, it will remain confined within the ambit of black and white word only. A continuous monitoring and review of the existing legislations is necessary to protect the rich heritage of animals. The ECs effort in this regard must be applauded. It has taken several initiatives to boost awareness of the existing laws among the stakeholders and the public in general, and has also organised training programmes. Efforts of the Government in India to ensure effective enforcement are lacking. The Government should take positive steps towards implementation of the animal welfare legislations.

## CHAPTER 7

### Judicial Decisions on Animal Cruelty

#### 7.1. Gauri Maulekhi v. Union of India and Ors.<sup>497</sup>

In 2014, Gauri Maulekhi, consultant to Humane Society International/India and Trustee of People for Animals filed an urgent petition against the illegal transportation of animals across Indo-Nepal border for slaughter in the Gadhimai festival. The festival was held every five years in Bara District, in Nepal and involved the massacre of several thousands of innocent animals such as buffaloes, sheep, pigeons, etc in the garb of religion.

Noting that nearly 70% of the animals slaughtered at the festival were illegally imported from India, the Hon'ble Apex Court "*passed an interim order directing the Union of India to prevent such illegal movement of animals, held that, export of live cattle and buffaloes without a license were in violation of the Foreign Trade (Development and Regulation) Act, 1992 as well as the export-import policy of India. The Union of India, is therefore, directed to ensure that no live cattle and buffaloes were exported out of India into Nepal in the absence of a licence.*"

#### 7.2. Animal Welfare Board of India v. A. Nagaraja and Ors.<sup>498</sup>

The instant PIL was filed against the practice of 'jallikattu', a bull-taming sport played in Tamil Nadu, and the conduct of bullock-cart races in Maharashtra. It is in context to these practices that rights of animals under the Indian Constitution as well as the Indian laws, culture, religion and ethology were analysed with specific reference to the PCA Act, 1960 and the Tamil Nadu Regulation of Jallikattu Act, 2009 (hereinafter referred to as 'the TNRJ Act').

It was argued by the AWBI, that such practices should be abolished on the ground that it is violative of sections 3, 11(1)(a), 11(1)(m) and 22 of the PCA Act. It was further contended that the practice of Jallikattu and bullock-cart racing had no historical, cultural or religious significance in the two States where it was performed and, even if it so assumed, welfare legislation like the PCA Act would override the same. It was also argued that in the absence of Presidential assent under Article 254 of the Indian Constitution, the State cannot

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<sup>497</sup> Gauri Maulekhi v. Union of India and Ors., MANU/SCOR/41906/2014

<sup>498</sup> *Supra* note 277

give effect to the TNRJ Act as the same is violative of the provisions of the PCA Act and the rules made thereunder. The Board also submitted that bulls compelled to take part in the race undergo significant pain and suffering, therefore, exhibition or training of such animals as performing animals must be completely prohibited.

Organisers of these events, in response to the arguments, stated that such sports are an integral part of their custom and tradition and it has been in practice for the last three centuries. It was also asserted that bullocks participating in the event were handled with utmost care and protection. An economic perspective was also raised in the assertion that because these events attracted a huge number of viewers who were willing to pay to watch, it was a great source of revenue for the state. It was also argued that the State has the authority only to regulate sporting events and therefore, a complete ban cannot be imposed and that all the issues raised in the petition are sufficiently dealt with by the TNRJ Act.

The State of Tamil Nadu had also put forward arguments in support. It took the stand that every endeavour to ensure that no cruelty is inflicted upon the bulls selected for jallikattu in contravention of the PCA Act would be made, and in addition to that, under the mandates of the TNRJ Act, such sporting event can be duly governed. Further, it also stated that bulls being ‘performing animals’, Section 22 of the PCA Act is inapplicable in the matter as no tickets are sold for the event. No representation was made by the State of Maharashtra and so, it was construed that the State was in favour of banning such activities.

Thus, the Court was to consider: firstly, whether practices such as jallikattu and bullock-cart racing were cruel to animals and as such violative of the PCA Act; secondly, whether such practices stand justified on the ground of cultural and historical significance; thirdly, whether bulls had a right to life under Article 21 of the Indian Constitution.

The Court held that sporting events such as jallikattu are indeed harmful to the well beings of the bulls. In such events, the bulls are subjected to immense torment and suffering. The nature of bull’s reaction to external stimulus and threat was carefully analysed and it was found that they choose to ‘flight’ rather than ‘fight’. However, the bulls are unable respond naturally as these sporting events take place in enclosed and restricted environment and thus cause considerable harm to the bulls. It endorsed the stand taken by AWBI and held that such practices clearly violate the provisions of the PCA Act. It also held that, “*bulls being draught animals cannot be used as performing animals, since it is not designed for the purpose.*”

With respect to the issue pertaining to the cultural significance of such practices, it was held that, “PCA Act overrides this culture and tradition, the manner in which the practices of Jallikattu and bullock-cart racing were conducted, had never been supported in Tamil tradition or culture. It held that even if the practice has been ongoing for quite some time, it must now give way to the provisions of the PCA Act.”

The ‘rights’ of the animals under Article 21 of the Indian Constitution was extensively examined. It was held that, “the term ‘life’ under Article 21 extended to animal life as well and so far as animals are concerned, it means not just mere survival or existence or being of instrumental value for human beings, but expands to mean a life of intrinsic worth, honour and dignity. Reading the provisions of the PCA Act in conjunction with Article 21 and 51A (g) of the Constitution, it is stated that animals too have a right against human beings to not be tortured and against the infliction of unnecessary pain or suffering. Animal dignity must be protected and practices that harm animals must be banned. To that end, the TNRJ Act is unconstitutional and such sporting events are unlawful”.

### **7.3. Wildlife Rescue and Rehabilitation Centre v. Union of India<sup>499</sup>**

The instant writ petition was filed before the Apex Court highlighting the cruelties perpetrated in the State of Kerala on elephants and the need to curb them. The petitioner also alleged that several captive elephants were held by private individual without any declaration and registration.

The Division Bench, expressing concern over the matter, strictly directed, “the Chief Wildlife Warden to keep a record of all the captive elephants present in the State and to ensure that the owners obtained the requisite declarations and certificates under Sections 40 and 42 of the WPA, 1973. The State was to ensure that the various temples within its jurisdiction are registered with the District Committee in compliance with the provisions of the Kerala Captive Elephants (Management and Maintenance) Rules, 2012. The temples were also required to inform the District Committee of the number of elephants to be used in any festival. Further, the State, the District Committee, the Management of the temples, and the elephant owners were required to strictly ensure that no cruelty is inflicted on the elephants.”

In the event of failure to carry out such duty, the Court held that serious consequences would follow, including the forfeiture of the elephants to the State.

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<sup>499</sup>Wildlife Rescue and Rehabilitation Centre v. Union of India, (2015) S.C.C. OnLine 732

#### **7.4. People for Animals v. Mohazzim and Ors.<sup>500</sup>**

On the basis of an intimation given to Station House Officer of the Lajpat Nagar Police Station, New Delhi, an FIR was registered against the respondents for violation of the provisions of the Prevention of Cruelty (Capture of Animal) Rules, 1979. Consequently, the birds and animals in its possession were seized and transferred to recognized body of the MoEF, Government of India. Subsequently, an application for the release of birds on an interim order was filed by the respondent and the same was allowed. A revision petition against such order was filed by the complainant, i.e. People for Animals but the same was dismissed. Evidence of the cruelty meted out to the birds was filed by the petitioner. The petitioner also alleged that despite the statutory and constitutional right to live with dignity, more than thousands of birds were confined by the respondent to small cages and sold in commercial markets.

The Court was of the opinion that birds deserve sympathy and that the conduct of trading in birds is a violation of its right. It recognized, “*the inherent right of birds to fly in the sky as against the right of human beings to confine them in small cages for the purpose of their trade or business, and held that birds have a fundamental right to live with dignity and cannot be subjected to cruelty by anyone including the claim made by the respondent.*”

#### **7.5. Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai<sup>501</sup>**

The PIL was filed against the ill-treatment of horses and ponies used for joyrides. It was alleged that the horses were forcefully made to overwork, and that they endured repeated multiple injuries, and suffered from anomalies of lameness and hoof.

The petitioner highlighted the instance of cruelty perpetrated on the horses used for victorias and joyrides and stated that they struggle for space due to increasing congestion on the streets and are vulnerable to accidents because of their inability to navigate efficiently in the traffic. It was stated that means such as whipping and spiked bits were used to control the horses and that the victoria owners often engaged in overloading of passengers, plied unfit horses without proper shoes, thereby causing immense physical harm and mental agony to the horse.

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<sup>500</sup> People for Animals v. Mohazzim and Ors., (2015) 3 RCR (Criminal) 94 (India).

<sup>501</sup> Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai, (2015) S.C.C. OnLine 3351



Drawing the attention of the court to the deplorable conditions of the stables, the petitioner alleged that the horses were kept in unhygienic conditions and made to stand in their dung for hours.

The petitioner, therefore, prayed to phase out and eventually ban the use of horses and ponies for carriages and joyrides in the city.

The Court held that, *“on the basis of the premise that animals have intrinsic worth and the right to live with dignity, that use of horse-driven carriages for joyrides was solely for human pleasure and an avoidable human activity. Such non- essential avoidable human activities violate the basic rights granted to animals and are therefore illegal.”*

It therefore, directed the State authorities to completely prohibit the plying of horse-driven carriages and to shut down all stables meant for horses and ponies in the city within a period of one year.

#### **7.6. Animal Welfare Board of India v. People for Elimination of Stray Troubles and Ors.<sup>502</sup>**

In the present case, it was argued that bite by a stray dog poses a threat in the society and human lives cannot be endangered in the name of compassion for dogs.

The Court passed an interim order declaring that a harmonious equilibrium must co-exist between compassion for dogs and human lives. It stated that the local authorities have the prime responsibility to provide dog pounds including animal kennels/shelters in sufficient number which can be handled by the AWOs, the authorities must also provide sufficient number of dogs vans equipped with ramps, a driver and two trained dog catchers so that stray dogs can be captured and transported. In addition to this, the Court directed the local authorities to provide an ambulance-cum-clinical truck as a mobile sterilization and immunization centre, incinerators for disposal of carcasses and to ensure that shelters or pounds are repaired periodically. The Court held that, *“dogs should not be killed indiscriminately and that the administrative authorities must duly adhere to the provisions of the PCA Act and the rules made thereunder.”*

#### **7.7. Girish Chandra Kholia v. State of Uttarakhand and Ors.<sup>503</sup>**

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<sup>502</sup>Animal Welfare Board of India v. People for Elimination of Stray Troubles and Ors., (2015) S.C.C. OnLine 1193 (India).

The PIL was filed before the High Court of Uttarakhand to bring into light the menace caused by stray dogs in the State. The petitioner alleged that over a period of five years, around eleven thousand cases of dog bite have surfaced and many persons have also died as a result of dog bite. It was also submitted that in various places, due to the fear of dogs, people were afraid to come out on the road. The petitioner raised the question whether the life of citizens or that of stray dogs is more important and whether the State authorities are duty bound to save the life of public that is threatened due to biting of the stray dogs. The counsel for the State submitted that municipal bodies are already doing their work in this regard.

The Court, taking into consideration the urgency of the matter ordered the issuance of necessary directions by Chief Secretary of the State to all concerned authorities for taking effective measures in this regard. The directions so issued were to be binding on all authorities, including municipal and local bodies. Failure to comply with such directions was to be viewed as contempt of Court. The concerned authority was to specify the number of stray dogs in each of the town, city and village and make required arrangements for the construction of shelter house in every place. The municipal and local bodies were directed to ensure that all dog owners register their dogs with the municipal boards.

The Hon'ble Court suggested that, *“a law for the killing of dangerous stray dogs may be considered by the State Government and directed it to issue in a widely circulated newspaper in the State of Uttarakhand, an advertisement inviting general public and NGOs who are against the idea of shelter to come forward and adopt the dogs.”*

The Court directed all stray dogs to be shifted to shelter homes within a period of six months.

#### **7.8. Alim v. State of Uttarakhand and Ors.<sup>504</sup>**

The petition was filed against the illegal practice of slaughtering of cows in the Haridwar district. It was alleged that despite the expiry of license to sell meat, the respondent was brutally slaughtering cows in open and the blood from the slaughter was allowed to flow into the streets. In support of its plea, the petitioner also submitted an image of a cow being slaughtered brutally in an open space. The counsel for the petitioner pointed to the failure of the State Government to strictly implement the anti-cruelty laws and alleged that the State Government, Municipal Bodies and Panchayati Raj institutions have failed to build adequate number of goshalas and pounds. Highlighting the plight of cows in the State, the petitioner

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<sup>503</sup> Girish Chandra Kholia v. State of Uttarakhand and Ors., (2018) S.C.C. OnLine 556

<sup>504</sup> Alim vs. State of Uttarakhand and Ors., MANU/UC/0567/2018.

prayed that modern goshalas be constructed and provisions for medical treatment and care of the cows and stray cattle be made.

The Court, took judicial notice of the facts that cattle are abandoned on the streets by their owner so as to avoid feeding and taking care of them and also that these animals cause great nuisance and menace on the road. It was also brought to Court's notice that the land of goshalas are widely encroached upon by unscrupulous people with impunity and that the State Government has failed to appoint any infirmaries to treat and care of the animals.

Noting the failure of the State and the citizen in adhering to the provisions of the existing laws, the Court broadened the scope of the petition.

It invoked the doctrine of *parens patriae* and gave a number of directives for the protection of the cows and other stray cattle to the State Government. These included, “*ensuring a ban of the slaughter of any cow, bull, bullock, heifer or calf in the State, prohibiting the export of such animals for slaughter and prohibiting the sale in any form throughout the State of beef or beef products, registering cases against owners found abandoning their cattle on the streets under sections 289, 428 and 429 of the IPC and the provisions of the PCA, 1960 as well as section 7 of the Uttarakhand Protection of Cow Progeny Act, 2007 (abandoning a cow after milking it and leaving its progeny vagrant is a punishable offence), providing adequate medical treatment to all stray cattle, constructing goshalas or shelter homes within a period of one year from the date of passing of the order, appointing infirmaries within a period of three weeks in order to take care and treat animals, to ensure that the roads are kept free from the stray cattle and that utmost care is taken to avoid the infliction of unnecessary pain and suffering while removing them from the streets, all unauthorised encroachers are evicted from the goshalas within a period of three months and that rural areas are patrolled once in 24 hours to ensure that no cow is slaughtered.*”

The Court requested religious gurus to aid in the building of goshalas and laid down conditions under which animals may be transported on foot and directed the setting up of SPCA in those districts in which it has not been constituted.

### **7.9. Subhas Bhattacharjee v. The State of Tripura and Ors.<sup>505</sup>**

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<sup>505</sup> *Supra* note 285

The instant writ petition was filed against the inhumane practice of animal sacrifice for religious purposes in two of the temples situated in the State of Tripura. It was contended by the petitioner State Government that such practice forms an integral part of worship in the Hindu religion. The Government placed several documents on record to show the continued existence of animal sacrifice in the temple since time immemorial.

The Court had to consider whether the practice was protected under Article 25(1) of the Indian the Constitution and if so, whether prohibiting animal sacrifice in these temples would constitute a violation of the said right.

The Court held, *“under the ambit of Article 25(1), only those practices which are essential and integral part of religion, in the absence of which the very foundation of the religion will be fundamentally changed and those which do not violate public health, morality or other rights guaranteed under Part III of the Constitution of India are protected. Sacrifice of animal not being an essential part of religion is also violative of Article 21 of the Indian Constitution.”*

The practice of animal sacrifice in these temples is mere optional as other practices, such as offering of fruits, sweets, etc by devotees are prevalent. Further, there is no historical background or textual scriptures that confirm that such practices were obligatory in the performance of puja. Because the practice of animal sacrifice fails to succeed the doctrine of essential test, such rudimentary practices must be removed to bring positive reform in today's society.

It was also held that, *“animal sacrifice in the name of religion cannot be considered a moral act, unless it is essential. Compassion for living creature is a basic tenet of all religion, no religion calls for killing. Animal sacrifice is morally wrong as it is an act of illegally taking away of life. Like humans, animals too are made of flesh and blood; they breathe like us, and are sentient beings. Animals have fundamental rights and we must acknowledge and protect them. They too are God's creation and have a right to live in harmony with human beings and the nature. Animal sacrifice is one of the most heinous types of animal cruelty and performance of such activities in full public view cannot be justified. The ambit of the term 'life' under Article 21 is wide enough to encompass all living creatures be it human, animal, bird or insect. Deprivation of life is permissible only in accordance with legally established*

*procedure. Thus, it is important that sacrificing animal and taking away its life must also be in line with appropriate legal procedure. Sacrifice of animal in the manner practiced in these temples, in the name of religion, is nowhere permitted by law. It is reiterated that only those practices which constitute essential and integral part of religion are protected under Article 25(1). Human sacrifice is now condemned by every religion and is no longer practiced as a part of rituals. Thus, if human sacrifice could be stopped, there is no justifiable reason to hinder a ban on animal sacrifice as part of religious activities, since both human and animal life are legally mandated to be respected and protected.”*

Open violence in the form of animal sacrifice can have a deep seated impact on the viewer, especially the children. Having the cut heads held in front of the deity along with their blood spilled on the ground can affect the mental wellbeing and peace of a person. It can also endanger the physical health of the public at large by increasing the peril of spread of diseases, as blood from the temple premises flow into open drains and gets contaminated.

Therefore, the Court held that, *“a ban on animal sacrifice in these temples or any other temple in the State does not infringe the fundamental right guaranteed under Article 25(1) as the practices in the instant case, are contrary to constitutional morality and health and do not stand to be protected.”*

Consequently, animal sacrifice in all temples in the State was prohibited and the Government was ordered to take the appropriate steps to ensure that the order was complied with.

#### **7.10. Karnail Singh and Ors.v. State of Haryana<sup>506</sup>**

In this case, the appellants were convicted by the trial court under for the transportation of 29 cows in two trucks from the province of Haryana to Uttar Pradesh in violation of restriction on the exports of cows for meat slaughter imposed by the State. Upon appeal, the conviction of the appellants were upheld, however, the sentence of imprisonment was decreased to six months from two years. Aggrieved by the decision of the court, the instant revision petition was filed before the Hon’ble High Court of Punjab and Haryana.

The Court upheld the conviction recorded by the Court below, and in the interest of justice, sentenced the appellants to imprisonment to the period already undergone. However, taking judicial note of the cruel and brutal manner in which the cows were packed and transported,

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<sup>506</sup>Supra note 47

in its judgement of 104 pages, the Court elaborately discussed the jurisprudence of animal rights. In its final ruling, the Court directed the State Government to ensure due enforcement of a number of standards pertaining to transportation of animals in the State.

The Court, in its judgement declared that, *“much like humans, animals and birds have legal right. It further declared citizens as the ‘guardians of the animal kingdom’ and conferred upon them the duty to ensure the welfare and protection of animals. All animals have an intrinsic right to life, honour and dignity, and this must be protected by law. It is necessary to respect and protect the rights and privacy of animals. All animals, including avian and aquatic must be bestowed with the status of legal entity or legal person, so that animal welfare can be better protected.”*

### **7.11. Saddam v. Union of India<sup>507</sup>**

In this case, a petition was filed alleging that the elephant, named Laxmi has been illegally kept under the custody of Elephant Rehabilitation Centre. The petitioner, claiming to be a Mahout, contended that the expression “not being subjected to torture” also means that an entity cannot be distanced from anyone from whom it is very closely connected and that separating Laxmi from him would tantamount to mental anguish given the degree to which they have been linked over the last ten years. The petitioner, therefore prayed for the issuance of direction to release Laxmi and bring her back to Delhi.

It was held that, *“an animal is unable to express itself and therefore, under the doctrine of parens patriae the Court it duty bound to take care of their rights. Jungle is an elephant’s natural habitat as it needs ample water and a wide area for living, walking and grazing and that the interest of an elephant is best served in a forest than in a congested city.”*

In case of a conflict between the rights of the elephant and the alleged Mahout, the rights of the elephant must be given a priority. There is no conclusive proof to show that the Mahout is the owner and that Laxmi cannot survive without him. Even if the ownership is established, to shift the elephant to an uncomfortable environment against her rights and interest and allow her to be treated as a ‘slave’ is not justified. Consequently, presence of Laxmi in the Rehabilitation Centre is not ille-gal and unauthorised.

### **7.12. N. Prakash v. State of Kerala and Ors.<sup>508</sup>**

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<sup>507</sup> Saddam v. Union of India and Ors., (2020) S.C.C. OnLine 386.

The instant writ petition was filed before the Hon'ble High Court of Kerala alleging that due to the implementation of a lockdown amid the COVID-19 pandemic, the petitioner had applied for an online pass for its vehicle to go out and buy Meo-Persian biscuits for its cats, available at the Cochin Pet Hospital but the same was denied by the police administration without any legitimate reason. It was submitted that the biscuits were important for the survival of its cats as the petitioner being a pure vegetarian did not cook non-vegetarian food in the house.

Relying on the provisions of the PCA Act and the judgement of the Apex Court in A. Nagaraja's case, the petitioner contended that animals too under Article 21 of the Indian Constitution have a fundamental right to life and hence the police authorities cannot deny him a pass for procuring cat food. He also pointed out that, "animal feed and fodder" were listed as "essential items" under the guidelines issued by Central Government in the Ministry of Home Affairs for which even during the period of lockdown movement was allowed.

It was held that, "*Article 51A (g) confers upon every citizen of India the fundamental duty to have compassion for living creatures and more so on a person rearing a pet. It is not a matter of choice but a sacrosanct duty of the citizen to inculcate a healthy respect for other living creature and to recognise their rights. Citing the stand taken by the Apex Court in A. Nagaraja's case that animals too have a right to live with dignity, free from cruelty and that freedom from hunger, thirst and malnutrition is an internationally recognised freedom for animals, it was held that the petitioner was entitled to travel for procuring animal feed.*" The Court directed the respondents to allow the petitioner to travel to Kochi on producing a self-declaration stating the purpose of his movement.

### **7.13. Vineeta Tandon v. State of Maharashtra and Ors.<sup>509</sup>**

The petition in the instant case was filed before Hon'ble High Court of Bombay seeking multiple reliefs for pet animals. It was alleged that due to the State's imposition of a lockdown as a result of the Covid-19 pandemic, some arbitrary measures were taken by police stations within the jurisdiction of Respondent Nos. 3 and 4. These included prohibiting people from taking their pet animals, especially dogs, for walking; obstructing ambulances or pet taxis owned by NOGs and others to move animals from their shelters or pet owners to and from veterinary clinics; and refusing to grant passes for such ambulances and pet taxis. It was also

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<sup>508</sup> N. Prakash v. State of Kerala and Ors., (2020) S.C.C. OnLine 1570.

<sup>509</sup> Vineeta Tandon v. State of Maharashtra and Ors., (2020), S.C.C. OnLine 638

alleged that housing societies were given arbitrary orders to prohibit its residents from walking their dogs.

It was submitted by the AGP that as per the directions issued by the State, people are not forbidden from walking their dogs within the compounds of their house or societies. Further, no directions have been issued to the police authority to stop or hinder the movement of pet taxies and ambulances.

In the light of the above matter, the Court directed the State *“to ensure that in case any directive concerning walking of the dogs has been issued by the AWBI to the DGP of the State, appropriate decision in that behalf are taken and communicated to the Court. Further, the State was ordered to issue a clear directive in the meantime to ensure that ambulances and pet taxies were not stopped or obstructed from ferrying sick animals to and from veterinary clinics by the police authorities.”*



## CHAPTER 8

### Findings and Analysis of Empirical Study

#### Key Findings:

- 1. Socio-demographic characteristics of the respondents do not influence their attitudes towards animal welfare issues. It is widely accepted that animal cruelty is an important issue, and routine use of animals in contexts, such as ritual slaughter, unnecessary experiments are cruel, and must not be justified.**
- 2. There is a growing consensus that animals are sentient beings, entitled to rights.**
- 3. The existing anti-cruelty legislations have failed to meet its desired objective, and do not adequately address the plight of farm animals.**
- 4. Protecting animals from cruel treatment has still a long way to go in India. While extensive anti-cruelty statutes have been adopted, an effective enforcement mechanism is still lacking. Mere declaration of laws is itself not sufficient unless proactive measures to create public awareness are not taken.**

#### Statistical Representation and Analysis of Data:

The data was collected from a sample consisting of males (53.6%) and females (46.4%), belonging to the age group of 18-24 years (54.5%) and 24-34 years (45.5%). The same share of respondents (69.1%) consume meat either every time (8.2%) or often (36.4%), while 24.5% rarely eat meat. Only 36.4% of the respondents do not eat meat. Further, 61.7% of the respondents have a pet while 38.2% do not. Despite the socio-demographic differences in the sample, almost all respondents in the study consider cruelty towards animals as an important issue. When asked if the respondent concerned ever considered turning vegan, 26.5% responded in the affirmative, citing ‘all lives matter equally, slaughtering of animals for some sort of food is totally irrational’, ‘torture to animals in obtaining both milk and meat products’, ‘harm to animals’, ‘food shouldn’t be the cause of suffering and exploitation of animals’ ‘inhumane activities towards animals which affects them at such a level disrupting the very concept of how a living organism should be ethically treated on this planet’ as reasons for their decision.

The result of the study conducted as illustrated in the graphical representation below is reflective of the growing consensus among the people that animal cruelty is as important issue in today’s society. Out of the total 110 responses that were received, 105 participants

responded in the affirmative when asked if they considered animal cruelty to be an important issue. Further, when asked if they would take action if and when they saw someone abusing an animal, 102 participants stated that they would.

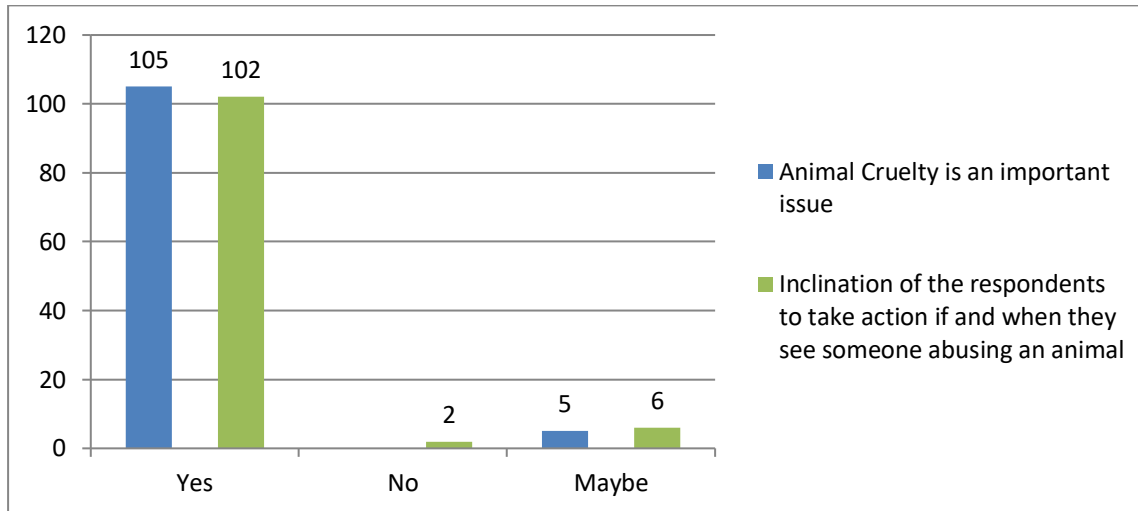


Figure 1: Attitude of the respondents towards animal cruelty

Every day today, instances of inhumane treatment of animals in laboratory experiments, on roads, for entertainment, in temple, in farms, etc., surface of newspaper articles and social media platforms. Not until, recently, did issues of animal cruelty ever made headlines because of the insignificance of the topic and lack of public concern. However, gradually people are acknowledging that animal cruelty issues are real and pervasive.

The survey conducted revealed that practices such as animal sacrifice and use of animals in unnecessary experiments are cruel. When asked as to whether the slaughtering of animals for religious purposes are in line with the modern ideas of animal welfare, and if such practices should be condemned, majority of respondents **strongly agreed that animal sacrifice rituals are borderless barbaric and must not be allowed.**

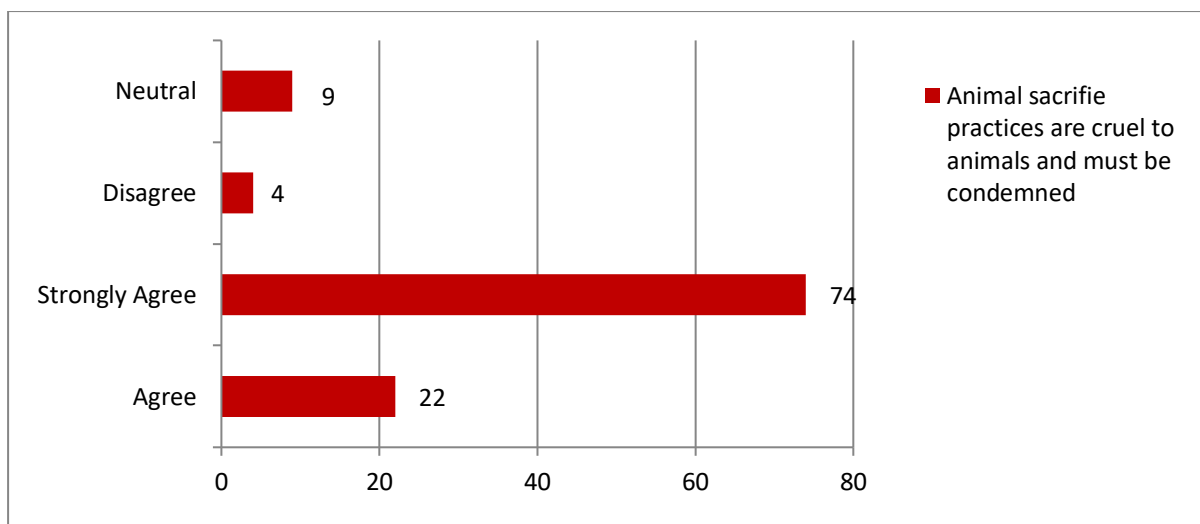


Figure 2: Attitude of the respondents on animal sacrifice

Animal sacrifice practices are prevalent in several parts of the country. Any positive steps taken by the government towards banning such primordial practices have raised intense public debates and protest on the grounds that it is a violation of the fundamental right guaranteed under Article 25(1) of the Indian Constitution, and that the same has also been explicitly protected under Section 28 of the PCA, Act, 1960. Be it duly noted the texts of some of the relevant judicial dictums assessed in the aforementioned chapters (Chapter 5 and 7), clearly point out that animal cruelty practices cannot be protected under the garb of religion. Further, under Section 28 of the PCA Act, the manner (halal or jhatka) of killing an animal as prescribed by one's religion is protected, and not ritual slaughter of animals in temples or otherwise.

In the researcher's view no religion in the world, preaches violence or demands that its adherents destroy animals. Animal sacrifice ritual is a barbaric scene that propagates violence and dilutes the love and compassion which is the basic tenet of every religion. Animals, from the very beginning have always been celebrated in our live and culture. Verses from Isha-Upanishads clearly iterate that no species have a right to encroach upon the rights and privileges of other species.

It was found that **majority of the respondents also oppose the use of animal as subjects of scientific experiments**, while some others hold the opinion that it is ethical to use animals for experiments as long as it is necessary for scientific discoveries and medical progress. Additional statements (not distinctly represented in the graph below) expressing their views on the subject matter was also provided by some of the respondent. For instance, one of the

respondent stated that, although experimentation on animals is unethical, it may be conducted provided that the animals are kept in an environment conducive to their needs, the responsibility for ensuring humane treatment of animals during such procedures are undertaken, and that any violations are not met lightly. The respondent also stated that, ‘animals have a heart’.

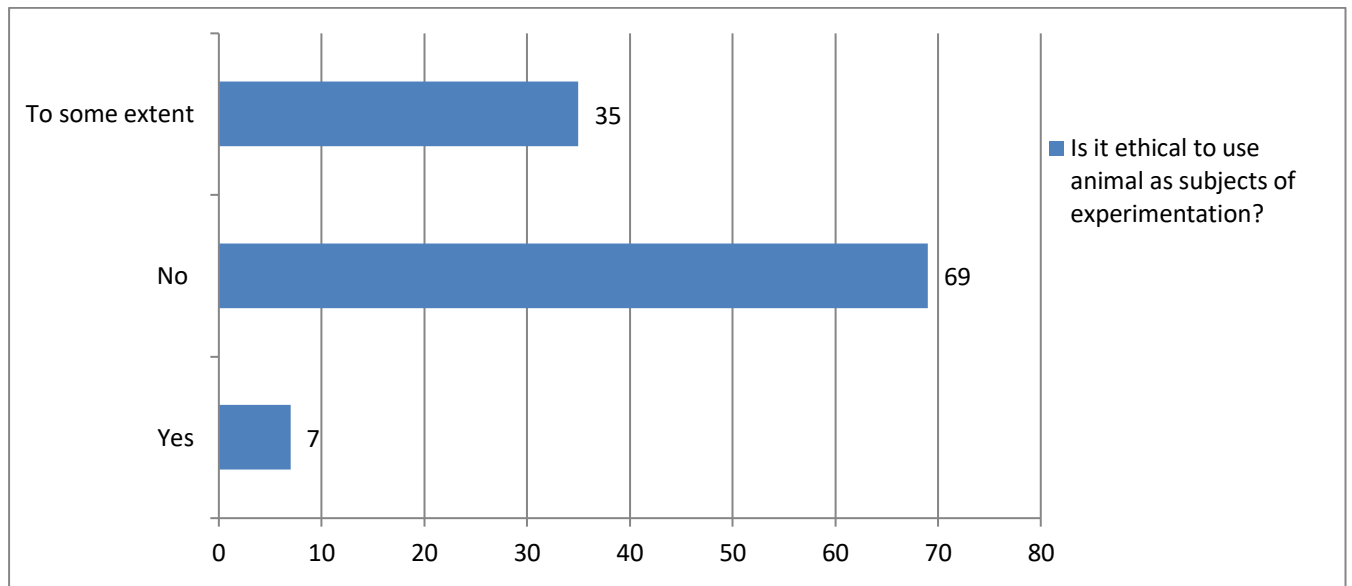


Fig 3: Attitude of the respondents towards use of animals in scientific experimentation

Several thousand of animals are killed every year in laboratories for curiosity-driven experimentation, drug, chemical testing, etc. They are kept in appalling conditions, without any suitable facilities. They are made to inhale toxic fumes, confined in small, overcrowded cages for hours, and are subjected to brutal procedures while they are still in a conscious state. In addition to this, they are deprived of their natural environment, are socially isolated and mentally traumatized. They are regarded as nothing more than mere disposable laboratory equipment. Other than the ethical concerns, it is also true that artificially induced diseases in comparison do not have a similar effect on laboratory animals as those occurring naturally in human beings. The results of such experiments do not always produce results that can be successfully interpreted and applied to human conditions. For instance, as of 2015, the result of about 85 HIV/AIDS vaccines failed to protect humans despite its success on animals.<sup>510</sup> Very often research institutes exaggerate and promote findings of experiments conducted on animals which may not have any relevant effect on human health. They also do

<sup>510</sup>*Experiments on Animals: Overview*, PETA (Aug.11, 2020, 4:36PM), <https://www.peta.org/issues/animals-used-for-experimentation/animals-used-experimentation-factsheets/animal-experiments-overview/>

not publish results of failed animal studies, thereby misleading the public on the effectiveness of animal experimentation.

In India, despite elaborative legislative provisions mandating the development and utilization of alternatives to animal experiment, the truth is that there are very limited laboratories willing to develop non-animal technologies, at both public and private sectors. Moreover, the educational institutions also lack a comprehensive drug discovery and development curriculum and research programme, due to which students often do not possess the appropriate skills to conduct independent and innovative research. The Government should take sincere efforts to develop alternatives to animal research, and to this end, encourage the establishment of centres of excellence. An approach that is more compassionate as well as creative needs to be adopted in the field of scientific experimentation.

The statement that ‘animals have a heart’ reflects the acceptance of the notion of animal sentience. However, to generalize the statement on the basis of the input of one respondent is not appropriate. This therefore brings us to the next question as to whether there is a general acceptance of the idea that animals are sentient beings, entitled to rights. Usually, there is a preconceived notion that such an idea is only supported by those who own of a pet because of their emotional attachment to their pets. The survey conducted reveals that there is a growing acceptance of animal sentience, and their entitlement to right, not just among pet owners but also among those who do not own pets. This is well illustrated in the figure represented below:

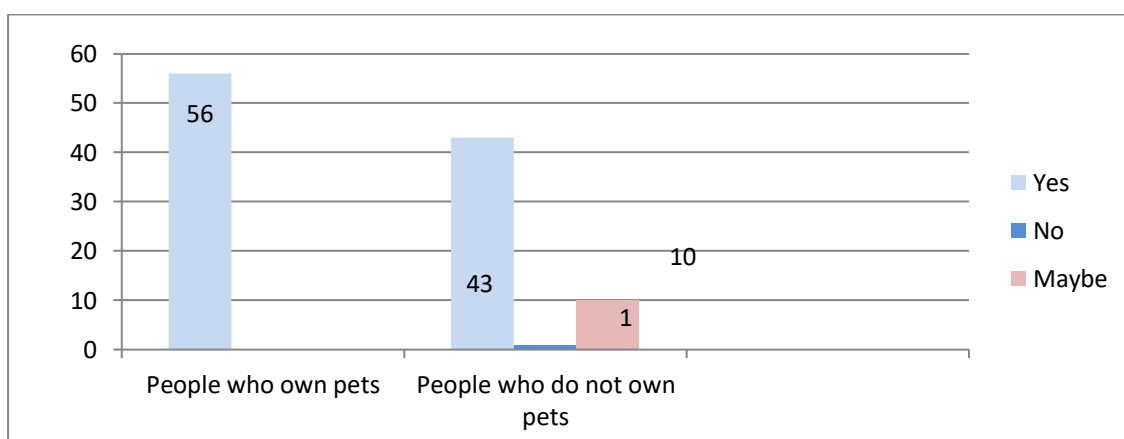


Figure 4: Response of the participants on whether animals are sentient beings, entitled to rights.

Further, when asked which statement best represented the respondent's belief on farm animals, an increasing acceptance of animal sentience (23.6%) was seen in the attitude of the respondents, agreeing that emotional lives of animal matter and that they are entitled to a just treatment. The survey also revealed that 37.3% of the respondent believed that existing legislation on animal welfare are not sufficient. Another 23.6% firmly believed that consumption of meat needs to be reduced, and nearly 5.5% believe that there ought to be enforcement measures taken against farmers in case they fail to meet high welfare standards. The figure below is represents this view:

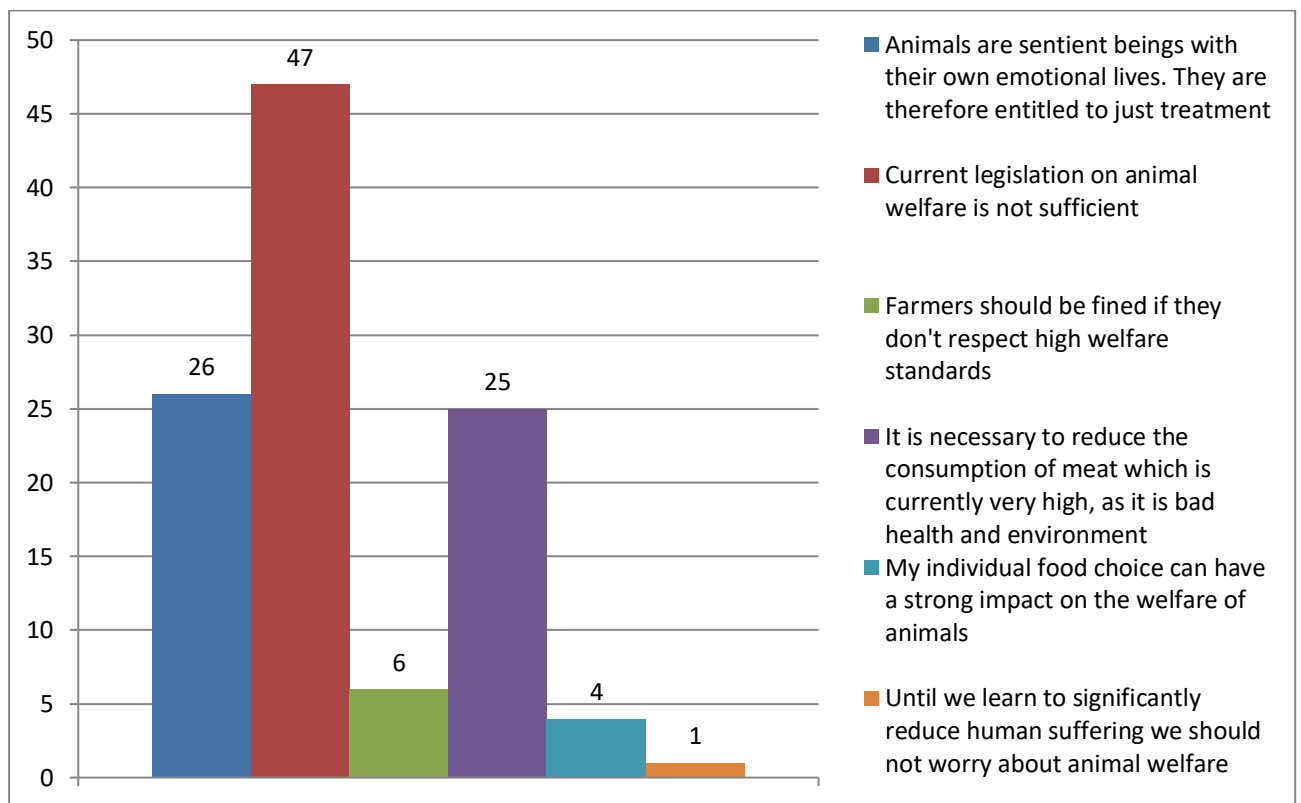


Fig 5: Attitude of the respondents towards farm animals in India

The idea that animals are sentient beings is reflected in writing of various thinkers and has also been scientifically established. Reports of various scientific committees have confirmed that non-humans animals just like human beings possess consciousness, feelings and emotions. They have the capacity to experience, pain, suffering and states of well-being (discussed in detail in Chapter 2). Any legislative framework, prohibiting animal cruelty, would in fact be meaningless without the underlying premise that animals can feel and suffer. International law on animal protection is essentially built upon the idea that animals are sentient creatures, and cannot be equated to machines. The founding treaty of EU also

explicitly recognises animal sentience, and the idea is also impliedly iterated under the mandates of Indian Constitution as well as the PCA Act, 1960 and the rules made under it. The 1989 Rules on Scientific Experiment in India, state that in all scientific experiments, animals with the least degree of sentience capable of producing scientifically accurate results should be considered first. ‘Animal sentience’ has also been applied by the judiciary time and again in several judgments as an underlying basis for granting animal rights.

It is true that in India, several anti-cruelty legislations have been adopted to address many of the animal welfare concerns. However, plight of animals on farm is still unregulated. Unlike EU, no ban on the use of veal crates, sow stalls, and barren battery cages have been imposed in India. Animals are confined in small receptacles with no freedom of movement. What is also unfortunately true is that the limited rights so inferred upon the animals under the legislations have been time and again blatantly violated.

When asked if in the opinion of the respondent the legal rights enjoined upon animals are enjoyed by them in real spirit and sense, 75 of the respondents, out of which 52 belonged to the legal background, replied in the negative. This figure illustrated below, is representative of this view:

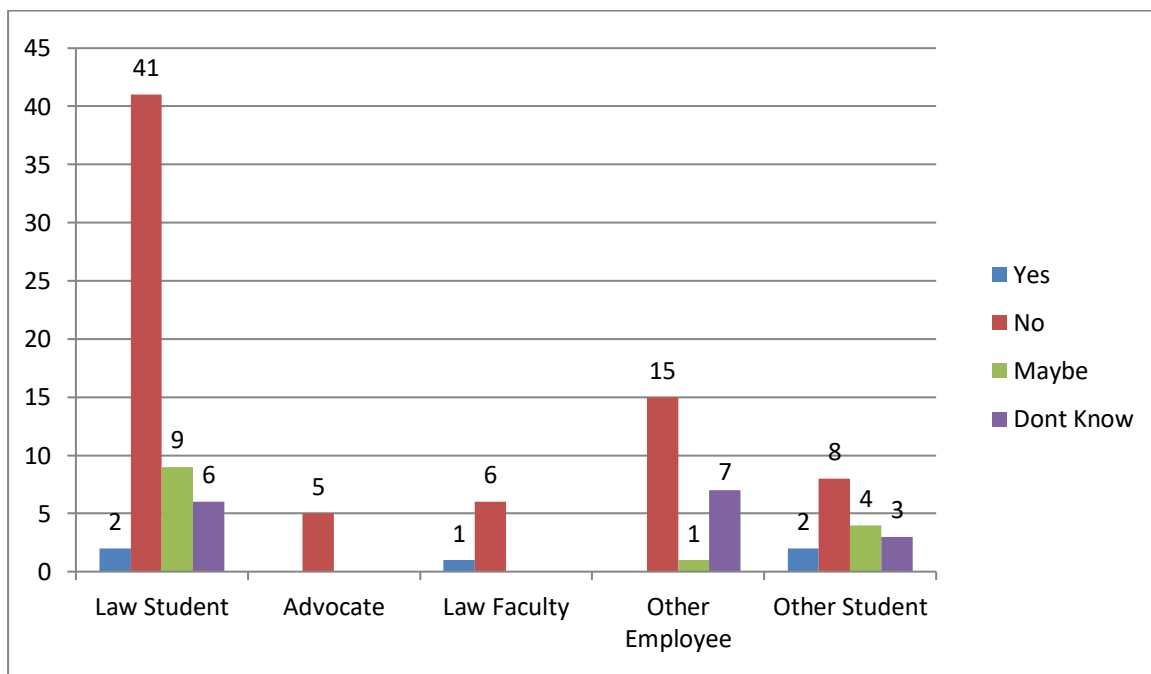


Fig 5: Response of the participants on whether legal rights enjoined upon animals are enjoyed in real spirit and sense.

The study conducted reveals that there is a lack of awareness of the existing regulatory framework on animal protection not just among student fraternity and employees belonging to different departments, but also amongst students and faculty members from legal departments, as well as advocates. Only 30.9% of the total respondents are aware of the anti-cruelty laws applicable in the country to protect animals. The figure below illustrates the result of the survey conducted:

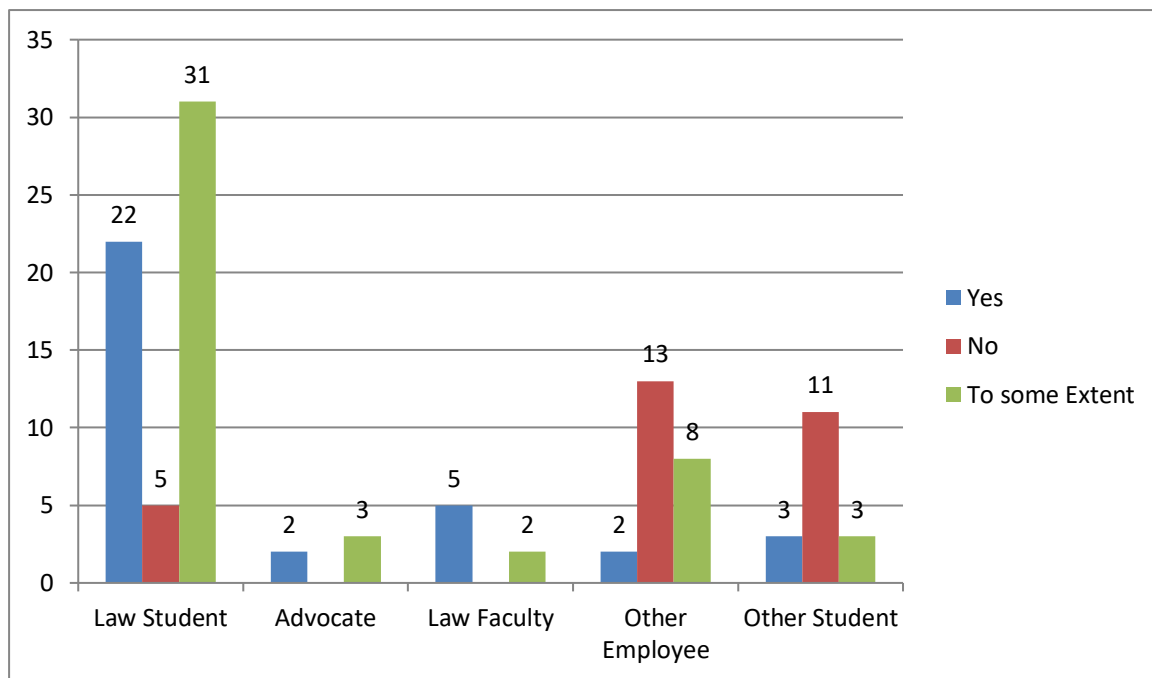


Fig 6: Response of the participants on familiarity with the anti-cruelty statutes applicable in the country for protection of animals.

Education is the key to eradicate evils of cruelty to animals. Lack of awareness among the public is reflective of the failure of the Government to implement the extensive legislation that exist. This has also resulted in continued exploitation of animals as majority of animal cruelty instances go unreported because of lack of knowledge that a certain act has been condemned under the law and that effective action can be taken against it.

Strict implementation of laws and its continued monitoring and evaluation is the need of the hour. Mere enactment of statutes to prevent animal is not an endpoint in itself. More important is the enforcement of sundry animal aegis laws and the visual discernment to ensure that the practices which are forbidden under them do not take place in the State and in the event of stern action against the perpetrators are taken. This emphasises the importance of understanding the inherent dignity of an individual animal, and the idea that each animal is



deserving of deference and a meaningful life without human exploitation and intervention. There is a need to spread awareness that infringement of animal right is a concern, a serious matter worthy of public discourse.

## CHAPTER 9

### Conclusion and Recommendations

The paper aspired to analyse the potential of anti-cruelty laws in India in regulating animal matters. For this purpose, it was primarily important to study why the field requires regulation in the first place. The examination of evolution of property status of animals and scientific underpinnings of animal sentience is reflective of the need of regulatory intervention to protect animals, and adopt stringent regulation to ameliorate the sufferings of the animals and confer upon them the basic right to live a meaningful life.

The provision of wide array of international regulations is reflective of a widespread rejection of the notion of animals as mere property or senseless objects. There is a growing prominence and recognition among the world's civilization of the principle of humane treatment of animals. While the principle has not yet been established as a binding international norm, it is universally identified as a basic ideal of humanity. International convention on trade such as GATT although at present do not facilitate the protection of animals, it has the potential to do so in the future. In addition to this, there exist specifically designed concrete declarations and proposals for the protection of animals. However, most international convention that seeks to secure welfare of animals is principally aimed at protection of and preservation of certain species, and not individual animals as such.

In fact, regional agreement such as that of COE is not generally based on conservationist interests, but has gone a step forward to include domestic animals within its ambit, which are typically devoid of any legal protection. Noteworthy provisions for the protection of three major groups of domesticated animals, i.e., farm animals, those used for scientific experimentation and research, and companion animals has been incorporated under various legislations adopted by the Council. More innovative and general means for protection of animals have been established by international Organisation, such as the OIE and, in particular, the EU. The activities of these Organisations reflects an explicit recognition of animal sentience, with particular focus on protection of animals in areas in which exploitation of animals occur in the highest degree and number, by means of effective cooperation on this issues. Despite the considerable obstacles to overcome, the role of international law in regulating and furthering animals' interest is noteworthy.

In India, the analysis of the existing anti-cruelty statutes for the protection of animals reveals that despite extensive provisions, the field of animal protection law in the country remains in a sorry state. The central PCA Act, 1960, the rules framed there under, and a number of other legislation, although contains elaborative provisions, but there are inherent defects, and enforcement action on the part of the government is negligible. Also, the notion of ‘necessity’ as highlighted in the texts, typically render animals as mere objects, capable of being exploited for human ends and needs. Fortunately, proactive measures towards protection of animals and acknowledgement of their right to a meaningful life have been taken by the judiciary in the recent years.

Upon perusal of the findings of the available literature and data collected during the course of empirical study, the following measures are recommended by the researcher to streamline the existing regulatory framework for the protection of animals in India:

- **Formal recognition of animal sentience:**The acceptance of animals as sentient beings must be ingrained within the country's entire legal framework. The challenge will begin with the expression in the Constitution of core values and obligations, so that the very basis for the state's systematic and efficient treatment and security of the animal can be fully defined. At the very least, the Constitutional mandate for animal welfare and protection must provide for recognition that animals are sentient beings with an intrinsic worth, and a clear commitment or pledge to make animal welfare a priority. Existing legislations and all future legislation related directly or indirectly to animals must be reviewed so that animals are not referred as goods or property.
- **Amendment of the PCA Act, 1960:** As noted in the preceding chapters, the Act has limited applicability. There is ambiguity as to which animals does the law applies to. While section 2(a) of the Act states that it is applicable to all living beings, section 14 expressly exempts animals used in scientific experimentation from cruelty considerations. . It also allows the killing of an animal in a way that is expected by every community’s religion, thereby potentially leaving open the option of unstunned ritual slaughter. Considering that the plight of animals used in scientific experiments is immense, it is necessary that such practices are brought under the purview of the Act. There are no second thoughts on the diabolical nature of animal sacrifice in the name of religion. It is strongly recommended that religious slaughter in any form must be prohibited, and to that end section 28 be repealed. Further, section 11(3)(a) must also be amended to include dehorning, castration and nose roping under cruelty

considerations. The punishments prescribed under the Act are abysmally low and does not commensurate with the gravity of the offence. It is therefore, recommended that significant penalty which acts as a disincentive for animal cruelty must be imposed.

- **Adopt legislation for the welfare of farm animals:** The Government must adopt stringent legislation to ensure that the welfare provisions for farm animals commensurate the Five Freedoms recognised internationally. To this end, the Government must take stern action to ban the worst forms of confinement for farm animals, more particularly the use of veal crates, sow stall and barren battery cages. Steps must also be taken to set a stocking density for broiler chickens.
- **Introduction of Animal Welfare Impact Assessment:** In all cases, where there is a likelihood of a policy, law, activity or programme to adversely affect the lives or welfare of animals, an animal welfare impact assessment should be carried out. The assessment in the legislative and policy realms must be done with a view to ensure consistency and congruity between the relevant policy areas and the welfare needs of animals. This would ensure that in all relevant areas of government policy and regulation, welfare of animals is duly taken into account. Further, where the assessment indicate a possibility of adverse effect on the animal welfare or life, a thorough ethical review must be carried out before any decision on the proposed regulatory initiative is taken; all steps must consequently be taken to prevent or counter such impact or harm.
- **Development of animal welfare indicators:** The Government must in consultation with the key stakeholders develop animal welfare indicators for all species of animals. These indicators must state all authorised and licensed uses, both inputs, i.e., the needs to be provided for the animals and the animal based measures. It must be stated in clear and measurable terms, and must be regularly reviewed and updates on the basis of the latest scientific knowledge and ethical advances in animal welfare fields. These indicators can then be used assess compliance during any inspection or enforcement visit to any animal user or establishment.
- **Establishment of research and development:** In addition to the available international research national animal welfare research is also required to ensure that the country can take decisions and exchange information and experience on animal welfare problems, based on facts specific to local circumstances and the local environment. The Government must therefore, support the development of national

research on animal welfare issues, and also encourage the development of alternatives to the use of animals in scientific research.

- **Support for AWOs:** The non-profit based AWOs working towards the protection and humane treatment of animals must be supported. They must also be consulted and represented in all relevant discussions and decision-making, and due weightage must be given to the advice or opinion of these organisations. This would ensure that in all existing or potential action that the authorities/government may consider, an opportunity of being heard and to influence the decision is given to those who have a credible role to play in the protection and welfare of animals.
- **Support for animal welfare:** The Government must encourage and support the welfare of animals and the development of human attitudes, both materially and ideologically. This should include not just the duty to inform and sensitize the public, and impart education, but also to provide necessary financial resources for promoting and developing humane attitudes and animal welfare. The responsibility to orchestrate a change in the attitude towards animal welfare concerns lies upon the State as well as the society, so that each individual can make an ethical and moral decision about their relation with fellow creatures. The State must, therefore be bound to take steps to gradually counter any deficiencies in the knowledge, understanding and awareness of its society that prevent the attainment of the protection of animals' lives and welfare. To this end, the Government must not only support and fund research in areas of animal welfare such as humane forms of animal keeping, but also collect and disseminate good animal welfare practices, pilot projects, research and cooperation (within and outside the country). Further, the Government must also fund for training and capacity building, including the provisions of guidance on animal welfare where most needed, e.g. policy officials, enforcement officers, key stakeholders, etc.
- **Appointment of Animal Welfare Ombudsman:** Provisions for appointment of an Animal Welfare Ombudsman, who shall act as an independent arbiter for animal welfare issues, and thereby ensure enhanced legal protection for animals, must be made. Appointing a public prosecutor to defend and maintain interest of individual animals would result in better representation of animals' interest as it would be a priority function for the Animal Welfare Ombudsman's office.

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ANNEXURE

QUESTIONNAIRE

8/19/2020

A SURVEY ON CRUELTY TO ANIMALS IN INDIA

A SURVEY ON CRUELTY TO ANIMALS IN INDIA

Hi,

This survey is to assess the effectiveness of animal cruelty laws in our country. It is a part of my dissertation on:

"CRUELTY AGAINST ANIMALS: AN ANALYSIS OF THE REGULATORY FRAMEWORK IN INDIA"

**\*Required**

1. Name

\_\_\_\_\_

2. Gender \*

*Mark only one oval.*

Female

Male

Transgender

Prefer not to say

Other: \_\_\_\_\_

3. Age group \*

*Mark only one oval.*

Under 18 years

18-24 years

25-34 years

35-44 years

45-54 years

Above 55 years

Other: \_\_\_\_\_



## 4. Occupation \*

*Mark only one oval.*

Law Student

Advocate

Law Faculty

Other Student

Other Employee

Other: \_\_\_\_\_

5. Do you have a  
pet? \* *Mark only  
one oval.*

Yes

No

6. Do you eat meat?  
\* *Mark only one  
oval.*

Never

Rarely

Often

Every time

7. Have you ever considered turning vegan? \*

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8. Do you think animal are sentient beings, entitled to rights? \* *Mark only one oval.*

Yes

No

Maybe

9. Do you consider animal cruelty to be an important issue in today's society? \* *Mark only one oval.*

Yes

No

Maybe

10. If you see someone abusing an animal, would you say or do something? \* *Mark only one oval.*

Yes

No

Maybe

11. Which of the following animal cruelty issue seems most important to you? \* *Mark only one oval.*

Human violence against animals

Living conditions of farm animals

Use of animals for research and experiments

Sacrifice of animals in the name of religion

All of the above

Other:

\_\_\_\_\_

12. Are you familiar with the anti-cruelty law applicable in India to protect animals? \* *Mark only one oval.*

Yes

No

To some extent

13. Do you think legal rights enjoined upon animals are enjoyed by them in real spirit and sense? \* *Mark only one oval.*

Yes

No

Maybe

Don't know

14. How strong in your opinion are the laws in our country to protect animals from endless cruelty and suffering? \* *Mark only one oval.*

Strong

Very Strong

Neutral

Weak

Very weak

15. Millions of animals suffer through stressful and unnecessary tests every year, there are countless examples of such wasteful, cruel, and ludicrous experiments. In your opinion, is it ethical to use animals as subjects of experimentation?

\*

*Mark only one oval.*

Yes

No

To some extent

Other: \_\_\_\_\_

16. Animal sacrifice rituals, despite being borderless barbaric and not in keeping with modern ideas of welfare are still in use today by religious communities all over the world, including in most modern societies. Don't you think such practices should be condemned?

\*

*Mark only one oval.*

Strongly disagree

Disagree

Neutral

Agree

Strongly agree

17. Most of the animals spend their lives in small cages that they can barely move. Do you think better legislation should be adopted to protect our livestock from abuse by industrial farms and their workers? \*

*Mark only one oval.*

Strongly disagree

Disagree

Neutral

Agree

Strongly agree

18. Which of the following statements on farm animal welfare best represents your belief? \* *Mark only one oval.*

It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment

Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment

My individual food choice can have a strong impact on the welfare of farm animals

Current legislation on animal welfare is not sufficient

Farmers should be fined if they don't respect high welfare standards

Consumption of meat is essential part of our diet

Until we learn to significantly reduce human suffering, we should not worry about animal welfare

I don't understand all of this interest in animal welfare; animals aren't humans, they can't feel like us, they don't have a psycho-emotional life like ours

19. How do you evaluate the role of the judiciary in protecting and safeguarding the animals? \* *Mark only one oval.*

Not Effective

Effective

Highly effective

Neutral



20. What changes would you suggest in the existing legislative framework in the country so that animals are better protected?

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**Google** Forms

## RESPONSES

Name	Gender	Age group	Occupation	Do you have a pet?
Bhaskar jyoti	Male	25-34 years	Advocate	Yes
Prashant Prawar	Male	25-34 years	Advocate	Yes
Arunav Talukdar	Male	25-34 years	Advocate	No
Tirap Kakati	Male	25-34 years	Advocate	No
Debjani Chowdhury	Female	25-34 years	Advocate	No
Ayush Singhania	Male	25-34 years	Other Employee	No
Narender Pal	Male	25-34 years	Law Faculty	Yes
Moonmi Baishya	Female	25-34 years	Law Faculty	Yes
Priyanka Sarmah	Female	25-34 years	Law Faculty	No
Juri Goswami	Female	25-34 years	Law Faculty	No
Pamidi	Female	25-34 years	Law Faculty	Yes
Abhishek Chakravarty	Male	25-34 years	Law Faculty	No
Barnali Sharma	Female	25-34 years	Law Faculty	No
Bose, Debamalya	Male	25-34 years	Law Student	Yes
Nikita	Female	18-24 years	Law Student	Yes
Niraj Kumar Bawa	Male	18-24 years	Law Student	Yes
	Female	18-24 years	Law Student	Yes
Rakesh Choudhury	Male	25-34 years	Law Student	Yes
Tanay Paul	Male	25-34 years	Law Student	Yes
Subhranil Majumder	Male	18-24 years	Law Student	Yes
Anya Behera	Female	18-24 years	Law Student	Yes
Kaushik Rabha	Male	25-34 years	Law Student	Yes
Girisha	Female	25-34 years	Law Student	No
Pranami Baruah	Female	18-24 years	Law Student	No
Devarupa Bhattacharyya	Female	18-24 years	Law Student	No
Anurag	Male	18-24 years	Law Student	Yes
	Female	18-24 years	Law Student	No
Mayurakshi Bhattacharyya	Female	18-24 years	Law Student	Yes
Bose, Debamalya	Male	25-34 years	Law Student	No
Simran Gangwal	Female	18-24 years	Law Student	No
FARZIN NAZ	Female	25-34 years	Law Student	Yes
Krishna Medhi	Female	25-34 years	Law Student	Yes

Saurav Jhunjunwala	Male	18-24 years	Law Student	No
Bristhi	Female	18-24 years	Law Student	No
Barnali Goswami	Female	25-34 years	Law Student	No
Sudarshan Goswami	Male	18-24 years	Law Student	Yes
Bidisha Barman	Female	18-24 years	Law Student	No
Joon	Male	18-24 years	Law Student	Yes
Naba Kishore Sharma	Male	18-24 years	Law Student	No
Trishna Ramchiary	Female	18-24 years	Law Student	No
Smriti katiyar	Female	25-34 years	Law Student	Yes
Alekh	Male	25-34 years	Law Student	No
LONGJAM HEROJIT SINGH	Male	18-24 years	Law Student	Yes
Harshaditty Roy Das	Male	18-24 years	Law Student	No
Madhusmita Ronghangpi	Female	25-34 years	Law Student	No
Shine geeta kemprai	Female	18-24 years	Law Student	Yes
Siddhant Sarangi	Male	18-24 years	Law Student	No
Sourabh	Male	18-24 years	Law Student	No
Sunidhi Sharma	Female	18-24 years	Law Student	Yes
Sabina Yasmin Saharia	Female	18-24 years	Law Student	Yes
Hema Deori	Female	25-34 years	Law Student	Yes
Anindita Deb	Male	18-24 years	Law Student	No
Saurav Baishya	Male	18-24 years	Law Student	Yes
Indranil Barman	Male	25-34 years	Law Student	No
Mukesh Chopra	Male	18-24 years	Law Student	No
Mukesh Chopra	Male	18-24 years	Law Student	No
Bristi Rekha Mahanta	Female	25-34 years	Law Student	No
Filzah	Female	18-24 years	Law Student	No
ARIF ALAM	Male	25-34 years	Law Student	Yes
Priyanka Barman	Female	25-34 years	Law Student	Yes
Aayush Rinwa	Male	18-24 years	Law Student	Yes
Dipendra Shekhawat	Male	18-24 years	Law Student	No
Hardik Vyas	Male	18-24 years	Law Student	Yes
Anant	Male	18-24 years	Law Student	No
Yash Kothari	Male	18-24 years	Law Student	No
Jahnvi Bhandari	Female	18-24 years	Law Student	Yes
Mehul Shah	Male	18-24 years	Law Student	No
Aarzo Agarwal	Female	25-34 years	Law Student	No

Alekh	Male	25-34 years	Law Student	No
Ratnapriya Choudhury	Female	18-24 years	Law Student	No
Niharica Chaudhury	Female	18-24 years	Law Student	Yes
Navita Pareek	Female	18-24 years	Other Employee	Yes
Ayush Jain	Male	18-24 years	Other Employee	Yes
Esha Chakraborty	Female	25-34 years	Other Employee	Yes
Arghya	Male	25-34 years	Other Employee	Yes
Sameer	Male	18-24 years	Other Employee	Yes
Sakshi Ajitsaria	Female	18-24 years	Other Employee	Yes
Denish	Male	25-34 years	Other Employee	Yes
Ayush Singhanian	Male	25-34 years	Other Employee	No
Harshita H	Female	18-24 years	Other Employee	No
Saumya Siotia	Female	18-24 years	Other Employee	No
Shubham jain	Male	25-34 years	Other Employee	Yes
Kajri Roy	Female	25-34 years	Other Employee	No
Sakshi Ajitsaria	Female	18-24 years	Other Employee	No
Shubham jain	Male	25-34 years	Other Employee	Yes
Harshita H	Female	18-24 years	Other Employee	No
Dharneet Sharma	Male	25-34 years	Other Employee	Yes
RICHA GANGAWAT	Female	25-34 years	Other Employee	No
Shubham jain	Male	25-34 years	Other Employee	Yes
Harshita H	Female	18-24 years	Other Employee	No
Tanvi	Female	25-34 years	Other Employee	No
Vishal Todi	Male	25-34 years	Other Employee	No
SUMIT SAPRA	Male	25-34 years	Other Employee	No
Yuvraj	Male	18-24 years	Other Student	Yes
Mrinmoy Das	Male	18-24 years	Other Student	Yes
T. Abhisek	Male	25-34 years	Other Student	Yes
Ayush	Male	25-34 years	Other Student	Yes
Aakash	Male	25-34 years	Other Student	No
Ruchika	Male	18-24 years	Other Student	Yes
Khaja	Male	25-34 years	Other Student	Yes
Akshat Pugalia	Male	18-24 years	Other Student	No
NILESH SHARMA	Male	18-24 years	Other Student	Yes
Sindhuja	Female	18-24 years	Other Student	No
Mehnaz	Female	18-24 years	Other Student	Yes
	Female	18-24 years	Other Student	No
Ayan Sarkar	Male	18-24 years	Other Student	No

Heena gupta	Female	25-34 years	Other Student	Yes
Rohit Baruah	Male	18-24 years	Other Student	Yes
Tanishqa	Female	18-24 years	Other Student	Yes
Subhangini Tiwari	Female	18-24 years	Other Student	Yes

Do you eat meat?	Have you ever considered turning vegan?	Do you think animal are sentient beings, entitled to rights?	Do you consider animal cruelty to be an important issue in today's society?	If you see someone abusing an animal, would you say or do something?
Rarely	No	Maybe	Maybe	Yes
Often	Yes	Yes	Yes	Yes
Often	Yes	Yes	Yes	Yes
Often	No	Yes	Maybe	Yes
Often	No	Yes	Yes	Yes
Never	No	Yes	Yes	Maybe
Every time	No	Yes	Yes	Yes
Never	Yes	Yes	Yes	Yes
Often	Yes	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	Yes	Yes	Yes	Yes
Rarely	Not yet	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Often	Yes	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Every time	Not yet	Yes	Yes	Maybe
Every time	No	Yes	Yes	Yes
Often	Not yet	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes
Rarely	Not yet	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Never	Yes	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes

Never	I am a vegan	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Never	Yes	Yes	Yes	Yes
Never	No	Yes	Maybe	No
Every time	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	Yes	Yes	Yes	Yes
Every time	No	Maybe	Yes	Yes
Often	Yes	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Every time	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Every time	No	No	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Never	I am a vegan	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Never	No	Maybe	Yes	Yes
Never	No	Maybe	Yes	Yes
Never	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	Yes	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Never	I am a vegan	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes
Never	No	Yes	Yes	Yes

Never	No	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Rarely	No	Maybe	Yes	Yes
Often	No	Yes	Yes	Yes
Rarely	Not yet	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Every time	No	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes
Never	Yes	Yes	Yes	Maybe
Never	No	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Never	I am a vegan	Yes	Yes	Yes
Often	Yes	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes
Never	I am a vegan	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Never	I am a vegan	Yes	Yes	Yes
Never	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Never	Yes	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Often	No	Maybe	Yes	No
Often	No	Yes	Yes	Yes
Often	No	Maybe	Yes	Yes
Often	No	Maybe	Maybe	Maybe
Rarely	No	Maybe	Yes	Maybe
Never	No	Maybe	Yes	Yes
Often	No	Yes	Yes	Yes
Never	Yes	Yes	Yes	Yes
Often	Yes	Yes	Yes	Maybe
Rarely	No	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Rarely	No	Yes	Yes	Yes

Every time	No	Yes	Maybe	Yes
Never	I am a vegan	Yes	Yes	Yes
Often	No	Yes	Yes	Yes
Rarely	Yes	Yes	Yes	Yes
Often	No	Yes	Yes	Yes

Which of the following animal cruelty issue seems most important to you?	Are you familiar with the anti-cruelty law applicable in India to protect animals?	Do you think legal rights enjoined upon animals are enjoyed by them in real spirit and sense?	How strong in your opinion are the laws in our country to protect animals from endless cruelty and suffering?	Millions of animals suffer through stressful and unnecessary tests every year, there are countless examples of such wasteful, cruel, and ludicrous experiments. In your opinion, is it ethical to use animals as subjects of experimentation ?
All of the above	Yes	No	Weak	To some extent
All of the above	To some extent	No	Weak	No
All of the above	To some extent	No	Weak	No
Sacrifice of animals in the name of religion	To some extent	No	Weak	No
All of the above	Yes	No	Weak	To some extent
All of the above	No	Don't know	Very weak	No
Sacrifice of animals in the name of religion	To some extent	No	Neutral	Yes
All of the above	Yes	Yes	Very weak	No
All of the above	Yes	No	Neutral	No
Sacrifice of animals in the name of religion	Yes	No	Strong	To some extent
All of the above	Yes	No	Very weak	No



All of the above	Yes	No	Neutral	No
All of the above	To some extent	No	Very weak	No
All of the above	Yes	Maybe	Neutral	No
All of the above	No	No	Neutral	To some extent
All of the above	Yes	No	Very weak	No
Sacrifice of animals in the name of religion	To some extent	No	Weak	To some extent
All of the above	Yes	No	Weak	To some extent
Sacrifice of animals in the name of religion	To some extent	No	Weak	To some extent
Sacrifice of animals in the name of religion	No	Yes	Weak	No
Sacrifice of animals in the name of religion	Yes	No	Neutral	To some extent
Human violence against animals	To some extent	Yes	Strong	Yes
All of the above	Yes	No	Weak	No
Sacrifice of animals in the name of religion	To some extent	No	Weak	No
All of the above	Yes	No	Weak	To some extent
Human violence against animals	To some extent	No	Neutral	To some extent
All of the above	Yes	No	Weak	No
All of the above	To some extent	No	Weak	No
All of the above	Yes	Maybe	Neutral	No
All of the above	Yes	Don't know	Weak	No
Human violence against animals	To some extent	No	Very weak	No
All of the above	To some extent	No	Very weak	No
Sacrifice of animals in the name of religion	Yes	No	Neutral	To some extent
All of the above	To some extent	Don't know	Weak	Yes
Sacrifice of animals in the name of religion	To some extent	No	Weak	Yes
All of the above	Yes	No	Weak	To some extent
All of the above	Yes	No	Weak	No
All of the above	No	No	Very weak	To some extent
Human violence against animals	To some extent	Maybe	Neutral	To some extent
All of the above	Yes	No	Strong	No
All of the above	No	No	Weak	To some extent
Living conditions of farm animals	To some extent	No	Very weak	No

All of the above	To some extent	No	Very weak	No
All of the above	Yes	Don't know	Neutral	To some extent
All of the above	Yes	Maybe	Neutral	No
All of the above	No	Don't know	Very weak	No
All of the above	To some extent	No	Very Strong	No
Human violence against animals	To some extent	Maybe	Weak	To some extent
All of the above	Yes	No	Weak	No
Killing innocent animals to satisfy ones appetite	Yes	No	Weak	To some extent
All of the above	To some extent	No	Weak	No
All of the above	Yes	No	Weak	No
All of the above	To some extent	Maybe	Very weak	To some extent
Sacrifice of animals in the name of religion	To some extent	Maybe	Weak	No
All of the above	To some extent	Maybe	Neutral	No
All of the above	To some extent	Maybe	Neutral	No
All of the above	To some extent	No	Weak	No
All of the above	Yes	No	Weak	No
Use of animals for research and experiments	To some extent	No	Weak	No
All of the above	To some extent	No	Weak	No
All of the above	To some extent	No	Weak	No
All of the above	To some extent	Don't know	Weak	To some extent
All of the above	Yes	No	Weak	No
Human violence against animals	To some extent	No	Weak	To some extent
All of the above	Yes	No	Neutral	To some extent
All of the above	Yes	No	Neutral	No
Human violence against animals	To some extent	No	Neutral	To some extent
All of the above	To some extent	No	Weak	No
Living conditions of farm animals	To some extent	No	Very weak	No
All of the above	To some extent	Don't know	Neutral	No
All of the above	To some extent	No	Weak	No
All of the above	No	Don't know	Very weak	No
All of the above	To some extent	No	Weak	To some extent
All of the above	To some extent	No	Very Strong	No
All of the above	No	No	Weak	To some extent
Human violence against animals	Yes	Don't know	Weak	To some extent
All of the above	To some extent	No	Weak	No

All of the above	To some extent	No	Very weak	To some extent
All of the above	No	Don't know	Very weak	No
Human violence against animals	No	Don't know	Neutral	No
All of the above	No	Maybe	Weak	No
All of the above	No	No	Very weak	No
Human violence against animals	Yes	No	Weak	To some extent
All of the above	To some extent	No	Weak	No
All of the above	No	No	Very weak	No
Human violence against animals	No	Don't know	Neutral	No
All of the above	To some extent	No	Very weak	To some extent
All of the above	To some extent	No	Weak	No
All of the above	No	No	Very weak	No
Human violence against animals	No	Don't know	Neutral	No
All of the above	To some extent	No	Weak	To some extent
Eating them as food and killing them for their body.	No	No	Very weak	No
All of the above	No	No	Very weak	To some extent
All of the above	Yes	No	Weak	No
All of the above	No	Maybe	Neutral	To some extent
Living conditions of farm animals	To some extent	Maybe	Neutral	To some extent
All of the above	No	No	Very weak	To some extent
Human violence against animals	No	Don't know	Neutral	No
Sacrifice of animals in the name of religion	No	No	Neutral	To some extent
Use of animals for research and experiments	No	Maybe	Strong	No
All of the above	Yes	Yes	Neutral	No
Killing for sport.	To some extent	No	Weak	Yes
All of the above	No	Maybe	Neutral	No
All of the above	No	No	Neutral	No
All of the above	No	Don't know	Weak	Yes
Human violence against animals	No	Don't know	Very weak	Yes
All of the above	No	No	Very weak	No
All of the above	To some extent	No	Weak	No
All of the above	Yes	Yes	Neutral	No
Human violence against animals	No	No	Very weak	No

Animal sacrifice rituals, despite being borderless barbaric and not in keeping with modern ideas of welfare are still in use today by religious communities all over the world, including in most modern societies. Don't you think such practices should be condemned?	Most of the animals spend their lives in small cages that they can barely move. Do you think better legislation should be adopted to protect our livestock from abuse by industrial farms and their workers?	Which of the following statements on farm animal welfare best represents your belief?	How do you evaluate the role of the judiciary in protecting and safeguarding the animals?
Agree	Neutral	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Neutral
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Neutral
Strongly agree	Agree	Consumption of meat is essential part of our diet	Neutral
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Neutral	Agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Neutral
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Strongly agree	Strongly	Current legislation on animal welfare is not sufficient	Neutral

	agree		
Strongly agree	Agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Effective
Agree	Strongly agree	Farmers should be fined if they don't respect high welfare standards	Not Effective
Agree	Agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Not Effective
Strongly agree	Agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Highly effective
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Neutral
Strongly agree	Agree	Current legislation on animal welfare is not sufficient	Highly effective
Agree	Agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Agree	Current legislation on animal welfare is not sufficient	Neutral
Disagree	Neutral	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Effective
Strongly agree	Agree	Current legislation on animal welfare is not sufficient	Neutral
Agree	Agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Neutral
Strongly agree	Strongly	Animals are sentient beings with their own emotional lives.	Effective

	agree	They are therefore entitled to a just treatment	
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Neutral	Current legislation on animal welfare is not sufficient	Effective
Strongly agree	Agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Strongly agree	Agree	My individual food choice can have a strong impact on the welfare of farm animals	Neutral
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Highly effective
Agree	Strongly agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Agree	Farmers should be fined if they don't respect high welfare standards	Not Effective
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Strongly agree	Agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Agree	Agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Neutral
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Neutral
Agree	Strongly agree	Current legislation on animal welfare is not sufficient	Effective
Strongly agree	Strongly agree	Consumption of meat is essential part of our diet	Neutral
Neutral	Strongly agree	Farmers should be fined if they don't respect high welfare standards	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective

Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Effective
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Strongly agree	Strongly agree	My individual food choice can have a strong impact on the welfare of farm animals	Not Effective
Strongly agree	Agree	My individual food choice can have a strong impact on the welfare of farm animals	Not Effective
Agree	Strongly agree	Farmers should be fined if they don't respect high welfare standards	Neutral
Agree	Strongly agree	Farmers should be fined if they don't respect high welfare standards	Neutral
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Neutral	Neutral	Current legislation on animal welfare is not sufficient	Effective
Agree	Strongly agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Neutral
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Effective
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Not Effective
Agree	Agree	My individual food choice can have a strong impact on the welfare of farm animals	Neutral
Neutral	Neutral	Current legislation on animal welfare is not sufficient	Effective
Agree	Agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Neutral
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Strongly agree	Agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Effective
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Neutral
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Agree	Agree	Current legislation on animal welfare is not sufficient	Effective
Strongly agree	Strongly	Current legislation on animal welfare is not sufficient	Neutral

	agree		
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Highly effective
Agree	Neutral	Farmers should be fined if they don't respect high welfare standards	Not Effective
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Not Effective
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Not Effective
Neutral	Agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Effective
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Highly effective
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Neutral	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Not Effective
Agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Highly effective
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Strongly agree	Agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Highly effective
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Neutral	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Agree	Agree	Current legislation on animal welfare is not sufficient	Effective
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Neutral	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Not Effective
Strongly	Strongly	Consumption of meat is essential part of our diet	Effective



disagree	disagree		
Neutral	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Strongly agree	Strongly agree	Consumption of meat is essential part of our diet	Not Effective
Agree	Agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Highly effective
Agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Disagree	Strongly agree	Consumption of meat is essential part of our diet	Neutral
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Neutral
Agree	Agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Disagree	Agree	Until we learn to significantly reduce human suffering, we should not worry about animal welfare	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Disagree	Agree	Consumption of meat is essential part of our diet	Neutral
Strongly agree	Agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Neutral
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Neutral
Strongly agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Neutral
Strongly agree	Agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Strongly agree	It is necessary to reduce the consumption of meat, which is currently very high, as it is bad for health and environment	Not Effective
Agree	Strongly agree	Animals are sentient beings with their own emotional lives. They are therefore entitled to a just treatment	Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective
Strongly agree	Strongly agree	Current legislation on animal welfare is not sufficient	Not Effective

What changes would you suggest in the existing legislative framework in the country so that animals are better protected?

Laws won't change anything until we educate people but even educated people also commit cruelty so I have nothing much to add

It is not only about legislation, it is about understanding and accepting the idea of mutual coexistence. People should always think before they do something. In my case I love consumption of meat but it is true that for my satisfaction a lot of innocent beings lose their lives, which is not at all good and permitted under the rule of natural justice. I can live without consuming meat and fish (not instantly, but definitely); but you see I don't control the rest of the world so what I do is not going to make any changes in the behaviour of other people. They should realise, think and understand what needs to be done and what is the right thing to do. Then implement the same in their practices.

A balanced legislation having strict laws to follow against animal cruelty as well as reformative provisions with intent to provide better standard of living to stranded animals.

Better living space for farm animals and least experimentation on animals

I would suggest better standards of environment for the animals.

Stronger law enforcement for the benefit of all animals specially street felines .

1. Protection must be given to animals through legislations with strong punishment provisions for their violations.
2. Establishment of a Boards at the Centre, State and District levels to regulate and frame rules regarding animal wellbeing and superintendence of the higher board upon the lower ones.
3. State Legislative Committees to check upon the laws and their implementations on ground.
4. The laws should also cover the emotional damage along with the physical ones.. like abandoning, cursing, mental assault.
5. No animal should be distinguished and should be treated equally by the laws, i.e. from stray animals to the highly endangered ones.

To make sure all the animal laws that exist are properly realised and proper living conditions for animals in farm be ensured.

To amend the existing law to meet today's requirement and changes

There should be separate legislative act and regulations for different animals viz farm animals, pet animals, stray animals respectively.

## More effective mangament

Stricter punishment and excess fine should be imposed on those people who disobeying the laws .

1. Consumption of meat should be stopped by law in our country.
2. If consumption stops than the human beings will easily start to respect them and as well as nature.
3. Strict laws should be implemented in India by imposing fine for those who are nonvegan.

My opinions regarding animals might irks to many and might criticize me but I always hope for the best for me as well as my society. STOP EATING MEAT YOU CAN EASILY FIND

EASYGOING LIFE WITHOUT ANY HURDLE AND DIFFICULTIES. REUQUESTING ALL TO THINK ABOUT THE LIFE OF ANIMALS, IF WE TAKE AWAY THE CHILDREN OF AN HUMAN BEINGS WITHOUT ANY LAWS THAN DEFINITELY ONE WILL SHOUT AT WHOEVER IS TAKING AWAY,BUT IF THE SAME THINGS HAPPPEN TO AN ANIMALS THAN IF HE SHOUT TO IT DOESNOT WORK BECAUSE THEY ANIMALS ACCORDING TO SOCIETY. YOU HAVE LOT OF THING TO EAT GIVEN BY NATURE. ADOPT IT AND STAY HAPPILY.

1. Stop sacrifice of animals in name of religion.
2. Stop trading, export of animal body parts such as tusks of elephants, rhino horns, tiger skin.
3. There should be more a kind of animal firms not for specific animal but so that it can produce a sort of help to animals living.

Ban on religious sacrifice of any type .

Take actions against sacrifice of animal for religious purposes

Although a lot of very elaborate and specific animal protection laws have been passed in India, they are often not properly implemented. It is so because it is imperative to realize that the legislation that we currently have in that the legislation have in India is not sufficiently strong and reasonable so as to make great change. The general anti-cruelty parts in Section 11 of the PCAA can be made a lot more effective by increasing the punishment and fine to some extent.

The laws can be made more stringent and all-encompassing so that animals of all kinds, be it street animals or wild or pets can be safeguarded.

Better care n change of mind towards animal don't treat them like slaves

Mindset of people needs to change. Laws are ineffective unless the people are not following it.

A better law enforcement for animal welfare.

Legislative framework is not enough. Execution is the key. Having a framework won't help, if

proper execution is not done.

There should be a very strict set of legal sanctions to penalise actions against animal torture and killing for they deserve to live in a just condition being major part of our ecosystem.

Mindset of people needs to change. Laws are ineffective unless the people are not following it. Stricter laws should be implemented, if already not in place and most importantly, the general public should be made aware of it so they don't participate in acts of animal cruelty. Further, the living conditions and experimentation should also be looked into as animals are not just our food and or for our entertainment/use of products.

It is not only about legislation, it is about understanding and accepting the idea of mutual coexistence. People should always think before they do something. In my case I love consumption of meat but it is true that for my satisfaction a lot of innocent beings lose their lives, which is not at all good and permitted under the rule of natural justice. I can live without consuming meat and fish (not instantly, but definitely); but you see I don't control the rest of the world so what I do is not going to make any changes in the behaviour of other people. They should realise, think and understand what needs to be done and what is the right thing to do. Then implement the same in their practices.

Proper measures should be provided for stray animals and for the animals used for commercial purpose. Strict legislative methods should be adopted against the practice of animal sacrifice.

Effective laws to be made covering all issues including stray animals, caged ones as well as wild animals

Don't have depth knowledge about law specific, so it would be inappropriate me to comment on that.

I don't think there is basic protection available!

The law is obsolete and anyone gets away with animal abuse!

The law has to be changed and deal with modern circumstances

Change in punishments, proper execution, and awareness.

As a sports lawyer, I was working extensively on the Jallikattu case and in my opinion one suggestive measure that needs to be implemented on an urgent basis is the prohibition of traditional festivals which includes animals.

Killing for fun and in the name of religions should be stopped.

More stringent measure should be adopted.

Better laws and their enforcement

Banning of animal sacrifice during festivals

Despite the prevailing laws in our country for the protection of animals and prevention of cruelty met out to them, I think the quantum of punishment prescribed for the offences against animal cruelty should be increased because it might create a sense of more fear among the offenders in the society. Moreover, people aren't much aware about the laws against animal cruelty so efforts should be made to educate people more on this matter in order to create a dominant impact in the society about providing humane treatment to animals.

I dont think there is basic protection available!

The law is obsolete and anyone gets away with animal abuse!

The law has to be changed and deal with modern circumstances

Mainly education is most important because there are some people who do not have any idea about "cruelty to animals". Education system should introduce a animal related subject in schools. Judicial system must be strict about the cruelty of animals like any other crime.

Ban Meat

Laws to more stringent and a monitoring body should be established to monitor the effectiveness of the law in the field.

Stringent laws to be implemented

People don't value the life's of animals because the recent incident of Kerala showed how cruel the humans are and till now no actions has been taken against the people who murdered the Female elephant. A strong legislationsis required to focus on such criminal activities against the animals. The stay of the farm animals should be checked out and slaughter ing of the animals should be done after a certain age and forest animals should not be killed there should be strict regulations for hunters, they are a big danger for the animals to be in endangered kind hunting of rhino deer otter or other kind of animal should not be killed for meat or medicinal purposes or just for fun hunting that the rich people or royals do forest animals should be kept away from human and humans should not let interfere in their life... Human consumption of products has caused a lot of suffer to environment plastics all over the ocean or water habitat has caused a big disaster for animals which they didnt had to do anything with they have to survive with the dirt and harm caused by others the humans .

Stricter laws should be implemented, if already not in place and most importantly, the general public

should be made aware of it so they don't participate in acts of animal cruelty. Further, the living conditions and experimentation should also be looked into as animals are not just our food and or for our entertainment/use of products.

Ban on any kind of meat so that slaughtering is stopped at a primary level

Strict implementation of existing laws, effective legislations to stop using forest lands for industrial purposes, conservation of more forest areas, necessary limitations on research and experiments on animals, etc.

There are no laws which limit humans' animal slaughter of livestock. This should change for sustainable livestock production and hygiene.

There are no laws which are safeguarding the hygiene and the living conditions of pets/ livestock.

The beauty products/ medical experiment industry should not be testing poisonous prototypes or products which deteriorate the health / life spans of any living beings.

Organised efforts for pet registration should be considered for the wellbeing of domestic animals.

Laws should be made to increase adoption instead of trade of animals.

Enforce stricter punishment for animal cruelty

To uphold and consider the judgement of every High Court in India in respect of animal lives and a new set of uniform laws should be enacted to protect the animals from barbaric torture of humans.

Stringent laws, better enforcement machinery and a severe penalties to deter crime against animals.

I dont think there is basic protection available!

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Stricter laws should be implemented, if already not in place and most importantly, the general public should be made aware of it so they don't participate in acts of animal cruelty. Further, the living conditions and experimentation should also be looked into as animals are not just our food and or for our entertainment/use of products.

Stricter penalty provisions should be adopted for animal cruelty . The present law only charges a fine of Rs.2000 and/or a jail term of upto five years

Judiciary must focus on the rights of animals from the view of greater Humanity rather than treating them as commodities.

As far as Indian legal system is concerned, it has ample amount of Acts to determine rules and regulations in almost every respective field. Regarding the animal cruelty, there is a separate Act called Prevention of Cruelty to Animals Act and regarding protection of the environment there is another another called Environment Protection Act, 1986. Again there is IFA'1927 for the forests.

The point is, keeping in mind the vast Indian territory and all its problems, separate Acts are important. But the other side of the fact is, though separate these Acts are inter linked. So unless u make the basics rights, true outcomes cannot be derived out of separate Acts.

Having said that, if the matter is related to the lives of wildlife animals living in Reserves and Sanctuaries then we need to focus on the Forest Act and confine it strictly to authorised entry and sealing of the boundaries and regular checks must happen. The guards must be empowered with better ammunitions and better facilities to keep them interested about their work.

When the matter is about cruelty, strictness has to occur from the farming stage of the animals... Their consumption cannot be reduced since that will create another issue among the people but it can be gradually reduced by creating more awareness and till that time the protection of animals under farmers shall be deeply attended.

More emphasis should be given on implementation

I don't think there is need of a new legislation regarding animal rights. It will be sufficient if the prevailing laws are implicated properly.

Legislations are there but implementation is weak.

Over consumption must be controlled and awareness to make the population more sensitive towards animals (especially stray animals) must be done.

What is needed is proper implementation of the existing laws by the concerned authorities. Besides, some reforms need to be made emphasizing protection and prevention of cruelty to stray animals.

1. There must be establishment of proper government bodies which will look after these issues.
2. There must be strict laws for animal protection in our country and there must be proper enforcement mechanism for implementation of such laws.

A higher fine and imprisonment for any act of cruelty.

There should be a stricter law against the use of steroids or drugs for abnormal growth of animals

More laws should be introduced against the cruelty of animals and effective implementation of those laws is more important.

ANY HUMAN FOUND GUILTY OF CRUELTY AGAINST HUMANS SHOULD BE MADE TO GO THROUGH THE SAME PROCEDURE, MAY IT BE PEELING OFF HIS SKIN, BREAKING HIS BONES, KEEPING HIM IN COMPACT CAGES TO FINALLY KILLING HIM IN THE SAME WAY. THAT WILL FINALLY STOP ANIMAL ABUSE.

A separate and independent statutory body shall be constituted for protection of animals.

Laws are there but i find the problem is in the enforcement part

Enhanced penal provisions and fines.

The police and other enforcement authorities should be sensitised to be compassionate and receptive towards complaints received for crime against animals and should be punished accordingly for dereliction of duty.

**Ban Meat**

A check on the proper implementation of the animal protection and conservation laws along with the increased use of rationality so as to stop abusing animals in the name of religion and other things would go a long way in protection of the animals.

There should be a proper monitoring system to put an end to barbaric ritualistic practises of animal sacrifice