

ANIMAL LAWS IN INDIA: WITH SPECIAL REFERNCE TO KERELA’S ELEPHANT CASE

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Table of contents

I.	INHUMANE KILLING OF AN ELEPHANT BY THE HUMAN.....	02
	A. Her remembrance...	
	B. What happened on May 25th of 2020?	
	C. Legal course taken...	
II.	LAWS GOVERNING ANIMAL RIGHTS IN INDIA.....	04
	A. The Constitution of India, 1950	
	B. Prevention of Cruelty to Animals act, 1960	
	C. Indian Penal Code, 1860	
	D. The Performing Animal Rules, 1973	
	E. Laws Relating to Testing/Experimenting on Animals	
	• Drugs and Cosmetics Rules (Second Amendment), 2014	
	• Breeding of an Experiment on Animals (Control and Supervision), Rules 1998	
III.	CRITICAL ANALYSIS OF ANIMAL LAWS IN INDIA.....	08
IV.	A FEW WELCOMING STEPS.....	09
V.	RECOMMENDATIONS.....	09
VI.	CONCLUSION.....	10

I. Inhumane killing of an elephant by the human

A. Her Remembrance...

*“Vinayaki she was named, Vinayaki as we will remember her
Vinayak Lord Ganesha is named, Vinayaki as he remembered her;
Belief is the key
Named as Lord Ganesha’s heart is thee
Oh Dear Vinayaki, we are flawed as humans
Forgive us, for we behaved inhumanly.”*

India is the soil where animals have been a figure of worship since the bygone days. Its origin can be seen in the Vedas and Upanishads too. India fosters the principle of “Love everyone, regardless” and animals are an indelible part of the country. In the case of **State of Karnataka and anr. v. Dr. Praveen Bhai Thogadia**¹ that:

“The chore of religion based upon spiritual values, which the Vedas, Upanishad and Puranas were said to reveal to mankind seem to be -“Love others, serve others, help ever, hurt never” and “Sarvae Jana Sukhino Bhavantoo”².

B. What happened on May 25?

On the date of 25th of May, 2020, in Kerela’s Silent Valley, a pregnant elephant bore a prey to an inhuman, cruel act after she was fed with a pineapple by a man filled with powerful crackers. When she munched it, she same exploded in her mouth.

“Her jaw was broken and she was unable to eat after she chewed the pineapple and it exploded in her mouth. It is certain that she was offered the pineapple

¹ 2003 (3) KarLJ 435

² Supra.

filled with crackers to eliminate her,” told Principal Chief Conservator of Forests (Wildlife) and Chief Wildlife warden to PTI.³

In the morning, the elephant was spotted in the Thayamkundu area of the Veliyar river. It was in a very bad state and injured. The animal was suffering from acute pain. Villagers informed the forest officials about her condition.⁴

A. Legal course taken...

Elephants are protected animals mentioned as **item no. 12-B** named ‘Indian Elephant (*Elephas maximus*)’ in **schedule-I** of the **Wildlife Protection Act, 1972** and hence killing and trade in any of its articles/organs is a severely punishable strictly.

The accused have been booked under the Wildlife Protection Act, 1972 for hunting, and **Kerala Forest Act, 1961** for offences related to trespassing. The three arrested were brought before Punnala Model Forest Station.

It was reported by the forest officials that the elephant fell prey to a certain trap laid to catch animals. Punalur **Divisional Forest’s Officer (DFO)** gave his statement in the media, "The culprits had stuffed pineapple pieces with explosives meant for wild boars and deer. But it happened that the elephant accidentally bit into it and injured itself."

³ Pregnant wild elephant dies in Kerala after cracker filled with pineapple explodes in her mouth, THE HINDU, (JUNE 05, 2020 11:02AM). <https://www.thehindu.com/news/national/kerala/pregnant-wild-elephant-dies-in-kerala-after-cracker-filled-pineapple-explodes-in-her-mouth/article31736516.ece>.

⁴ Vishal Pandey, #JusticeForVinayaki: Story behind the pregnant elephant's killing in Kerala's Palakkad (Jun 06, 2020, 01:31 AM) <https://zeenews.india.com/india/justiceforvinayaki-story-behind-the-pregnant-elephants-killing-in-keralas-palakkad-2288223.html>.

Wildlife Crime Control Bureau (WCCBHQ) is also taking active participation. Among the heated debate, it was revealed that this incident was not first of its kind; many similar incidents take place in and out the place, in fact throughout the nation.

Prime is that it is against law to give an animal any injurious substance. It is illegal to put out poisoned food under **Section 11 of Prevention to Cruelty against animals act, 1960.**

It is believed by the authorities that more related accused are roaming scot-free that are needed to be brought into the books. This is a matter of general awareness mainly because laws related to animal protection are among the least known legislations in the country. Focus of the writers, next, will be to enlist the respective laws and then analyze the current legal standards for the protection of animals in our country.

II. LAWS GOVERNING ANIMAL RIGHTS IN INDIA

Course to writ jurisdiction of the Supreme Court was needed to be taken for ensuring justice in the Kerala's elephant case. Even though there isn't lack of legislations, rules in this regard. Hence comes out from this is the importance of reading these laws.

A. THE CONSTITUTION OF INDIA, 1950

It is a **fundamental duty** of every citizen under **Article 51-A (g)** of the Constitution of India, 1950 to protect wildlife and have compassion for all living creatures. **Article 48A** poses a **duty on State** to protect, safeguard and improve the forests and wildlife of the country.

As per **Article 48**, the **Constitution requires the state** to “take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves in other milch and draught cattle.

As per **List II of the Seventh Schedule**, the Legislative Assembly is given the authority to make laws on the following: “preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.”

As per the **Eleventh Schedule**, the Constitution provides that Panchayat (local self-government) may make laws on the following: “animal husbandry, dairying and poultry”, and fisheries.

As per the **Twelfth Schedule**, Municipalities may undertake certain duties pertaining to the regulation of slaughterhouses and tanneries.

B. PREVENTION OF CRUELTY TO ANIMALS ACT, 1960 (PCA)

The **preamble** of the act states-

“An Act to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals.”⁵

⁵ Preamble to Prevention of Cruelty to Animals Act, 1960

More than 24,000 cases were reported across India under the PCA act in duration of 2012-2016. Be it the case of the death of Shaktiman-the police horse in 2016, Vinayaki the elephant's death 2919, poisoning of stray dogs in 2019, etc.

Section 11 of the PCA is the main section which punishes instances of cruelty and lists specific offences. It renders beating, kicking, over-riding, over-driving, over-loading, torturing, which causes unnecessary pain or suffering to any animal and various more offences punishable.

Section 13 of PCA rules for the ending life of suffering animals. If the Court is satisfied that it is for the ultimate good of the animal to end its suffering and living means only pain, it has power to direct its death to any suitable person for that purpose.

Section 35 of PCA deals with treatment and care of animals concerned under this Act, against which offences have been committed.

In *State of U.P vs. Mustakeem and Ors*⁶ the Supreme Court held that Custody of animals, in cases of cruelty, shall not be given to the accused but to the nearest *gaushala* or *pinjrapole*, until the conclusion of the trial.

In the case of *Nair, N.R. and Ors. Vs. Union of India and Ors*⁷ Kerala High Court held that Bears, monkeys, tigers, panthers and lions shall not be trained or exhibited as performing animals.

*Animal Welfare Board of India vs. A Nagaraja and Others*⁸, the Supreme Court held that Bulls cannot be performing animals. *Jallikattu* and other animal races and fights are prohibited.

⁶ Cr A 283- 287/2002

⁷ AIR 2000 Ker 340

⁸ (2014) 7 SCC 547

C. INDIAN PENAL CODE, 1860

Sections 428 and 429 of the Indian Penal Code make it illegal to maim or cause injury to any animal with a monetary value greater than Rs 10. It is illegal to throw acid on cows (something that vegetable sellers do as a matter of routine). The Code also makes it illegal for cars to purposefully injure or kill dogs, cats and cows on the street. Offenders can be reported to the local animal protection group and police station and a case filed under the above-referenced sections. Punishment is a fine of Rs 2000 and/or a jail term of up to five years.

D. THE PERFORMING ANIMALS RULES, 1973

Animals are not allowed to be used for the aim of entertainment but for **registration** under The Performing Animals Rules, 1973. **Section 26** provides for punishment for any person who uses any animal for the purposes of entertainment/performance with a fine of upto Rs 500 or with an imprisonment of upto three months or with both. In **2013**, dolphins were banned to be held captive to be used for public entertainment.

E. LAWS RELATING TO TESTING OR EXPERIMENT ON ANIMALS

Countless silent animals are used for experimental purposes throughout globe. Be it monkeys, snakes, white mice, rabbits, etc. The pain that is inflicted on them is indescribable.

- 1. Drugs and Cosmetics Rules (Second Amendment) 2014**, animal testing for cosmetic products was **prohibited** all over India because use of animals for experimentation in the cosmetic industry amounts to grave brutality to the animal kind. Any person who violates the Act is liable for punishment

for a term which may extend from 3 to 10 years or shall be liable to a fine which could be Rs.500 to Rs.10,000, or both.

As per **Rule 135 B of the Drugs and Cosmetic (Fifth Amendment) Rules 2014**, import of cosmetics that were tested on animals is prohibited. In 2014, India became **the first country in Asia to ban testing** of cosmetics on animals.

2. Breeding of and Experiments on Animals (Control and Supervision) Rules, 1998

A **committee** was formed for the Purpose of **Control and Supervision of Experiments on Animals (CPCSEA)**. The same was formed under the aegis of **PCA** act. The said committee formed the Breeding of and Experiments on Animals (Control and Supervision) Rules, 1998 (amended in 2001 and 2006) that regulate the experimentation on animals.

The rules enumerates set of rules to follow while experimenting on animals and using them for research. Experimentation on animals is also closely governed and monitored by a **2006 amendment**, which states that percentage of accuracy should be 95% high and that why any other mode was not used must be justified. **The 2013 amendment** banned the use of live animal experiments in medical institutions. No stray animals can be picked under these rules and only animals bred for this purpose and approved can be used.

III. CRITICAL ANALYSIS OF ANIMAL LAWS IN INDIA

What is the reason behind the fact that people are ruthlessly murdering animals and the right to justice is not fulfilled to the voiceless?

A. The Prevention of Cruelty to Animals Act (PCA) has never even been significantly amended since it was first enacted in the year 1960. Even the latest bill **Prevention of Cruelty to Animals Amendment Bill, 2017** has not got full assent to be an act of parliament. The said bill aims to amend parts related to inspection, administration, etc.

B. The **amount of fines** that are imposed on the accused is so **meagre** that it does not even give a slight sense of punishment. Making crimes punishable is not sufficient until the quantum of punishment imposed is not equal to the nature of the crime. For example, under **Sec 11(1)(a) to (o) of PCA Act, 1960** the fine can be imposed only upto **fifty rupees**. Second time not less than **twenty five rupees** and not less than a hundred rupees.

C. The **proportionality doctrine** is a doctrine extensively followed in every penal legislation. As per this, the punishment needs to be fair toward both the offender and the society. The punishment should be equal to the nature of the crime. The quantum of punishments in every animal protection law is so ineffective in the sense of the **quid pro quo** the offender is needed to give back that even the **punitive theory** fails to apply in these legislations.

D. The **execution of laws** is one such problem that is neither the elephant in the room nor is one for which proper implementation policies with practical approach are formed. One of the main problems in the execution is the claim of **forest-dwellers** over their land and other people who depend on forest produce for livelihood. With such **intermixing interests of humans and**

animals both, the face-offs are inevitable. For this, the **Forest Rights Act, 2006** has been enacted but it has proven ineffective.

E. No public awareness. The people of India are not educated regarding the laws. They are in fact non-sentimental to the woes of such animals. **Why the ones who cannot speak are unheard?**

IV. A FEW WELCOMING STEPS...

In 2014, the **Supreme Court** delivered a landmark judgment on the subject of animals' cruelty. In **Animal Welfare Board of India v. A. Nagaraja & Ors**⁹ the SC held that animals too have the right to live with honour and dignity.

Punjab and Haryana High Court in the case of **Karnail Singh & Ors vs State Of Haryana**¹⁰ on **31 May, 2019** has held animals to be legal persons. It's highly welcoming feat in the Indian jurisprudence by **Justice Rajiv Sharma.** To quote him-

“All the animals have honour and dignity. Every species has an inherent right to live and is required to be protected by law. The rights and privacy of animals are to be respected and protected from unlawful attacks.”¹¹

⁹ (2014) 7 SCC 547

¹⁰ 2019 SCC OnLine P&H 704

¹¹ Supra.

V. RECOMMENDATIONS

As the problem is huge and complicated, the solution has to be mixed long term and short term. A bundle of everything can be the only answer.

- A.** The area for humans and animals in the forest region should be clearly demarcated so that animals are not killed for the matters of safety.
- B.** The illegal import and export of various animal products should be strictly checked as this is the main reason for killing animals across the country.
- C.** Most people are unaware about the legal implications of killing certain animals. However, the principle of *ignorantia juris non excusat* would still apply and therefore the people need to be better educated about the implications of killing animals.
- D.** The forest departments have to be more vigilant to prevent such killings and on happening of such incidents, track down as soon as possible the real culprits.
- E.** The current NGOs and other organizations need to be more vocal and specific in their work and proper policy research should be done and given to the government.
- F.** The pending bills should be passed so that intellectual thought given in this regard is used and implemented.
- G.** Proper and separate tribunal should be set up for faster resolving of these issues.
- H.** People should be encouraged to bring to the notice such cases of animal cruelty. Registering of First Information Report FIR should be encouraged.

VI. CONCLUSION

Concepts like humanity are real hard to comprehend. A selfish concept designed to consider ourselves self-superior assuming the right to harm other species. A civil man is not just a man who wears white collar, black coat but also a man who has achieved control over one's barbaric nature.

A few theorists claim that man's hatred towards animals is a result of the fact that animals destroy their crops. But to believe this argument is a total fallacy of mind. Ours is rather a vicious cycle in which if one benefits the other is surely hurt. We as humanity have stolen the land of the wildlife and habituated ourselves in it. Now, when animals approach it, we hate them. We hate them when we are asked to stop using their death as a symbol of our pride and the status through the fur of our clothes.

Animal rights cannot be curtailed for mere entertainment, experimentation or fashion.

To note that many legislations do exist but their implementation lacks. Non implementation has diluted their deterrent effects and that something needs to be done at the earliest to save those who cannot speak up for their rights.

It's time we follow our own Indic principle of – **“Sarvae Jana Sukhino Bhavantoo.”**
