



Directorate of Distance Education NALSAR University of Law, Hyderabad

Reading Material

Post-Graduate Diploma on Animal Protection

1.3 Laws relating to Cruelty to Animals

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Chapter 1

Introduction to Animal Laws and General Principles of Law

Simply put, any legal issue involving animals would come under the ambit of animal laws. Until not long ago, animal rights and animal right activists were dismissed as fringe and never given appropriate media attention. However, with changing times animal welfare issues have started to take a more prominent place in the media and are being given far more importance by the courts as well as the legislature. There exist various legislations in India to protect animal welfare, such as – Prevention of Cruelty to Animals Act 1960, The Wildlife Protection Act 1972 at the central level and different cattle protection, cow slaughter protection legislations at different states , each seeking to deter cruelty against animals and to provide the protections to animals enshrined in the Constitution of India, Article 51(G):

“It shall be the duty of every citizen of India to protect and improve the natural environmental including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

The Indian Penal Code, 1860 is another legislation, Section 428 and 429 of the code punish any mischief (i.e., killing, poisoning, maiming or rendering useless) committed towards animals/pets. In a perfect world, laws to protect animals would eliminate cruelty in its entirety and provide strict directions for animal welfare to take place, however, change tends to take place gradually and it would be safe to say that the same is taking place in India. The aforementioned legislations were enacted to prevent any unnecessary pain or suffering on animals, to provide them protection from poaching, smuggling, etc and similar legislations continue to be enacted. That said, despite specific statutes there also exists protection for animals under other general concepts of law such as tort law, constitutional laws, etc and this chapter seeks to explore the same in depth.

Definition, Nature, Scope and Development of Law

For centuries, philosophers have debated the quintessential question of “*What is Law?*” and yet there is no single and commonly accepted definition of it. This study of legal philosophy is what is referred to as **Jurisprudence**. One of the forefathers of Jurisprudence, **John Salmond** says that “*the law may be defined as body of principles recognised and applied by the state in the administration of justice*”. There exist various schools of thought that have contributed to the jurisprudence of the Indian legal system.

Natural law School

Natural law philosophers argue that *law is that which reflects, or is premised on, the built-in sense of right and wrong that each individual has within themselves*, what we also call instinct or sense of morality. This sense of morality which is also derived from one's conscience gives each person the ability to discover their own moral truth, some believing that this is God-given, and others believing that this is an intrinsic part of the human nature. The belief of natural law philosophers is that inherent moral goodness is distinct and independent of the institutional views of good and evil, as a result of which no government can make an evil (morally) law to be good or a good (morally) law to be evil. This inherent morality sets a standard to which positive law should be measured, this is also known as the internal morality of law, i.e., what it ought to be. For e.g., In South Africa, during the apartheid regime, although the government had the power to enact racially discriminatory laws, these laws weren't truly lawful because they were morally reprehensible.

This theory of Natural Law was very influential in 17th (Seventeenth) and 18th (Eighteenth) century Europe, and revolutionaries were very attracted to it because it established a philosophical foundation for political reform. Various philosophers used it as a framework to criticize and reform positive laws, the attempt throughout time to establish the concepts of natural law in human existence, and to understand natural law to be premised on the fact that there is a higher law that can't be amended even by the sovereign. The issue however that arises with Natural law is that if there is no consensus in society on what is morally right and wrong, it loses its effectiveness as the basis of law. E.g., societal stances on issues such as Abortion, Euthanasia, Death Penalty, etc.

There has been a remarkable influence of natural law in the Indian legal scenario, which is especially visible in the Indian Constitution. Part III of the Constitution which provides for Fundamental Rights accounts for the natural law element in it, although it is not just the fundamental rights portion that has natural law influences, the basic structure of the Indian Constitution is the light bearer of natural law. The Supreme Court in 1973 in the case of *Kesavananda Bharti v. State of Kerala* came up with the doctrine of basic structure, preventing the executive and the legislature from altering the fundamental structure of the Constitution, displaying hints of natural law influence wherein even the supreme bodies of the country that are responsible for making and implementing the laws cannot override some laws that are to be taken as laws by the gods.

Historical Jurisprudence School

This school of thought is preferred by most aristocrats because it provides for a justification for preserving status quo and allowing the preferential treatment of elites in the society. Historical philosophy of law perpetuates the notion that law consists of the will of the sovereign along with *the spirit of the people*.

Law is only valid to the extent that the will of the sovereign is compatible with long-standing social practices, customs, and values. Law, according to this view, could not be arbitrarily imposed by legislators whose legal source was “right” reasoning. Instead, the historical school insisted that only practices that have withstood the test of time could be thought of as law. Further, these philosophers believed that law changes slowly and invisibly as human conduct changes.

A major advantage of historical jurisprudence is that it promotes stability in law. In fact, much law is largely grounded in judicially approved custom.

An excerpt from the book “An Introduction to the law and legal system”, by Frank August Schubert, at pg. 2.

This is something we see very clearly in personal laws in India, where the influence of custom is what has defined the law and given it its legitimacy. There exists a very obvious problem with this, which is of determining at what point does a practice become a custom, the standard used in India is of the practice having been in continuous use for 50 years, however, such a determination is always subject to court discretion.

Utilitarian Law School

This school of law focusses on the social usefulness of a legislation rather than the purposes of justice it seeks to serve. Utilitarianism is the belief that promotes maximization of happiness and welfare for the majority of the society, legal philosophers that followed this school of thought believed that the government is responsible for enacting laws that promotes happiness of the general public at large. Laws should be drafted in such a manner that they provide people with the incentive to maximize their pleasure and minimize their pain.

One of the foundations of our society is the belief that the nation and all its subjects are committed to the rule of law, and this is enshrined in the Constitution as well. Law is used to regulate people’s relationships with themselves, other beings, and their relationship with the government. It reflects every society’s aspirations, cultures, political, and economic beliefs.

They believed that the desire to maximize pleasure and minimize pain is what motivates people, and that legislatures were responsible for inducing people to act in socially desirable ways through a legislated system of incentives and disincentives. For example, if the pain imposed by a criminal sentence exceeds the gain realized by an offender in committing the offense, future criminal actions will be deterred. Additionally, they thought that law should focus on providing people with security and equality of opportunity. They maintained that property rights should be protected because security of property is crucial to attaining happiness. People, they thought, should perform their contracts because increased commercial activity and economic growth produce socially beneficial increases in employment.

Utilitarian influence can be found in legislative enactments that require the nation's broadcasters to operate "in the public interest," in "lemon laws," and in other consumer protection legislation. A major problem with utilitarianism is that not every- one agrees about what is pleasurable and what is painful. And many, if not most, political scientists would dispute that legislators actually make decisions according to the pleasure–pain principle.

An excerpt from the book "An Introduction to the law and legal system", by Frank August Schubert, at pg. 3.

Analytical Law School

This school of thought aims to create a system through which law exists as a scientifically valid system, by analysing legal concepts and ideas on the basis of scientific and empirical methods. It came as a reaction to the Natural Law school of thought and is also known as the positive or imperative school of jurisprudence. Scholars of this school, such as **Jeremy Bentham** (1748-1832) and **John Austin** (1790-1859) rejected Natural Law for being vague and abstract. The idea of positivism as under this school makes a distinction between law and morality and emphasizes on the separation between them, insisting on the belief that law is

man-made or enacted by the legislature. Thus, the fundamental difference between Natural law proponents and proponents of this school is that – Natural law proponents believe that if a law is not moral, no one is under the obligation to follow it, however, analytical thinkers/positivists believe that a law that has been duly enacted, remains law and should be so obeyed until it is changed. **Austin** argues that law is the command of the sovereign that is backed by the threat of a penalty or punishment, natural law tends to blur the distinction between law and morality, and law is the ‘*species of command of sovereign*’. The aforementioned idea of command and punishment is the defining characteristic of positive law.

This school of thought has been rejected by jurists such as **Ronal Dworkin, Fuller, and Finnis** for giving too much emphasis on law as a command and ignoring morality and custom as a source of law.

The criminal law code such as Indian Penal Code, 1890 is a stellar example of the influence of this school of thought wherein the command of the sovereign which is the state is the law of the land and needs to be obeyed and failure to do so results in punishment. However, the code also contains influence of Natural Law and thus seeks to strike a balance between the various schools of thought.

Sociological School

Scholars of this school look at law as a social phenomenon, as a tool that can be used to bring about social change, visualizing it from the perceptions of the people in society. It is based on balancing the conflicting interests prevalent in society and premised on the belief that law exists to serve the needs of the society.

Early sociologists were interested in examining jurisprudence from a social-scientific perspective. They focused on what they called the living law—not just the law declared by legislatures and courts, but the informal rules that actually influence social behaviour. The sociological school maintains that law can only be understood when the formal system of rules is considered in conjunction with social realities (or facts). In this sense, it is similar to the historical school. However, the historical school approached time in terms of centuries, whereas the sociological school focused on ten- or twenty-year segments.

An excerpt from the book “An Introduction to the law and legal system”, by Frank August Schubert, at pg. 5

According to **Roscoe Pound**, a scholar of this school, the main features of the school are that it highlights the purpose and function of law rather than its content, that law is effectively a social institution that is designed for social need, and that it is a tool that can be used to balance the conflicting interests of society. However, one of the biggest criticisms of this school is that it overlooked the importance of the state.

Realist School

Realists consider the law made by judges to be the real law, and do not give due importance to the traditional rules, statutes and concepts as real sources of law. It is understood as a combination of sociological jurisprudence and analytical positivism. The scholars of this school place a lot of emphasis on the judges in the system for the implementation, interpretation and development of law. They believe that social, economic and psychological backgrounds of judge influence their decision making. **Karl Llewellyn** propounded that the main features of this school of thought is that case laws are far more important than legislative law and the court room is effectively the laboratory of law. This school argues that law that is on paper is far different from what is actually implemented and understood in society, thus the only true understanding of what the law is comes from judicial interpretation. We see an enormous influence of this school in the common law system that we follow, wherein supreme importance is given to judicial precedent to understand the development and true meaning of the law at hand.

Development of Law In India

Law in India has evolved tremendously over the years, from religious prescriptions such as the Vedas, Upanishads, etc, to the current constitutional and legal system, the legal system has come a long way and continues to improve upon itself. India's recorded legal history starts from the Vedic ages and also indicates the presence of some sort of civil legal system in the Bronze Age as well as the Indus Valley Civilization. Secular law in India varied from region to region as well as according to the ruler, however, court systems (both civil and criminal) were essential elements of the ruling dynasties of Ancient India as well. Evolving from law in the ancient times, the colonisation of India by the British brought about significant changes in the legal system. To understand development of law in India, we can divide it into two periods:

1. Law in British Ruled India

The common law system – which is a legal system that develops based on recorded judicial precedents, was brought to India with the advent of the British East India Company (“**company**”) in our country. King George I granted charter to the company in 1726 to establish “Mayor’s courts” in Bombay, Calcutta, and Madras. Post the Company’s victory in the Battle of Plassey, their judicial functions expanded substantially and by 1772 the company had courts in various other locations as well. In this process, the Company slowly and gradually replaced the existing Mughal legal system. After the first war of Indian Independence of 1857, the Queen’s Proclamation of 1858 was brought about and the control of Company territories passed to the British Crown. This shift in the legal system brought about numerous other changes – Supreme Courts replaced the mayoral courts. These courts were first converted to the first High Courts as authorized under the Indian High Courts Act, 1862. These High Courts also had superintendence of lower courts and the enrolment of law practitioners was made the responsibility of the respective courts. At the time of the British rule, the Privy Council was the highest court of appeal, cases before the council were adjudicated by the lords of the House of Lords. Similar to how the state sues and is sued now, at the time it was in the name of the British sovereign in their capacity as Empress of India. Indian Practitioners were barred entry to the newly created Supreme Courts as the right of audience was available only to English, Irish and Scottish professional bodies. Various rules and statutes came about subsequently, eventually giving way to the Legal Practitioners Act, 1846 which opened the profession to everybody – regardless of nationality or religion.

Soon enough coding of law began with the formation of the first Law Commission. Under the leadership of Thomas Macaulay, the Indian Penal Code was drafted, enacted and given force in 1862. It was followed by the Code of Criminal Procedure by the same commission and various others Acts such as the Evidence Act, 1872 and the Contracts Act, 1872 were also brought about.

2. Law After Independence

Post - Independence, the Indian parliament was in the process of drafting the constitution to form the bedrock of the nation. The members of the constituent assembly devoted an exemplary amount of energy into forming a constitution of *unprecedented magnitude in both scope and length*. This document has ended up being the guiding light in all matters of the country, be it executive, legislative, or judicial in nature. It turned the direction of the whole system towards social welfare rather than the earlier perpetuation of colonial and imperial interests. It seeks to empower the weakest members of the society by way of judicial interpretation, thus showing the influence of the utilitarian school of thought.

As a consequence of being a common law country and having adopted the common law system, India has an organic law. Through legislative action as well as judicial pronouncements, it has worked very well in achieving the objectives that the drafters of the Constitution intended the legal system to. By a network of courts and a large number of legislations, the Indian legal system strives to move the country towards a socially just paradigm and ensure welfare for all.

Sources of Law

The main sources of law in India are the Constitution, statutes (legislation), customary law and case law. India being a common law country places significant reliance on case law precedent for the development of the law and jurisprudence. Statutes are enacted by the Parliament for the entire country, by the State legislatures for respective States, and by the Union Territory legislatures for respective Union Territories. There also is a vast body of laws which are the subordinate legislation comprising of rules, regulations as well as the bye-laws made by Central/State governments and local authorities, e.g., municipal corporations, municipalities, gram panchayats and other local bodies. The subordinate legislations are made under the authority conferred or delegated either by Parliament or State or Union Territory legislatures concerned or statutory bodies created by statutes such as Insolvency and Bankruptcy Board of India. Judicial decisions of higher courts like the Supreme Court and various High Courts are important sources of law, given the common law nature of our system. Their binding nature being strict on lower courts, i.e., decisions of Supreme Court are binding on all courts within the territory of India, the decisions of High Courts are binding on all lower courts, and so on. Given the diversity of religions and cultures in India, some personal laws, local customs and conventions which are not against statute, morality, public policy, and larger social welfare are also recognised to have a legal character and are taken into account by courts while administering justice. **Salmond** classified the prevalent sources of law in two categories:

1. Formal Sources of Law: comprise the sources from which law derives its force and validity. E.g., Laws enacted by the state.
2. Material Sources of Law: refers to the matters where laws are derived from. E.g., customs.

Most legal systems are based on legislations, but there exists a significant influence of religious texts and customs on laws in India along with legislations. There exist three major sources of law in any modern society:

1. Custom

Customs are basically *long-established practices that have acquired binding or an obligatory character*. However, the key element for a custom to be valid is that it must've been observed for a very long time without any interruption. It must also be supported by the general public opinion as well as the prevalent notion of morality. E.g., Although the Hindu Marriages Act, 1955 prohibits marriages which fall within the prohibited degrees of relationships, such marriages are still allowed and found valid under the law if there is a proven custom within a community.

In ancient societies, custom was considered as one of the most important sources of law, however, with the advent of time, it's importance diminished giving way to judicial precedents and legislation. There exists considerable debate over whether customs constitute law or not but given the belief that real source of law is actually the will of the people and it is always reflected in the custom and traditions of society, customs are a main source of law. Jurists and courts have laid out the essentials of a valid custom for them to be recognized as valid sources of law, the essentials being:

- a. Antiquity: The custom should've been in existence for a long period of time. There exists no specific time period in India to determine this and is generally left to judicial discretion.
- b. Continuous: The custom should've been in continuous practice, without any interruption. Any disrupted practice or long intervals between practice raise doubts on the validity of the custom.
- c. Exercised as a Matter of Right: it must be openly enjoyed and should be in the knowledge of the respective community. It must also be exercised as a matter of right.
- d. Reasonableness: it must be reasonable and conform to the accepted norms of justice and public usage. If the custom would possibly lead to inconvenience and mischief, it would not be valid.
- e. Morality: an immoral custom or one that is opposed to public policy would not be valid.

Custom was one of the most important sources of law in ancient India, so much so that even the British adopted a non - interventionist policy in the personal law related matters of the society. Even after independence and the enactment of the Constitution, the constitution provided for a positive environment for social changes in the country. Although, the importance of custom has diminished over time, it still remains an integral influence and a large part of Indian law, especially personal laws.

2. Judicial Precedent

This, as the term implies, is effectively previously decided judgments of superior courts, namely the High Courts and the Supreme court which inferior courts are bound to follow and

hold the decisions to be the law. Given the hierarchy of courts in India (which is elaborated upon a little further into this chapter), this binding character of judicial decisions is important to the development of our legal system. It is an important source of law and contains influence from the English legal system.

THE DOCTRINE OF PRECEDENT IN INDIA

PRE-INDEPENDENCE

Section 212 of the Government of India Act, 1919 provided that the law laid down by Federal Courts and judgments given by the Privy Council would be binding upon all courts in British India. Privy Council at the time was the supreme judicial authority.

POST-INDEPENDENCE

The British Courts found themselves replaced by the Indian Courts, and Supreme Court of India became the supreme judicial authority. India established its own streamlined system of courts, but retained the doctrine of precedent. The structure of binding value of these precedents based on the respective courts is as follows:

1. Supreme Court

- Binding on all courts in India
- Not bound by its own decisions of smaller benches or decisions made by the Federal Courts or the Privy Council

2. High Courts

- Binding on all inferior courts within its jurisdiction and only persuasive for courts outside its jurisdiction
- In cases of conflict with decisions of the same court with a similar bench, the matter is referred to a higher bench
- Federal Court and Privy Council decisions are binding as long as they're not in conflict with the decisions of the Supreme Court

3. Lower Courts

- Bound by the decisions of higher courts in their own states, and decisions by high courts from outside states are only persuasive in nature.

Judicial decisions are divided into two parts for better reading and understanding, these two parts are:

1. **Ratio Decidendi** (reason of decision) → it refers to the binding part of a particular judgment, translated to English it means the reasons given for the said decision. It is taken to be the general principle derived from a judgment that is deduced by the courts when deciding the particular case based on the facts. This is the part of the judgment that forms judicial precedent and becomes binding on lower courts.
2. **Obiter Dicta** (Said by the way) → it refers to those parts of judicial decisions which are general observations of the judge in the case and have only persuasive, not any binding authority.

Given these aspects of judicial decisions, it increases the importance of the system of hierarchy of courts in India.

3. Legislation

One of the most modern sources of law, it is also considered the most important one. The word “legislation” has been derived from the Latin word *legis* which translates to “**law**” and *latum* which translates to “**to make**” or “**set**”, thus the word roughly means *the making of law*. Its importance can be estimated from the fact that it is brought about by the sovereign and backed by its authority. In the strict sense, legislations are laws enacted by the sovereign or any other body of authority authorized to do so by the sovereign.

There exist two fundamental types of legislations:

- Supreme Legislation: These are laws directly enacted by the sovereign, and are known as supreme because no other authority apart from the sovereign can control or check them. Laws enacted by the Indian Parliament fall under this category, although in India powers of the Parliament are checked and controlled by the Constitution, laws enacted by it are not under the control of any other legislative body.
- Subordinate Legislation: They are the laws that are made by an authority that is subordinate to the supreme/sovereign authority and has been delegated the authority to draft the laws. The validity, origin and existence of these laws depends entirely on the will of the said sovereign. Further, subordinate legislations can be of the following types:
 - a. Autonomous Law: laws made by a body that is constituted of a group of individuals recognized under a law and has been conferred with the power

to make rules and regulations, are autonomous laws. e.g., Laws made by Universities, incorporated companies, etc.

- b. Judicial Rules: Some countries confer the judiciary with the power to make rules to govern their administrative procedures. The courts in India have such power conferred to them under the Constitution.
- c. Local Laws: Laws made by local bodies that have been recognized and conferred with law making powers. Local bodies like Panchayats and Municipal Corporations in India have been recognized under the Constitution by way of the 73rd and 74th Amendments and have the power to make local laws in the forms of rules and bye-laws.
- d. Laws made by the Executive: Given the separation of powers in India, the three organs of the state are vested with three different functions. Although the primary responsibility of drafting legislations lies with the legislature, on occasion some of this responsibility is delegated to executive organs of the state, these are called delegated legislation and form a class of subordinate legislation.

Difference Between Substantive and Procedural Law

Substantive law is the law that provides for the rights and obligations of the parties concerned, whereas Procedural law is the law that provides for the practice, procedure and machinery for the imposition and implementation of the rights and duties. The fundamental differences between the two are as follows:

SUBSTANTIVE LAW	PROCEDURAL LAW
It alludes to the law that deals with the subject matter of the case and asserts the rights and obligations of the parties concerned.	It alludes to the law that prescribes the methods, procedure and machinery for the enforcement of rights and obligations that substantive law seeks to protect.
It regulates the conduct of an individual or group or government agency.	It regulates the manner in which a legal remedy can be attained from the judicial system.
It can only be applied to legal matters, and not to non-legal matters.	It can be applied to both legal and non-legal matters.
It is governed by the Acts of Parliament.	Statutory law regulates it.

It pertains to the rights and duties of the parties and provides for punishments upon contravention of the same. Personifies the idea that violating laws would lead to a penalty.	It provides for the procedure for the initiation and prosecution of civil and criminal proceedings.
It relates to matters outside the court.	It relates to matters inside the court.

SELF ASSESSMENT QUESTIONS

1. What are the different schools of thought that influenced the existent legal system in India? Can you think of specific laws and legislations that show clear influences of these schools of thought? Which school do you believe is the most beneficial to be applied to a legal system and why?
2. What are the major sources of law in India? Do you think given the historical background, customs and traditions should be given far more importance than legislations? Can you think of situations where the court has sided with customs and situations where the court has strived to move away from them for better social welfare? Can you think of incidents where judicial precedent has actually contributed to a change in the written law(legislation that is)?
3. Sort the following legislations into
 1. Supreme and subordinate legislations
 2. Substantive or Procedural law

S. No.	LEGISLATION
1.	Aadhar (Targeted Delivery of Financial and other subsidies, benefits and services) Act, 2016
2.	Advocates Act, 1961
3.	Code of Civil Procedure, 1908
4.	Punjab Land Revenue Act, 1887
5.	Arbitration and Conciliation Act, 1996
6.	Code of Criminal Procedure, 1965
7.	Prevention of Cruelty to Animals Act, 1960
8.	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
9.	Indian Wireless Telegraph Rules, 1973
10.	Indian Evidence Act, 1872

Chapter 2

Basic Legal Terminologies

a) What is an FIR?

First information Report police (FIR) is a written document prepared by the police when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report. It is generally a complaint lodged with the police by the victim of a cognizable offence or by someone on his/her behalf.

Anyone can report the commission of a cognizable offence either orally or in writing to the police. Even a telephonic message can be treated as an FIR.

- **Cognizable Offence:** A cognizable offence is one in which the police may arrest a person without warrant. They are authorized to start investigation into a cognizable case on their own and do not require any orders from the court to do so.
- **Non- Cognizable Offence:** A non-cognizable offence is an offence in which a police officer has no authority to arrest without warrant. The police cannot investigate such an offence without the court's permission.

Why is FIR important?

An FIR is an important document as it sets the process of criminal justice in motion. It is only after the FIR is registered in the police station that the police take up investigation of the case.

Who can lodge an FIR?

Anyone who knows about the commission of a cognizable offence can file an FIR. It is not necessary that only the victim of the crime should file an FIR. A police officer who comes to know about a cognizable offence can file himself.

A person can file a FIR if:

- If he is the person against whom the offence has been committed:
- If the person knows about an offence which has been committed:
- If the person has witnessed the offence being committed.

Things You Should Not Do:

- One should never file a false complaint or give wrong information to the police. He/ she can be prosecuted for giving wrong information for misleading the police. (Section 203 Indian Penal Code, 1860)
- Never exaggerate or distort facts.
- Never make vague or unclear statements.

What is the Procedure of Filing an FIR?

- The procedure of filing an FIR is prescribed in Section 154 of the Criminal Procedure Code, 1973.
- When information about the commission of a cognizable offence is given orally, the police must write it down.
- It is the right of the individual giving information or making complaint to demand that the information recorded by the police is read over.
- Once the information has been recorded by the police, it must be signed by the person giving the information. One should sign the report after verifying that the information recorded by the police is as per the details given by the complainant.
- People who cannot read or write must put their left thumb impression on the document after being satisfied that it is a correct record.
- One should always ask for a copy of the FIR, if the police deny giving the FIR, it is the right to get it free of cost.

What Should One Mention in the FIR?

- Name and address;
- Date, time and location of the incident one is reporting;
- The true facts of the incident as they occurred;
- Names and descriptions of the person involved in the incident.

What Can one Do if the FIR is Not Registered?

- He/ she can meet the Station House Officer who is directly and personally responsible for all that occurs in his jurisdictions and the police station. He is also the head of the police station and can authorise immediate registration of the FIR or other higher officers like Superintendent of police, Deputy Inspector General of Police and Inspector General of Police bring complaint to the person's notice.
- The person can send the complaint in writing by post to the Superintendent of police concerned. If the Superintendent of police is satisfied with the complaint, he shall either investigate the case himself or order an investigation to be made.
- One can file a private complaint before the court having jurisdiction.

b) What is a writ?

It is a provision to make the Right to Constitutional Remedies available to every citizen, this right is the guarantor of all other rights and thus is one of the most crucial rights to be protected by the justice system. The Supreme Court is empowered by the Constitution of India to issue writs in order to enforce the fundamental rights provided under Part III of the Constitution, the court can be approached under Article 32. The parliament can also confer on the supreme court's power to issue writs for purposes as they may deem fit. Furthermore, High Courts under Article 226 of the Constitution are also capable of issuing writs for enforcing rights conferred under Part III. There exist 5 types of writs:

1. *Habeas Corpus* – literally translating to produce the body. It is a writ issued to produce a person who has been detained before a court and for the person to be released if the detainment is found to be illegal.

Such a writ can be filed in cases where:

- the detained person has not been produced before the magistrate within 24 hours of detainment
- a person has been arrested without any violation of law
- a person has been arrested under an unconstitutional law
- the detention is with a malafide intention

E.g., If an individual has been detained by the law enforcement machinery without having given any details of the arrest to the next of kin, a Habeas Corpus writ can be filed to compel them to produce the individual before the court.

2. *Certiorari* – literally translating to be certified. It is a writ which can be issued by again either court in order to quash an order given by a lower court/tribunal/quasi-judicial authority. There are three conditions essential for this writ to be passed:

- There should be a court/tribunal or an officer with legal authority to determine the question and it should be with a duty to act judicially
- The body must have passed an order acting without jurisdiction or in excess of its jurisdiction
- The order could be against Natural Justice principles or could contain an error.

E.g., If a civil court passes an order in a criminal case, or a civil court passes an order in a civil case where it does not have the authority to do so, it would amount to it acting without jurisdiction and the order can asked to be set aside by filing a writ of Certiorari.

3. *Mandamus* – literally translating to we command. It is an order that can be issued by either the Supreme Court or High Court to a lower court/tribunal/authority such

public official, corporation, etc to direct them to perform a public/statutory duty. It is issued when public authorities have a function/public duty to perform but fail to do so. It cannot be issued against the following bodies:

- Private individual/body
- If the duty being brought into question was discretionary and not mandatory
- Against president or governors of a state
- Against a working chief justice of a court
- To enforce a private contract

E.g., Say a child custody order needs immediate enforcement, failure of which would result in the removal of the child from the jurisdiction, in such a case this writ can be filed.

4. *Prohibition* – popularly known as the stay order. It is generally issued when a lower court/body overshoots its limits or acts in excess of its powers to prevent them from continuing the proceedings when they have no power to try it in the first place.

E.g., Continuing the earlier child custody example, say a court exceeded their authority or granted custody to the wrong parent, a writ of Prohibition can be filed to prevent the proceedings from being continued.

5. *Quo Warranto* – literally translating to by what warrants. It is a writ issued to prevent a person from holding a public office that he/she is not entitled to. It forces them to have to explain to the court by what authority they happen to hold office. While issuing this writ, the court just makes a public declaration of the illegality of the appointment and does not consider other factors that become relevant when issuing a writ of *Certiorari*. E.g., If a person has been wrongfully appointed to a position or is refusing to vacate office, this writ can be filed to compel them to comply with the law.

Writs are generally used by Animal Right activists to prevent public bodies from taking steps that could be harmful to Animal welfare, or to request the court to direct public bodies to take steps to ensure Animal welfare.

E.g., In the case of *Narayan Dutt Bhatt v. Union of India* (Writ Petition (PIL) No. 43 of 2014), the petitioner filed a writ petition to seek direction against the Union to restrict movement of horse carts/ tongas from Nepal to India and India to Nepal.

c) What is a PIL?

PIL stands for Public Interest Litigation and it is effectively the use of law to advance human rights and equality in the society. Originally known as social action litigation, it came about as a judicial tool that could be used to ensure social welfare in society. Under a PIL, the strict

rule of *locus standi* which is a must in private matters is relaxed considerably, a much more encompassing rule is brought about giving the right of *locus standi* (the right or the capacity to bring an action before the court) to any citizen that has sufficient interest in bringing forth an action to redress a wrong. It serves several functions, such as:

- Helps clarify the law
- Holds public bodies accountable, ensuring that they act fairly and transparently, within the remit of their powers and make appropriate decisions
- Helps in development of the law by bringing about opportunities for varied interpretations of the law
- Gives vulnerable people an avenue and a voice to bring forth their grievances before the court
- Helps raise awareness over important issues, encourages public debate and media coverage.

Some of the landmark PIL cases that brought about a significant change in our judicial system's functioning are:

- *Vishaka v. State of Rajasthan* → the PIL was filed to challenge sexual harassment in the workplace. The judgment recognized sexual harassment as a clear violation of fundamental rights and laid down guidelines for institutions and workplaces to follow to prevent harassment, and complaint procedures to put in place for employees to utilise.
- *Hussainara Khatoon v. State of Bihar* → this is almost regarded as the first PIL case in India, it brought attention to the issue of undertrial prisoners in India, who had been detained in prisons for far longer periods than the maximum sentences for the crimes committed by them provided for even. The court established the right to speedy trial by way of this judgment and passed the general order for the release of over 40,000 under-trial prisoners.

d) Structure of the Indian Judiciary (Courts)

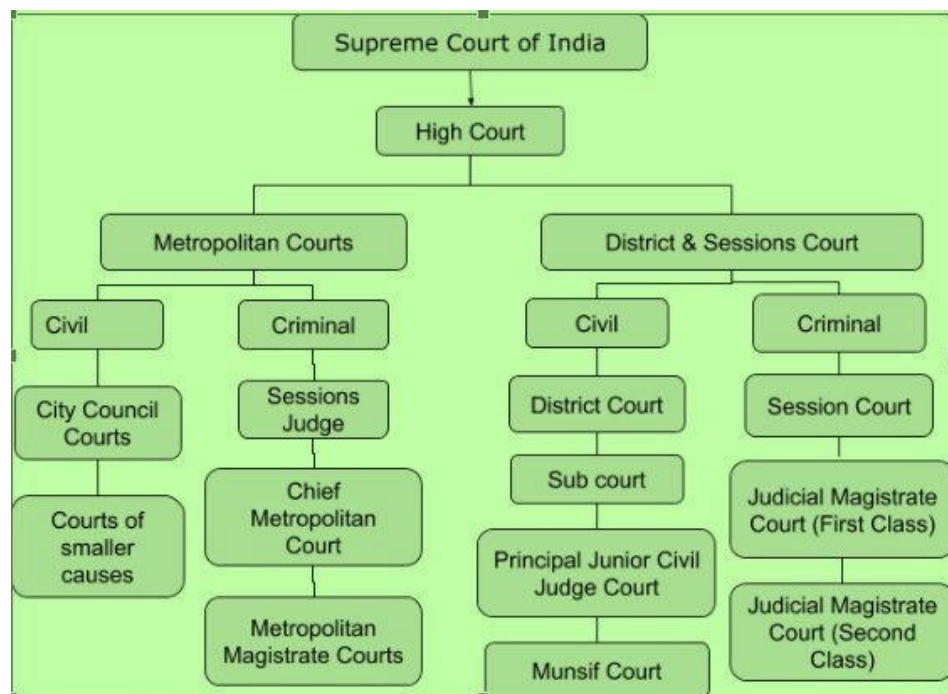
One of the sacred notions of the Indian Legal System is that of judicial independence, it's also one of the most fundamental features and courts strive supremely hard to protect the same. No interference by the executive or legislative branches of the state into the judiciary is tolerated. Governance in India follows a strict principle of separation of powers (Legislative, Executive and Judiciary) and the independence of judiciary is an element of such governance, however, this begs the question of how each branch of governance is kept in check. The judiciary does this by way of exercising the **doctrine of Judicial Review** – by using this the judiciary has the power to review the actions of the executive and legislative to check whether they're in compliance with the laws of our country.

The Indian judiciary is divided into various levels and is highly fragmented. A product of decentralised governance, the fragmentation of the judiciary was brought about in order to

be able to address issues from the grassroots level and have specialized courts for matters. The structure is as follows:

Supreme Court

It is the highest judicial body in India and is also known as the Apex court. It came into power on 28th January 1950. It is the guardian of the constitution and is the highest court of appeal. Articles 124-147 of the constitution lay down the jurisdiction of the court and its composition. The apex court enjoys both Original and Appellate jurisdiction, i.e., it can entertain both original suits filed before it as well as suits brought by way of an appeal. Although State High Court Judgments are conclusive in most matters, they can be appealed before the Apex court either by granting of leave under Article 132 or 133 or by special leave under Article 136 of the Constitution. It comprises of the Chief justice of India along with 25 other judges, who together form the Supreme Court of India.



High Courts

There are 25 high courts in India, and they are the highest judicial body at the state level. Article 141 of the constitution mandates that all high courts are bound by decisions given by the apex court by precedence. These courts are instituted as constitutional courts under Part VI, Chapter V, Article 214 of the Constitution. Although they are the principal civil courts of original jurisdiction, they exercise such jurisdiction (civil or criminal) only if the subordinate courts in the state are not competent to try such matters due to lack of pecuniary or territorial

jurisdiction and they primarily exercise their appellate jurisdiction consisting of appeals from lower courts as well as writ petitions filed under Article 226 of the Constitution. The High Courts also have the duty to ensure that Courts and Tribunals subordinate to them act within their jurisdictional limits, this is mandated on them under Article 227, these courts are also responsible for the administration of justice in the respective states. The judges are appointed by the President of India after consultation with the Chief justice of India, Chief Justice of the High Court and the Governor of the State.

District Courts

These courts are established by the State Governments of India for every district or for multiple districts together based on the number of cases and population distribution in the districts. They are under the administration control of the High Court of the respective state and administer justice at the district level, their decisions subject to the appellate jurisdiction of the high court and the high court's decisions having binding value of the district courts. The court is president over by one judge appointed by the state government, based on the workload Additional District Judges and Assistant District Judges are also appointed. District courts comprise of various other courts amongst it, the organization of the subordinate courts is uniform across the country. Every district has two types of law courts: 1. Civil Courts; 2. Criminal Courts., these courts are the highest civil court in a district and exercise both judicial and administrative powers. They have the power of superintendence over the courts under their control. The court is generally located at the district headquarters and had the power to try both civil and criminal cases, which is why the judges are designated as either District Judges (Civil cases) or Sessions Judges (Criminal cases). Below these courts are the courts of Sub-Judge, Additional Sub-Judge and Munsif courts which are generally located in the sub-divisional and district headquarters. Most civil cases are filed in the Munsif court, appeals from this court can then be taken to the Sub-Judge's court or the Additional Sub-Judge. Appeals from these courts then lie in the District court and so on and so forth till the Supreme Court.

Lok Adalats

These are subordinate courts that are also known as village courts, nyaya panchayat, etc. It composes a system for alternate dispute resolution in villages. Recognized through the 1888 Madras Village Court Act, it was then developed into various provinces and states within the country.

Hierarchy of courts aside, the Constitution under Articles 323A and 323B gives government to power to set up special Tribunals to aid in administration of justice by dealing with cases

in special areas, e.g., Tax tribunals to deal with Tax cases, Land Tribunals to deal with property cases specifically. These special courts are given and exercise large powers in their respective areas. There also exist other special forums such as the Consumer Courts, Electricity Regulatory Commissions, Telecom Disputes Tribunals and so on, each with their own detailed setup and consisting of an Appellate Forum.

Civil Court

Civil courts deal with the civil wrongs which are the wrong done by an individual against the other individual. Individual here includes natural person as well as legal entity. The civil court has the power to award damages or compensation to the party whose rights has been infringed.

Section 9 gives jurisdiction to civil courts to try all suits of civil nature excepting those which are expressly or impliedly barred by any other law in force. The jurisdiction of the courts to try all suits of civil nature is very expansive this is because of the principle ***ubi jus ibi remedium (for every wrong the law provides remedy)***. It is only where cognizance of a specified type of suit is barred by a statute either expressly or impliedly that the jurisdiction of the Civil Court would be ousted to entertain such a suit. The general principle is that a statute excluding the jurisdiction of Civil Courts should be construed strictly (Dhruv Green Field Ltd. Hukam Singh, (2002) 6 SCC 416(419,420). When only a part of the relief can be granted by a civil court it has jurisdiction to entertain suit (Satyapromoda v. Gurrayya, A 1982AP 24). The manner in which a dispute is to be adjudicated upon is decided by procedural laws, which are enacted from time to time. It is because of the enactment of the Code of Civil Procedure Code that normally all disputes between the parties of civil nature is adjudicated by the civil courts.

The Civil Process and Functioning of Civil Courts

The Code of Civil Procedure (CPC) is a procedural law; it neither creates nor takes away any right. It is intended to regulate the procedure to be followed by civil courts. In other words, the CPC regulates the functioning of civil courts. Civil case is such that it is not criminal in nature. It is generally on property, business, personal domestic problems, divorces and such types where ones constitutional and personal rights are breached. In brief, it lays down the Procedure of filing a civil case; Powers of court to pass various orders; Court fees and stamps involved in filing of a case; Rights of the parties to a case (plaintiff & defendant); Jurisdiction and parameters of civil courts functioning; Specific rules for proceedings of a case; Right of Appeals, review or reference. In fact, the first uniform Code of Civil Procedure was enacted in 1859.

The Civil Court Structure

Disputes relating to property, breach of contracts, wrongs committed in money transactions, minor omissions etc., are categorized as civil wrongs and could be subject to a civil process. In such cases civil suits should be instituted by the aggrieved persons. Courts of law administer justice by considering the nature of the wrong done. Civil wrongs are redressed before civil courts by granting injunctions or by payment of damages or compensation to the aggrieved party. As a matter of fact, every suit should be instituted before the court of lowest jurisdiction. In the civil side the Munsiff's Court is the court of lowest jurisdiction. If the value of the subject matter of the suit is worth rupees one lakh or below, the Munsiff's Court is the competent court to try the suit. If the value exceeds above rupees one lakh the suit should be filed before the Subordinate Judge's Court (Sub Court). An appeal from the decision of the Munsiff court is filed before the District Court. Appeals from the decisions of the Subordinate Court are filed before the District Court if the subject matter of the suit is valued up to rupees two lakhs. If the value is above rupees two lakhs, the appeal should be filed before the High Court and next to the Supreme Court. An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies-(a) that the case involves a substantial question of law of general importance; and (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Civil Court has been categorized on the basis of Jurisdiction:

- **Subject Matter Jurisdiction:** It can be defined as the authority vested in the court to try and hear cases of particular type and pertaining to particular subject matter.
- **Territorial Jurisdiction:** The court can decide within the geographical limits of a court's authority and it can exercise authority beyond that territorial and geographical limits.
- **Pecuniary Jurisdictions:** Pecuniary Jurisdiction is related to money, whether a court can try cases and suits of monetary value/ amount of the case or suit in question.
- **Appellate Jurisdiction:** It refers to the authority of a court to rehear or review a case that has already been decided by a lower court. Appellate Jurisdiction is generally vested in higher courts. In India, both the High Courts and the Supreme Court have appellate jurisdiction to hear matters which are brought in the form of appeal before them. They can either overrule the judgement of the lower court or uphold it.

Short Definitions

Civil Courts: The court of the district judges is the highest civil court in a district. It exercises both judicial and administrative powers. It has the power of superintendence over the courts under its control. The court of the District judge is located at the district

headquarters. He combines in himself the powers of trying both civil as well as criminal cases. Thus he is designated as the District and Sessions Judge.

Below the court of the District Judge are the courts of Sub-judge, Additional Sub-Judge and Munsif Courts, which are located in the sub-divisional and district headquarters. Most of the civil cases are filed in the court of the Munsif. A case can be taken in appeal from the court of the Munsif to the court of the sub-Judge or the Additional Sub-Judge. Appeals from the courts of the sub- Judges and Additional sub-Judges shall lie in the District-Court. The Court of the District Judge has both original and appellate jurisdiction. Against the decision of the District judge an appeal-shall lie in the High Court.

Criminal Courts: The different Criminal Courts are as follows:

Magistrate Court

The District Courts of India are presided over by a judge. They administer justice in India at a district level. These courts are under administrative and judicial control of the High Court of the State to which the district concerned belongs.

Section 11 of CrPC states that in every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class and at such places, as the State Government may after consultation with the High Court, by notification specify. Courts of Judicial Magistrate of First Class are at the second lowest level of the Criminal Court structure in India. According to Section 15 of the CrPC, a Judicial Magistrate is under the general control of the Sessions Judge and is subordinate to the Chief Judicial Magistrate. In terms of Section 29 of the CrPC, a Judicial Magistrate of First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees or of both.

Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.

In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the First Class to be the Chief Judicial Magistrate. A Chief Judicial Magistrate may impose a sentence except (a) sentence of death, (b) imprisonment of life, or (c) imprisonment for a term exceeding seven years. A Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

Metropolitan Magistrates

The Courts of Metropolitan Magistrates were created by Section 16 of the Criminal Procedure Code. The Court of Chief Metropolitan Magistrate and those of The Additional Chief Metropolitan Magistrates were created by Section 17 of the Code. Section 18 of the Code also provided for Special Metropolitan Magistrates. The towns having population

exceeding one million could be declared as Metropolitan Areas. A Metropolitan magistrate is under the general control of the Sessions Judge and is subordinate to the Chief Metropolitan Magistrate.

Executive Magistrates

In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate. The State Government may appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under this 179 Code or under any other law for the time being in force as may be directed by the State Government.

Special Executive Magistrates

Under Section 21 of the CrPC, the State Government may appoint, Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

The Court at the lowest level is called Judicial Magistrate of the Second Class. This Court is competent to try the case if the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both. The First Class Magistrate is competent to try offences punishable with imprisonment for a term not exceeding three years or with fine up to ten thousand rupees. In States such as Kerala, the Second and the First Class Magistrate Courts have been unified. The Chief Judicial Magistrate can impose any fine and impose punishment up to seven years of imprisonment. The Assistant Sessions Judge is competent to impose punishments up to ten years imprisonment and impose any fine. The Sessions Judge can impose any punishment authorized by law, but the sentence of death passed by him should be subject to the confirmation by the High Court. (See for details Sections 28 and 29 of CrPC).

Role of the Magistrate Court

A magistrate hears evidence and decides whether a person is guilty or not guilty to an offence as charged. A magistrate imposes a penalty on those who are either found guilty or plead guilty to offences. The magistrate role is to ensure that justice is administered fairly and impartially.

Structure of Magistrate's Courts

First Class Magistrates are at the grassroots level in the judicial structure. Sections 12 and 17 of the Code of Criminal Procedure (CrPC), 1973 define the role of the Chief Judicial Magistrate (CJM) and the Chief Metropolitan Magistrate (CMM), respectively. In terms of powers and superintendence over magistrates, both the CJM and the CMM enjoy equal status, with the only difference being the area in which they operate. According to Section 8 of the CrPC, the state government may notify any city or town to be a metropolitan area when its population exceeds 10 lakhs.

Hence, in a metropolitan area the term CMM is used, and in the remaining areas, the term CJM is used. According to CrPC, the High Court has the power to appoint any First Class Magistrate to be the CJM or the CMM for a given area. In terms of hierarchy all judicial magistrates are subordinate to the CJM or the CMM (as the case may be), who are in turn subordinate to the Sessions Judge. As per Sections 17 and 19 of the CrPC, the CJM and the CMM, respectively, have the power to make rules and distribute business amongst the judicial magistrates subordinate to them.

Courts of Judicial Magistrate of Second Class are at the lowest hierarchy of the Criminal Court structure in India. According to Section 11 of the Crpc(Criminal Procedure Code) , a Court of Judicial Magistrate of Second Class may be established by the State Government in consultation with the High Court of the respective state at such places in the district and in any number by a notification.

Sentences Which Magistrates May Pass

Section 29 of the Criminal Procedure Code lays down the quantum of punishment which different categories of Magistrates are empowered to impose. The powers of the individual classes of the Magistrates to pass sentence are as follows.

- According to Section 29(1) The Court of the Chief Judicial Magistrate may pass any sentence as authorised by the law except that of a sentence of death or imprisonment for life or imprisonment for a term exceeding more than seven years.
- According to Section 29(2) of the CrPc The Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding more than three years or of a fine not exceeding more than Five Thousand Rupees or of both.
- According to Section 29(3) of the Crpc , The Judicial Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of penalty not exceeding One Thousand Rupees or of both.

- The Chief Metropolitan Magistrate shall have all the powers of the Court of a Chief Judicial Magistrate and that of the Metropolitan Magistrate and the powers of the Court of the Magistrate of the First Class.¹

SELF ASSESSMENT QUESTIONS

1. Which document grants the right to file writs before a Court? Under which provision can you file a writ before – a. the Supreme Court, b. High Courts? Which writ would you file in the following situations?
 - a. A local butcher has been arrested on suspicions of selling beef, however, the police has refused to divulge any more information and his whereabouts are unknown for the past one week.
 - b. An individual without the requisite qualifications has been appointed as the head of a public department.
 - c. A court having civil jurisdiction over matters not exceeding Rs. 10,000 has decided on a matter worth over Rs. 10,00,000.
 - d. The Municipal body in your district is refusing to carry out their duties and has neglected to perform the same for quite a while.
2. What was the origin of PILs? What are the basic functions they seek to serve? Can you think of a few situations where PILs have helped in bringing about social justice? Can you think of any current social situations where PILs will prove useful?
3. What is the structure of the judiciary in India? Which courts have both original and appellate jurisdiction? Which courts can entertain writs or PILs?

¹ <http://dakshindia.org/Daksh Justice in India/23 chapter 02.xhtml>

Chapter 3

Constitution and the Legislative Process in India

Constitutional Protections for Animal Welfare

The Constitution of India is seen as the *supreme lex* of India and is a Quasi Federal Constitution. It lays down the framework delineating the fundamental political code, procedures, structures, powers and duties of government institutions, setting out the rights that are guaranteed to the citizens, the directive principles of state policy, and the duties that the citizens have towards each other. It is a living document and the interpretation of its provisions constantly evolves with the changing time and circumstances, it is also the very basis for the sanctity of the various other laws of the country. It is a lengthy, elaborate document containing 395 articles (divided into 22 parts) and 12 schedules. The Indian constitution recognizes the lives and the importance of welfare of animals and makes it a fundamental duty of the citizens of India to treat all animals with dignity and respect.

1. Article 51A(g): to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures
2. Article 48: Organisation of agriculture and animal husbandry The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle
3. Article 48A: Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country
4. Under the State List, seventh schedule, it is provided that the state has the power and authority to “Preserve, protect and improve stock and prevent animal diseases, and enforce veterinary training and practice” (14).
5. Under the Concurrent List, it is provided that the central and state both have the power and the authority to “Prevent cruelty to animals” (17) and “Protection wild animals and birds” (17B).
6. Article 243G: the Panchayati Raj institutions have the responsibility and the authority to deal with matters that are relating to “Animal Husbandry, dairying and poultry” “Markets and fairs” “Fisheries”. (11th Schedule of the Constitution)
7. Article 243 W: The municipalities have the responsibility and authority to deal with matters that are relating to “Cattle pounds; prevention of cruelty to animals” & Regulation of slaughterhouses and tanneries. (12th Schedule of the Constitution)

Furthermore, there exist the following provisions under the Constitution of India that provide the Supreme Court with jurisdiction and authority to make its decisions the law of the land, and for it to be followed by all courts as well as authorities. Thus, ensuring that decisions given by the court in the ambit of Animal Welfare are followed properly by all courts ensuring its enforcement and by all authorities to ensure its implementation.

1. Article 141: The law declared by the Supreme Court shall be binding on all courts within the territory of India.
2. Article 144: All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court

Thus, the constitution provides for a wide protective framework to ensure the welfare of Animals in the country. It also ensures that appropriate bodies take on the burden to take care of the Animals and make appropriate laws to carry out the protections envisioned under the Constitution.

Legislative Process In India

The law-making body in India is the Parliament, whose basic function is to make laws, repeal and amend them. All legislative proposals are first brought before the Parliament in the form of a Bill. A Bill can be introduced by a Minister (called a *Government Bill*) or a Member other than a Minister as well (called a *Private Member's Bill*). This Bill then needs the approval of both the Houses of Parliament (the Rajya Sabha and Lok Sabha) and the President to become an Act.

In case of Government Bill, the Minister who is introducing the Bill has to give a 7 days' notice of his/her intention to move for leave to introduce the Bill. This Bill is then circulated to the House at least two days before the day on which the Bill was proposed to be introduced. While generally a Bill can be introduced in either House of the Parliament a Money bill can be introduced only in the Lok Sabha. If a question arises whether the Bill is a Money Bill or not, the decision of the speaker is final. Further, there are special features of a Constitution Amendment Bills as well. These bills can be introduced in either house of the parliament however, a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting is required for the adopting the effective clauses and passing of the Bill.

A Bill undergoes 3 readings in each house (Lok Sabha and Rajya Sabha) before it is sent to the President for assent. If a situation arises wherein a bill passed by one house is rejected by the other, the President may, unless the Bill has lapsed, call for a joint meeting of the two

houses. The Constitution allows for this procedure however, it places no obligation upon the President to resolve the matter.

The house which is in possession of the Bill undertakes the task of obtaining the assent of the President. For instance, in the case of a Money bill or when a Bill is passed after a joint sitting, the Lok Sabha Secretariat gets the assent. After obtaining the assent of the President the Bill becomes an Act.

Article 21 of the Constitution of India

Article 21 of the constitution reads as follows, “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”

Article 21 refers to the “right to life” and embodies various aspects of life.² It essentially confers on every person the fundamental right to life and personal liberty.³ Bhagwati, J stated that Article 21, “embodies a constitutional value of supreme importance in a democratic society.” Further, Iyer, J. has characterised the Article as follows, “as the procedural *magna carta* protective of life and liberty.”⁴

The text of Article 21 was narrowly interpreted **before** the case of ***Maneka Gandhi v. Union of India*** (hereinafter referred to as “Maneka”).⁵ This was a case which dealt with Articles 14, 19 and 21 of the constitution. The facts are simple. The petitioner, Maneka Gandhi, was denied a passport under the Passports Act, 1967. She contended that the right to travel abroad is a “personal liberty” which is guaranteed under Article 21 except for the procedure established by law. She stated that as there did not exist any procedure under the aforementioned Act for the impounding of a passport, the action was violative of Articles 14, 19 and 21. The court held, *inter alia*, that the right is not merely physical in nature and includes the right to live with dignity. Further, the term ‘personal liberty’ was given an expansive definition and the court stated that the attempt of the court should be to expand the ambit of the rights using tools of judicial construction.⁶ It was also laid down that the phrase ‘procedure established by law’ would not simply mean any procedure but it should satisfy some requisites of being fair and reasonable.

² M P JAIN, INDIAN CONSTITUTIONAL LAW 976 (7th ed. 2014).

³ DD Basu, pg 219. (need to check edition and volume)

⁴

⁵ 1978 AIR 597.

⁶ M P JAIN, INDIAN CONSTITUTIONAL LAW 1244 (7th ed. 2014).

Since this landmark case, the Apex court has given a very liberal interpretation to the protection of personal liberty and dignity. It is for this reason that this case was lauded as being a highly creative judicial pronouncement. After *Maneka*, the Supreme Court has broadened the scope of Article 21 entirely and have used this to imply and embody various other fundamental rights.

Thus, since *Maneka*, Article 21 has been interpreted in a multidimensional manner. The Article has become all-encompassing and the Supreme court has guaranteed the following rights under it: right to food and shelter,⁷ right against solitary confinement, right against hand cuffing, right against delayed execution, right against public hanging, right to get doctors assistance and the right to education.⁸

Application to Animals

The Supreme Court has adopted a rather expansive reading of the rights which can fall under Article 21. This has enabled it to bring within its ambit various rights that animals must be granted as well. This section seeks to discuss and touch upon some important observations made with regards to animal rights and Article 21.

The most important case in this regard is that of *Animal Welfare Board Of India Vs A. Nagaraja & ors.*⁹ The facts of the case are rather simple. This case was an appeal against a Division Bench decision of the Madras High court which allowed for Jallikattu to be conducted if certain conditions were complied with. The Animal Welfare Board of India (AWBI) appealed against this decision and sought to enforce its notification which barred bulls from being exhibited or trained as performing animals.

The Supreme Court ruled in favour of the AWBI, by holding Article 51(g) of the constitution (discussed later in the chapter) as the “magna carta of animal rights” and further, by safeguarding the “life” of animals under Article 21. The following was observed,

“Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article

⁷ *Shantisar Builders v. Narayanan Khimalal Totame*, (1990) 1 SCC 520.

⁸ *Unni Krishnan and others V. state of AP*, 1993 AIR 217.

⁹ Civil Appeal No. 5387 of 2014.

21 of the Constitution. So far as animals are concerned, in our view, “life” means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour[,] and dignity.”

Other than this, various High courts have, in the recent past relied upon the aforementioned case and Article 21 to highlight the importance of safeguarding the life and dignity of animals.

Article 48 of the Constitution

Article 48 reads as follows, *“The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.”*

As the text suggests, this Directive Principle places an obligation on the State to organise agriculture and animal husbandry on modern and scientific lines. Further, the State must also take steps for preserving and improving the breeds, and prohibiting slaughter of cows, calves and other milch and draught cattle.¹⁰ Such a restriction is not a violation of Article 19(1)(g), as it is subject to reasonable restrictions.¹¹

This particular Article was drafted in November, 1948 and there was tension regarding the religious angle. During the Constituent Assembly debates, there was much debate with regards to moving this particular provision to Part III, the Fundamental Rights section. However, this was denied as it was stated that fundamental rights deal with human beings only and not animals.

Case Law

Primarily, two cases become important to understand the ambit of this Article. In the case of **Quareshi v. State of Bihar**,¹² the Supreme court stated that the directive only applies to cows, calves and other animals which have the potential of yielding milk or have the capacity to work as draught. Hence, according to this judgement, the article did not envisage a prohibition on the slaughter of *all* cows or cattle.

¹⁰ M P JAIN, INDIAN CONSTITUTIONAL LAW 217 (7th ed. 2014).

¹¹ Abdul Hakim Quareshi v. State of Bihar, AIR 1961 SC 448.

¹² AIR 1961 SC 448.

However, this was overruled by the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***,¹³ which held that Article 48 envisions a *total* ban on the slaughter of cows and their progeny. The court observed that cattle which has served the human species must be treated with compassion in its old age, even though it is “useless”.¹⁴

Article 48A of the Constitution

Article 48A reads as follows, “*Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.*”

This Article was added by the 42nd amendment and places an obligation upon the State to protect and improve the environment and to safeguard the forests and wildlife of the country. This particular Article deals with the three interrelated subjects of “environment, forests and wildlife.” This Article mandates the State to protect and improve the environment, and further, to safeguard the forests and wildlife of the country. As this Article is a part of the Directive Principles, it is not judicially enforceable, however, it becomes enforceable by the ever-expanding interpretation of Article 21.¹⁵

The counterpart of this Article for citizens is Article 51A which has been discussed later. In the case of ***MC Mehta v. Union of India***,¹⁶ the Supreme Court stated the following with regards to this Article,

“Articles 39, 47 and 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment.”

Further, whenever an issue with regards to maintain the ecology is brought before the court, this particular Article must be borne in mind.¹⁷

Article 51A(G) & 51A(H)

The Article reads as follows:

“It shall be the duty of every citizen of India:

¹³ (2005) 8 SCC 534.

¹⁴ DD BASU, SHORTER CONSTITUTION OF INDIA 651 (14 ed. 2013).

¹⁵ DD BASU, SHORTER CONSTITUTION OF INDIA 652 (14 ed. 2013).

¹⁶ AIR 2002 SC 1696.

¹⁷ Sachidanand Pandey and Ors. vs. The State of West Bengal and Ors., 1987 AIR 1109.

- (a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;**
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;**
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.”

Article 51A was contained in Part IV A (Fundamental Duties) of the Constitution was also added as a part of the 42nd Amendment in 1976. This was added in accordance with a recommendation of the Swaran Singh Committee and brings our Constitution in consonance with the Article 29(1) of the Universal Declaration of Human Rights. Fundamental Duties are not enforceable by courts however, are often resorted to in cases of interpretation of constitutional and other matters.¹⁸

Article 51(g) particularly places an obligation upon the citizens to protect and improve the natural environment and to have compassion for all *living creatures*. It makes it the fundamental duty of all citizens to have compassion for living creatures, which includes concern for their suffering and well-being.¹⁹ While, Article 51(h) seeks to develop scientific temperament and humanism. These provisions, as has been mentioned earlier, have been regarded as the magna carta of the animal rights jurisprudence in India.²⁰

These Articles are to be read with Articles 48 and 48A of the Constitution. The Supreme court in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others***,²¹ held that the intention of the parliament while enacting Article 51A was to ensure that the spirit of Articles 48 and 48-A are honoured.

¹⁸ DD BASU, SHORTER CONSTITUTION OF INDIA 659 (14th ed. 2013).

¹⁹ Animal Welfare Board of India vs A. Nagaraja & Ors, (2014) 7 SCC 547.

²⁰ *Ibid.*

²¹ (2005) 8 SCC 534.

Article 141

The article reads as follows, “*The law declared by the Supreme Court shall be binding on all courts within the territory of India.*”

This Article embodies the doctrine of *stare decisis*, which is a special feature of English law. The doctrine rests upon the principle that the law must be definite, fixed and known and must have been decided by a court of competent jurisdiction.²² The reason for adopting this doctrine is quite simple: consistency.²³ The Supreme Court has observed that consistency is the cornerstone for the administration of justice as it helps create confidence in the system and enables the development of law.²⁴ Thus, this rule is one based on convenience and judicial propriety or as some judges call it, judicial discipline.

As per the hierarchy of courts in India, the Supreme Court is the highest court in the country and the final court of appeal.²⁵ As the text of Article 141 lays down all the courts and tribunals²⁶ are bound to follow the decisions of the Supreme court. Thus, in this regard, the judgements delivered by the Supreme court become a source of law itself.²⁷

However, what is binding is the operative part of the judgement or the *ratio decidendi*. The *ratio decidendi* is to be determined after reading the judgement is its entirety²⁸ and must be distinguished from the relief finally granted. Mere observations or the *obiter dicta* is not the ratio of the judgment and is hence, binding upon the lower judiciary.

Article 144

Article 144 reads as follows, “*All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.*”

According to this Article all authorities, whether civil or judicial, are under an obligation to act in aid of the Apex Court. The court has the power to hold any authority in contempt if they disregard or disobey the order of the court.²⁹

²² DD BASU, SHORTER CONSTITUTION OF INDIA 1024 (14th ed. 2013).

²³ State of Andhra Pradesh v. A.P. Jaiswal, AIR 2001 SC 499.

²⁴ *Ibid.*

²⁵ DD BASU, SHORTER CONSTITUTION OF INDIA 1020 (14th ed. 2013).

²⁶ Union of India v Kantilal Pandya, (1995) 3 SCC 17.

²⁷ M P JAIN, INDIAN CONSTITUTIONAL LAW 291 (7th ed. 2014).

²⁸ Sathappan v. Andhra Bank Limited, (2004) 11 SCC 672.

²⁹ M P JAIN, INDIAN CONSTITUTIONAL LAW 288 (7th ed. 2014).

In toto, Articles 32, 141, 142 and 144 are of utmost importance as they allow for the Apex court to issue directives and fill gaps till the legislature steps in.³⁰ Articles 141 and 144 are complementary in nature as the former states that the law declared by the SC will be binding upon all other courts while the latter necessitates the courts to aid in the enforcement of law.³¹ Further, this is even more effective as Article 144 in particular covers not only courts (which is covered by the principle of stare decisis embodied in Article 141) but also civil authorities. Thus, in this regard, Article 144 places an obligation upon the relevant authorities not only to follow the law but also all of the orders, decrees and directions passed by the Supreme Court.³²

Article 300A

Article 300A reads as follows, “***Persons not to be deprived of property save by authority of law- No person shall be deprived of his property save by authority of law.***”

This falls within Chapter IV of Part XII of the Constitution and deals with the right to property. This Article was introduced by the Forty fourth amendment when Articles 19(1)(f) and 31 were deleted. The following two words need interpretation:

1. *Property*: this word connotes everything ranging which is capable of ownership, corporeal or incorporeal, tangible, intangible, visible or invisible and everything else that has real or persona value and goes to make up property.³³
2. *Deprived of his property*: this phrase must be seen from the particular context or fact situation.³⁴ this deprivation usually occurs due to acquisition or taking possession for a public purpose.

Animals: Persons or Property?

In the case of ***Animal Welfare Board of India v. A. Nagaraja***,³⁵ the Supreme court stated the following with regards to the status of animals,

“Animals are world-wide legally recognised as ‘property’ that can be possessed by humans. On deletion of Article 19(1)(f) from the Indian Constitution, right to property is more a fundamental right in India, this gives the Parliament more a leeway to pass laws protecting the rights of animals. Right to hold on to a

³⁰ Vineet Narain v. Union of India, (1998) 1 SCC 226.

³¹ DD BASU, SHORTER CONSTITUTION OF INDIA 1068 (14th ed. 2013).

³² M P JAIN, INDIAN CONSTITUTIONAL LAW 287 (7th ed. 2014).

³³ ARVIND P DATAR, COMMENTARY ON THE CONSTITUTION OF INDIA 1652 0

³⁴ Datar page 1655.

³⁵ (2014) 7 SCC 547.

property which includes animals also, is now only a legal right not a fundamental right. We have also to see the rights of animals in that perspective as well.”

They also discussed the legislations from countries such as Switzerland, Austria, Slovenia which have included animal welfare in their constitutions to balance the animal’s owners’ *right to property* and the right to rights of the animals to be free from unnecessary damage or pain. Thus, under the current framework, animals are regarded as the property of the owners.

However, even though the SC recognised that animals are universally treated as property, it was stated that since the right to property is not a fundamental right and merely a constitutional right, it provides the parliament with enough flexibility to safeguard the rights of animals.³⁶

Constitutional Morality

Constitutional Morality is essentially a strict adherence to the substantive content, and forms of the constitution.³⁷ In the Indian context, this term is often traced back to the Constituent Assembly debates where Ambedkar had invoked George Grote (an English political radical and historian), to defend the inclusion of the structure of the administration. For Ambedkar, this term refers to the conventions, protocols and roles that need to be kept in mind when the constitution gives an authority discretionary power or is silent about an issue.³⁸ In a nutshell it is a strict observance of the core principles of the constitution. However, the principle also strives towards ushering a pluralistic and inclusive society.³⁹ The following was stated about the importance of the principle by Andre Beteille, an Indian sociologist,

“In the absence of constitutional morality, the operation of a constitution, no matter how carefully written, tends to become arbitrary, erratic and capricious. It is not possible in a democratic order to insulate completely the domain of law from that of politics. A constitution such as ours is expected to provide guidance on what should be regulated by the impersonal rule of law and what may be settled by the competition for power among parties, among factions and among

³⁶ Vishrut Kansal, *The Curious Case of Nagaraja in India: Are Animals Still Regarded as “Property” With No Claim Rights?*, 256-267 *Journal of International Wildlife Law & Policy* (2016).

³⁷ Pratab Bhanu Mehta, *What is constitutional morality?* Available at: https://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm.

³⁸ Pratab Bhanu Mehta, *What is constitutional morality?* Available at: https://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm.

³⁹ *Navtej Singh Johar v. Union of India*, (2018) 1 SCC 791.

*political leaders. It is here that the significance of constitutional morality lies. Without some infusion of constitutional morality among legislators, judges, lawyers, ministers, civil servants, writers and public intellectuals, the Constitution becomes a plaything of power brokers*⁴⁰

Judgements and Directions of the Supreme Court

1. N. Nair v. Union of India⁴¹:

The Indian circus federation challenged the notification issued by the government of India which sought to ban the training and exhibition of five animals: bears, monkeys, tigers, panthers and dogs. The Circus federation contended that this violated their right to occupation under Article 19(g) of the constitution and was hence, liable to be struck down on account of being illegal and unconstitutional. The court ruled in favor of the government due to the following reasons:

- It was said that the notification does not violate the petitioners right to carry on trade or occupation as the words ‘trade’ and ‘business’ as used in 19(1)(g) do not permit the carrying on of activities which inflict pain and suffering on animals.
- The court evaluated the directive principles and stated that the notification was in public interest and in keeping with the values furthered by Articles 48A and 51(g) of the Constitution and hence, also permissible under Article 19(1)(g).

The following was also stated with regards to the rights animals possess,

“Though not homosapiens. they are also beings entitled to dignified existences and humane treatment sans cruelty and torture. In many respects, they comport better than humans, they kill to eat and eat to live and not live to eat as some of us do, they do not practice deception, fraud, or falsehood and malpractices as humans do, they care for their little ones expecting nothing.”

“In our considered opinion, legal rights shall not be the exclusive preserve of the humans which has to be extended beyond people thereby dismantling the thick legal wall with humans all on one side and all non-human animals on the other side. While the law currently protects wild life and endangered species from extinction, animals are denied rights, an anachronism which must necessarily change.”

⁴⁰ Andre Béteille, *Constitutional Morality*, 43 EPW 35-42 (2008).

⁴¹ AIR 2000 Ker 340.

2. People For Ethical Treatment Of Animals V. Union of India

This is an important judgment rendered by the Bombay High court which necessitated a certification by the Animal Welfare Board of India for any film meant for public viewing stating that the provisions of the Performing Animals (Registration) Rules, 2001 have been complied with.⁴²

In consonance with the Prevention of Cruelty to Animals Act, 1960 and Performing Animals (Registration) Rules, 2001 and also Bombay High Court Judgement in WP No. 2490/2004, PETA Vs. UoI&Ors. Dated 22.08.2005, CBFC requires the applicants to furnish a No Objection Certificate (NOC) from the AWBI for certification of films in which performing animals have been used. Sub Rule 3 (bb) of Rule 21 (3) introduced in 1997 of the Cinematograph (Certification) Rules, 1983 stipulates:

“Every such application shall be accompanied by a declaration made in writing by the producer of the film declaring that no cruelty was caused to the animals used during shooting of the films produced in India”.

Section 5 B of the Cinematograph Act, 1952 prescribes principles for guidance in certifying films. The guidelines issued thereunder, stipulates among other things, the following in respect of use of animals in films -

“Scenes showing cruelty to or abuse of, animals are not presented needlessly”.

For issuing a NOC, AWBI screens the submitted application in two stages under “Performing Animal (Registration) Rules, 2001

Stage 1- Pre-shooting Permission:-

The applicant has to apply in a prescribed format, giving details of the story line, sequences where animals are to be used, complete justification for using animals, fitness certificate and relevance of using animal for obtaining pre-shoot permission.

Stage 2 - No Objection Certificate (NOC):-

After obtaining the pre-shoot permission, the applicant has to adhere to the conditions/guidelines and after completion of the shooting of the film, the producer has to send two CDs of the film to AWBI for viewing.

⁴² People for Ethical Treatment of Animals (PETA) vs. Union of India (UOI) and Ors.

Based upon the screening report, AWBI either issues or denies a NOC to the applicant.

3. **KARNAIL SINGH V STATE OF HARYANA**⁴³:

The Punjab and Haryana High Court has ruled that all animals are *legal persons* entitled to legal rights like human beings. Justice Rajiv Sharma's order states,

“The entire animal kingdom, including avian and aquatic, are declared legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All citizens throughout Haryana are hereby declared persons in loco parentis (responsible for a child in parents' absence) as the human face for the welfare/protection of animals.”

The list of directions issued by Justice Sharma in this order are as follows:

- The State Government is directed to ensure that the draught animals do not carry loads exceeding prescribed limits while driving vehicles.
- The State Government is directed to ensure that no animal shall carry weight or load in excess of the weights prescribed.
- The weight should be halved if the route travelled involves an ascent exceeding the limit prescribed by the Court.
- No more than four persons, excluding the driver and children below 6 years of age, are allowed to ride an animal drawn vehicle.
- No person is permitted to keep or cause to be kept in harness any animal used for the purpose of drawing vehicles where the temperature exceeds 37°C (99°F) during the period between 11 am and 4 pm. in summers and when the temperature is below 5°C between 5 am to 7 am and between 10 pm to 5 am in winter season.
- The use of spike stick or bit, harness or yoke with spikes, knobs or projections or any other sharp tackle or equipment is banned throughout the State of Haryana to avoid bruises, swelling, abrasions or severe pain to the animal.
- All the Municipal Bodies shall issue certificates of unladen weight of vehicles to avoid cruelty to animals.

⁴³ <https://barandbench.com/animals-legal-persons-punjab-haryana-high-court/karnail-singh-v-state-of-haryana-punjab-and-haryana-hc-may-2019/>

- The owners of bullock carts, camel carts, horse carts, tonga are ordered to put fluorescent reflectors in the front and back of the carts. The animals shall also be covered with stripes of fluorescent reflectors for their identification at night.
- All the Municipal Bodies throughout the State of Haryana are directed to provide shelter of suitable size to horses, bullocks and camels driving vehicles.
- Appropriate rules of the *Transport of Animals Rules, 1978* and the *Haryana Motor Vehicles rules, 1993* are to be complied with while transporting animals. These rules concern the making the vehicle suitable for transporting the animal through the provision of padding, anti-slipping material etc. It also entails limiting the number of cattle transported per vehicle (no more than six cattle), restrictions on overcrowding the vehicle with other merchandise, ensuring that there is an attendant with the animal being transported, ensuring that the cattle faces the engine to prevent their being frightened or injured, providing first aid etc.
- The State Government is directed to appoint Veterinary Officers as per Section 3 of the *Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009* (2009 Act) and also to declare controlled areas and free areas to prevent, control or eradicate any scheduled disease by notification.
- The State Government is directed to enforce the provisions of the 2009 Act to prevent the animals from infectious and contagious diseases in letter and spirit.
- No animal including cows, buffaloes, calves, horses, ponies, mules, donkeys, foal, goats and sheep, kids and lambs, pigs, piglets shall be transported on foot beyond the period specified in Rule 12 of the *Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, 2001* (2001 Rules)
- The animals shall be transported on foot only when the temperature is between 12°C to 30°C. The animals should be provided water every two hours and food in every four hours. The animals should not be made to walk more than 2 hours at a stretch.
- The State Government is directed to ensure that every animal to be transported should be healthy and in good condition. A certificate of veterinary doctor in respect of each animal to be transported is made compulsory as per the 2001 Rules.
- No new born animal of which the navel has not completely healed, diseased, blind, emaciated, lame, fatigued, or having given birth during the preceding seventy-two hours or likely to give birth during transport are ordered not to be transported on foot. There should be watering arrangements enroute during transport of such animals on foot. There should be sufficient feed and fodder arrangements during transportation of animals.
- The animals while transported shall not be tied by its nose, or legs or any other part of the body except by its neck. The animals, if at all, are to be tied during transportation shall be tied with rope covered with suitable cushioning.
- The State Government is directed to ensure that no animals shall be transported on foot on hard cement, bitumen- coated or metallised roads, steep gradients or hilly and rocky terrain, irrespective of weather conditions (summers and winter), as per Rule 30 of the 2001 Rules

- The State Government is also directed to constitute societies for prevention of cruelty to animals in each district
- The cost of transporting the animal to an infirmary or pinjrapole, shall be paid by the owner of the animal.
- The Director Animal Husbandry to the State of Haryana is directed to ensure proper treatment of stray cattle and animals, throughout the State of Haryana by the duly qualified doctors. The State of Haryana has already established infirmaries at 45 places.
- All the Veterinary doctors throughout the State of Haryana are directed to treat the stray animals brought to them by the citizens, in case, it is not possible to bring the sick animal/cattle to the Veterinary doctor, he/she shall personally visit and attend the stray cattle/animal without delay.
- All the Municipal bodies / Panchayati Raj Institutions, throughout the State of Haryana are directed to make sufficient provisions for housing the stray cattle and to provide them food/fodder and water.
- Since the carts driven by animals have no mechanical devices, they should be given the “*Right of Way*”. All the Police Officers throughout the State of Haryana are directed to ensure compliance of this direction to avoid inconvenience to the animals.
- The State of Haryana is directed to ensure that no person shall use or cause to be used any animal for drawing any vehicle or carrying any load for more than nine hours in a day in the aggregate; for more than five hours continuously without a break or rest for the animal. No animal can be used to draw vehicles in any area where the temperature exceeds 370 C (990F) during the period between 12 noon and 3 pm, as per Rule 6 of the Prevention of Cruelty to Draught and Pack Animals Rules, 1965.
- The State of Haryana is directed to enforce the provisions of *Prevention of Cruelty to Animals (Aquarium and Fish Tank Animals Shop) Rules, 2017*; *Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules 2017*; and the *Prevention of Cruelty to Animals (Pet Shop) Rules, 2018*, in letter and spirit.

4. NARAYAN VS UNION OF INDIA & OTHERS⁴⁴:

This judgement was rendered by the Uttarakhand High court. The petitioner sought to restrict the movement of horse carts or tongas to/from Nepal and wanted the implementation of provisions for vaccination, medical check-ups of infected horses. The Uttarakhand High Court, *inter alia*, gave the following directions:

- The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the

⁴⁴ <http://www.indiaenvironmentportal.org.in/content/457750/order-of-the-uttarakhand-high-court-regarding-protection-and-welfare-of-animals-04072018/>

citizens throughout the State of Uttarakhand are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.

- The State Government is directed to ensure the medical examination of all the animals including horses entering from Nepal to India as well as horses moving from Indian border to Nepal to check infectious and contagious diseases by setting the veterinary check-posts on the border.
- The State Government is directed to ensure that throughout the State of Uttarakhand, that no person in charge of any vehicle drawn by any animal allows more than four persons, excluding the driver and children below 6 years of age to ride the vehicle.
- The use of spike stick or bit, harness or yoke with spikes, knobs or projections or any other sharp tackle or equipment is banned throughout the State of Uttarakhand to avoid bruises, swelling, abrasions or severe pain to the animal.

5. **PEOPLE FOR ANIMALS V MD. MOHAZZIM (DELHI HIGH COURT)**⁴⁵

The case was initiated in 2004 when the Delhi police seized some birds and animals belonging to the respondent and filed a case alleging that he was in contravention of Prevention of Cruelty (Capture of Animals) Rules, 1979. These rules stated that birds and animals cannot be captured except by specific methods which are prescribed. While recalling the five fundamental freedoms accorded to animals in the case of *A. Nagaraja v Animal Welfare Board of India*, the court ruled for the petitioner. The following was observed,

“After hearing both sides, this Court is of the view that running the trade of birds is in violation of the rights of the birds. They deserve sympathy. Nobody is caring as to whether they have been inflicting cruelty or not despite of settled law that birds have a fundamental right to fly and cannot be caged and will have to be set free in the sky. Actually, they are meant for the same. But on the other hand, they are exported illegally in foreign countries without availability of proper food, water, medical aid and other basic amenities required as per law. Birds have fundamental rights including the right to live with dignity and they cannot be subjected to cruelty by anyone including claim made by the respondent. Therefore, I am clear in mind that all the birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages for the purposes of their business or otherwise. The petition requires consideration.”

⁴⁵ 2015 SCC Online Del 9508.

SELF ASSESSMENT QUESTIONS

1. How many readings does a Bill go through in each house?
 - a. One
 - b. Two
 - c. Three
 - d. Four
2. Answer the following in brief:
 - a. What is the doctrine of *stare decisis*? Which Article embodies this doctrine?
 - b. In what way has the expansive reading of Article 21 benefitted the animal rights jurisprudence.
 - c. Are Directive Principles enforceable? If not, how have courts used them to further animal rights?
 - d. Discuss the importance of Directive Principles in enhancing the animal rights jurisprudence.
3. Discuss the interplay of the DPSP's and Fundamental Duties and how they have aided the courts to expand animal rights.
4. The following would be binding upon all courts and tribunals as per Article 144:
 - a. Every judgment of the Supreme Court
 - b. The *ratio decidendi* of cases decided by the Supreme Court
 - c. The *obiter dicta* of cases decided by the Supreme Court
 - d. Both (b) and (c)
5. Distinguish between Article 141 and 144.
6. Can animals be classified as property under Article 300A? Discuss with case law.
7. Is the interpretation of Article 48 adopted by the Supreme Court in the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* unsecular in nature? Or should it be lauded as an achievement from the animal rights perspective? Discuss in groups.

Chapter 4

Law of Torts

The law of torts in India is essentially English law administered as rules of justice, equity and good conscience, however, before applying the English rules to India, the courts imperatively look at whether it is suited to Indian society and circumstances. The term tort is derived from the Latin term *tortum* which means to twist and refers to conduct that is twisted or tortious. Norman jurists introduced it to English law and it is seen as the branch of law dealing with civil wrongs committed to persons in society. A workable definition – a tort is a civil wrong independent of contract for which the appropriate remedy is an action for unliquidated damages.⁴⁶ A tort is constituted if:

1. a wrongful act has been committed by a person
2. the act gives rise to any legal damage
3. it must be of such a nature so as to give rise to legal remedy in the form of action for damages.

Thus, the aforementioned constitute the essentials of a tort.

In tortious cases as like most others, there exist primary two parties, the plaintiff and the defendant. A plaintiff refers to a person who comes before a court of law claiming that some right of his has been violated by the actions of a third party. A defendant refers to a person who comes before the court to oppose the plaintiff's claim.

Strict Liability Rule : Strict liability is a standard of liability under which a person would be held to be responsible for the consequences of a civil or a criminal wrong even when there is no fault or criminal intent on his part. Usually, activities that are of an abnormally hazardous nature such as possessing dangerous chemicals that can lead to a blast or owning wild animals, would invite strict liability.

Any person would be held responsible for damage that occurs to a neighbor's property because of an accidental blast that happens on his land, as he possessed dangerous chemicals. We need not prove that he was at fault in his way of storage or had a criminal intent to cause such a blast.

⁴⁶ Salmond and Heuston, Law of Torts.

In ***Rylands v. Fletcher***, the defendants constructed a reservoir on their land, and employed contractors for the same. The contractors failed to seal disused mines that they found during digging, and went ahead to fill the reservoir with water, as a result of which, the water flooded the plaintiff's property. The House of Lords had held the defendant liable and the standard of strict liability was applied to this tort. To succeed in this tort, the claimant needs to show that the defendant brought "something on to his land", made a non-natural use of the land, the thing that he brought was likely to do mischief in the event it escaped, and the thing did escape and cause damage. Also, the harm done to the plaintiff's land was reasonably foreseeable.

Absolute Liability: Standard of liability that holds a person responsible absolutely for any harm caused by an activity that is inherently dangerous and is capable of causing catastrophic damage and the person is deriving commercial gain from it. Such a person becomes absolutely liable to pay compensation to the aggrieved parties, they cannot plead or take the defence that all safety measures were taken by them, they are also not allowed any of the exceptions under tort law such as 'Act of God' or 'Act of Stranger'. Modifications in the doctrine arising out of the ***Rylands v. Fletcher*** case led to the development and inception of Absolute Liability in India. A fundamental difference between Strict and Absolute Liability is that in cases of Absolute Liability due to the inherent dangerous nature of the activity there are not defences or exceptions available to the person. Furthermore, as a result of this, for strict liability compensation is paid only according to the nature and quantum of damages caused but in the case of absolute liability the compensation awarded is mostly exemplary in nature. The doctrine of Absolute Liability has been upheld in India in the case of ***MC Mehta v. Union of India***⁴⁷ where the Supreme Court of India dealing with a claim of leakage of oleum gas from one of the units of Shriram Foods and Fertilizers Industries, Delhi which caused the death of several persons, refused to allow the applicability of Strict liability and came about with the doctrine of Absolute Liability instead, directing the suits to be taken forward in appropriate courts for appropriate compensation for the victims. The same doctrine was also used in ***Union Carbide Corporation v. Union of India***⁴⁸ to finally award compensation to the victims of the Gas Tragedy in Bhopal.

Judicial And Non- Judicial Remedies: A judicial remedy is also called a legal remedy. It is the means that courts of law use for enforcing a claimant's right, or for imposing a penalty on the defendant to remedy the harm done to the plaintiff.

⁴⁷ AIR 1987 SC 1086

⁴⁸ (1991) 4 SCC 548

There also exist situations where a person may not approach a court of law for redress since he can remedy the wrong done to him by his own action, such remedies that are sought without approaching the court are called non-judicial remedies.

Defences: The term ‘defence’ is generally used to refer to any argument that would convince the court that the defendant is not guilty. Defences are basically used to deny components of the tort that has been ostensibly committed.

These are in the nature of exceptions under which the defendant’s liability is absolved. The following are some of the common examples of defences:

- **Private Defence:** This is applicable when a defendant harms other person by reasonable force for protecting his body, property or somebody else’s property under the conditions of imminent danger and inability to immediately report to the authorities. Also, the harm done should be proportional to the gravity of danger.
- For example, A breaks into B's house to steal some artifacts, B realizes and A starts to run out of the house, B shoots A with a gun. This would not be proportional. If A attacks B and there is threat to B's life, B may shoot A as it would be proportional to the gravity of danger.
- **Necessity:** The defence of necessity can be taken when a lesser harm is caused in order to avoid or avert a greater loss or harm. For example, in the case of ***Cope v. Sharpe***, the defendant entered the plaintiff’s land in order to prevent fire from spreading to the adjacent lands. Eventually, the plaintiff sued the defendant for trespass but because the act of the defendant was considered to be reasonably necessary to prevent real and imminent danger, it was held that the defendant was not liable for trespass as he had committed the act out of necessity.
- **Inevitable accident:** If the occurrence of a mishap could not have been prevented even by taking the highest degree of care and attention by any ordinarily prudent individual, such mishap is known as an inevitable accident. It is a valid general defence to a tortious act. For example, in ***Stanley v. Powell***, the plaintiff and the defendant went for pheasant shooting, during the course of which, the bullet accidentally bounced off a tree, thereby injuring the plaintiff. The injury was held to have occurred due to an inevitable accident and was held to be non-actionable.
- **(Act of God:** Act of God or ‘*vis major*’ means an extraordinary act or event, which happens due to natural forces such as earthquakes, volcanic eruptions, and droughts. The deciding test is that the event could not have been prevented even by human intervention. For example, in ***Nicholas v. Marshall***, the embankments of some artificial lakes, which were constructed by

the defendant, broke because of extraordinary rains and flooding. The defendant was not held liable as the event was not foreseeable, and was an Act of God without human intervention.

- **Mistake:** Under certain circumstances, if the defendant acts under a mistaken belief, the defendant may not be liable. Mistake of fact is invalid in torts. Mistake of law is invalid in torts, but a mistake of fact committed with good faith and reasonable intent and believed to be justified by the law is a good defence. A mistake of fact is said to be committed when any person does an act but misunderstands some facts that negate a constituent element of the crime. For example, if I take my dog to the park everyday so that my pet can play off the leash with other pets in the locality, and on a certain day I happen to lose sight of my pet for a couple of minutes, subsequent to which I locate my pet and take it home, where I realise that the dog I have brought home is not my pet as it has a different mark. In this scenario, I will not be liable for committing a tort as I can take defence of mistake of facts. In **Morrison v. Ritchie & Co.**, the defendant was held liable for defamation, as he had accidentally published a statement that the plaintiff had given birth to twins in good faith while it had been only two months that the plaintiff had got married.
- **Statutory Authority:** The defendant cannot be held liable for damages that arise in the course of fulfilment of an act authorized by a statutory enactment or a law duly passed by the legislature.
- **When a plaintiff himself is the wrongdoer:** This defence is based on the maxim *ex turpi causa* which means that if the plaintiff himself is involved in the tortious act, he has no right to recover damages. For example, in *Pitts v. Hunt*, a rider aged 18 encouraged his friend aged 16 to drive recklessly under drunken conditions. They met with an accident and the driver died on the spot. The pillion claim compensation from the relatives of his friend for grave injuries suffered by him, but damages were denied to him as he himself was the wrongdoer.
- **Volenti Non Fit Injuria:** If the plaintiff freely consents to a wrongful act, either express or implied, and has voluntarily accepted the risk involved, he loses his right to claim damages from the defendant. To take this defence, the plaintiff must understand the extent of the risk and should not have consented to an unlawful or prohibited act. Consent given by minors cannot be taken into consideration but that given by guardians would suffice. For example, if in a cricket match, a spectator gets hit by the cricket ball without any negligence or wrongful intent on the part of players, in that scenario the plaintiff does not have any remedy as he himself had consented to such risk at the time of purchasing the tickets. The plaintiff had knowledge of the possible injury and had implicitly consented to suffering them by his act of purchasing tickets. However, say the roof of the stadium collapses and the spectator gets hurt, the stadium authorities can be held responsible for the same as the spectator had not consented to such a risk or have knowledge of this possible injury. In *Dann v. Hamilton*, the plaintiff sat as a passenger in a car whose driver was drunk with knowledge of risk that

accrued to her. Eventually, the car met with an accident due to negligent driving and the plaintiff suffered injuries. It was held that though the plaintiff had knowledge of risk, she had not consented to suffering injuries, and was thus entitled to damages.

Negligence: A party is said to be negligent when it fails to show the standard of care that a prudent person would have taken. It is the failure to observe the standard of care that would have been expected by a reasonable man under the specified circumstances. The concept of negligence is based on the idea that people are supposed to exercise reasonable care, by taking into consideration the potential harm that would be caused to other people or property and is ordinarily foreseeable. The elements of negligence must be established in order to prove it, these elements are:

- Duty of care,
- Breach of that duty,
- Damage incurred, and
- Causation.

The defendant has a duty to exercise reasonable care towards others. A breach of the duty to exercise such reasonable care may be caused by an act or culpable omission. As a result of the breach, the plaintiff suffers an injury. The injury suffered by the plaintiff is a reasonably foreseeable consequence of the defendant's breach of the duty of care he owed to the plaintiff.

Donoghue v. Stevenson: This case had laid down the principle of duty of care. The plaintiff and her friend went to a cafe, and the friend bought the plaintiff a ginger beer float. Eventually, she was horrified to find the decomposed remains of a snail in the bottle. The plaintiff suffered nervous shock and gastro-enteritis, and sued the manufacturer of the ginger beer, Stevenson. Lord MacMillan, a Scottish judge considered the case to have fallen within a new category of tort. As the case proceeded to the House of Lords, Lord Atkin defined neighbors as persons who are so closely and directly affected by one's acts that one reasonably ought to have them in contemplation as being so affected when one directs his mind to the acts or omissions that are called in question.

Further, the English case of ***Caparo Industries v. Dickman*** established a threefold test for duty of care. It lay down that the harm must be: foreseeable by a reasonable man under the same circumstances, the plaintiff and the defendant must have a relationship of proximity, and it should be fair, just and reasonable to impose liability. The test for determining whether there has been a breach of duty is both objective as well as subjective.

Types of Damages: Under the law of tort, damages are given to place the plaintiff in the same position that he had been in if the tort had not been committed. Damages under tort law

can be categorized as general damages and special damages. General damages are damages which cannot be easily assigned a monetary value but for which the plaintiff deserves to be compensated. Examples include pain and suffering, loss of consortium and emotional trauma. It is difficult to assign monetary value due to a lack of evidence such as bills or receipts, whereas special damages refer to tangible damages that can be assessed accurately such as the precise amount of lost wages or bills for psychiatric consultation due to mental anguish suffered as a result of an accident that happened because of the defendant's negligent, rash and reckless driving. It is easy to assign special damages a specific monetary value because they specifically compensate the plaintiff for the expenses he incurred as a result of the tort committed, and address "out of pocket" expenses. They are special in the sense that they will be specific to each plaintiff such as medical expenses, transportation costs, loss of earning capacity and repair or replacement of damaged property.

On the basis of presumption of damages, rights can be classified as absolute and qualified. Upon the violation of an absolute right, damages are conclusively presumed by the law although the plaintiff might not have suffered any pecuniary loss at all. Such presumed damages are called legal damages. In case the right involved is a qualified right, no such presumption exists, and actual or special damage must be proved in order to get damages.

Defamation: The tort of defamation results in injury to the reputation of a person. Intentional false communications, of a written or spoken nature, that harm a person's reputation or decrease the respect in which he is held by society at large, fall under defamation.

Defamation is of two kinds: libel, which is constituted of written content and slander, which is oral content. The tort is not directed at the plaintiff's hurt feelings, but at the opinion that the society at large holds of him. Speech is considered to be defamatory if it exposes the plaintiff to hatred, contempt or ridicule, tends to injure the plaintiff professionally or in the trade that he carries out, or cause him to be avoided by his neighbors. For actions under libel and slander, the plaintiff must prove that the defamatory content referred to him and was published with a malicious intent.

Defamation can be both civil and criminal in nature. Criminal defamation involves committing an offence for defaming a person and makes the defaming person liable for prosecution under the Indian Penal Code for a criminal act. Under Indian criminal law, both libel and slander are offences under Sections 499 and 500 of IPC. On the other hand, civil defamation does not involve any criminal offence, but the defendant can be sued to get legal compensation in the nature of generally unliquidated damages for the harm done to the plaintiff's reputation. Civil defamation leads to an action in the nature of a civil wrong under the law of torts as opposed to a criminal act.

Essentials of defamation:

1. The statement must be published. For example, in *South Indian Railway Co. v. Ramakrishna*, it was held that the mere asking for identity proofs by a railway employee does not tantamount to defamation as no statement has been published at all.
2. The statement must refer to the plaintiff.
3. If the audience to whom the defamatory statements were published could reasonably infer that the statements referred to the plaintiff, the defendant would be held liable.

Animal's Act 1971: It is an Act of the Parliament of the United Kingdom introduced for the codification of civil liability for damage done by animals in England and Wales. It mainly codifies the pre-existing common law rules. The Animals Act regulates liabilities and responsibilities for owning animals, both domestic pets as well as livestock. The Act mainly provides for damage caused by an animal of the *dangerous* species, or a species that is otherwise known to be aggressive or violent. The owner of the animal is usually held liable in such cases. In case the animal does not belong to a dangerous species, the owner is held liable if the animal displayed ordinary behavior or characteristics known to its keeper beforehand. Also, under certain circumstances specified in the act, owners can shoot dogs during the course of protecting their livestock against dogs.

Liability For The Cattle Trespass: For the purposes of determining liability under cattle trespass, cattle generally includes cow, bull, sheep, horse, pig, donkey, goat and poultry. When the defendant's cattle either accidentally stray or are intentionally driven into the plaintiff's land, the owner of the cattle is liable for any trespass committed by the animal. Cattle trespass invites strict liability, and it need not be proved that the owner was negligent in ensuring that the cattle do not trespass upon the plaintiff's land.

Dog's Act 1906: It is an Act passed by the Parliament of the UK that deals with dogs. The Animals Act has repealed its main provisions dealing with civil liability.

Liability Under the Scierter Rule: The term '*scierter*' means intent or knowledge of wrongdoing. Under tort law, the scierter action deals with damage done by animals directly to humans. It was finally abolished by the Animals Act 1971. In order to bring any tort within the scierter action, the action must be taken against the person under whose control the animal was when the tort had been committed. The proof of this action requires proof of injury, the fact that the animal has a problematic trait, and the knowledge of the person designated as in charge of the animal that it has a problematic trait. The liability is strict in nature, which means that liability will be imposed even in the absence of any fault in the

form of willful intent or negligence on the part of the defendant. The voluntary assumption of risk by the plaintiff through their actions, or the plaintiff being the cause of the injury is a valid defence.

Compensation Under motor Vehicles Act- Section 184: The Act regulates all aspects of vehicles used for transportation on roads. The Act mainly lays down provisions for licensing of drivers, registration of vehicles, insurance law, vehicle control through permits etc. Also, cases on deciding road accident compensation are adjudicated by the Motor Accident Claims Tribunal.

The provision reads as follows:

“Driving dangerously.—Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.”

SELF ASSESSMENT QUESTIONS

1. Elina does a snake juggling act in a circus, and often brings her pet pythons that she loves so much home. One day, the snakes accidentally escaped and bite a fellow neighbour. What standard of liability would be applicable?

Ans: Strict liability

2. The defendant plants a poisonous tree on his land, and the tree's branches spread out to his neighbour's land. Eventually, the plaintiff's cow happens to nibble on the tree's leaves and dies, and the plaintiff sues the defendant for committing a tort.

- a) Can it be argued by the plaintiff that no dangerous or poisonous substance has escaped from the boundaries of the defendant's land and onto the plaintiff's?
→No
 - b) Can it be argued by the plaintiff that he did not intend to harm the plaintiff's cow, and did not do anything of the kind?
→No
 - c) What standard of liability would be applicable in the scenario?
→Strict
 - d) Would the standard of strict liability be applicable even if the tree was not large enough to spread out the neighbour's land, but the neighbour himself would have visited the plaintiff with his cattle upon which the cow would have happened to nibble on the tiny plant's dangerous leaves?
→No
3. If a defendant, the owner of land, gives an axe-blow to an unarmed trespasser who comes with an intent to commit theft, as a result of which the thief is fatally injured, can the defendant claim private defence as a necessity?
No
4. The wall of the plaintiff's building collapses out to extraordinarily unusual levels of rainfall in town. It is further learnt that there was a construction related defect in the building caused due to the contractor's negligence. Also, it is found that the building would have anyway collapsed notwithstanding the contractor's negligence. The plaintiff sues the defendant contractor for negligence in construction.
- a) Suggest a valid defence that the contractor could assert.
→Act of God
 - b) Do you think the defence would have been applicable even if the levels of rain would have been ordinary?
→No
5. A and B enter into an altercation during the course of which A abuses B maliciously. They argue in a closed room where no one else is present. B wants to sue A for committing the tort of defamation.
- a) Do you think B will succeed?
→No

b) Had the altercation taken place in a room full of people, do you think your answer would have been different?

→Yes

c) Had the altercation taken place in a place full of people who could not understand the language spoken by both A and B, do you think the requirement for publication would have stood fulfilled as the argument was anyway conducted in a room full of people?

→No

Indian Penal Code (IPC), Civil Procedure Code (CPC) and Criminal Procedure Code (CrPC)

The concept of crime is not new to society, although the definitions and the laws surrounding it have evolved considerably over time. Criminal law is a body of rules and legislations that define conduct prohibited by the state as it threatens and harms public safety and welfare. Any crime committed is seen as committed not merely against an individual but against society in general, hence in all criminal cases the state acts as the prosecuting party in court.

The Constitution of India provides for a federal system in the country, by virtue of which the legislative powers of the government are divided between the central, state and local governments. Schedule VII read with Article 246 of the Constitution provides for a demarcation of legislative powers between the centre and the states. Schedule VII consists of three lists – the ‘Union List’ (List I), the ‘State List’ (List II), and the ‘Concurrent List’ (List III). Legislative jurisdiction over matters enumerated in the Union Lists are under the exclusive jurisdiction of the Union Parliament, State Lists are under the exclusive jurisdiction of the State Legislatures, and Concurrent List under the jurisdictions of both the Parliament and State Legislatures. In the event of repugnancy or contradiction between a state and a central law, the central law prevails. Criminal law and criminal procedure can be found in the Concurrent List, whereas police and prisons are found in the State List. The statutes that govern criminal law and criminal procedure are Indian Penal Code, 1860 (“IPC”) and Criminal Procedure Code, 1974 (“CrPC”). There exist specific courts for criminal trials to be carried and are called sessions courts. The IPC provides for the substantive law that needs to be followed in the event of commission of crime and the CrPC provides for the procedure which states how the police machinery is to function as far as investigation and procedure to be followed by the courts during investigation and trial. It is concerned with the set of rules that administer the series of proceedings that take place during a criminal offence. There exist two types of criminal justice systems:

1. Inquisitorial System: Black's law dictionary defines this as "proof taking used in civil law, whereby the judge conducts the trial, determines what questions to ask, and defines the scope and extent of the inquiry".
2. Adversarial System: Black's law dictionary defines this as "the court system where a judge decides on a case argued by the prosecutor who is suing the plaintiff and the defense attorney who defends their plaintiff. A jury has also been used to decide such cases."

India adopted an adversarial system of legal procedure, wherein the judge acts as a neutral arbiter between parties representing both sides of the case. One major distinction between India and other common law countries is that India *does not* follow the jury system.

Indian Penal Code: The Indian Penal Code ("IPC") is the main document that governs criminal acts and consists of the list of all punishments and cases that a person who commits any kind of crime is to be held liable and charged with. It extends to the whole of India and with the jurisdiction to provide Punishment of offences committed within India, Punishment of offences committed beyond, but which by law may be tried within, India. The provisions of IPC apply also to any offence committed by any citizen of India in any place without and beyond India; any person on any ship or aircraft registered in India wherever it may be.

The objective of enacting this code was to provide a general penal code for India. The code is exhaustive on the matters in respect of which it declares the law. However there are several other penal statutes that govern various other offences in addition to the IPC. In order to be held liable under the code, the accused should have both *mens reas* and *actus reas*.

Criminal Procedure Code: The Criminal Procedure Code ("CrPC") is predominantly a procedural law which states how the police machinery is to function as far as investigation and procedure to be followed by the courts during investigation and trial. It is concerned with the set of rules that administer the series of proceedings that take place during a criminal offence. The CrPC classifies criminal offences into several categories such as bailable, non-bailable, cognizable and non-cognizable. The various steps at the time of filing a complaint such as filing an FIR, gathering evidence and initiating an enquiry are all governed by the CrPC. The CrPC also lays down classes of criminal courts.

Chapter 5

Relevant Sections of the Evidence Act

Section 59 provides for Proof of facts by oral evidence.

“All facts, except the contents of documents or electronic records, may be proved by oral evidence — All facts, except the contents of documents or electronic records, may be proved by oral evidence.”

Oral evidence is generally the evidence stated by witnesses while physically present in the court, the section provides that apart from the evidence that is in the nature of documents or electronic, all other type of evidence can be produced in the form of oral evidence. This is done so as there exists a cardinal rule that where documentary evidence exists, that should be produced for it is the best evidence.

The Act lays down now guidance as to the reliability of oral evidence and the same is left to the discretion of judges. The judges are expected to apply their judicially trained mind and garnered experience of study of human affairs and determine the authenticity of the oral evidence put forth. Court thus subjects the witnesses to various forensic tests, such as:

1. Oath administered by the witness before speaking in court.
2. Cross examination by the opposite party
3. Consistency within the statement as well as with the other evidence produced in court.
4. Demeanour of the witness, which is also made a part of the record. This is required by the CPC (Order XVIII Rule 12) and CrPC (Section 280) for a judge to do.
5. Breach of oath to result in commission of perjury.
6. The ability to call the court witness at any point of time for obtaining proper proof of relevant facts.

Section 61 Proof of Contents of Documentary Evidence

Section 61 provides for Proof of Contents of Documentary Evidence

“The contents of documents may be proved either by primary or by secondary evidence.”

The section merely puts forth that there are two ways of proving contents of a document, namely primary and secondary evidence, Section 62 and 63 provide for what would

constitute primary and secondary evidence. Furthermore, this section is subject to Section 64 of the Act.

In the case of **G Subbaraman & Ors v. State** (2018 CriLJ 2377), the court made the following observation with respect to **Section 61**:

33. Chapter-V of the Indian Evidence Act deals with Documentary Evidence. Section 61 of the Act provides that contents of documents may be proved either by primary or by secondary evidence. Section 62 defines primary evidence as meaning the document itself produced for inspection of the Court. Section 63 defines Secondary evidence as meaning and including among others certified copies given under the provisions of the Evidence Act. Section 64 provides that documents must be proved by primary evidence except in the cases mentioned in the subsequent sections. Section 65 deals with cases in which secondary evidence relating to documents may be given.

.....

36. Normally, any party who wants to prove the content of the document is required to lead evidence by production of the original document before the court through its author. Under section 61, the original document can be presented before the Court through the author, who created the document and it can be proved. In alternate, when the content of the document is attempted to be proved by tendering secondary evidence, such document can be tendered under section 63 read with section 65 of the Evidence Act provided the conditions laid down in these sections are satisfied. Section 63(2), permits, copies can be made from original by mechanical processes which in themselves ensure the accuracy of the copy and copies compared with such copies.

Thus, documentary evidence is required to proven either as primary or secondary evidence before the court to establish the proof of the contents. Furthermore, in the case of **Ghanshyam v. State of UP** (MANU/UP/2391/2017) the court observed that “*Documents can only be proved by the person who has recorded it*” and that “*document can be read into evidence only after it has been proved in accordance with the law*”.

Section 65B Admissibility of Electronic Records

Section 65B provides for Admissibility of electronic records

“(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) *For the purposes of this section, —*

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. —For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.”

This section is required to be read with Section 79A of the Information Technology Act, 2008 which provides for Central Government to notify examiner of electronic Evidence. Although, Section 65B puts down a requirement for the signature of the certifying officer, the inference from the case of **State v. Navjot Sandhu** (2005) 11 SCC 600) is that electronic evidence would be admissible even if the certificate mandated under Section 65B(4) is not produced. Although countries like UK, USA have moved away from the traditional best evidence rule, it has not been abolished in India yet and paper based documents still form the best evidence, however, what has changed is that India now allows e-documents as proof without further production or proof of the original. In the case of **Shafhi Mohammed v. State of Himachal Pradesh** (SLP (Crl.) No. 2032 of 2017), the Supreme Court of India gave a

path-breaking judgment and rationalized the law relating to admissibility of electronic evidence. It observed

“...it can be safely held that electronic evidence is admissible and provisions under Sections 65A and 65B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65B(h).”

and finally held that

*“The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. **Thus, requirement of certificate under Section 65B(h) is not always mandatory.** (12) Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. **The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.**”*

(Emphasis supplied)

Any electronic evidence collected in cases of Animal Cruelty or in Wildlife Law enforcement is also required to be secured and presented before the court in the manner as

prescribed under Section 65B of the Act. In most cases such evidence must be evaluated and examined by trained experts.⁴⁹ There have been several cases where electronically recorded evidence such as mobile video recordings, photos have been used as evidence for law enforcement agencies to take action against perpetrators of animal cruelty or illegal animal trade.⁵⁰

Section 101 Burden of Proof

Section 101 provides for Burden of Proof.

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

The fundamental understanding of burden of proof is that when a person is bound by law to prove the existence of any fact, it is said that the burden of proof lies on that person. The section in itself deals with two different notions, one part deals with proof of the existence of “facts” upon which “any legal right or disability” depends, enabling a party to get a judgment in their favour; whereas the second part deals with a person’s legal obligation to prove the existence of a fact. The definition of proved under Section 3 of the Evidence Act makes the understanding even clearer – “A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it exists.” It refers to the proving of a particular fact and not the entire case. Sir James Stephen observed that “when a fact is to be proved, evidence of it must be given of it by the person upon whom the burden of proving it is imposed, either by the nature of the issue or by any legal presumption.”

⁴⁹ Samir Sinha, Handbook on Wildlife law enforcement in India, TRAFFIC India, WWF-India, Natraj Publishers, last accessed 12th August 2019, <https://www.traffic.org/site/assets/files/6284/handbook-wildlife-law-enforcement-india.pdf>, pg. 46.

⁵⁰ *Telangana: four officials suspended for ordering culling of 78 dogs in Siddipet*, INDIA TODAY, last accessed 12th August 2019, <https://www.indiatoday.in/india/story/telangana-four-officials-suspended-after-video-of-78-dead-dogs-surfaces-on-social-media-1556128-2019-06-25>; Sapna Singh, *Man beats dog to death for barking, arrested*, DAILY PIONEER, last accessed 12th August 2019, <https://www.dailypioneer.com/2019/page1/man-beats-dog-to-death-for-barking--arrested.html>.

In the case of **Rangammal v. Kuppuswami** ((2011) 12 SCC 220), the Supreme Court held as follows:

"21Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party."

The court in the aforementioned case also placed reliance on the ratio of the 2003 Supreme Court case of **Subra Mukherjee v. Bharat Coking Cold Ltd** (AIR 2003 SC 1203) wherein the court determined the question of burden of proof of whether the document in question was genuine or sham or bogus, was that the party who alleged it to be bogus had to prove nothing until the party relying upon the document established its genuineness.

In cases involving welfare legislations, such as Employees Compensation Act, 1923 and Workmen Rules, 1924 in the case of **National Insurance Co. Ltd. v. Ram Dulari** (2017 (6) ALJ 110), the Allahabad High Court observed that true to the general reading of Section 101, *"the section casts burden of proof upon a party which asserts a fact and burden lies on the asserting party to prove such a fact"*.

Thus, there exist two different connotations of burden of proof:

1. Legal Burden - proper burden
→ burden of a party to prove their case completely to the court's satisfaction. It is constant and never shifts from the party seeking a judgment in their favour.
2. Evidentiary Burden – onus of proof
→ duty of party to prove a particular fact that has been pleaded. The burden shifts from party to party till the Court is persuaded towards one side.

The tests applicable for discharging burden of proof also differ based on civil law and criminal law. For civil law the test is of preponderance of possibilities and for criminal law the test is to establish proof beyond reasonable doubt. Thus, in civil cases the court gives its judgment in favour of the party whose case appears to be more probable than that of the other party, whereas in a criminal case the prosecution has to convince the court beyond any reasonable doubt that the case being established is true.

SELF ASSESSMENT QUESTIONS

1. What are the two types of criminal justice systems? Which system has been adopted by the Indian legal system? Why do you think this has been done?
2. What requirement does Section 65B lay down for the admissibility of electronic records as evidence? Is this requirement mandatory in every case?
Section 61 of the Act discusses which important aspect of proving evidence before the court? Which other sections is this section to be read with?

Chapter 6

Prevention of Cruelty to Animals Act, 1960

Definition, Nature scope and Development

Overview of the Prevention of Cruelty to Animals Act 1960

Section	Provisions
3	Duty of owner to ensure well being of an animal. In this document the word animal includes birds as defined in the act.
11 (1)(a)	Beating, kicking, overriding, overloading, torturing and causing unnecessary pain to any animal
11 (1) (b)	Using an old or injured or unfit animal for work. Applies to owner as well as user.
11 (1) (c)	Giving an injurious drug/medicine to any animal.
11 (1) (d)	Carrying an animal in any vehicle in a way that causes pain and discomfort to it.
11 (1) (e)	Keeping any animal in a cage where it doesn't have reasonable opportunity of movement.
11 (1) (f)	Keeping an animal on an unreasonably heavy chain or an unreasonably short chain or for an unreasonable period of time
11 (1) (g)	Keeping the animal in confinement, not giving an opportunity to exercise.
11 (1) (h)	Owner fails to provide food, water and shelter to animal.
11 (1) (i)	Abandoning a animal.
11 (1) (j)	Allowing an owned animal to roam on the streets or leaving it on the streets to die of disease or old age.
11 (1) (k)	Having possession of or offering for sale, an animal which is suffering because of hunger, mutilation, overcrowding etc
11 (1) (l)	Mutilating or killing an animal cruelly.
11 (1) (m)	Using an animal as a bait for another animal.
11 (1) (n)	Organising, keeping, using or managing any place for animal fighting.
11 (1) (o)	Shooting an animal when it is released from captivity for such purpose.

12	Injecting any substance to improve lactation (Oxytocin).
22 (i)	Exhibiting or training an animal without registration with AWBI.
22 (ii)	Making such an animal perform which has been banned (monkey, bear, lion, tiger, panther, bull).

Other Acts

Section 429 Indian Penal Code	killing, poisoning, maiming or rendering useless, any animal
Section 378 Indian Penal Code	Stealing an animal
Section 503 Indian Penal Code	Criminal intimidation to be charged if animal caretakers are prevented illegally/forcibly from keeping pets or feeding street animals.
Section 9 Wildlife Protection Act	Capturing, killing, poisoning, snaring, and trapping or any wild animal and every attempt to do so, Injuring or destroying or taking any part of the body of any such animal, or in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;
Section 38H Wildlife Protection Act	Running a zoo of any size without registration with the Central Zoo Authority
Section 38J Wildlife Protection Act	Teasing, molesting, injuring or feeding animals in a zoo.
Section 39 Wildlife Protection Act	Keeping any wild animal, wild animal article, ivory, any vehicle, vessel, weapon, trap or tool which has been used for trapping or hunting wild animals

Section 48A Wildlife Protection Act	Transporting any wild animal without permission from the Chief Wildlife Warden of the State.
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CRUELTY TO ANIMALS IN GENERAL

Section 3 and 11 - Prevention of Cruelty to Animals Act Section 429 - Indian Penal Code

No person shall beat, kick, injure, kill, torture, cause stress and discomfort to any animal or being the owner, allow such treatment to be inflicted upon any animal.

- Case to be duly registered.
- Photography and videography of the scene of crime to be made for purposes of prosecution.
- District Veterinary officer to be asked for a government veterinarian to attend to the animals
 - a) *If animal is dead – Post mortem to be done*
 - b) *If animal is alive – health certificate to be made*
 - c) *If animal is injured or diseased – Treatment to be ensured.*
- In case of suspected poisoning, viscera must be sent to a forensic laboratory once the veterinarian has sealed and stamped it. Signatures of complainants may be taken as witnesses.
- Statements of the accused and the complainant must be recorded.
- Any other article of evidentiary value such as a weapon(knife/rod/hammer/stone), heavy chains, cage in which animal was confined or any other must be taken into custody as well and produced before the magistrate along with photographs, health/forensic reports and statements.
- Carcass of the animal can be buried after post mortem examination.

Custody of live animals to be handed over to local infirmary, animal welfare organization, SPCA or registered gaushala, following due procedure.

ILLEGAL USE OF OXYTOCIN AND OTHER SUBSTANCE IN DAIRIES

Section 12 – Prevention of Cruelty to Animals Act 1960 Cognizable.
Two years imprisonment and/or fine of Rs

No person shall use any drug such as oxytocin to increase lactation in any animal or for any non-therapeutic purpose.

Any police officer not below the rank of a Sub Inspector can take cognizance.

- All containers of the drug, the syringe and any other evidence must be taken into custody immediately.
- The Drug Inspector and a veterinarian will be needed for sealing the sample.
- The veterinarian must write a prescription for purchase of oxytocin from the market.
- The veterinarian's sample and the confiscated drug must be sealed and stamped by Drug Inspector and sent to the lab for testing.
- The animals must be seized and sent to the shelter or SPCA following due procedure.
- FIR must be drawn carefully taking into account any other general cruelty issues or irregularities that may be reported at the event.
- Once the lab confirms presence of Oxytocin in the sample drug, charge sheet must be prepared.

1. Points to Note:

- Oxytocin cannot be openly sold in the market. It can only be sold with a prescription and records need to be maintained by chemist as per the Drugs and Cosmetics Act and Rules framed under the act.
- It can only be available in registered hospitals but is illegally made available to dairies across the country.
- An unlabelled, white or colorless drug in a glass or plastic vial reported in a dairy can be sent for testing for suspicion of oxytocin.
- Injecting any substance to an animal without veterinary prescription is an offence.

OFFENCES AGAINST PET ANIMALS AND COMMUNITY DOGS

Article 51A(G) of the Indian Constitution : to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
Section 11 – Prevention of Cruelty to Animals Act 1960
Animal Birth Control Rules 2001
Indian penal Code 1860

Banning pets from Societies/colonies/neighborhood

- Not allowed. Supreme Court Dated 7. 5.2014, AWBI Vs A.Nagaraja and others, no animal can be treated in a way that causes distress or physical harm.
- Supreme Court order dated 6.2.2013 SLP no 4453 of 2013 and order dated 10.5.2013 in SLP 17112 of 2013 picking up dogs from one place and leaving them in some other place have been disallowed.
- No person can be asked to abandon their pet by any Resident Welfare Association or such organizations or persons as that would mean making a rule contrary to the guidelines laid down in the Constitution and the Laws.

2. Intimidation and harassment of pet owners/dog feeders- Section 503 IPC

As per Guidelines issued by the Animal Welfare Board of India specifically for RWAs and any other recognized citizens' associations the following directions have been given:

- Recognized Associations/individuals may approach animal welfare organizations or SPCAs of their strict such for redressal of their grievances if any, with regard to stray animals.
- As per Section 11 of The Prevention of Cruelty to Animals Act,1960, beating, kicking over-riding, overloading, over-driving, torturing or otherwise treating any animals so as to subject it to unnecessary pain amounts to cruelty on animals. And whoever indulges in an act of cruelty to animals makes himself liable for action under Prevention of Cruelty to Animals Act.

- Recognized Associations/individuals may approach animal welfare organizations or SPCAs of their strict such for redressal of their grievances if any, with regard to stray animals.

All problems of stray animals have to be handled within the institutional framework available. No association, recognized or unrecognized, shall take recourse to any action regarding stray animals on their own, either themselves or through any person employed by them like security guards. · Where there is no recognized association, residents may take up grievances through the SPCA/Office of the District Veterinar Officer.

While residents and Associations are free to address institutional agencies for redressal of grievances in this matter, no resident/association can interfere with the freedom of other residents in caring and attending animals.

3. In a complaint under Section 429 of the IPC in respect of a dog belonging to/looked after by the complainant, poisoned by a neighbor, this course of action needs to be followed:

- If the owner believes that a neighbor is responsible for poisoning their dog, the owner should immediately contact the nearest police officer.
- The police officer should visit the site and note the condition of the animal.
- The dog has to be taken to a vet, for a post-mortem examination to determine the cause and approximate time of death. In the meantime the police officer can collect any physical evidence that is available, indicating both the perpetrator and the method used.
- The police officer must record the statement of witnesses who have seen the poisoning or witnesses who can record the attitude or history of previous cruelty of the alleged perpetrator towards the deceased.
- Thereafter, the police officer must put up a challan before the court of the concerned magistrate.

There is no law to prevent an owner of a pet to freely use the lift, lobby, apartment, garden, streets etc for exercising and keeping his pet.

However, it may be advised to the owner to collect the droppings of the pet animal and dispose it responsibly.

It may also be required of the owner to keep the pet sterilized and vaccinated.

ILLEGAL USE OF ANIMALS FOR PERFORMANCE

Section 22 - Prevention of Cruelty to Animals Act 1960
Performing Animals Rules 1973
Performing Animals Registration Rules 2001

No animal can be trained for performance or made to perform without a valid Performing Animal Registration Certificate issued by the Animal Welfare Board of India

“Performing Animal” means an animal which is used for the purpose of any entertainment. Entertainment means films, circuses and any animal events into which public are admitted.

At any such event, the exhibitor/trainer MUST possess a Performing Animals Registration (PAR) Certificate from the Animal Welfare Board of India (AWBI) giving details of ALL animals to be used in the event.

Rule 3 of the said rule makes it mandatory for every person desirous of training or exhibiting a performing animal to apply for registration with the prescribed authority. It further prohibits exhibition and training of a performing animal unless it has been registered with the prescribed authority.

Rule 5 of the said Rules empowers the prescribed authority to satisfy itself about the proposed performance and the method to be adopted for the training of such animals. It empowers the prescribed authority while granting registration to impose such conditions, as it may deem appropriate.

Rule 7 of the said rules mandates that the person who hires out or lends a performing animal in the making of the film shall give prior information to the Prescribed Authority (Animal Welfare Board of India) specifying the kind, age and health of the animal, the nature, duration and method of the performance to be done by the animal, and above all the justification for the use of such animal in the film. It further mandates that every such application has to be accompanied by a fitness certificate along with the ownership certificate in case of animals covered under the Wildlife Protection Act, 1972.

Rule 14 provides that the prescribed authority may depute an officer or authorize any other person, to inspect the mode of transport, care and upkeep of the animals, or to be present at the time of training or exhibition of the performing animals or during making of a film to ensure that the conditions of registration are being complied with.

4. Performance of Wild Animals

Section 2(7A) of the Wild Life Protection Act, 1972, defines the term “circus” as an establishment – either stationary or mobile – where animals are kept or used wholly or mainly for the purpose of performing tricks and manoeuvres.

Section 2(39) of the Wild Life Protection Act, 1972, includes inter alia “circus” within the definition of the word “zoo”.

Section 38H of the Wild Life Protection Act, 1972, declares that no zoo – including circuses, per Section 2(39) – shall be operated without being recognized by the Central Zoo Authority.

When these provisions of the Wild Life Protection Act, 1972, are read and interpreted together, it is clear that these wild animals which are performed fall within the definition of circus animal, as defined in Section 2(7A) of the Wild Life Protection Act. Hence, such animals cannot be made to perform without recognition by the Central Zoo Authority and without having their housing and other needs met, as detailed in the Recognition of Zoo Rules and as applicable to circuses. This makes all Madaris, Kalandars, Snake Charmers, Fortune telling parakeets, etc completely illegal.

5. Additional Conditions for Performance of Animals laid down under Rule 5 of the Performing Animal (Registration) Rules:

- Every owner who has ten or more such performing animals shall have a veterinarian as a regular employee for their care treatment and transport.
- The owner shall not transport such animals by road continuously for more than 8 hours and except in cages admeasuring as specified in the Fifth Schedule of the Performing Animals (Registration) rules, 2001.
- The owner shall ensure proper watering and feeding halts during such transportation.
- The owner after transportation shall provide feeding and retiring enclosures in respect of the animals specified in the Sixth Schedule of Performing Animals (Registration) rules, 2001.
- The owner shall ensure that any animal is not inflicted unnecessary pain or suffering before or during or after its training or exhibition.
- The owner shall not deprive the animal of feed or water in order to compel the said animal to train or perform any trick.

- The owner shall train an animal as a performing animal to perform an act in accordance with its basic natural instinct.
- The owner shall not make a performing animal perform if it is sick or injured or pregnant.
- The owner shall ensure that no sudden loud noise is deliberately created within the vicinity of any performing animal or bring an animal close to fire, which may frighten the animal.
- The owner in case the performing animal is to be exhibited under artificial light, the overall intensity of such light shall not be more than 500 LUX.
- The owner shall not subject the animals to any action which may either kill or injure or use the animal in scenes which may cause injury to the animals.
- The owner shall not use any tripping device or wires or pitfalls for such animals.
- 13. The owner shall not expose any animal to either burning fire or to fire accidents.
- 14. The owner shall not keep any animal including horses in close proximity while shooting scenes involving explosives or other loud noises.
- The owner shall ensure that props such as spears, nails splinters, barbed wires and other such props shall not cause injury to the animals during the performance.
- The owner shall ensure that the equines are not made to walk on hard surfaces without being showed and shall further ensure that the animals are not used in downhill slides or rodeo slide stops without proper skid and hock boots.
- The owner of any equine shall not use any whip other than an air cushioned shock absorbing whip which has been scientifically tested to prove that it will not cause weals, bruising or other damage to the horse and subject to the conditions that
 - a. The whip shall not have raised binding, stitching, seam or flap.
 - b. The whip shall be used by licensed jockeys only.
 - c. The owner shall also ensure that the whip is not used other than either on the quarters in either the forehand or the backhand position or down the shoulder in the backhand position or use the whip with the arm above shoulder height.
 - d. The whip shall not be used more than 3 times in a race.
- The owner shall ensure that the animal is not used on floors that are very smooth without the use of non-skidding mats.
- The owner shall ensure that large gathering of animals is not allowed in such a way which may cause or result in stampede to the animals.
- The owner shall ensure that the animal is not made or incited to fight against other animals and shall further ensure that sedatives or tranquillizers or steroids or any

other artificial enhancers are not administered to or inserted in any animal except the anesthesia by a veterinary doctor for the purpose of treatment of an injured or sick animal.

- The owner shall ensure that the animal shall not be transported or be kept or confined in cages and receptacles which do not measure in height, length or breadth as specified under the Transport of Animal Rules, 1978, the Recognition of Zoo Rules, 1992 or under any other Act, rule or order for this purpose.
- The owner shall ensure that the animal is not continuously used for excessive number of takes in shooting a film without providing adequate rest to the animal and in the event of a snake being used it shall not be made to ingest any substances or made to crawl across tarred or any other heated surface and shall not be contorted to wrestle.
- The owner shall ensure that while using an animal in shooting a film, the fight sequence shall not be shot in any livestock holding area including poultry area and shall further ensure that no birds are shown in cages.
- The owner shall inform the prescribed authority at least four weeks in advance informing the place, date and time of the actual making of the film wherein the animal is to be used.

Any police officer not below the rank of a sub inspector is authorised under section 25 of the PCA act to inspect the premises and check for registration

- If owner does not have PAR certificate,
 - Seize animals and file NCR for violation of section 22, 26 of the Prevention of Cruelty to Animals Act 1960.
 - If any of the animals are injured or mutilated, an FIR under Section 429 of the IPC can be lodged.
- If owner has PAR certificate for a certain number of animals but more animals are being used for training/performance/exhibition; and there is visible cruelty to animals
 - Seize the animals not listed in the certificate and file FIR under section 22, 26 and section 11 of the PCA act.
 - Transfer seized animals to the nearest local animal shelter, for treatment and care.

Points to Note:

Dog shows, animal rides, animal races, animal sports etc. come under the definition of Performance and cannot be done without Registration with Animal Welfare Board of India.

OVERLOADING

Section 3, 11 - Prevention of Cruelty to Animals Act 1960 Draught and Pack Animal Rules, 1965

No person shall cause any animal to carry or pull any load if the load is in excess to the prescribed norms or if the animal is injured, diseased, or unfit in any other way.

I. Load Limit for Transporting Goods on Cart

Type of Cart	Load Limit					
	Small bullock or small buffalo (up to 250 kg)	Medium bullock or <u>medium</u> buffalo (250-350kg)	Large bullock or large buffalo (350 kg and above)	Horse or mule	Pony	Camel
Two-wheeled vehicle						1000 kg
1. If fitted with ball bearing	1000 kg	1400 kg	1800 kg	-	-	
2. If fitted with pneumatic tyres	750 kg	1050 kg	1350 kg	750 kg	600 kg	
3. If not fitted with pneumatic tyres	500 kg	900	900 kg	500 kg	400 kg	
Note: 1. The weights specified are inclusive of the weight of the vehicle . 2. Where the vehicle to be drawn is a four-wheeled vehicle, weight specified in each case above, be read as being one and a quarter time . 3. If the four-wheeled vehicle is one fitted with pneumatic tyres, the weight specified in each case above, be read as one and a half times . 4. If the vehicle, whether two-wheeled or four-wheeled is to be drawn by two animals of either species, the weight specified shall be read as twice , and if the vehicle is one fitted with pneumatic tyres, the weight shall be read as two and a half times of what is specified . 5. Where the route by which a vehicle is to be drawn involves an ascent for not less than one kilometer and the gradient is more than three meters in a distance of thirty meters, the weight specified in each case, be read as one-half of what is specified .						

II. Load Limit for Goods on Back (Pack) of the Animal

(Section 4 of The Prevention of Cruelty to Draught and Pack Animal Rules, 1965)

Sl no	Type of animal	Load limit
1	Small bullock or buffalo	100 kg
2	Medium bullock or buffalo	150 kg
3	Large bullock or buffalo	175 kg
4	Pony	70 kg
5	Mule	200 kg
6	Donkey	50 kg
7	Camel	250 kg

III. Load Limit for Passengers

(Section 5 of The Prevention of Cruelty to Draught and Pack Animal Rules, 1965)

No person in charge of any vehicle drawn by any animal shall allow **more than four persons, excluding the driver and children below 6 years of age**, to ride on the vehicle.

IV. Other Common Offences

- Beating, kicking, over-riding, **over-loading**, torturing any animal (*Section 11 (1) (a) of Prevention of Cruelty to Animals Act, 1960*)
- Using animal for drawing any vehicle or carrying any load **for more than nine hours in a day** (*Section 6 of Draught and Pack Animal Rules, 1965*)
- Using any animal in any area where the **temperature exceeds 37°C (99°F) during the period between 12.00 noon and 3.00 p.m.** (*Section 6 of Draught and Pack Animal Rules, 1965*)
- Continue to **keep animal in harness even after it is no longer needed** for the work purpose. (*Section 7 of Draught and Pack Animal Rules, 1965*).
- **Use of** spiked stick or bit, harness or yoke with spikes, knobs or -projections or any other sharp tackle or equipment (*Section 8 of Draught and Pack Animal Rules, 1965*)

1. Any police officer above the rank of a constable shall ask the owner or other person in charge of the animal to take the animal and the vehicle to the nearest weigh bridge available to determine the weight of the load and the cart.
2. If weight is excessive, animal must be seized and an NCR report must be drawn up.
3. The custody of the animal must be given to SPCA or any registered organization following due procedure.

TRANSPORT OF ANIMALS

Prevention of Cruelty to Animals Act 1960
Transport of Animals Rules 1978
Transport of Animals Amendment Rules 2001
Motor Vehicles Act
Indian Penal Code 1860

GENERAL CONDITIONS FOR TRANSPORT OF ALL ANIMALS

Rule 96 Transport of Animals Amendment Rules 2001	Issue of certificate before transportation (1) A valid certificate issued by an officer or any person or Animal Welfare Organization duly recognized and authorised for this purpose by the Animal Welfare Board of India or the Central Government shall be procured by any person making transport of any animal before transportation of such animal verifying that all the relevant Central and State Acts, rules and orders pertaining to the said animals including the rules relating to transport of such animals have been duly complied with and that the animal is not being transported for any purpose contrary to the provision of any law. (2) In the absence of such certificate, the carrier shall refuse to accept the consignment for transport.
Rule 97 Transport of Animals Amendment Rules 2001	Cancellation of permit or authorization for transport - (1) In the event of contravention or non compliance of any of the rules contained in these rule for transport of animals, if it is pointed out in writing by any officer or persons or Animal Welfare Organizations authorized for this purpose by the Animal Welfare Board of India or the Central Government, then, any permit or authorization issued for such transport shall be immediately cancelled by the concerned authority and it shall be the duty of the police to stop the further transport even from the intermediary station and proceed against the said offenders and deal with the animal in accordance with law. (2) The custody of the animals immediately after unloading from the rail wagons, truck or any other vehicle shall be given to the authorized Animal Welfare Organization if available, till the competent authority or the magistrate having jurisdiction decides about their care and upkeep.
Rule 98 Transport of Animals	(1) Animals to be transported shall be healthy and in good condition and such animals shall be examined by a veterinary doctor for freedom from infectious diseases and their fitness to undertake the journey; provided that the nature and duration of the proposed journey shall be taken into account while

Amendment Rules 2001	deciding upon the degree of fitness. (2) An animal which is unfit for transport shall not be transported and the animals who are new born, diseased, blind emaciated, lame, fatigued or having given birth during the preceding seventy two hours or likely to give birth during transport shall not be transported. (3) Pregnant and very young animals shall not be mixed with other animals during transport. (4) Different classes of animals shall be kept separately during transport. (5) Diseased animals, whenever transported for treatment, shall not be mixed with other animals (6) Troublesome animals shall be given tranquilisers before loading during transport. Animals shall be transported in their on-farm social groups (established atleast one week prior to journey).
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General Conditions for Transport of Animals for Slaughter as per Food Safety and Standards Regulations 2011

1.1 Only healthy animals in good condition shall be transported unless they are meant for emergency slaughter. These animals should be certified by a qualified veterinary inspector for freedom from infectious diseases and ectoparasitic diseases and their fitness to undertake the journey.

1.2 When animals are to be transported from endemic areas of a disease to non-endemic areas, the animals should be given protective vaccination and kept in quarantine for 30 days, before transportation.

1.3 Female animals in advanced stages of pregnancy shall not be transported.

1.4 When transporting large animals particularly bears/bulls, special arrangements by providing suitable partitions should be made to protect the animals from infighting. Similar arrangements should also be made to protect the young ones from being crushed when they are transported.

1.5 To avoid exhaustion, the animals shall be given humane treatment and care during

transportation. The animals shall not be bound or chained during transit and space provided for them shall be large enough to stand or lie.

1.6 An attendant along with first aid equipment shall accompany the animals in transit.

1.7 Before loading, the animals should not be fed heavily. Only light feed may be allowed. For journeys less than 12 hours no feed need be carried but for longer journeys sufficient feed shall be carried to last during the journey. Watering facilities shall be provided at regular intervals.

1.8 Light and heavy animals shall be separated by providing partitions; animals from different pens/sheds shall not be mixed during transportation. Male stock shall not be transported with female stock (adults).

1.9 All vehicles should be inspected for safety, suitability and cleanliness before loading the animals. The floor and walls should be undamaged and there should be no nails or sharp projections which may injure the animals.

1.10 The Vehicles should be thoroughly sprayed with suitable disinfectant before loading the animals.

1.11 A layer of clean sand to cover the floor to a thickness of not less than 6 cm shall be provided. This layer of sand shall be moistened with water during the summer months. During hot months arrangements shall be made to sprinkle water on the animals at frequent intervals. In winter, a 2-cm layer of clean sand with another 6-cm layer of whole-straw shall be provided.

1.12 Animals when driven for loading or unloading shall never be struck with stick. Driving could best be done by soft-rubber pipe.

1.13 If animals are to be transported in extreme cold or hot climate, it is preferable to transport them in covered Lorries on road so that they may not die or get exhausted or suffer from acute respiratory disease. Journey under such adverse climate shall be minimized.

1.14 Each consignment should bear a label showing the following particulars:

- a) Number and kind of the animals loaded;*
- b) Name, address and telephone number, if any, of the consignor;*
- c) Name address and telephone number, if any, of the consignee;*
- d) Instructions regarding feeding and watering.*

2.0 Loading

2.1 Loading during extremes of temperatures shall be avoided.

2.2 Suitable ramp shall be provided for loading and unloading the animals. The floor of the ramp shall have cleats at intervals, so that animals do not slip as they climb or descend. The ramp shall be covered with straw to avoid slipping. At any time of loading and unloading the vehicle shall be kept clean to avoid slipping of animals.

2.3 In case of railway wagons when loading is done on the platform, the door of the wagon may be used as ramp. In such cases, bales or bags of hay, agricultural wastes etc. may be placed on the either side of the dropped door to prevent the animals from getting their legs between the sides of the wagons and platform.

3.0 Space Requirements

*3.1 Overcrowding shall be avoided. **Each animal shall have enough space to lie down.***

Transport of Dogs and Cats (Transport of Animals Rules 1978)

Rule 4	Health Certificate mandatory, both owner and carrier liable. Certificate must be as per the Schedule A of the Transport of Animals Rules 1979
Rule 5	Pregnant dog or cat cannot be transported
Rule 6	Unweaned pups/kittens can only be made to travel with their mother
Rule 8	Adequate care must be taken to ensure that animals are given food and water during the journey.
Rule 9	An attendant must be present to ensure well-being of animals during the journey.

Transport of Monkeys (Transport of Animals Rules 1978)

Rule 16	Health certificate for each monkey stating its fitness to travel, as specified in Schedule D of the Transport of Animals Rules 1979
Rule 17	Monkeys from different areas must not be mixed together. Adequate arrangement for food and water to be made during the journey. Precautions must be taken to protect the monkeys from extreme weather conditions.
Rule 18	Infant monkeys not to be transported unless permission from the Central Government is obtained.
Rule 19	Pregnant and nursing monkeys cannot to be transported unless permission from the Central Government is obtained.
Rule 21	Trapping cages should be sterilized or thoroughly disinfected to avoid cross infection.
Rule 23	Cage shall be made of wood or bamboo. The floor of the cage shall be made of bamboo reapers and the space between each reaper must be 20mm

	to 30mm. The weight of any one loaded cage shall not exceed 45 kilograms. The following two sizes of cages shall be used. (a) 910 x 760 x 510 mm – to contain not more than twelve monkeys, weighing between 1.8 and 3.00 kilograms each or ten monkeys weighing between 3.1 and 5.0 kilograms, each. (b) 710 x 710 x 510 mm – to contain not more than ten monkeys weighing between 1.8 and 3.00 kilograms each or eight monkeys weighing between 3.1 and 5.00 kilograms each.
Rule 25	Adequate ventilation must be provided during the journey.
Rule 28	Not more than one cage shall be placed over the other and gunny packing shall be placed between two cages, when one is placed over the other.

6. Transport of Cattle

Rule 47 (Transport of Animals Rules 1978)	A valid certificate by a qualified veterinary surgeon to the effect that the cattle are in a fit condition to travel by rail or road and are not suffering from any infectious or contagious or parasitic diseases and that they have been vaccinated against infectious or contagious or parasitic diseases, shall accompany each consignment.
Rule 56 (Transport of Animals Rules 1978)	When cattle are to be transported by goods vehicle, the following precautions are to be taken namely: (a) Specially fitted goods vehicles with a special type of tail board and padding around the sides should be used. (b) Ordinary goods vehicles shall be provided with anti-slipping material, such as coir matting or wooden board on the floor and the superstructure, if low, should be raised. (d) Each goods vehicle shall be provided with one attendant. (e) While transporting, the cattle, the goods, vehicles shall not be loaded with any other merchandise; and (f) to prevent cattle being frightened or injured, they should preferably, face the engine.

Rule 2 (Transport of Animals Amendment Rules 2009)

Vehicle Size Length X Width (square meter)	Floor area of the vehicle in square meter	Number of cattle permitted			
		Cattle weighing less than 200kg (1 sq mtr space per cattle)	Cattle weighing 200- 300kg (1.20 sq mtr space per cattle)	Cattle weighing 300- 400kg (1.40 sq mtr space per cattle)	Cattle weighing above 400kg (2 sq mtr space per cattle)
6.9 x 2.4	16.56	16	14	12	8
5.6 x 2.3	12.88	12	10	8	6
4.16 x 1.9	7.904	8	6	6	4
2.9 x 1.89	5.481	5	4	4	2

7. Transport of Equines

Rule 58 Transport of Animals Rules 1978	(a) A valid certificate by a qualified veterinary surgeon to the effect that the equines are in a fit condition to travel by rail; road or sea and are not suffering from any infectious or contagious disease or diseases shall accompany each consignment. (b) In the absence of such a certificate, the carrier shall refuse to accept the consignment for transport. (c) The certificate shall be in a form specified in Schedule – I.
Rule 59 Transport of Animals Rules 1978	Each consignment shall bear a label showing in bold red letters the name address and telephone number (if any) of the consignor and consignee the number and type of equines being transported and quantity of ratios and food provided.
Rule 60 Transport of Animals Rules 1978	(a) Pregnant and young equines shall not be mixed with other animals. (b) Different species of equines shall be kept separately. (c) Equines shall be loaded after being fed and given water adequately, watering arrangements shall be made enroute and sufficient food carried to last during the journey. (d) Veterinary first-aid equipment shall accompany all batches of

	equines. (e) Adequate ventilation shall be ensured. (f) Suitable ramps and platforms, improved where not available, shall be used for loading and unloading equines.
Rule 62 Transport of Animals Rules 1978	For the transport of equines by goods – Vehicles, the following precautions shall be taken, namely: (a) Specially fitted vehicles with a special type of tail – board and padding around the sides shall be used; (b) Ordinary goods vehicles shall; be provided with antislipping material on the floor and the super structure, if low, should be raised (c) Bamboo poles of at least 8 cm diameter between each animal and two stout batons at the back shall be provided to prevent the animal from falling; (d) To prevent horses from being frightened or injured their heads should face left away from the passing traffic; (e) Each vehicle shall not carry more than four to six equines; (f) Each vehicle shall be provided with one attendant; These vehicles shall be driven at a speed not more than 35 kilometers per hour.

Transport of Animals Amendment Rules 2009

Space requirement for transport of equines

Horses	Space in sq mtr
Stallion horses	2.25
Mares	2
Ponies	1.5
6 months to 12 months	1.4
12 months to 18 months	1.6
Over 18 months and upto 2 years	2
Mares with foal at foot (upto 6 months)	2.25

8. Transport of Goats and Sheep

Rule 65 Transport of Animals Rules 1978	(a) A valid health certificate by a qualified veterinary surgeon to the effect that the sheep and goats are in a fit condition to travel by rail or road and are not suffering from infectious or contagious or parasitic
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	disease shall accompany each consignment. (b) In the absence of such a certificate, the carrier shall refuse to accept the consignment for transport. (c) The certificate shall be in a form specified in Schedule – J.
Rule 66 Transport of Animals Rules 1978	Each consignment shall bear a label showing in bold red letters the name, address and telephone number (if any) of the consignor and consignee the number and type of sheep or goats being transported and quantity of rations and food provided.
Rule 67 Transport of Animals Rules 1978	(a) First-aid equipment shall accompany the sheep or goats in transit. (b) Suitable ramps shall be provided for loading and unloading the sheep or goats.
Rule 68 Transport of Animals Rules 1978	Sheep and goats shall be transported separately; but if lots are small special partition shall be provided to separate them.
Rule 69 Transport of Animals Rules 1978	Rams and male young stock shall not be mixed with female stock in the same compartment.
Rule 70 Transport of Animals Rules 1978	Sufficient food and fodder shall be carried to last during the journey and watering facility shall be provided at regular intervals.
Rule 71 Transport of Animals Rules 1978	Material for padding, such as straw, shall be placed on the floor to avoid injury if an animal lies down, and this shall be not less than 5 cm thick.
Rule 72 Transport of Animals Rules 1978	The animals shall not be fettered unless there is a risk of their jumping out and their legs shall not be tied down.

Rule 4 Transport of Animals Amendment Rules 2009 Space requirement for transport of sheep and goats

Approx weight of animal in kg	Space required in Sq. mtr.	
	Wooled	Shorn
Not more than 20	0.17	0.16
More than 20 but not more than 25	0.19	0.18
More than 25 but not more than 30	0.23	0.22
More than 30 but not more than 40	0.27	0.25
More than 40	0.32	0.29

Transport of Poultry (Transport of Animals Amendment Rules 2001)

Rule 77	(a) the container shall be properly cleaned and sterilised before the poultry is placed in them (b) poultry shall not be exposed to the sunlight, rain and direct blast of air during transport. (c) poultry shall not be transported when the temperature exceeds 25 degree Celsius or when the temperature falls below 15 degree Celsius.
Rule 78	Day-old chicks and turkey poults (a) chicks and poults shall be packed and dispatched immediately after hatching and shall not be stored in boxes for any length of time before dispatch. (b) chicks or poults shall not be fed or watered before and during transportation. (c) every effort shall be made to ensure that chicks and poults arrive as quickly as possible at the dispatching site (d) personal attention shall be given by the consignor or the forwarding agent to ensure that all consignments are kept out of direct sunlight, rain and heat; (e) care shall be taken to carry the boxes in a level position so that chicks are not in danger of falling over on to their backs and 11 The putting up of other merchandise over and around chick boxes shall be avoided.
Rule 79	Poultry other than day-old chicks and turkey poults (a) the poultry to be transported shall be healthy and in good condition and shall be examined and certified by a veterinary doctor for freedom from infectious diseases and fitness to undertake the journey. (b) poultry transported in the same container shall be of the same species and of the same age group (c) poultry shall be properly fed and watered before it is placed in containers for transportation and extra feed and water shall be provided in suitable troughs fixed in the containers. (d) arrangements shall be made for watering and feeding during transportation and during hot weather, watering shall be ensured every six hours; (e) male stock shall not be transported with female stock in the same container
Rule 80	Road Travel - In transport of poultry by road the container shall not be placed one on the top of the other and shall be covered properly in order to provide light, ventilation and to protect from rain, heat and cold air.
Rule 83	Containers for transportation - In transport of poultry by rail, road or air - (a) containers used to transport poultry shall be made of such material which shall not collapse or crumble and they shall be well ventilated and designed to protect the health of poultry by giving it adequate space and safety. (b) the containers shall be so designed as to render impossible for birds to crowd into the corners during transportation, and to avoid the danger of boxes being stocked so close together as to interfere with ventilation.

	(c) all the containers shall be clearly labelled showing the name, address and telephone number of the consignor and the consignee. (d) the minimum floor space per bird and the dimension of the containers for transporting poultry shall be as specified in the Table
Rule 84	Special requirement of containers for chicks and poults - In transport of poultry (a) wire mesh or a net of any material shall not be used as a bottom for the containers. (b) the container shall be properly secured to avoid pilferage (c) the following instruction shall be printed on a label and fixed to the lid or printed directly on sides, namely "Care in Transit". (e) poultry shall not be transported continuously for more than 6 hours and whole batch shall be inspected at every 6 hours interval. (f) the transportation shall not remain stationary for more than 30 min and during this period, it shall be parked in shade and arrangements shall be made for feeding and watering (g) all precautions against fire shall be taken and provision of fire extinguishers in transport shall be provided.

9. Transport of Pigs

Rule 87 Transport of Animals Amendment Rules 2001	(1) A valid health certificate by a veterinary doctor to the effect that the pigs are in a fit condition to travel by rail or road and are not suffering from infectious or contagious or parasitic disease shall accompany each consignment in the transport of pigs by rail or road. (2) In the absence of a certificate under sub-rule (1), the carrier shall refuse to accept the consignment for transport. (3) The certificate under sub rule (1) shall be in a form specified in Schedule K
Rule 88 Transport of Animals Amendment Rules 2001	Each consignment shall bear a label showing in bold red letters the name, address and telephone number (if any) of the consignor and consignee, the number and type of pigs being transported, and quantity of rations and food provided to them.
Rule 89 Transport of Animals Amendment Rules 2001	First aid - In transport of pigs by rail or road. (a) first-aid equipment shall accompany the pigs; (b) suitable ramps shall be provided for loading and unloading the pigs; (c) in the case of a railway wagon, when the loading or unloading is done on the platform the dropped door of the wagon shall be used as a ramp.

Rule 90 Transport of Animals Amendment Rules 2001	Group of pigs - In transport of pigs by rail or road, male young stock shall not be mixed with female stock in the same compartment.
Rule 91 Transport of Animals Amendment Rules 2001	Facility of food and water - In transport of pigs by rail or road, sufficient food and fodder shall be carried to last during the journey and watering facility shall be provided at regular intervals.
Rule 92 Transport of Animals Amendment Rules 2001	Padding of floor during travel - In transport of pigs by rail or road, material for padding, such as straw, shall be placed on the floor to avoid injury if an animal lies down, and this shall be not less than 5 cm thick.
Rule 93 Transport of Animals Amendment Rules 2001	Ban on fettering - In transport of pigs by rail or road, the animals shall not be fettered unless there is a risk of their jumping out and their legs shall not be tied down.

Rule 6 Transport of Animals Amendment Rules 2009

Type of animal	Maximum number of pigs (Road Vehicle)			
	Vehicle size 5.6m x 2.35m	Vehicle size 5.15m x 2.18m	Vehicle size 3.03m x 2.18m	Vehicle size 2.9m x 2.0m
Weaner	43	37	22	19
Adult	31	26	15	13
Young	21	18	10	9

OFFENCES AGAINST CAPTIVE ELEPHANTS

Prevention of Cruelty to Animals Act 1960
Wildlife Protection Act 1972
Indian Penal Code 1860 or

No person shall house, transport or exhibit an elephant except under the provisions laid down in law. Elephants are protected under Schedule I of the Wildlife Protection Act 1972

1. Committing mischief by killing, poisoning, maiming or rendering useless any elephant is a cognizable offence under Section 429 of the Indian Penal Code.
2. Illegal possession - Not having ownership certificate (Section 42 Wildlife Protection Act, 1972)
3. Illegal transport - If the elephant is being transported from one state to another, not having the transport certificate issued by the Chief Wildlife Warden. (Section 40, 43 (3) and 48A of Wildlife Protection Act)
4. Offering an elephant for sale (Section 48 of WPA)
5. Forcing injured, diseased or unfit elephants to work (Section 3 and 11 of PCA Act)
6. Using iron ankus (Section 3 and 11 of PCA Act)
7. Beating, kicking, over-driving, over-loading, torturing or treating any elephant in a cruel manner (Section 3 and 11 of PCA Act)
8. Not providing adequate veterinary care to a sick, injured or pregnant elephant (Section 3 and 11 of PCA Act)
9. Willfully and unreasonably administering any injurious drug or substance to an elephant to control elephants particularly to suppress musth without proper veterinary advice (Section 3 and 11 of the PCA Act)
10. Keeping for unreasonable time, an elephant chained or tethered upon an unreasonable short or unreasonably heavy chain or cord (Section 3 and 11 of PCA Act)
11. Abandoning an elephant (Section 3 and 11 of PCA and Section 42 of WPA)
12. Training or exhibiting or forcing an elephant to perform any act such as elephant rides for tourism purposes without the permission of Animal Welfare Board of India.
(Performing Animals Registration Rules, 2001).

1. Take photos and videos of cruelty/ offence.
2. Section 50 of WPA authorizes any police officer not below the rank of sub-inspector to arrest any person without warrant and detain him, if the arresting officer has reasonable grounds for believing that such person has committed an offence under the Act.
3. File a charge sheet before a judicial magistrate with evidence of cruelty in the form photographs and videos.
4. The police officer shall take a cognisance of the offence under PCA Act, WPA and Indian Penal Code confiscate the animal so as to provide necessary treatment and care to the elephant

10. OTHER COMMON OFFENCES AGAINST ANIMALS

Sr no	Offence	Action to be taken
1	Slaughter of Camels, rabbits, dogs, cats	Rule 3, Slaughterhouse Rules 2001 Camel is not listed as a food animal under the Food safety and Standards Act, hence cannot be slaughtered. Designated food inspector to be asked to destroy meat. Live animals to be seized. FIR to be drawn under Section 429 of IPC
2	Bull races	Sections 3, 11 and 22 of the Prevention of Cruelty to Animals Act Also banned by the Supreme Court of India
3	Animal Fights (buffaloes, dogs, cocks, bulbul etc)	Sections 3, 11 and 22 of the Prevention of Cruelty to Animals Act Also banned by the Supreme Court of India
4	Cow Slaughter	Provisions as per Special Acts made in each State
5	Breeding of dogs	Registration of each breeding dog must be done with the Animal Welfare Board of India. Rule 12, Animal Birth Control Rules 2001
6	Overcrowding of animals (e.g. in dairies, pet shops, poultry markets etc.)	Sections 3 and 11 of the Prevention of Cruelty to Animals Act 1960 If animals are injured or mutilated, Section 429 IPC may also be used
7	Selling Indian wild animals or body part of any Indian wild animal (tortoises, turtles, birds, frogs, parakeets,	Section 9, Wildlife Protection Act 1972

	leopard, tiger, snakes etc.)	
8	Animal Sacrifice (in any religious place on any festival)	No animal is allowed to be killed in any place other than a registered slaughterhouse. Section 3 and 11 of the Prevention of Cruelty to Animals Act, Rule 3 of the Slaughterhouse Rules 2001, Food Safety and Standards Act 2006
9	Killing of stray dogs by local authority (municipal corporation/municipality/panchayat/cantonment or any other)	Section 11 of the Prevention of Cruelty to Animals Act 1960 Section 429 of Indian Penal Code
10	A person not holding a valid degree from a Veterinary College, pretending to be a Veterinarian	Sections 3 and 11 of Prevention of Cruelty to Animals Act Sections 415 and 425 of Indian Penal Code
11	Transport/Capture/Relocation of Monkeys	Section 9, Wildlife Protection Act 1972 Transport of Animals Rules 1978 Cage specifications are detailed in the Rules. Permission of the Central Government is compulsory before female and infant monkeys can be transported.
12	Cruelty during transport of animals	Transport of Animals Rules 1978 Transport of Animals on Foot Rules 2001 Transport of Animals (Amendment) Rules 2001 Transport of Animals (Amendment) Rules 2009

13	Cruelty during capture of animals	Rule 3, Prevention Of Cruelty (Capture Of Animals) Rules, 1979 No animal can be caught except with a sack and loop method. Tranquilizer guns may be used to capture large animals which may be difficult to catch.
14	A monkey being made to 'dance' and beg for money	The government of India has prohibited the performance of Bears, Monkeys, Tigers, Panthers, Lions and Bulls. Therefore, it is illegal to use these animals for performances on the streets. The Performing Animal (Registration) Rules, 2001 under the Prevention of Cruelty to Animals Act 1960, mandates that every animal who is used for performance needs to be registered with the Animal Welfare Board of India but as the performance of monkeys is prohibited, the Animal Welfare Board of India does not register these animals for performance. All species of monkeys are protected under the Wildlife Protection Act, 1972. This act declares that all Indian wildlife is government property and thus prohibits the capture and possession of monkeys.
15	Parakeet Fortune Tellers /Snake Charmers	The Prevention of Cruelty to Animals Act 1960 and the Rules thereunder. The Wildlife Protection Act of 1972 and the Rules thereunder.
16	Unrecognized/Illegal Zoos or Deer Parks	Recognition of Zoo Rules, 1992. The said Rules besides the requirement of registration of zoos extensively prescribed the standards and norms subject to which recognition under Section 38 H of the Act is to be granted.
17	Animal Experimentation	The Prevention of Cruelty to Animals Act, 1960 governs the animal experimentation in

		the country. The Committee for the Purpose of Control and Supervision of Experimentation on Animals (CPCSEA) has been constituted under the provisions of the Prevention of Cruelty to Animals Act, 1960 and the rules framed thereunder. It is mandatory that all institutions that breed, conduct experiments on animals register themselves with the CPCSEA.
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14. COW SLAUGHTER LAWS

1	Andhra Pradesh Prohibition of Cow Slaughter and Animals Preservation Act, 1977	Section 5 – Total prohibition of slaughter of cow and buffalo calves or any buffalo that is likely to become economical (breeding or agricultural purposes) <i>Cognizable offence – Six months imprisonment or one thousand Rupees fine or both.</i>
2	Assam Cattle Preservation Act, 1950	Section 5 – Prohibition of slaughter of cows, calves, bulls, male and female buffaloes which are less than 14 years old, unless they are unfit for work or breeding. <i>Cognizable offence – Six months imprisonment or one thousand Rupees fine or both.</i>
3	Bihar Preservation and Improvement of Animals Act, 1955	Section 3 – Prohibition of slaughter of cows. Bulls and female buffaloes older than 25 years may be given written permission if they have become unfit for work or production. <i>Cognizable offence – Six months imprisonment or one thousand Rupees fine or both.</i>
4	The Chhattisgarh Agricultural Cattle Preservation Act, 2004	Section 4 – Prohibition of slaughter or cows, bulls, calves, male or female buffaloes. <i>Cognizable and Non Bailable Offence – Three years imprisonment or ten thousand rupees or both.</i>

5	The Delhi Agricultural Cattle Preservation Act, 1994	Section 4 – Prohibition of slaughter of cows, calves, bulls production. <i>Cognizable offence – Five years imprisonment and upto ten thousand Rupees fine.</i>
6	The Goa Animal Preservation Act 1995	Section 4 - Total prohibition of slaughter of cow and buffalo calves or any buffalo that is likely to become economical (breeding or agricultural purposes) <i>Cognizable offence – Three years imprisonment.</i>
7	The Bombay Animal Preservation Act 1954 (Applied to Gujarat)	Section 5 – Total Prohibition of the slaughter of cow, bull or calf. Prohibition on the slaughter of productive buffaloes (male and female) <i>Cognizable offence – Six months imprisonment or one thousand Rupees fine or both.</i>
8	The Jammu and Kashmir Ranbir Penal Code Samvat, 1989	Section 298 A - Total prohibition of the slaughter of cow, calf, bull. <i>Cognizable offence – Ten years imprisonment and fine</i>
9	The Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964	Section 4 – Prohibition of slaughter of cow, calf or she buffalo. (Section 5 provides for slaughter of unfit animals and those that are over 12 years of age after obtaining certificate from competent authority) <i>Cognizable offence – Six months imprisonment or one thousand Rupees fine or both</i>
10	The Madhya Pradesh Agricultural Cattle Preservation Act, 1959	Section 4 – Prohibition of slaughter of cow, calf, bull and calf of she buffalo. Prohibition of slaughter of any other cattle unless its 15 years of age or is unfit for production or use. <i>Cognizable offence – One year imprisonment or one thousand Rupees fine or both.</i>

11	The Maharashtra Animal Preservation Act, 1976	Section 5 – Prohibition on the slaughter of cows. Prohibition of slaughter of any other cattle unless its 15 years of age or is unfit for production or use. <i>Cognizable offence – Six months imprisonment or one thousand Rupees fine or both.</i>
12	Proclamation on the Prohibition of Cow Killing in Manipur Memo no 915 P, 15.10.1936	Cow slaughter prohibited.
13	The Orissa Prevention of Cow Slaughter Act, 1960	Section 3 - Prohibition on the slaughter of cows and calves. Prohibition of slaughter of any other cattle unless its 14 years of age or is unfit for production or use. <i>Cognizable offence – Two years imprisonment or one thousand Rupees fine or both.</i>
14	The Pondicherry Prevention of Cow Slaughter Act, 1968	Section 3 - Prohibition of the slaughter of cows and calves. Prohibition of slaughter of any other cattle unless its 15 years of age or is unfit for production or use. <i>Cognizable offence – Two years imprisonment or one thousand Rupees fine or both.</i>
15	The Punjab Prohibition of Cow Slaughter Act, 1955 (Applicable in Haryana and Himachal Pradesh as well)	Section 3 – Prohibition of the slaughter of cows, bulls, and calves. <i>Cognizable offence – Two years imprisonment or one thousand Rupees fine or both.</i>
16	The Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995	Section 3 – Prohibition of the slaughter of cows, bulls, and calves. <i>Cognizable offence – Upto ten years imprisonment or ten thousand Rupees fine or both.</i>
17	The Madras Livestock Improvement Act, 1940	Section 4 - Prohibition of slaughter of any other cattle unless its 10 years of age or is unfit for production or use. <i>Cognizable offence –Upto three years imprisonment or one thousand Rupees fine or both.</i>

18	The Uttar Pradesh Prevention of Cow Slaughter Act, 1955	Section 3 – Prohibition of the slaughter of cows, bulls, and calves. <i>Cognizable offence – Seven years imprisonment or ten thousand Rupees fine or both.</i>
19	The Uttarakhand Cow and Its Progeny Protection Act, 2007	Section 3 – Prohibition of the slaughter of cows, bulls, and calves. <i>Cognizable offence – Ten years imprisonment or ten thousand Rupees fine or both.</i>

SELF-ASSESSMENT QUESTIONS

1. Which are the animals that have been banned from being used as performing animals?
2. List down the steps in the registration of an animal as a performing animal.

Pet Shop- Licensing and Registration Norms

The Prevention of Cruelty to Animals (Pet Shop) Rules, 2018 have been enacted to ensure humane handling of pets and regulate pet trade. Pet animals, as defined under Rule 2(j), include dog, cat, rabbit, guinea pig, hamster, rodents, of the rat or mice category etc. Pet shop covers any shop or place where pet animals are sold or used, kept or exhibited for sale. This also includes online platforms through which the sale and purchase of a pet animal happens. Pet shop owner is any person who owns or has control over a pet shop. A person is required to obtain a certificate of registration in Form II to carry on or continue the business of sale or trade in pet animals or establish a pet shop engaged in exchange or purchase of pet animals. The person operating a pet shop needs to get the said registration certificate within sixty days of commencement of the rules. Every pet shop owner, under these rules, is required to display the said Certificate in the pet shop. The owner is required to keep the pet shop open for inspection by an Inspector authorised by the State Board or SPCA.

Only a major or a person of sound mind is eligible for registration. If the person is a corporation, company or other association, of persons, such an entity needs to be duly registered in accordance with law. The procedure for registration begins with the owner requiring to make an application for registration of pet shop as in Form I appended to the Rules. The owner is required

to provide all the information required along with depositing a fee of Rupees five thousand which is non-refundable. If the same owner opens a new pet shop elsewhere, he will have to do the registration for the same again. The owner is all required to produce an affidavit along with the registration application saying that he has fulfilled all the requirements stated in the application. The State Board may register the pet shop and grant a Certificate of Registration. This is followed by the board causing the shop to be inspected by an authorised veterinarian within a period of three months. The said Veterinarian is required to submit an Inspection report to the State Board which may, on being satisfied that the pet shop follows all the requirements as per the Rules, continue the registration. When the State Board does not permit the registration of pet shop due to one of the reasons mentioned Rule 4(9), the Board needs to inform the applicant about the same within thirty days of obtaining the Inspection Report. With respect to renewal, an application for the same has to be made thirty days before the existing license expires and the same procedure (as the first fresh registration) needs to be followed.

The Rules also provide specifications as to how the arrangements with respect to accommodation, infrastructure and housing need to be like in a pet shop so as to ensure the well-being of pet animals. It lays down conditions relating to ventilation, temperature, etc. It also outlines the mode of general as well as veterinary care that need to be given to these animals at pet shops under Rule 7. The Pet Shop Rules also contain provisions for non-compliance, inspections, complaints etc. A few interesting rules include the cancellation of license in the event of non-compliance to the rules after registration, maintaining of ‘mortality register’ and ‘health register’ by the pet shops, submission of annual report by the pet owner to the State Board etc.

SELF-ASSESSMENT QUESTIONS

1. What are the things that the RWAs cannot do to pet owners and pets? What facilities are accessible to pets?
2. What do you think could be the other reasons, than those mentioned above, for getting dog licenses?
3. What innovative ways can be devised to control dog population?

Animals in Slaughterhouses

Furthermore, the following Acts and Rules also regulate Slaughterhouses and Meat Shops.

- Prevention of Cruelty to Animals Act, 1960 [Relevant sections: Sections 3, 11 and 38.
- Prevention of Cruelty to Animals (Slaughterhouse) Rules 2001
- Performa for Ante and Post Mortem Fitness Certificates to be issued by the Veterinary Doctor after examining the animal before and after slaughter of animals as per Rule 4 (3) of the Prevention of Cruelty to Animals (Slaughter House) Rules 2001 [Relevant

documents: Letter from FSSAI to All Central Licencing Authorities and Commissioners of food safety of all States /UT's]

- Food Safety and Standards Act 2006 [Relevant sections- Section 63, 92]
- Food Safety and Standards (Licensing and Registration of Food Business) Regulations 2011 [Relevant regulations- Part IV]
- Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 [Relevant regulations- Regulation 2.5]
- Agriculture and Processed Food Product Export Development Authority (Amendment) Act 2009 [Relevant sections- Section 4 and section 12]
- Environment Protection Act 1986 [Relevant Sections- 6 & 25]
- The Environment (Protection) Rules, 1986 [Relevant Rules- Effluent Discharge Standards, S.No. 50]
- The Water (Preservation and Control of Pollution) Act, 1974 [Relevant Section 24, 25, 26, 27, 28 & 362-387 33B]
- The Municipal Solid Wastes (Management & Handling) Rules 2000 [Relevant Rules- 7, Schedule II- S.No.1(iii), 4, 5, 6, Form II Clause 6(ii)]

Also, most meat shops employ young children in the garb of training which can be prevented using Section 3 of the Child Labor Act 1986.

Illegal slaughter and trade of meat is a public nuisance under Section 268 of IPC and may also be covered under Section 269 of IPC for spreading infectious diseases. Roadside meat shops also flout the The Water (Prevention and Control of Pollution) Act 1974.

The slaughterhouses and meat shops are given licenses by the Food Safety and Standards Department. The FSS Designated Officer of every District is authorised to take action against unregistered slaughterhouses and meat shops and to regulate registered ones.

Salient provisions of the Food Safety and Standards (Licensing and Registration of Food Business) Regulations 2011

- Municipal Corporations are NOT licensing authorities anymore and all meat shops and slaughterhouses must have FSS license. (Section 89 of the Food Safety and Standards Act 2006)
- A separate license must be obtained for Slaughterhouse and a separate one for Meat Shops. Hence no animal can be slaughtered in a meat shop, not even poultry.
- Penalties for operating an unlicensed meat shop or a slaughterhouse are in Sections 63, 55, 56, 58 and 59 of the Food Safety and Standards Act 2006.
- Transport and slaughter of animals for slaughter (even poultry) has to be as per FSSA Regulations (licensing and Registration) 2011.

- No animal other than sheep, goat, bovines, pigs, poultry, fish are allowed to be slaughtered for food. It is illegal to slaughter rabbits, dogs, cats, camels etc.
- Ante Mortem and Post mortem examinations to be done by registered veterinary officers is mandatory as per the Slaughterhouse Rules 2001 and also the Food Safety and Standards (Licensing and Registration of Food Business) Regulations 2011. The format for such examination has been provided by the Animal welfare Board of India, and approved by the Supreme Court of India. The prescribed form is attached and must be followed by all registered slaughterhouses.
- Licensed slaughterhouses and meat shops are required to follow stringent norms listed in the Regulations 2011 and display the Registration Certificate prominently in the premises.
- Periodic inspections need to be conducted to ensure compliance. In case of non compliance, an Improvement Notice needs to be issued by the Food Safety Inspector and a re-inspection can be done. If the suggested improvement has not been made, then the license can be revoked.

The Prevention of Cruelty to Animals Act 1960 and Slaughterhouse Rules 2011 thereunder are implemented in the District by the Society for Prevention of Cruelty to Animals, the Chairman of which is the District Magistrate. Role of the District Magistrate are as follows:

- To instruct the Food Safety and Standards Designated Officer of the District to provide a list of registered and unregistered slaughterhouse and meat shop in the District.
- To form a Slaughterhouse Task Force, with the Food Safety Inspectors, District Police and representative of the Local authority.
- To instruct the Slaughterhouse Task Force to take the following action on unregistered slaughterhouses
 - Penalise the owner of the premises or any person/persons who are using the premises for running a Food Business without registration under the Food Safety and Standards Act 2006 and Regulations 2011
 - Seal the facility/building under Section 133 CrPC.
 - Lodge an FIR under Sections 429, 268 and 269 of the Indian Penal Code.
 - Seize any live animals/weapons that may be present at the unregistered slaughterhouse.

Please note: Any meat shop where poultry/goats/bovines are being slaughtered shall be deemed to be an unregistered slaughterhouse as per the Food Safety and Standards (licensing and Registration) 2011.

- To instruct the Slaughterhouse Task Force to take the following action on unregistered meat shops:
 - Penalise the owner of the meat shop for running a Food Business without registration under the Food Safety and Standards Act 2006 and Regulations 2011
 - Seal the facility/building under Section 133 CrPC.
 - Lodge an FIR under Sections 429, 268 and 269 of the Indian Penal Code.
 - Seize any live animals/weapons that may be present at the unregistered slaughterhouse.
 - If the meat shop is functioning from any facility constructed in an unauthorised manner, the shop may be demolished under Section 133 CrPC and under the Municipal Corporation Act if the area falls under a Municipal Corporation.

Please note: No license can be given by any Local Authority to run a meat shop or slaughterhouse.
- To regulate the licensed Slaughterhouses and meat shops through the Designated Food Safety Officer of the District must conduct an inspection and issue an improvement notice for all non-compliant actions. Thereafter, upon no improvement, the license may be withdrawn.
- To advertise in prominent regional newspapers for the public to inform the nearest police station if any meat shop fails to follow the rules.

Role of the Secretary, Urban Development, State Government

In compliance of the order dated 23.08.2012 of the Supreme Court in WP 309 of 2003, the Slaughterhouse Monitoring Committee has been created in every under the Chairmanship of the Secretary, Urban Development.

The following are the functions of the Slaughterhouse Monitoring Committee:

- To identify and prepare a list of all the Slaughter Houses located within the local self Govt (Municipal Corporations, Panchayats etc.)
- To call for reports from the District Magistrate or the Dy. Commissioner and District Food Safety Inspector as the case may be on the condition/functioning of the Slaughterhouses and also on the compliance of the relevant applicable laws.
- To recommend modernization of old slaughter houses (S.H.s) and to relocate S.H.s which are located within or in close proximity of a residential area.
- To recommend appropriate measures for dealing with solid waste, water/air pollution and for preventing cruelty to the animals meant for slaughter.

- To carry out surprise & random inspections of S.H.s regularly and to issue directions for compliance of the recommendations that may be made by it.
- To send bi-annual reports on the state S.H.s to the Central Committee and to refer issues that may require Central Committee recommendations or Central Govt. assistance.
- To accord final approval for licensing of Slaughtehouses to Local Self Govt.
- To identify on an ongoing basis, the unlicensed slaughter houses in the region, and other unlicensed, unlawful establishments where animals are being slaughtered, on howsoever a small scale, and take the help of the District Magistrate and other law enforcement agencies to crack down on the same.
- To check for child labour.

SELF-ASSESSMENT QUESTIONS

1. What is lairage? What are the different rules associated with it?
2. What are the steps, as provided in the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, that ensure the cleanliness of the slaughter process?

Society for Prevention of Cruelty to Animals (SPCA)

Society for Prevention of Cruelty to Animals (SPCA), generally speaking, is a name for various non-profit animal welfare organisations all over the world. Operating independent of each other, these organisations indulge in campaigning for animal welfare, help in cases of prevention of animal cruelty and assist in rehabilitation of animals. Each SPCA has its own set of policies with respect to how they function and what their principles are with respect to animals.

The Central Government brought out a notification in 2001 requiring every state to open up a SCPA in each district of a state and the land for the same is to be given by the state government. These SPCAs were supposed to be established under the Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001. The state government under this organisation would appoint a managing committee for the implementation of the provisions of PCA. These SPCAs were to come in every district within six months of the date of the commencement of the above said rule. However, this never materialised. Even to this day, only a few districts have SCPAs. For example, an SPCA was formed in Nagpur only in the year 2013 by the Nagpur Municipal Corporation (NMC).

SELF-ASSESSMENT QUESTIONS

1. What are SPCAs? How are they established?

Care and Maintenance of Case Property Animals

The Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 frames rules with respect to the care and maintenance of those animals which are subject to cases whose litigation is ongoing. Rule 3 states that when an animal has been seized as per the Act, the animal may be kept at an SPCA, Animal Welfare Organisation, Gaushala or Pinjrapole as directed by the Magistrate. The authority seizing the animal needs to ensure that health inspection, identification and marking of such animal is done through the veterinary officer at the Government Veterinary Hospital of the concerned jurisdiction. The marking has to be done by ear tagging or any other less harmful advance technology. Marking by hot branding, cold branding or other injurious methods is prohibited under these rules.

As per Rule 5, the Magistrate needs to find out from the organisation to which it gives the animal for custody as to the cost incurred in transport, maintenance and treatment of the said animal. The owner and the accused need to execute a bond along with sureties in this regard within three days. When a vehicle is known to have been involved in the offence, the vehicle will have to be given as security as directed by the Magistrate. In the case of a body corporate owning the case property animal, the CEO, President or highest-ranking employee of the Body Corporate, the body corporate and the accused shall be jointly and severally liable for the treatment, cost of transport and care of the animal. When it is the Government that owns the animal, the Head of the Department and the accused will be jointly and severally liable for the aforementioned aspects.

As per Rule 6, when the Investigating Officer knows that an offence under the Act has been committed but is unable to find out who the accused or the owner is, the local authority will take up the costs involved and it is considered that the owner has given up on the ownership of the said animal. Such a relinquishment of ownership does not take away the effect of any criminal charges against the owner or the unknown offender. According to Rule 8, if the accused is convicted or he pleads guilty, he will be deprived of the ownership by the Magistrate. The seized animal will be forfeited to the infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala. If he is not guilty of any charges, the seized animal will be returned to him. Further, the unused portion of the bond amount that he had executed will be returned to him. Rule 9 provides a detailed process for adoption of such animals. The animal shall be put up for adoption under this Rule once the animal has been forfeited to Animal Welfare Organisation, SPCA or the like. Each variety of animal has a different rule with respect to the undertakings and affidavits that need to be produced. The person adopting the animal can neither sell nor abandon the animal. The adopter is required to follow the State cattle protection and preservation law. The adoption will not be to the effect of creating an irrevocable right to the adopter. The Animal Welfare Organisation or the SPCA or the like can still inspect the animals given in adoption. If it

finds that the adopter is not providing sufficient care, the organisation can take back the possession. The adopter will only be a lawful guardian of the animal. So, he will not have any rights that is usually vested in the owner. But he has the duty to take all responsible measures to ensure the well-being of such adopted animals. The adopter will endeavour to prevent the infliction of any unnecessary pain or suffering upon the animal.

SELF-ASSESSMENT QUESTIONS

1. What are case property animals?
2. In whose custody does the animal stay when the litigation is going on?
3. Who will get the custody of the animal when the case is decided against the owner?

Dog Breeding and Marketing

The Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017 puts out the requirements that are to be met by the breeders and the establishments used for breeding with respect to health, housing facilities and conditions for sales.

A breeder is prohibited from breeding and selling dogs unless he has a certificate of registration for establishment being used for breeding and housing dogs. This establishment is open to inspection by any person authorised by the State Animal Welfare Board [hereinafter, State Board]. The breeder is required to make an application for registration to the State Board providing all the information and a fee of Rupees five thousand. Once the Board receives the application, it sends a team of representatives along with a veterinary practitioner to inspect the establishment. This team will submit a report to the Board which it will go through to check if the establishment complies with all requirements and then, issue the Certificate of Registration. The Second Schedule provides a list of all the standards and requirements that the breeder should follow. Along with this, the Board will also fix the maximum holding capacity of the establishment based on factors like available space, facilities etc. This Certificate will be valid for two years and has to be renewed after that period.

SELF-ASSESSMENT QUESTIONS

1. For how long is the certificate of registration for breeding valid?
2. What is the fee for registration?

Chapter 7

International Laws: CITES, CMS and CBD

International law refers to the body of rules, norms and standards commonly accepted and followed by countries in their relations with each other. International law thus establishes normative guidelines and a conceptual framework for states to follow along a broad range of domains, including war, diplomacy and trade. International law thus provides a way for states to practice organized and more stable international relations.

International law is starkly different from domestic or municipal law in a number of ways, the most important of those being the issue of enforceability. While municipal law is enforced upon the citizens by the coercive machinery of the state (for example, the state can punish individuals who do not abide by the law), there is no authority to enforce international law. International law depends on voluntary agreements and standards accepted by sovereign states, and the states are not bound to follow the norms and rules. A state may choose to act against the basic norms of international law or to violate an agreement it had voluntarily entered into, but usually such a violation is deterred by the international community through a variety of threats ranging from trade sanctions to military intervention.

The origins of international law can be traced back to treaties between warring states in the ancient civilizations, and the codes of conduct of soldiers during war. Modern international law is deemed to have emerged after the Treaty of Westphalia in 1648, which recognizes the sovereignty of a state as its essential characteristic. International law gradually developed over the next two and a half centuries through the works of scholars like Hugo Grotius and a number of treaties between the European states, but it received the first major boost after the 1st World War, when the bloodshed and the destruction led international leaders to come together and form the League of Nations, with the objective of maintaining peace and avoiding war. The Permanent Court of International Justice (PCIJ) was set up as one of the organs of the League, and aimed at adjudicating disputes between nations with reference to international law.

The League, however, failed in its mandate and soon the world was ravaged by the Second World War. After the war, the international community came together to form the United Nations Organization (“UN”) - a body far stronger and far more powerful than the League of Nations. The Permanent Court of International Justice was replaced by the International Court of Justice (“ICJ”) which became responsible for the interpretation of international law and its application to adjudication of disputes between nations.

Article 38 of the ICJ Statute lists the sources of international law as follows:

“Article 38

1. *The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:*
 - a. *international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*

- b. *international custom, as evidence of a general practice accepted as law;*
 - c. *the general principles of law recognized by civilized nations;*
 - d. *subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.*
2. *This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto."*

The sources of International Law thus are:

- a. International Treaties and Conventions:** Treaties refer to voluntary agreements which are entered into by nations. International treaty law comprises the obligations expressly and voluntarily taken by states upon themselves through treaties. A state may approve of a treaty and become a signatory when the treaty is signed by the representative of the state, but the treaty is not binding upon the state until it is ratified. In International Law, ratification defines the act in which a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. Usually a multilateral treaty or a convention is ratified by a country when its legislature approves of the treaty or convention.
- b. International custom as derived from the "general practice" of states:** Customary International law is derived from the consistent practice of States accompanied by *opinio juris*, i.e. the conviction of states that the consistent practice is required by a legal obligation. Judgments of international tribunals as well as scholarly works have traditionally been looked to as persuasive sources for custom in addition to direct evidence of state behavior.
- c. General legal principles "recognized by civilized nations":** Peremptory norms refer to the fundamental principles of international law from which no derogation is possible. These norms include prohibition of slavery, genocide, and apartheid etc., wars of aggression, territorial aggrandizement and refolement.
- d. Apart from these sources, judicial decisions and opinions of scholars are also a part of international law.**

Just as the WTO and its concomitant trade agreements have been instrumental to international trade, treaties and international organizations are capable of fostering international cooperation and concerted action in various areas, including those which can really make a difference. Over the years, a number of international agreements and conventions have been agreed upon by states with a view to promoting international cooperation in wildlife conservation.

International Wildlife Law

International Wildlife law refers to the collective body of international instruments that aim at the conservation of wildlife through the combined efforts of various states. It primarily includes five major conventions (known as the "Big Five"), a number of regional agreements, bilateral treaties and memoranda of understanding between states.

The Big Five Conventions In International Wildlife Law

I. The Ramsar Convention on Wetlands of International Importance

The Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat was signed in 1971 at Ramsar, Iran. It aims at the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world. The contracting parties to the convention are called upon to recognize the interdependence of humans and environment as well as the ecological functions of wetlands, such as wildlife habitat, nutrient cycling and flood control.

According to the convention, a wetland is considered to be internationally important if it supports vulnerable/endangered species, provides refuge to birds or animals during adverse conditions or supports a significant population of birds, fish or animals. The convention aims to ensure international cooperation to ensure that the natural ecosystem of internationally important ecosystems is preserved. As of May 2018, there were 2331 Ramsar sites across the world, covering a total area of 2.1 million square km.

The convention is ratified by 170 countries. In order to be a party to the convention, a country needs to have at least one Ramsar site. The Convention created the following bodies in order to monitor its operation:

- Conference of Contracting Parties(“COP”): The Conference of Parties is the governing body comprising the governments of all the contracting parties. It has the authority to amend the convention, create expert bodies, review progress reports of member nations and collaborate with international bodies and agreements. The COP meets once every 3 years to elect a Standing Committee – the last of such meetings (referred to as the COP13) took place in Dubai in October 2018.
- Standing Committee: The Standing Committee refers to the executive body which represents the COP between its triennial sessions.
- The Scientific and Technical Review Panel (“STRP”): The Scientific and Technical Review Panel provides guidance to the Standing Committee, the COP and the Secretariat on various scientific matters.
- The Secretariat: The secretariat is based at the headquarters of the International Union for the Conservation of Nature(“IUCN”) at Gland, Switzerland. It oversees and co-ordinates the day-to-day activities of the Convention’s activities.

The Ramsar Convention works closely with 6 International Organization Partners(“IOPs”)

- Birdlife International
- International Union for the Conservation of Nature(“IUCN”)
- International Water Management Institute(IWMI)
- Wetlands International
- WWF International
- Wildfowl and Wetlands Trust(WWT)

These IOPs participate regularly as observers in the Conference of Parties and as full members in the Scientific and Technical Review Panel. These organizations aid the Convention by implementing field studies, assisting in scientific research and providing financial support.

The World Wetlands Day is celebrated every year on 2nd February to mark the date of adoption of the Ramsar Convention and to promote awareness about Wildlife Conservation across the globe.

II. Convention on the Conservation of Migratory Species of Wild Animals

The Convention on the Conservation of Migratory Species of Wild Animals (CMS) is an international treaty concluded under the aegis of the United Nations Environment Programme (UNEP), aimed at the conservation of migratory species across the globe. Signed in 1979 in Bonn, the Convention (also known as the Bonn Convention) entered into force in 1983. The CMS is the only global and UN based intergovernmental organization established exclusively for the conservation and management of terrestrial, aquatic and avian migratory species throughout their range.

Article 2 of the Convention sets out the fundamental principles. The parties to the convention acknowledge the importance of migratory species being conserved and urges the “*Range states*”, i.e., the states through which the migratory species pass, to take steps in this regard, “*whenever possible and appropriate*”, “*paying special attention to migratory species status of which is unfavourable and taking individually or in cooperation appropriate and necessary steps to conserve such species and their habitat.*”. The parties also acknowledge the need to prevent any migratory species from being endangered.

Article 2(3) of the Convention states that the parties

- “(a) Should promote, cooperate in and support research relating to migratory species;
- (b) Shall endeavour to provide immediate protection for migratory species included in Appendix I; and
- (c) Shall endeavour to conclude AGREEMENTS covering the conservation and management of migratory species included in Appendix II.”

Appendix I to the convention lists migratory species that are threatened with extinction. CMS parties aim at preserving these species, trying to conserve the habitats in which they live and keeping a check on other factors that might threaten their survival. The CMS imposes a duty on its parties to afford the maximum protection to the species listed in appendix I and promotes concerted action among the Range states in this regard.

Appendix II lists migratory species that would benefit from concerted action by various states towards their protection. These species are the basis for regional or global agreements or memoranda of understanding aimed at their conservation and protection.

Agreements refer to formal instruments that the signatory states are bound by. A number of agreements have been concluded under the auspices of the CMS for the conservation and protection of particular species.

In addition, a number of Memoranda of Understanding (MOUs) have been concluded across the world aimed at the conservation of migratory species. MOUs are not as formal as the Agreements, and do not strictly impose any obligation on the states that enter into an understanding.

The implementation of the CMS is the responsibility of the following bodies:

Conference of Parties: The Conference of Parties is the CMS' decision making body. It meets triennially and discharges its functions in accordance with Article VII of the constitution. Its functions include reviewing the implementation of the CMS, adopting budgets, resolutions and recommendations, amend Appendix I or II and so on.

Standing Committee: Established by resolution 1.1 of the Conference of Parties, the Standing Committee serves as the interim executive of the CMS between the triennial meetings of the COP. The Standing Committee ensures that decisions are implemented and monitors the budget and performs any other task as may be assigned to it by the COP. The committee usually meets annually.

Secretariat: Based in the UN Campus at Bonn, the Secretariat under the auspices of the UNEP provides administrative support to the CMS.

According to Art.6(3) of the convention, parties which are Range States for migratory species listed in Appendix I or II are bound to inform the CoP through the Secretariat, at least six months prior to each ordinary meeting of the Conference, on the measures that they are taking to implement the Convention for these species

III. Convention on the International Trade in Species of Wild Fauna and Flora

The Convention on the International Trade in Species of Wild Fauna and Flora("CITES"), also known as the Washington Convention is one of the largest and oldest conservation agreements in use. It is a multilateral treaty drafted as a result of the results of the 1963 conference of the International Union of the Conservation of Nature (IUCN). The convention was opened for ratification in 1973 and became effective from July 1, 1975.

The convention is aimed at ensuring that international trade in specimens of wild flora and fauna do not threaten the survival of the species in its wild habitat and accords varying degrees of protection to above 35,000 species of animals and plants. The Secretariat of the General Agreement on Tariffs and Trade (GATT) was consulted during the drafting process to ensure that the convention does not violate the GATT.

Participation in the CITES is voluntary and countries that have ratified the convention are referred to as parties. CITES does not prevail over national laws but requires the parties to the convention to frame laws in accordance with CITES. Most countries that have ratified the convention, however, lack such domestic legislation or have laws that prescribe punishments not commensurate to the gravity of the crimes and do not serve as effective deterrents to the trade in endangered species protected by the CITES. As of 2002, 50% of the parties to the

CITES do not fulfill the four requirements to become a party: designation of Management and Scientific Authorities; laws prohibiting the trade in violation of CITES; penalties for such trade; laws providing for the confiscation of specimens.

Although the Convention does not specify what kind of action is to be taken against a party in case of noncompliance, the practice over the years has resulted in several ways of dealing with violation of the convention by parties. Infractions may include negligence with regards to the issue of permits, excessive trade, inefficiency in enforcement and failure to produce annual reports. When informed of an infraction by a party, the Secretariat will inform the other parties about it, will give the accused party time to respond to the allegations and may provide technical assistance to prevent further infraction. Other actions the Convention itself does not provide for but that derive from subsequent COP resolutions may be taken against the offending Party. These include:

- Mandatory confirmation of all permits by the Secretariat
- Suspension of cooperation from the Secretariat
- A formal warning
- A visit by the Secretariat to verify capacity
- Recommendations to all Parties to suspend CITES related trade with the offending party^[5]
- Dictation of corrective measures to be taken by the offending Party before the Secretariat will resume cooperation or recommend resumption of trade

Infractions may also be checked by bilateral sanctions on the basis of national legislation.

The activities of the Secretariat and the Conference of Parties comes from a Trust Fund derived from party contributions. This fund, however, is not available to the parties to improve implementation or compliance. All activities outside secretariat activities, such as training or species-specific programmes like Monitoring the Illegal Killing of Elephants (MIKE) must find external donors, mostly from donor countries.

The text of the convention had been finalized after a meeting of the representatives of 80 countries at Washington D.C. in 1973. It was open for ratification until 31 March 1974 and entered into force on 1 July 1975 after it was ratified by 10 signatory countries. By 2003, all the signatory countries had ratified the convention.

An amendment to the text of the Convention known as the Gaborone amendment allows Regional Economic Integration Organizations (REIO) to become party to the convention in the same manner as states. The REIO can vote in the COP with the number of votes representing the member states but does not have a vote of its own.

CITES protects roughly 5000 species of plants and 29000 species of animals from being over-exploitation through international trade. Each species is listed in an appendix that reflects the degree of threat to the species and the controls that are applicable to its trade.

Species may be split-listed, i.e., some populations of a species may be on one list while some may be on another. For example, all populations of the African elephant are listed in appendix I except that in Botswana, Namibia, South Africa and Zimbabwe.

The inclusion of a species into an appendix or its deletion from the appendix is decided at the meetings of the Conference of Parties which meets once every three years. Species in the Appendices may be proposed for addition, change of Appendix, or de-listing (i.e., deletion) by any Party, whether or not it is a range State and changes may be made despite objections by range States if there is sufficient (2/3 majority) support for the listing.

Appendix I lists around 1200 species that are threatened with extinction and are or may be affected by international trade. Commercial transactions in the wild-caught specimens of these species is illegal. **Captive-bred and cultivated specimens of the species listed in appendix I are considered appendix II specimens and have concomitant requirements.** Any trade in these species requires a permit from the exporting country, and the exporting country is also expected to check that an import permit has been secured.

Notable examples of Appendix I species include the red panda (*ailurus fulgens*), Western gorilla (*Gorilla gorilla*), African bush elephant (*Loxodonta Africana*), Asiatic elephant (*Elephas Maximus*), Asiatic lion (*Panthera leo persica*) etc.

Appendix II includes around 21000 species that are not faced with extinction but may become so unless trade in specimens of these species is compatible with the survival needs of these species in the wild. International trade in these species can be authorized by granting an export permit or a re-export certificate and no import permit is required under CITES.

Examples of species listed in Appendix II include the Hartman' s zebra (*Equus zebra hartmannae*), the emperor scorpion (*Pardinus imperator*), bigleaf mahogany (*Swietenia macrophylla*) and lignum vitae ironwood (*Guaiacum officinale*).

Appendix III includes about 170 species that have been listed after one member country has asked for assistance in controlling trade in the species. The species may not be threatened with extinction globally. In all member countries, trade in these species is only permitted with an appropriate export permit and a certificate of origin from the state of the member country who has listed the species.

Examples of species listed in appendix III and the country which listed them are Two-toed sloth (*Chloepus hoffmani*) by Costa Rica, African civet (*civettictis civet*) and alligator snapping turtle by the US.

The Conference of Parties("COP") meets once every three years while the different committees - Animals committee, plants committee, Standing committee meet around once a year.

IV. Convention on Biological Diversity

The Convention on Biodiversity(CBD), commonly known as the Biodiversity Convention, is a multilateral treaty with three main goals - the conservation of biological diversity (or biodiversity), the sustainable use of its resources and the equitable sharing of benefits arising from genetic resources.

The objective of this convention is to develop national strategies for the conservation and strategic development of biological diversity. It is often considered one of the most important documents on sustainable development. It was opened for signing at the Earth Summit at Rio de Janeiro on June 5, 1992 and entered into force on December 29, 1993.

The convention has two supplementary agreements - the Cartagena Protocol and the Nagoya Protocol. **The Cartagena Protocol on Biosafety to the Convention on Biological Diversity** imposes restrictions on the movement of Living Modified Organisms(LMOs) resulting from modern biotechnology from one country to another. It was adopted on 29 January 2000 as a supplementary agreement and came into force on September 11,2003.

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization(ABS) to the Convention on Biological Diversity was adopted in Nagoya, Japan on 29 October, 2010 and entered into force on 12 October, 2014 to ensure the fair and equitable sharing of genetic resources across the world. The Nagoya protocol provides a transparent legal framework for the effective utilization of one of the three objectives of the CBD - the equitable sharing of benefits arising out of the utilization of genetic resources.

The Convention recognized for the first time in international law that the conservation of biological diversity is “a common concern of humankind” and is an integral part of the development process. The agreement is broad, encompassing all ecosystems, species and genetic resources. It blends the traditional idea of conservation with the economic goal of sustainable use of resources and also has provisions for the free and equitable sharing of the benefits arising out of the use of genetic resources, especially those designed for commercial use. **The Convention on Biodiversity is legally binding - countries that are parties to the convention are obliged to implement it.**

All attempts at conservation before this convention aimed at protecting particular species or species. The CBD recognized for the first time that resources are not infinite and brought in the idea of sustainable development, pointing out to the world that steps should be taken to ensure that the exploitation of the natural resources does not lead to the long - term decline of biological diversity.

The convention is based on the **precautionary principle**, i.e., when there is a threat to biodiversity, measures to avoid or minimize the threat should not be postponed merely because there is no scientific certainty. The convention acknowledges that the parties need to incur huge expenditure to preserve biodiversity as mandated by the Convention but contends that such preservation will be beneficial to all of mankind in the longer run. The Convention established the following international bodies to ensure its maintenance:

- Conference of Parties: It is the governing body of the convention comprising the various governments and regional organizations that have ratified the convention. It is the ultimate authority under the act that reviews progress reports, identifies new priorities and sets work plans. The COP can also make amendments to the convention, create expert advisory bodies and collaborate with other international bodies.
- Secretariat: The CBD secretariat based in Montreal; Canada works under the auspices of the United Nations Environment Programme (UNEP). Its functions are to organize meetings, draft documents, assist member governments in the implementation of the programme of work, coordinate with other international organizations, and collect and disseminate information.
- Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA): It is a body comprising experts from the governments of various member states. It makes recommendations to the COP on scientific and technical matters.
- Subsidiary Body on Implementation (SBI): In 2014, the Conference of the Parties to the Convention on Biological Diversity established the Subsidiary Body on Implementation (SBI) to replace the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention. Its main functions are: (a) review of progress in implementation; (b) strategic actions to enhance implementation; (c) strengthening means of implementation; and (d) operations of the convention and the Protocols.

The first meeting of the SBI was held on 2-6 May 2016 and the second meeting was held on 9-13 July 2018, both in Montreal, Canada. The third meeting of the SBI will be held on 25-29 May 2020 in Montreal, Canada.

Article 6 of the Convention envisages the implementation of the convention at the national level through the National Biodiversity Strategies and Actions Plans (NBSAPs). The convention requires parties to prepare a National Biodiversity Strategy and to implement the same through the planning and activities of all those sectors which have an impact on biodiversity. Till 2002, 173 parties had an NBSAP. In accordance with article 26 of the convention, every member state is expected to submit its progress report. As of 2016, the Convention has 196 parties - 195 states and the European Union.

UNESCO World Heritage Convention

The UNESCO World Heritage Convention brings together the conservation of cultural heritage and nature. The Convention recognizes the way in which people interact with the environment and emphasizes on the need to maintain a balance between the needs of the society and conservation of the nature.

The idea for protecting heritage began to gain ground soon after the First World War. The 1972 Convention concerning the Protection of the World Cultural and Natural Heritage developed from the merging of two separate movements - one dealing with the preservation of cultural sites, and another dealing with the conservation of nature.

The movement for the protection of cultural heritage received a boost with the decision to rebuild the Aswan Dam in Egypt when it was feared that the Abu Simbel temples, the treasures of the Egyptian civilization would be flooded. In 1959, after an appeal from Egypt and Sudan, UNESCO launched an international campaign - archaeological research in the areas to be flooded was accelerated. Moreover, the temples at Abu Simbel and Philae were dismantled, moved to dry ground and reassembled.

The campaign cost about US\$ 80 million, around half of which was contributed by 50 countries, thus engaging the international community in the preservation of heritage. This campaign led to similar campaigns to conserve the Venice Lagoon area in Italy, the remains of Mohenjodaro in Pakistan, and restoring the Borobodur Temple Compounds in Indonesia. Soon afterwards, the UNESCO began working towards a draft convention on the protection of cultural heritage with the help of the International Council on Monuments and Sites (ICOMOS).

Linking the idea of preservation of cultural heritage with conservation of the environment came from the US. At a White House Conference in 1965, the US called for the establishment of a World Heritage Trust that would encourage international cooperation to protect *“the world’ s superb natural and scenic areas and historic sites for the present and the future of the entire world citizenry.”* Three years later in 1968, the International Union for the Conservation of Nature(IUCN) also proposed a similar initiative to its members. The proposals of the IUCN were presented at the 1972 UN Conference on Human Environment at Stockholm.

After much discussion, representatives of various states agreed upon a single text and on November 16, 1972, the Convention regarding the Protection of World Cultural and Natural Heritage was adopted by the General Conference of the UNESCO. On the same date, the conference also adopted the Recommendation concerning the Protection, at the National Level, of the Cultural and Natural Heritage. The criteria for considering something as natural heritage are:

- "contains superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance"
- "is an outstanding example representing major stages of Earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features"
- "is an outstanding example representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems, and communities of plants and animals"
- "contains the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened

species of outstanding universal value from the point of view of science or conservation"

UNESCO recognition as a world heritage site or a heritage of universal value means that these highly sensitive heritage is to be protected under the Law of War and under international law. The Convention has been ratified by 193 parties - including all 189 members of the United Nations, plus the Cook Islands, Niue and the State of Palestine.

The expenditure of identifying and conserving world heritage sites comes from the World Heritage Fund - annually about \$ 4 million is made available to the parties in order to protect and preserve natural and cultural heritage. Emergency assistance may also be made available for urgent action to repair damage caused by human-made or natural disasters. In the case of sites included on the **List of World Heritage in Danger**, the attention and the funds of both the national and the international community are focused on the conservation needs of these particularly threatened sites.

Apart from these five major conventions, international wildlife law includes a variety of treaties and conventions with specific scope, dealing with particular species or particular regions. Examples include the International Convention on the Regulation of Whaling("ICRW) and the Convention on the Conservation of Antarctic Seals. Bilateral treaties such as the Mexico-United States Convention for the Protection of Migratory Birds and Game Mammals and Memoranda of Understanding between countries with a view to the conservation of wildlife also form an important part of international law aiming at conservation of wildlife.

Limitations of International Wildlife Law

The problems of international wildlife law arise primarily from the very structure of international law. The voluntary commitment made by a sovereign state is an international legal order that lacks an executive or a judiciary to enforce the law makes it impossible to see that the commitments made by the states are fulfilled. Broadly proclaimed intentions to halt and reverse biodiversity loss have often proven impossible to achieve in practice. Compliance is generally imperfect - implementation and enforcement failures affect even the most sophisticated legal instruments. Ideological differences between treaty parties pose another challenge - the recurrent debate within CITES over the relative weight to be given to strict protection versus sustainable use of rhinoceroses and elephants is such an example.

Any effective international legal instrument must include clear and adequate commitments, attract a substantial number of parties, and ensure an adequate degree of compliance. International treaties and conventions vary in the degree to which they meet these criteria. Wildlife treaty negotiations are invariably affected by the apparent tension between attracting sufficient parties and the other two criteria, and many treaty texts reflect ensuing compromises.

Although nearly all states in the world quickly ratified the CBD, most of its obligations are diminished by the qualification that they be fulfilled “*as far as possible and as appropriate.*” Moreover, the convention lacks effective mechanism to ensure compliance. Several treaties cater to country-specific exceptions by allowing *reservations*, a process whereby a state, when it becomes a party or when a new obligation is adopted, limits the scope of the treaty *vis-à-vis* that state—such as the reservation to the zero quota for commercial whaling lodged by Iceland upon re-joining the ICRW in 2002 and the reservations regarding wolves (*Canis lupus*) filed by 14 Bern Convention parties.

Essentially, international law cannot accomplish more than what the world's diverse and changeable national administrations, and the societies that they represent, want it to—or are capable of realistically implementing. The less-than-satisfactory contribution of international wildlife law to addressing biodiversity loss reflects at least partially an overall reluctance of governments and societies to impose long-term and enforceable constraints on economic development and other human ambitions.

International Wildlife Law A Complete Failure?

Although international law is not binding and is often not implemented sincerely, it serves as a moral compass, reminding governments and the public of their commitments to conservation.

International legal instruments have produced many positive conservation outcomes, including:

- a. the designation of protected areas pursuant to international obligations;
- b. similarly instigated national legislation regulating wildlife exploitation;
- c. enhanced priority for conservation issues on governments’ agendas;
- d. incorporation of technical guidance adopted by COPs and other treaty bodies into national action plans and legislation;
- e. coordinated collection of data;
- f. increased cooperation among and between governmental and nongovernmental stakeholders;
- g. direct assistance to conservation initiatives through treaties’ funding mechanisms; and
- h. many instances in which harmful developments were blocked or particular conservation actions taken when governments were confronted with their international obligations in national or international court proceedings or through compliance mechanisms.

For example, CITES contributes substantially to the conservation of species whose survival in the wild is threatened by trade – the population of jaguars in South America improved after CITES put a ban on the trade in their pellets. Other agreements like the Agreement on the Conservation of African-Eurasian Migratory Water-birds (AEWA) and the Bern Convention on the Conservation of European Wildlife have proved to be successful instruments towards the conservation of wildlife.

SELF-ASSESSMENT QUESTIONS

1.
 - a. How does international law contribute to the conservation of wildlife?
 - b. What are its limitations?
 - c. How do you think such limitations can be overcome?
2. Write a short note on the Ramsar Convention 1971.
3.
 - (a) Explain the varying degrees of protection provided by the Convention on International Trade in Endangered Species (CITES) to the species listed in different appendices.
 - (b) Particular community in the country X has a long tradition of using lion skin for medicinal purposes, and hunting Asiatic lions (*Panthera Leo Persica*) is very common in the Northern part of the country where this community resides. After X ratified the CITES in 2001, it introduced domestic laws prohibiting trade in lion skin. The laws also empowered the authorities to confiscate any lion skin found in the possession of the traders. Taking into consideration the popular demand for lion skin and out of respect for the long standing tradition of using lion skin for medicinal purposes, the state did not introduce any punishments for anyone involved in such trade.
 - i. Is X fulfilling its obligations under the CITES?
 - ii. If not, explain what steps can be taken against X to ensure compliance with the convention.
4.
 - (a) Discuss the importance of the Convention on Biological Diversity in the preservation of wildlife.
 - (b) A country XYZ is a party to the CBD. The government of XYZ is planning to build a dam in the basin of river Dragon flow in an attempt to provide irrigation facilities to the farmers and provide water supply to two steel plants. However, there are concerns that construction of the dam may cause an irreversible damage to the biodiversity in the river valley - there is no certainty that such a damage will take place and there is no unanimity in the scientific community on this issue. The government has decided to carry out its plan and to construct the dam as no scientific authority can show that the damage will definitely happen as a result of the construction of the dam. Is the decision of the government to construct the dam in accordance with the CBD? Explain.

Taking into account the increasing threats to big cats in the wild, the international community drafted a convention on the protection of Wild cats. The Convention required all the parties to the convention to ensure that the species in question have sufficient resources such as food and water to survive in their natural habitat and to prohibit poaching

X, a country in Sub-Saharan Africa, suffered an extreme drought in which a huge percentage of its population perished, and the preservation of big cats would involve huge expenditure by the state. Would X be liable to sanctions for not complying with its obligations with the CBD?

5. Distinguish between signatory to a convention and party to a convention? Are both signatories and parties to a convention bound by it? Explain.

Chapter 8

Case Laws

MAJOR ANIMAL LAW CASES DECIDED BY INDIAN COURTS

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1. People for Ethical Treatment of Animals Vs. Union of India

(Bombay High Court; decided on 22nd August, 2005)

Open Source Link:

SUMMARY: The Bombay High Court that was reported with a similar title, where it was held that:

"The Central Board of Film Certification shall hereafter in all cases where an applicant for certification of a film for public exhibition states that an animal has been used in the shooting of a film, require the production of a certificate from the Animal Welfare Board of India certifying that the provisions of the Performing Animals (Registration) Rules, 2001, have been complied with. Such a certificate shall be filed with the application for certification of a film for public exhibition and, in any event, before the film is certified for public exhibition."

Therefore, a film wishing to use an animal, needs to obtain a No Objection Certificate from the Animal Welfare Board of India as pre-requisite for certification from the Central Board for Film Certification.

Pursuant to this judgment, the Ministry of Information and Broadcasting (through its Committee of Experts)⁵¹ explains the current process as follows:

In consonance with the Prevention of Cruelty to Animals Act, 1960 and Performing Animals (Registration) Rules, 2001 and also Bombay High Court Judgement in WP No. 2490/2004, PETA Vs. UoI & Ors. Dated 22.08.2005, CBFC Section 5 B of the Cinematograph Act, 1952 prescribes principles for guidance in certifying films. The guidelines issued thereunder, stipulates among other things, the following in respect of use of animals in films – requires the applicants to furnish a No Objection Certificate (NOC) from the AWBI for certification of films in which performing animals have been used. AWBI is a statutory and advisory body under the Ministry of Environment & Forests.

Sub Rule 3 (bb) of Rule 21 (3) introduced in 1997 of the Cinematograph (Certification) Rules, 1983 stipulates:

"Every such application shall be accompanied by

A declaration made in writing by the producer of the film declaring that no cruelty was caused to the animals used during shooting of the films produced in India " .

"Scenes showing cruelty to or abuse of, animals are not presented needlessly " . For issuing a NOC, AWBI screens the submitted application in two stages under "Performing Animal (Registration) Rules, 2001

⁵¹ https://mib.gov.in/sites/default/files/REPORT_OF_COMMITTEE_OF_EXPERTS_-_Phase_II.pdf

Stage 1- Pre-shooting Permission: -

The applicant has to apply in a prescribed format, giving details of the story line, sequences where animals are to be used, complete justification for using animals, fitness certificate and relevance of using animal for obtaining pre-shoot permission.

Stage 2 - No Objection Certificate (NOC): -

After obtaining the pre-shoot permission, the applicant has to adhere to the conditions/guidelines and after completion of the shooting of the film, the producer has to send two CDs of the film to AWBI for viewing.

Based upon the screening report, AWBI either issues or denies a NOC to the applicant.

The AWBI has at present an office only at Chennai which puts the producers from other parts of the country to hardship and difficulty in getting the NOC. The Committee was of the view that there is a need to bring about further clarity and simplification of the process to allow film producers the operational flexibility that is critically required in any film project. Besides, a better and comprehensive definition of “performing animals” is needed.

2. Shri. Ajay Madhusudan Marathe Vs. New Sarvodaya Cooperative Housing Society Ltd.

(Maharashtra State Consumer Disputes Redressal Commission; decided on 25 November, 2008)

Open Source Link:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwjuiivuJlc3iAhUS4HMBHaoJA0kQFjABegQIAxAC&url=https%3A%2F%2Fjaagrutiindia.files.wordpress.com%2F2010%2F08%2Fshimu-consumer-court.doc&usg=AOvVaw2Wx341EIGN6Nr5KTqas7kW>

SUMMARY: The Consumer Court ruled in favour of a resident who complained that the cooperative housing society in which he resided had passed a resolution preventing dogs from making use of the building's lifts. The society passed this resolution on the basis that the dog was not a consumer and his usage of the lift could result in the spread of diseases and hence could be disallowed from using the society's facilities. To this, the Court declared that the owner, being a member of the cooperative housing society, was a consumer and hence, was well within his rights to bring his complaint to the Consumer Court. In addition, the dog bore a valid Kennel Club of India licence, was registered with the Municipal Corporation and had been issued a Health Certificate by the Bombay Veterinary College. This ruling reiterated

that residents couldn't be prevented from having pets and those pets were not to be banned from using lifts.

On the point of whether or not the dog can be said to be a "consumer" within the definition provided under the Consumer Protection Act 1986, the Consumer Court noted in the negative as follows:

"It is pertinent to address the objections raised by the Society. As per society, it is out of purview of this forum as Dog is not a consumer of the society, as no separate charges are levied by society. Complainant is defaulter. The forum is of the view that society is registered co op housing society, and that complainant is member of the society .He pays the Maintenance charges to society .If the complainant is defaulter, the society is free and has recourse to act so as to recover the amount. But as a member of the co op society, the complainant is definitely eligible to lodge a complaint with this forum regarding deficiency in service & he is consumer of the society as per section 2 (1) (d) of the consumer protection act. In this matter, whether the dog is a consumer of the society is not a pertinent point, and only the point to be checked is whether the complainant is consumer of the society. Hence the arguments put forward by the society are being rejected since the forum does not find any substance in it."

However, it nonetheless noted the characteristics of the particular dog in question as follows:

"On merits, forum has observed that the complainant is a resident of the building for a long time. The society is registered in 1982. Complainant has valid license for the dog issued by the Navi Mumbai Municipal Corporation. The dog is staying in this building with the complainant for the last 11 years. The dog is now old & is suffering with osteoarthritis. Complainant stays on top floor of the society & hence it is very difficult for the dog to use the stair case. Complainant has attached a certificate from the Bombay veterinary college dated 16/6 /2008 along with his complaint. This certificate states the following very clearly "...on clinical examination he is apparently healthy except he has acrylic dermatitis at the right metatarsal region (hind limb) wound at the left elbow. However he has no infections or contagious disease and is fit to keep at home. Since the dog is aged 11 years and having osteoarthritis he should be allowed to use lift of society. He has already been vaccinated against Antirabies, DHLPPi Corona which are valid upto May 2009 ..."

Further, the Consumer Court adopted a sympathetic view of the dog in question with the following observations and directions to the housing society:

"Taking into consideration the age & health of the dog, the complainant must be allowed to use the lift for the dog. But the society without any justifiable reasons prevented the complainant from using the lift for his dog. Even after getting the certificate about dog's health from the authorities the society refused to allow the lift to be used for the movement of the dog. The forum feels this is deficiency in service by the society as per section 2(1) (g) of the consumer protection act. Society must allow the lift to be used for the movement of dog henceforth. Complainant should use the lift of the society for the movement his dog when no

other person other than his family member is present in the lift. In case the dog urinates and/or dirties the premises of the society in any manner the responsibility of cleaning up will be with the complainant.”

It also ordered the payment of compensation as follows:

“An old dog could not use the lift of the society. Complainant & his family went thru mental agony & suffered. Since the deficiency in service by the society is responsible for this suffering , complainant is entitled to get Rs. 3,000/- compensation from the society. Not only that but since the society did not look into the complaint of the complainant properly, the complainant had to approach the forum. He had to take help of a lawyer. The forum feels the complainant is entitled to get Rs. 2,000/- towards legal expenses from the society.”

3. Ozair Hussain Vs. Union of India

(High Court of Delhi; decided on 13 November, 2002)

Open Source Link: <https://indiankanoon.org/doc/295123/>

Citations: AIR 2003 Delhi 103, 101 (2002) DLT 229

SUMMARY: Taking cognizance of the freedom of expression as enshrined in Article 19(1) of the Constitution of India as well as Article 10(2) of the International Covenant on Civil and Political Rights (ICCPR), the Delhi High Court declared that the packaging of products including food, drugs (except those that are life-saving) and cosmetics must contain information regarding the items’ vegetarian or non-vegetarian origins. Any article of food that contains whole or part of an animal, but not including milk or milk products as an ingredient, must be identified by a brown circle within a square outline. Likewise, all vegetarian food is to be identified by the presence of a green circle within a green square outline. The rationale behind this judgement was that a citizen’s freedom of expression also extended to his/her food choices and hence, this ruling would enable citizens to make informed choices about the products they consume.

From the standpoint of *locus standi* (a technical doctrine employed to determine who can approach a court to avail a legal remedy) in a Public Interest Litigation, the following observations of the Court about the petitioner are relevant:

“The petitioner claims to be an animal welfare volunteer and a member of several animal welfare organisations. He is also stated to be a conscientious objector to be consumption and use of animals and their derivatives for food, cosmetics and drugs. It has been highlighted in the petition that more than 60% of the people of this country

are vegetarians and over 50% of them are illiterate and large number of them cannot read or write English. It is urged by the learned counsel for the petitioner that there should be complete disclosure of constituents of cosmetics and food products and that such products should bear an easily recognisable symbol conveying the origin or ingredients of the products, whether vegetarian or non-vegetarian, so that both literate or illiterate consumers can make an informed choice before selecting the products. He pleads that Articles 19(1)(a), 21, 25 of the Constitution as also the Preamble to the Constitution mandates disclosure of information. ”

The Court ruled as follows:

“In so far as food products are concerned, adequate provisions have been made for informing the consumers as to whether or not the article of food is vegetarian or non-vegetarian. As regards drugs and cosmetics, necessary amendments have not been made in the relevant statutes. In so far as a life saving drug is concerned, there is a view point that the information: whether or not it is derived or manufactured, wholly or partly, from an animal, should not be disclosed since it is meant to fight disease and save life. In other words, a patient, who is suffering from serious ailment, which can be fatal if a life saving drug is not administered to him, need not be informed in his own interest as to whether or not the drug contains part of any animal as it is conducive to preservation of life and, therefore, in tune with Article 21 of the Constitution. this also means that he should not have a choice in the matter of administering life saving drug to him. In many cases patients are unconscious and they have to be put on life saving drugs. In any event they cannot exercise an informed choice in the matter of selection of such drugs. In the circumstances, therefore, the aforesaid view must prevail in case of life saving drugs. This limited exception will apply only to life saving drugs. It needs to be clarified that all drugs do not qualify for being treated as life saving drugs. Drugs which are not life saving drugs must stand at par with the food products and in case they are derived from animals, whether in whole or in part, the consumers must be informed. ”

After this judgment,⁵² the Food Safety and Standards Authority of India (FSSAI) provides for separate packaging and labeling regulations known as Food Safety and Standards (Packaging and Labeling) Regulations, 2011 (hereinafter referred to as the "**Packaging and Labeling Regulations**") which lay down the statutory and regulatory requirements for packaging and labeling of products. A plain reading of the Packaging and Labeling Regulations, show that there are different kinds of products: Pre-packaged, Proprietary and other specific products as mentioned in the regulations.

⁵² See India: Laws Governing The Food Industry In India - Revisited

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Article by Vinay Vaish, Partner, Vaish Associates Advocates and Urmi Chudgar, Associate, Vaish Associates

Advocates <http://www.mondaq.com/india/x/244880/food+drugs+law/Laws+Governing+The+Food+Industry+In+India+Revisited>

Regulation 2.12 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 defines "*proprietary food*" as food that has not been standardized under these regulations. Regulation 1 (8) of the Packaging and Labeling Regulations defines "*prepackaged*" or "*pre-packed food*", as food, which is placed in a package of any nature, in such a manner that the contents cannot be changed without tampering it and which is ready for sale to the consumer.

The **Packaging and Labelling Regulations** provide the general requirements for labeling of food products prescribed under the FSSA, as follows:

- i. The particulars of declaration required under these Regulations to be specified on the label shall be in English or Hindi in Devnagri script: Provided that nothing herein contained shall prevent the use of any other language in addition to the language required under this regulation.
- ii. Pre-packaged food shall not be described or presented on any label or in any manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect;
- iii. Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container;
- iv. Contents on the label shall be clear, prominent, indelible and readily legible by the consumer under normal conditions of purchase and use;
- v. Where the container is covered by a wrapper, the wrapper shall carry the necessary information or the label on the container shall be readily legible through the outer wrapper and not obscured by it.

In addition to these general requirements specified above, every package of food shall also carry the following information on the label: (i) name of the food; (ii) list of ingredients; (iii) nutritional information; (iv) **declaration regarding veg. and non-veg**; (v) declaration regarding food additives; (vi) name and complete address of the manufacturer; (vii) net quantity; (viii) lot/code/batch identification; (ix) date of manufacturing or packing; (x) best before and use by date; (xi) country of origin for imported food; and (xii) instructions for use.

4. State of U.P Vs. Mustakeem and Ors.

SUMMARY:

In the state of Uttar Pradesh, in a case where goats were found to be transported for slaughter in a cruel manner (they were tightly bound to each other, which was against the provisions of the Prevention of Cruelty to Animals Act, 1960), an FIR was filed against the owner. However, the UP High Court returned custody of the animals to the owner while the matter was under litigation. On appeal, the Hon' ble Supreme Court declared that the animals were supposed to be confiscated from the owner and housed in a *gaushala*, under the care of

the state government who was given their charge for the duration of the case. With this ruling, the Court made it amply clear that once an animal was removed from a person's care on grounds of cruelty to his/her charge, the animal would not be returned until the case was resolved.

5. Gauri Maulekhi Vs. Union of India and Ors

(Supreme Court of India; order dated 13th July 2015)
[W.P. (Civil) No. 881 of 2014]

Gauri Maulekhi approached Supreme Court in 2014 for banning illegal Trans boundary smuggling of cattle to Gadhimai Temple in Nepal for animal sacrifice. Senior Advocate Anand Grover, who appeared for Gauri Maulekhi brought the court's attention to India's Export – Import policy under the Foreign Trade (Development and Regulation) Act, 1992 which categorically place live cattle and buffalos in the restricted category of exports requiring a licence to legally export them. He further stated that this was being totally flouted as most of the animals were transported illegally through porous border without an export license. Bench consisting of Justice Jagdish Khehar and Justice Arun Misra passed the following interim order on 17/10/ 2014:

“Our attention has been drawn to Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, which authorises the Central Government to formulate the export/import policy. It is submitted that such an export policy has indeed been formulated by the Government whereunder in Schedule-2 at serial no.10 of Table-B insofar as live cattle and buffaloes are concerned, their export is restricted. Only export of live cattle and buffaloes are permitted under licence. In view of the above, we direct the respondents to ensure that no live cattle and buffaloes are exported out of India into Nepal, but under licence.”

In 2015 and 2016, the Supreme Court issued further directions asking the government to frame guidelines to prevent animals from the being smuggled out of India. The government obliged and brought out the The Draft Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017 were finally notified on 23rd May, 2017, with the Ministry noting as follows:

“It may be recalled that in the case before the Hon'ble Supreme Court of India in W.P. (Civil) No. 881 of 2014 filed by Gauri Maulekhi versus Union of India and others, the Apex Court passed an order dated 13th July, 2015 to frame guidelines to prevent animals from the being smuggled out of India for the Gadhimai Festival held in Nepal where large scale animals sacrifices took place. The Supreme Court had constituted a Committee under the Chairmanship of DG, Sahastra Seema Bal (SSB) and some suggestions were made by them, including measures to curb trans-boundary smuggling of cattle. The Supreme Court also inter alia directed that rules with regard to Livestock Market and Case Property animals also be notified. On 12th July, 2016 the

Hon'ble Supreme Court by the way of a final order directed this Ministry to frame rules under Section 38 of the Prevention of Cruelty to Animals, 1960."

Of this issue, Dr. B Balagopal notes as follows:

"The joint settlement proposal which was accepted by the Supreme Court on 13th July 2015 was formulated only in consultation with respondents in W.P. (Civil) No. 881 of 2014. Most of those respondents are states bordering to Nepal and Bangladesh. It is strange that joint proposals formulated to curb trans-boundary smuggling of cattle is used for regulating the animal markets in the country. The Supreme Court has issued no directions to take steps to prevent ban of cattle sale for slaughter. That issue was not at all considered by Court. The directions of the Apex Court were to take steps to curb trans border smuggling of cattle. It is unfortunate that such directions are misinterpreted to justify the provisions in the Rules which impose ban of cattle sale in animal markets for slaughter."⁵³

6. Nair, N.R. and Ors. Vs. Union of India and Ors

(Supreme Court of India; decided on 1 May, 2001)

Open Source Link: <https://indiankanoon.org/doc/462988/>

Citation: 2001 (3) SCR 353

SUMMARY: The Kerala High Court upheld a notification by the Ministry of Environment and Forests stating that bears, monkeys, tigers, panthers and lions shall not be exhibited or trained as performing animals. When the notification was challenged in the Supreme Court, the court declared that animals suffer cruelty as they are abused and caged to make them perform, and therefore, this contravenes the PCA Act, 1960. It also dismissed the argument that the petitioners' right to carry out any trade or business under article 19(g) of the Indian Constitution was violated as those activities that caused pain and suffering to the aforementioned animals would not be allowed.

The main challenge in these appeals by special leave from the judgment of the Kerala High Court is to the validity of Section 22 of the Prevention of Cruelty to Animals Act, 1960 (for short "the Act") and the Notification issued under Section 22 to the effect that no person shall train or exhibit any animals specified therein, namely, bears, monkeys, tigers, panthers and lions. Briefly stated the facts are that on 2nd March, 1991 a Notification under Section 22 was issued banning training and exhibition of bears, monkeys, tigers, panthers and dogs. This

⁵³ <https://www.livelaw.in/supreme-court-orders-new-cattle-rules/>

Notification was challenged by the Indian Circus Federation before the High Court of Delhi. After the issuance of the Notification, a corrigendum was issued whereby dogs were excluded from the said Notification. Thereafter by an order dated 21st August, 1997, a Division Bench of the Delhi High Court required the Government of India to have a fresh look into the Notification after taking into account materials placed before it by the petitioners therein and other authorities.

A Committee was constituted by the Government of India consisting of Additional Inspector General (Wildlife), Director, Wildlife Institute of India, Member Secretary, Central Zoo Authority, Additional IGF (Retd.) and Director, Animal Welfare. The said Committee gave a detailed Report and in pursuance thereto the impugned Notification dated 14th October, 1998 was issued under Section 22 whereby exhibition and training of bears, monkeys, tigers, panthers and lions was prohibited.

The said Notification was challenged by filing a writ petition in the Kerala High Court and by the impugned judgment dated 6th June, 2000, the High Court has upheld the validity of the said Notification.

HELD: We agree with the decision of the High Court that in exercise of judicial review neither the High Court nor this Court can go into the correctness of the decision of the Government in issuing the impugned Notification. We are not satisfied that the Government acted irresponsibly or did not take into consideration the relevant materials which were available to it. A High Powered Committee had been constituted under the directions of the High Court, that Committee looked into all the evidence which was placed before it and the High Court has referred to extracts thereof which shows the manner in which the animals are trained or ill-trained. We need not make any further observations in respect thereof except to hold that we are satisfied that the impugned Notification is within the parameters of the Prevention of Cruelty to Animals Act, 1960.

7. Animal Welfare Board of India Vs. A Nagaraja and Ors

(Supreme Court of India; decided on 7 May, 2014)

Open Source Link: <https://indiankanoon.org/doc/39696860/>

SUMMARY: When the Supreme Court banned the practice of *Jallikattu* in 2014, it alluded to various sections of the PCA Act, 1960, which addresses unnecessary suffering of animals. Alluding to Section 3 and Section 11, the Hon' ble Court declared that all animal fights incited by humans are illegal, even those carried out under the guise of tradition and culture. The Court also listed various recommendations, among them an overhaul of the penalties and punishments in the PCA Act, 1960, so as to allow it to function effectively as a deterrent in cases related to animal cruelty.

The Supreme Court here was concerned with an issue of seminal importance with regard to the Rights of Animals under our Constitution, laws, culture, tradition, religion and ethology, which we have to examine, in connection with the conduct of Jallikattu, Bullock-cart races etc. in the States of Tamil Nadu and Maharashtra, with particular reference to the provisions of the Prevention of Cruelty to Animals Act, 1960 (for short ‘the PCA Act’), the Tamil Nadu Regulation of Jallikattu Act, 2009 (for short “TNRJ Act”) and the notification dated 11.7.2011 issued by the Central Government under Section 22(ii) of the PCA Act.

ABWI, a statutory Board, established under Section 4 of the PCA Act for the promotion of animal welfare and for the purpose of protecting the animals from being subjected to unnecessary pain or suffering has taken up a specific stand that Jallikattu, Bull/Bullock-cart races etc., as such, conducted in the States of Tamil Nadu and Maharashtra respectively, inherently violate the provisions of the PCA Act, particularly, Section 3, Sections 11(1)(a) & (m) and Section 22 of the PCA Act. ABWI, through its reports, affidavits and photographs, high-lighted the manner in which Jallikattu is being conducted, especially in the Southern Part of the State of Tamil Nadu, and how the bulls involved are physically and mentally tortured for human pleasure and enjoyment. ABWI has taken up the stand that, by no stretch of imagination, it can be gainsaid that Jallikattu or Bullock-cart race conducted, as such, has any historical, cultural or religious significance, either in the State of Tamil Nadu or in the State of Maharashtra and, even assuming so, the welfare legislation like PCA Act would supersede the same, being a Parliamentary legislation. ABWI has also taken up the specific stand that the bulls involved in Jallikattu, Bullock-cart race etc. are not “performing animals” within the meaning of Sections 21 and 22 of the PCA Act and that the MoEF, in any view, was justified in issuing the notification dated 11.7.2011 banning the exhibition of Bulls or training them as performing animals on accepting the stand taken by it before this Court. Further, it has also taken up the stand that the TNRJ Act is repugnant to the provisions of the PCA Act and the rules made thereunder and State cannot give effect to it in the absence of the assent of the President under Article 254 of the Constitution of India. Further, ABWI also submits that the Bulls which are forced to participate in the race are subjected to considerable pain and suffering, which clearly violates Section 3 and Sections 11(1)(a) & (m) of the PCA Act read with Article 51A(g) and Article 21 of the Constitution of India and hence exhibition or training them as performing animals be completely banned.

On the other hand, organizers of Jallikattu and Bullock-cart races, individually and collectively, took up the stand that these events take place at the end of harvest season (January and February) and sometimes during temple festivals which is traditionally and closely associated with village life, especially in the Southern Districts of the State of Tamil Nadu. Organizers of Bullock-cart races in the State of Maharashtra also took the stand that the same is going on for the last more than three hundred years by way of custom and tradition and that extreme care and protection are being taken not to cause any injury or pain to the bullocks which participate in the event. Organizers also submitted that such sport events attract large number of persons which generates revenue for the State as well as enjoyment to the participants. Further, it was also stated that no cruelty is meted out to the performing bulls in Bullock-cart races so as to violate Section 11(1)(a) of the PCA Act and the District Collector, Police Officials etc. are always on duty to prevent cruelty on animals. Further, it is also their stand that the sport events can only be regulated and not completely prohibited and

the State of Tamil Nadu has already enacted the TNRJ Act, which takes care of the apprehensions expressed by the Board.

The Court observed that it had to examine the various issues raised in this case, primarily keeping in mind the welfare and the well-being of the animals and not from the stand point of the Organizers, Bull tamers, Bull Racers, spectators, participants or the respective States or the Central Government, since we are dealing with a welfare legislation of a sentient- being, over which human-beings have domination and the standard we have to apply in deciding the issue on hand is the “Species Best Interest” , subject to just exceptions, out of human necessity.

On the legislative history of animal laws, the Court observed as follows:

“The PCA Act, 1960 was enacted even before the introduction of Part IV-A dealing with the fundamental duties, by the Constitutional 47th Amendment Act, 1956. Earlier, the then British in India enacted the Prevention of Cruelty Act, 1890 for the human beings to reap maximum gains by exploiting them with coercive methods with an idea that the very existence of the animals is for the benefit of the human beings. During the course of administering the above mentioned Act, many deficiencies were noticed by the Government of India and a Committee was constituted to investigate and suggest measures for prevention of cruelty to animals. Following that, a Bill was introduced in the Parliament and, ultimately, the PCA Act, 1960 was enacted so as to prevent the infliction of unnecessary pain or suffering on animals and to amend the law relating to prevention of cruelty to animals..PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state of affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of parents patriae to take care of the rights of animals, since they are unable to take care of themselves as against human beings.”

The Court also recognised the peculiarity of the physiology of bulls and observed as follows:

“All animals are not anatomically designed to be performing animals. Bulls are basically Draught and Pack animals. they are live-stock used for farming and agriculture purposes, like ploughing, transportation etc. Bulls, it may be noted, have

been recognized as Draught and Pack animals in the Prevention of Cruelty to Draught and Pack Animals Rules, 1965. Draught means an animal used for pulling heavy loads. Rules define large bullock to mean a bullock the weight of which exceeds 350 Kgs. Bullocks have a large abdomen and thorax and the entire body has a resemblance to a barrel shape, which limits ability to run. Bulls have also limitations on flexing joints and the rigid heavily built body and limited flexion of joints do not favour running faster. Due to that body constitution, the Prevention of Cruelty to Animals (Transportation of Animals on Foot) Rules, 2001, especially Rule 11 says that no person shall use a whip or a stick in order to force the animal to walk or to hasten the pace of their walk. Bulls, it may be noted, are cloven footed (two digits) animals and two digits in each leg can comfortably bear weight only when they are walking, not running. Horse, on the other hand, is a solid hooved plant-eating quadruped with a flowing mane and tail, domesticated for riding and as a draught animal. Horse power, we call it as an imperial unit of power, equal to 550 foot-pounds per second. Horse's anatomy enables it to make use of speed and can be usefully used for horse racing etc., unlike Bulls."

The Court also took note of international approach to animal welfare (paragraphs 47-64 as follows):

"47. We may, at the outset, indicate unfortunately, there is no international agreement that ensures the welfare and protection of animals. United Nations, all these years, safeguarded only the rights of human beings, not the rights of other species like animals, ignoring the fact that many of them, including Bulls, are sacrificing their lives to alleviate human suffering, combating diseases and as food for human consumption. International community should hang their head in shame, for not recognizing their rights all these ages, a species which served the humanity from the time of Adam and Eve. Of course, there has been a slow but observable shift from the anthropocentric approach to a more nature's right centric approach in International Environmental Law, Animal Welfare Laws etc. Environmentalist noticed three stages in the development of international environmental law instrument, which are as under:

(a) The First Stage: Human self-interest reason for environmental protection

- The instruments in this stage were fuelled by the recognition that the conservation of nature was in the common interest of all mankind.
- Some the instruments executed during this time included the Declaration of the Protection of Birds Useful to Agriculture (1875), Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900), Convention for the Regulation of Whaling (1931) which had the objective of ensuring the health of the whaling industry rather than conserving or protecting the whale species.
- The attitude behind these treaties was the assertion of an unlimited right to exploit natural resources - which derived from their right as sovereign nations.

(b) The Second Stage: International Equity

- This stage saw the extension of treaties beyond the requirements of the present generation to also meet the needs to future generations of human beings. This shift signalled a departure from the pure tenets of anthropocentrism.

- For example, the 1946 Whaling Convention which built upon the 1931 treaty mentioned in the preamble that “it is in the interest of the nations of the world to safeguard for future generations the great natural resource represented by the whale stocks” . Similarly, the Stockholm Declaration of the UN embodied this shift in thinking, stating that “man bears a solemn responsibility to protect and improve the environment for present and future generations” and subsequently asserts that “the natural resources of the earth must be safeguarded for the benefit of present and future generations through careful planning and management” . Other documents expressed this shift in terms of sustainability and sustainable development.

(c) The Third Stage: Nature’ s own rights

- Recent Multinational instruments have asserted the intrinsic value of nature.

- UNEP Biodiversity Convention (1992) “Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic values of biological diversity and its components [we have] agreed as follows:.....” . The World Charter for Nature proclaims that “every form of life is unique, warranting respect regardless of its worth to man.” The Charter uses the term “nature” in preference to “environment” with a view to shifting to non-anthropocentric human-independent terminology.”

48. We have accepted and applied the eco-centric principles in T. N. Godavarman Thirumulpad v. Union of India and Others (2012) 3 SCC 277, T. N. Godavarman Thirumulpad v. Union of India and Others (2012) 4 SCC 362 and in Centre for Environmental Law World Wide Fund - India v. Union of India and Others (2013) 8 SCC 234.

49. Based on eco-centric principles, rights of animals have been recognized in various countries. Protection of animals has been guaranteed by the Constitution of Germany by way of an amendment in 2002 when the words “and the animals” were added to the constitutional clauses that obliges ‘state’ to respect ‘animal dignity’ . Therefore, the dignity of the animals is constitutionally recognised in that country. German Animal Welfare Law, especially Article 3 provides far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners’ fundamental rights to property and the animals’ interest in freedom from unnecessary suffering or pain, damage and fear.

50. Animals Welfare Act of 2006 (U.K.) also confers considerable protection to the animals from pain and suffering. The Austrian Federal Animal Protection Act also recognises man's responsibilities towards his fellow creatures and the subject "Federal Act" aims at the protection of life and well being of the animals. The Animal Welfare Act, 2010 (Norway) states "animals have an intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain. Section 26 of the Legislation prohibits training an animal to fight with people, the operative portion of the same reads as follows :

"Any person who trains animals and who uses animals which are used for showing, entertainment and competitions, including those who organise such activities, shall ensure that the animals:

a) xxx xxx xxx

b) xxx xxx xxx

c) xxx xxx xxx

(d) are not trained for or used in fights with other animals or people."

51. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

52. Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals. Five freedoms referred to in UDAW, which we will deal with in latter part of the judgment, find support in PCA Act and the rules framed thereunder to a great extent.

53. World Health Organization of Animal Health (OIE), of which India is a member, acts as the international reference organisation for animal health and animal welfare. OIE has been recognised as a reference organisation by the World Trade Organisation (WTO) and, in the year 2013, it has a total of 178 member countries. On animal welfare, OIE says that an animal is in good state of welfare if (as indicated by Scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress.

FREEDOM:

54. Chapter 7.1.2 of the guidelines of OIE, recognizes five internationally recognized freedoms for animals, such as:

- i) freedom from hunger, thirst and malnutrition;

- ii) freedom from fear and distress;
- iii) freedom from physical and thermal discomfort;
- iv) freedom from pain, injury and disease; and
- v) freedom to express normal patterns of behaviour.

Food and Agricultural Organisation (FAO) in its “Legislative and Regulatory Options for Animal Welfare” indicated that these five freedoms found their place in Farm Welfare Council 2009 U.K. and is also called Brambell’s Five Freedoms. These five freedoms, as already indicated, are considered to be the fundamental principles of animal welfare and we can say that these freedoms find a place in Sections 3 and 11 of PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India.

55. Animals are world-wide legally recognised as ‘property’ that can be possessed by humans. On deletion of Article 19(1)(f) from the Indian Constitution, right to property is more a fundamental right in India, this gives the Parliament more a leeway to pass laws protecting the rights of animals. Right to hold on to a property which includes animals also, is now only a legal right not a fundamental right. We have also to see the rights of animals in that perspective as well.

56. Rights guaranteed to the animals under Sections 3, 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under Sections 3 and 11 have to be read along with Article 51A(g)(h) of the Constitution, which is the magna carta of animal rights.

COMPASSION:

57. Article 51A(g) states that it shall be the duty of citizens to have compassion for living creatures. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others* (2005) 8 SCC 534, this Court held that by enacting Article 51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51A(g), therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures”, which means concern for suffering, sympathy, kindness etc., which has to be read along with Sections 3, 11(1)(a) & (m), 22 etc. of PCA Act.

HUMANISM:

58. Article 51A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to

the expression “humanism” which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, understand benevolence, compassion, mercy etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of PCA Act as well as in Sections 3 and 11 of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51A(h). Both Articles 51A(g) and (h) have to be read into the PCA Act, especially into Section 3 and Section 11 of the PCA Act and be applied and enforced.

SPECIESISM:

59. Speciesism as a concept coined by Richard Ryder in his various works on the attitude to animals, like *Animal Revolution*, *Changing Attitudes towards Speciesism* (Oxford: Basil Blackwell, 1989), *Animal Welfare and the Environment* (London: Gerald Duckworth, 1992) etc. Oxford English Dictionary defines the term as “the assumption of human superiority over other creatures, leading to the exploitation of animals”. Speciesism is also described as the widespread discrimination that is practised by man against the other species, that is a prejudice or attitude of bias towards the interest of members of one’s own species and against those of members of other species. Speciesism as a concept used to be compared with Racism and Sexism on the ground that all those refer to discrimination that tend to promote or encourage domination and exploitation of members of one group by another. One school of thought is that Castism, Racism and Sexism are biological classification, since they are concerned with physical characteristics, such as, discrimination on the ground of caste, creed, religion, colour of the skin, reproductive role etc. rather than with physical properties, such as the capacity for being harmed or benefited.

60. We have got over those inequalities like Castism, Racism, Sexism etc. through Constitutional and Statutory amendments, like Articles 14 to 17, 19, 29 and so on. So far as animals are concerned, Section 3 of the Act confers right on animals so also rights under Section 11 not to be subjected to cruelty. When such statutory rights have been conferred on animals, we can always judge as to whether they are being exploited by human-beings. As already indicated, an enlightened society, of late, condemned slavery, racism, castism, sexism etc. through constitutional amendments, laws etc. but, though late, through PCA Act, Parliament has recognized the rights of animals, of course, without not sacrificing the interest of human beings under the Doctrine of necessity, like experiments on animals for the purpose of advancement by new discovery of 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 and also destruction of animals for food under Section 11(3) of the PCA Act. Legislature through Section 28 also saved the manner of killing of animals in the manner prescribed by religions, those are, in our view, reasonable restrictions on the rights enjoyed by the animals under Section 3 read with Section 11(1). Evidently, those restrictions are the direct inevitable consequences or the effects which could be said to have been in the contemplation of the legislature for human benefit, since they are unavoidable. Further, animals like Cows, Bulls etc. are all freely used for farming, transporting loads etc.,

that too, for the benefit of human beings, thereby subjecting them to some pain and suffering which is also unavoidable, but permitted by the Rules framed under the PCA Act.

NON-ESSENTIAL ACTIVITIES:

61. We have, however, lot of avoidable non-essential human activities like Bullock-cart race, Jallikattu etc. Bulls, thinking that they have only instrumental value are intentionally used though avoidable, ignoring welfare of the Bulls solely for human pleasure. Such avoidable human activities violate rights guaranteed to them under Sections 3 and 11 of PCA Act. AWBI, the expert statutory body has taken up the stand that events like Jallikattu, Bullock-cart race etc. inherently involve pain and suffering, which involves both physical and mental components, including fear and distress. Temple Grandin and Catherine Johnson, in their work on “Animals in Translation” say:

“The single worst thing you can do to an animal emotionally is to make it feel afraid. Fear is so bad for animals I think it is worse than pain. I always get surprised looks when I say this. If you gave most people a choice between intense pain and intense fear, they’ d probably pick fear.” Both anxiety and fear, therefore, play an important role in animal suffering, which is part and parcel of the events like Jallikattu, Bullock-cart Race etc..

RIGHT TO LIFE:

62. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, “life” means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals’ well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-ridder, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking

disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.

63. Jallikattu and other forms of Bulls race, as the various reports indicate, causes considerable pain, stress and strain on the bulls. Bulls, in such events, not only do move their head showing that they do not want to go to the arena but, as pain is being inflicted in the vadivasal is so much, they have no other go but to flee to a situation which is adverse to them. Bulls, in that situation, are stressed, exhausted, injured and humiliated. Frustration of the Bulls is noticeable in their vocalization and, looking at the facial expression of the bulls, ethologist or an ordinary man can easily sense their suffering. Bulls, otherwise are very peaceful animals dedicating their life for human use and requirement, but are subjected to such an ordeal that not only inflicts serious suffering on them but also forces them to behave in ways, namely, they do not behave, force them into the event which does not like and, in that process, they are being tortured to the hilt. Bulls cannot carry the so-called performance without being exhausted, injured, tortured or humiliated. Bulls are also intentionally subjected to fear, injury - both mentally and physically - and put to unnecessary stress and strain for human pleasure and enjoyment, that too, a species totally dedicated its life for human benefit, out of necessity.

64. We are, therefore, of the view that Sections 21, 22 of the PCA Act and the relevant provisions have to be understood in the light of the rights conferred on animals under Section 3, read with Sections 11(1)(a) & (o) and Articles 51A(g) and (h) of the Constitution, and if so read, in our view, Bulls cannot be used as a Performing Animals for Jallikattu and Bullock-cart Race, since they are basically draught and pack animals, not anatomically designed for such performances.”

DECISION: TNRJ Act, in its Objects and Reasons, speaks of ancient culture and tradition and also safety of animals, participants and spectators. PCA Act was enacted at a time when it was noticed that in order to reap maximum gains, the animals were being exploited by human beings, by using coercive methods and by inflicting unnecessary pain. PCA Act was, therefore, passed to prevent infliction of unnecessary pain or suffering and for the well-being and welfare of the animals and to preserve the natural instinct of the animal. Over-powering the performing animal was never in the contemplation of the PCA Act and, in fact, under Section 3 of the PCA Act, a statutory duty has been cast on the person who is in-charge or care of the animal to ensure the well-being of such animal and to prevent infliction on the animal of unnecessary pain or suffering. PCA Act, therefore, cast not only duties on human beings, but also confer corresponding rights on animals, which is being taken away by the State Act (TNRJ Act) by conferring rights on the organizers and Bull tamers, to conduct Jallikattu, which is inconsistent and in direct collision with Section 3, Section 11(1)(a), 11(1)(m)(ii) and Section 22 of the PCA Act read with Articles 51A(g) & (h) of the Constitution and hence repugnant to the PCA Act, which is a welfare legislation and hence declared unconstitutional and void, being violative of Article 254(1) of the Constitution of India.

The Court, therefore, held that AWBI was right in its stand that Jallikattu, Bullock-cart Race and such events were per se violate Sections 3, 11(1)(a) and 11(1)(m)(ii) of PCA Act and hence we uphold the notification dated 11.7.2011 issued by the Central Government, consequently, Bulls cannot be used as performing animals, either for the Jallikattu events or

Bullock- cart Races in the State of Tamil Nadu, Maharashtra or elsewhere in the country. We, therefore, make the following declarations and directions:

- 1) We declare that the rights guaranteed to the Bulls under Sections 3 and 11 of PCA Act read with Articles 51A(g) & (h) are cannot be taken away or curtailed, except under Sections 11(3) and 28 of PCA Act.
- 2) We declare that the five freedoms, referred to earlier be read into Sections 3 and 11 of PCA Act, be protected and safeguarded by the States, Central Government, Union Territories (in short “Governments”), MoEF and AWBI.
- 3) AWBI and Governments are directed to take appropriate steps to see that the persons-in-charge or care of animals, take reasonable measures to ensure the well-being of animals.
- 4) AWBI and Governments are directed to take steps to prevent the infliction of unnecessary pain or suffering on the animals, since their rights have been statutorily protected under Sections 3 and 11 of PCA Act.
- 5) AWBI is also directed to ensure that the provisions of Section 11(1)(m)(ii) scrupulously followed, meaning thereby, that the person-in-charge or care of the animal shall not incite any animal to fight against a human being or another animal.
- 6) AWBI and the Governments would also see that even in cases where Section 11(3) is involved, the animals be not put to unnecessary pain and suffering and adequate and scientific methods be adopted to achieve the same.
- 7) AWBI and the Governments should take steps to impart education in relation to human treatment of animals in accordance with Section 9(k) inculcating the spirit of Articles 51A(g) & (h) of the Constitution.
- 8) Parliament is expected to make proper amendment of the PCA Act to provide an effective deterrent to achieve the object and purpose of the Act and for violation of Section 11, adequate penalties and punishments should be imposed.
- 9) Parliament, it is expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honour.
- 10) The Governments would see that if the provisions of the PCA Act and the declarations and the directions issued by this Court are not properly and effectively complied with, disciplinary action be taken against the erring officials so that the purpose and object of PCA Act could be achieved.
- 11) TNRJ Act is found repugnant to PCA Act, which is a welfare legislation, hence held constitutionally void, being violative of Article 254(1) of the Constitution of India.
- 12) AWBI is directed to take effective and speedy steps to implement the provisions of PCA Act in consultation with SPCA and make periodical reports to the Governments and if any violation is noticed, the Governments should take steps to remedy the same, including appropriate follow-up action.

8. Narayan Dutt Bhatt Vs. Union of India & Ors

(High Court of Uttarakhand; decided on July 4, 2018)

Open Source Link: <http://lobis.nic.in/ddir/uhc/RS/judgement/07-07-2018/RS04072018WPPIL432014.pdf>

Citation: Writ Petition (PIL) No. 43 of 2014

Suggested Reading Material: <https://www.downtoearth.org.in/news/wildlife-biodiversity/uttarakhand-hc-order-declaring-animals-as-legal-entities-reflects-cultural-progress-experts-61036>

Judgement is regarding protection and welfare of animals. The petitioner had sought directions to the respondents to restrict the movement of horse carts/tongas from Nepal to India and from India to Nepal through Banbasa, District Champawat, Uttarakhand in India. Petitioner had prayed that there should be provisions for vaccination, medical check-up of the horses for suspected infections before entering into the Indian territory from Nepal and for regulating the traffic on the border areas.

Some of the major highlights of the Judgement of the Uttarakhand High Court are the following:

- a. The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Uttarakhand are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.
- b. The State Government is directed to ensure the medical examination of all the animals including horses entering from Nepal to India as well as horses moving from Indian border to Nepal to check infectious and contagious diseases by setting the veterinary check-posts on the border.
- c. The State Government is directed to ensure that throughout the State of Uttarakhand, that no person in charge of any vehicle drawn by any animal allows more than four persons, excluding the driver and children below 6 years of age to ride the vehicle.
- d. The use of spike stick or bit, harness or yoke with spikes, knobs or projections or any other sharp tackle or equipment is banned throughout the State of Uttarakhand to avoid bruises, swelling, abrasions or severe pain to the animal.

9. Shri Mata Vaishno Devi Shrine Vs. Gauri Maulekhi

(Supreme Court of India, decided on May 3, 2018)

Open Source Link: <https://indiankanoon.org/doc/89215464/>

An environment activist had moved the National Green Tribunal seeking directions to stop the use of horses and ponies in Vaishno Devi shrine premises in Jammu, prompting the green panel to seek response from the government on the issue. The green panel was hearing a plea by Gauri Maulekhi, who expressed concern over the “pollution and danger to public health”

caused by indiscriminate use of horses, ponies, mules and donkeys, used to carry pilgrims and goods from Katra to the Vaishno Devi temple. The plea, filed through advocate Aditya Singla, sought directions to ensure that no equines (horses, ponies, mules and donkeys) are used in the region of the Vaishno Devi shrine. “The large number of growing pilgrims has a direct correlation to the increase in the use of equines employed to carry pilgrims and their luggage to and from the shrine during peak seasons such as Navratras and the holiday season... “ Consequently, large amounts of untreated solid and liquid waste generated by pilgrims are disposed directly into Banganga river. A large proportion of this waste is generated by the 15,000–20,000 horses, mules and ponies deployed to carry the pilgrims on the 14 km trail to the Mata Vaishno Devi temple,” the plea said. Maulekhi alleged that despite the local authorities’ knowledge that these animals are being used in very large numbers, “They have failed to make arrangements in and around the shrine for maintenance of these animals and ensuring that they are free of disease.”

After the NGT had ruled against the Jammu and Kashmir Government over the issue, the Vaishno Devi Shrine Board had appealed NGT’ s decision before the Supreme Court. In 2018, the Supreme Court had expressed its opinion in favour of rehabilitating ponies and suggesting the Shrine Board to levy nominal fee from pilgrims to be devoted to the care of ponies (which would entail an estimated cost of about two crore rupees).

10. Compassion Unlimited Plus Action Vs. Union of India & Ors

(Supreme Court of India; decided on January 12, 2016)

As early as 1500-600 BC in Isha-Upanishads, it is professed as follows:

“The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species.”

In our view, this is the culture and tradition of the country, particularly the States of Tamil Nadu and Maharashtra.

The PCA Act has been enacted with an object to safeguard the welfare of the animals and evidently to cure some mischief and age old practices, so as to bring into effect some type of reform, based on eco-centric principles, recognizing the intrinsic value and worth of animals. All the same, the Act has taken care of the religious practices of the community, while killing an animal vide Section 28 of the Act.

When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which

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

The Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals. Five freedoms referred to in UDAW, which we will deal with in latter part of the judgment, find support in PCA Act and the rules framed thereunder to a great extent.

Article 51A(g) states that it shall be the duty of citizens to have compassion for living creatures. In *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others* (2005) 8 SCC 534, this Court held that by enacting Article 51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51A(g), therefore, enjoins that it was a fundamental duty of every citizen “to have compassion for living creatures” , which means concern for suffering, sympathy, kindness etc., which has to be read along with Sections 3, 11(1)(a) & (m), 22 etc. of PCA Act. XXXXXXXX

Jallikattu and other forms of Bulls race, as the various reports indicate, causes considerable pain, stress and strain on the bulls. Bulls, in such events, not only do move their head showing that they do not want to go to the arena but, as pain is being inflicted in the vadivasal is so much, they have no other go but to flee to a situation which is adverse to them. Bulls, in that situation, are stressed, exhausted, injured and humiliated. Frustration of the Bulls is noticeable in their vocalization and, looking at the facial expression of the bulls, ethologist or an ordinary man can easily sense their suffering. Bulls, otherwise are very peaceful animals dedicating their life for human use and requirement, but are subjected to such an ordeal that not only inflicts serious suffering on them but also forces them to behave in ways, namely, they do not behave, force them into the event which does not like and, in that process, they are being tortured to the hilt. Bulls cannot carry the so-called performance without being exhausted, injured, tortured or humiliated. Bulls are also intentionally subjected to fear, injury - both mentally and physically - and put to unnecessary stress and strain for human pleasure and enjoyment, that too, a species totally dedicated its life for human benefit, out of necessity.

Order dated 13.01.2016:

An application for intervention was allowed by the Court where there was a prayer seeking vacation of the order of stay dated 12.01.2016 passed in the writ petition. It is contended in the application that the Jallikattu is not a fight between bulls and humans but a game where the participants are required to embrace the running bulls by hanging on to their hump as long as possible; and they are unarmed. It is also put forth that the bulls are trained not to let the village youth clamber on to their humps and in no case they are led away by the owners afterwards. It is urged that Jallikattu is a socio-religious festival and not an entertainment and the people at various places in the State of Tamil Nadu have immense faith in the said festival

for many a reason. Emphasis is laid on the culture of the State and the belief of the pastoral communities. In essence, it is urged that there is no cruelty meted out to the bulls in such a festival or game.

11. Society for Prevention of Cruelty to Animals (SPCA) Vs State of Kerala & Ors.
(Kerala High Court; decided on December 09, 2014)

The Society, established for prevention of cruelty to animals approached the Court seeking direction to respondents to ensure that the provisions of the Performing Animals (Registration) Rules, 2001 are enforced and implemented with regard to Captive Elephants used for rides. The petitioner also sought declaration that the action of the respondents in permitting Elephant Rides using Captive Elephants without taking registration under the Performing Animals (Registration) Rules 2001 was arbitrary and illegal. It is submitted that the authorities failed to observe the above rules.

The Principal Chief Conservator of Forests for the Government of Kerala responded to the petitioner society's claims with an affidavit that the Court found to be satisfactory:

"With reference to the averments contained in paragraph 4 of the writ petition, it is submitted that the Captive Elephants are managed under the Kerala Captive Elephants (Management and Maintenance) Rules 2012. The 4th respondent, the Deputy Director, Periyar Tiger Reserve, Idukki does not maintain any departmental elephant. Ext.P1 was erected to avoid cheating of tourists by private owners of elephants. The rate fixed for elephant ride in G.O. (Rt) No.31/2013/F&WLD dt. 16/1/2013 (Ext.P2) is kept in abeyance till the departmental elephants are registered under the Performing Animals (Registration) Rules 2001 with the Animal Welfare Board of India. By letter dated 22/4/2014, the 2nd respondent directed the concerned officers to stop using of elephants under their jurisdiction as performing animals till the elephants are registered under the Performing animals (Registration) Rules, 2001. A true copy of the above letter dated 22/4/2014 of the 1st respondent is produced herewith and marked as Exhibit R2(e).

Noting that in paragraph 7 of the counter affidavit that the Kerala Forest and Wildlife Department has registered 160 cases relating to cruelty to elephants under the Kerala Captive Elephants (Management and Maintenance) Rules the Court found that the authorities seem to have been vigilant in the matter.

12. Animal Welfare Board of India Vs. People for the Elimination of Stray Dogs & Ors.

(Supreme Court of India; ordered on November 16, 2018)

About: <https://www.livelaw.in/sc-issues-notice-on-contempt-petition-against-ktaka-civic-body-killing-350-stray-dogs-read-petition/>

The Supreme Court issued notice on a contempt petition moved by an animal rights activist against the killing of 350 dogs by the municipal council in Sakaleshapura Town, Karnataka, in violation of a November, 2015 order of the apex court which expressly directed all municipal bodies to strictly follow the Prevention of Cruelty to Animals Act and the Animal Birth Control Rules providing against catching or dislocating stray dogs.

Broadly, the Supreme Court observed as follows:

“There can be no trace of doubt that there has to be compassion for dogs and they should not be killed in an indiscriminate manner, but indubitably the lives of the human beings are to be saved and one should not suffer due to dog bite because of administrative lapse...In course of hearing, learned counsel appearing for the petitioners, except the Animal Welfare Board, would pyramid their case on the plinth and foundation that the dogs, who have various uses for human society and have served the society for centuries and also have constitutional protection under Article 51A of the Constitution of India and the laws made, have to be taken care of. The resistance from the other side is that a bite by a stray dog creates menace in the society and in the name of compassion for dogs, the lives of human beings cannot be sacrificed.”

On 09.03.2016, after referring to the earlier order dated 18.11.2015 and various other aspects, the Supreme Court had expressed the following view:

“We will be failing in our duty if we do not make a note of the submissions of both the sides which are extreme in nature, for example, emphasis and stress have been laid that due to stray dogs, there has been threat to life, health, movement and sometimes security of the human beings. On the other hand, it has been highlighted that the stray dogs are being annihilated without any justifiable reason. As advised at present, we do not intend to say anything on the said counts today.”

The Court directed that the dogs which are required to be sterilized or vaccinated, the procedure shall be carried out in accordance with the Act and Rules and no organization shall create any kind of obstacle or impediment in the same. It shall be the obligation of the Board to oversee that this is being carried out and no obstructions are created in this regard from any quarter.

In pursuance of the aforesaid order dated 09.03.2016, the Animal Welfare Board has filed a module which takes note of various aspects. One aspect pertains to *"Implementation Framework for street dog population management, rabies eradication and reducing man-dog conflict"*. We think it appropriate to reproduce the same for the sake of completeness and so also to have future assistance. Therefore, it is reproduced hereunder:

The **Animal Birth Control (Dogs) Rules, 2001** prescribe the methodology for street dog population management, ensuring rabies eradication, and reduction in man-dog conflict based on scientific studies and recommendations of the World Health Organisation. However, the

implementation of the Rules in most states has been observed to be inadequate, haphazard, and poorly planned. The desired results have therefore not been achieved in such cases. The reasons for poor implementation have been cited to be, lack of required coordination between the centre and the state governments, and between local authorities, implementation agencies, and other stake-holders within the states. Most states have not created any budget head for animal birth control of street dogs. The grant given by the central government has always been inadequate, and has reduced even further in the past few years, to become negligible. Successfully conducting a viable animal birth control programme throughout the country is not possible in these circumstances. The shortage of resources has also led to huge cruelties being inflicted on the animals, and in increased conflict. In order to implement the Animal Birth Control (Dogs) Rules in letter and spirit, a water-tight implementation framework needs to be laid down and monitored by the Central Government and the Hon'ble Supreme Court of India from time to time.

STEP I: Creation of a Central Coordination Committee

It is recommended that a Central Coordination Committee for Street Dog Population control be set up to ensure seamless coordination between different stakeholders at the centre, and between the centre and the state governments. This will also help in clarifying the role that each stake-holder must play to ensure the successful conduct of the programme. Proposed structure of the Central Coordination Committee:

a) Chairperson: The Secretary, Ministry of Environment Forest and Climate Change, Government of India may be the Chairperson of the Central Coordination Committee.

b) Member Secretary: An officer of a rank equivalent to the Additional Secretary, Ministry of Health and Family Welfare, Government of India, may be the Member-Secretary as well as the nodal officer for coordinating the fund allocation to each state and union territory.

c) The following officials should be appointed as members of this committee: Additional Secretary, Department of Animal Husbandry Dairying and Fisheries, Ministry of Agriculture, Government of India

- Additional Secretary, Urban Development Ministry, Government of India
- Additional Secretary, Ministry of Rural Development, Government of India
- Chairperson, Animal Welfare Board of India
- Chairperson, Veterinary Council of India

- Representative of a prominent state animal welfare board actively engaged in animal birth control coordination in the state

- Representative of a prominent animal welfare organization duly registered with the AWBI and actively engaged in the animal birth control programme in at least three states.

The Central Co-ordination Committee shall meet at least once in a quarter and as often as required to execute its functions. Functions of the Central Coordination Committee:

- i) To create a consolidated pooled in fund sourced from the Ministry of Environment Forest and Climate Change, Ministry of Health and Family Welfare, Ministry of Agriculture, Ministry of Urban Development, and Ministry of Rural Development.
- ii) To invite proposals in the form of detailed project reports from the state governments based on state-wide high throughput ABC programmes, where infrastructure is to be created by the state governments, and the fund for implementation of the programme will thereafter be provided by the central government on a per dog basis.
- iii) To ensure that each state government creates a budget head for setting up infrastructure (i.e. ABC facilities/campuses and provisioning for ambulances for transportation of dogs) in the state.
- iv) To set up a protocol for disbursal of funds to state governments whereby the programme can be implemented in a phase-wise seamless manner in each state, keeping in mind that rotating funds/buffer funds must also be provisioned for so that there is no hitch in the conduct of the programme on account of interrupted funding.
- v) To determine the rate at which the ABC Implementing Agencies will be reimbursed for expenses incurred for ABC surgeries in each state, and to set mutually agreed upon targets for infrastructure creation, and the number of surgeries to be conducted in each state in a detailed phasewise manner. This rate shall be revised annually.
- vi) To ensure that each state sets up a State Monitoring and Implementation Committee for animal birth control and review the performance and processes of each such committee, and give recommendations for effective implementation of the Animal Birth Control (Dogs) Rules, 2001.
- vii) To submit annual progress reports to the Hon'ble Supreme Court regarding the progress of the ABC programme in each state.

STEP II: Creation of the State Monitoring and Implementation Committees

It is recommended that a State Monitoring and Implementation Committee be set up at the State/Union Territory level in all states and union territories across the country. Proposed Constitution of the State Monitoring and Implementation Committees:

- a) Chairperson: The Secretary in-charge of the Urban Local Bodies (or equivalent in that state/union territory) may be the Chairperson of the State Monitoring and Implementation Committee.

b) Member Secretary: An officer holding the rank of a Director in the Department of Animal Husbandry (or equivalent) may be the Member Secretary as well as the nodal officer for implementing the program in each state and union territory.

c) The following officials should be appointed as members of this committee:

- Principal Secretary, Health Department
- Principal Secretary, Panchayat Raj
- Director, Urban Development Department (or equivalent)
- Representative of the Animal Welfare Board of India
- Representative of the State Animal Welfare Board
- Administrative heads of at least 2 municipal corporations, and representatives of at least 2 panchayats, and at least 2 municipal councils in that state or union territory
- Representative of an animal welfare organization registered with the AWBI that has conducted more than 5000 animal birth control surgeries per year and has been in existence for a minimum of 3 years
- One full time Program Manager to be deputed by the Animal Husbandry Department, not below the rank of Deputy Director, for coordination of the program between various stakeholders.

The State Monitoring and Implementation Committees shall meet at least once in a quarter and as often as required to execute their functions.

Functions of the State Monitoring and Implementation Committee:

i) The setting up of Animal Birth Control Monitoring Committees at the local authority levels as required by the Animal Birth Control (Dogs) Rules. (Please see Step III below for greater detail in this regard).

ii) Developing a comprehensive district wise plan (including but not limited to infrastructure, budget, etc, for dog population management in urban and rural areas throughout the state.)

iii) Enlisting ABC Implementing Agencies that can implement the comprehensive local authority/district-wise plan as per the Animal Birth Control (Dogs) Rules, are possessed of the requisite training and experience, and are duly recognized by the Animal Welfare Board of India. This may include the animal husbandry department of the State working in consultation with and the under the technical guidance of the AWBI, or animal welfare organisations recognized by the AWBI

iv) Where adequate ABC Implementing Agencies are not available, the State Monitoring and Implementation Committee shall set up a Special Purpose Vehicle (SPV) within the state animal husbandry department to act as the ABC Implementing Agency. In each such case the ABC Implementing Agency will undergo training at an AWBI designated training establishment, and embark upon the program only once the training has been completed.

v) Ensuring that the requisite infrastructure is set up, and other capital costs (including but not limited to fully furnished ABC facilities/campuses with ambulances and equipment), and all other expenses for successfully running an animal birth control program, including manpower costs, are made available to the ABC Implementing Agencies from the local authorities, and reimbursed in a timely manner as required by Rule 6 of the Animal Birth Control (Dogs) Rules.

STEP III: Establishment of Animal Birth Control Monitoring Committees

The establishment of Animal Birth Control Monitoring Committees at local authority levels in accordance with Animal Birth Control (Dogs) Rules is indispensable for the success of the Animal Birth Control program. The constitution of the Monitoring Committee is provided for in Rule 4 of the Rules, and the functions that it is required to perform are provided for in Rule 5. Additionally, to implement the Rules in letter and spirit it is also necessary that the Monitoring Committees do the following:

- i) Arrive at an estimate of the number of dogs within its territorial limits by conducting a census in the manner advised by the AWBI.
- ii) Ensure development of the infrastructure required to execute the ABC program for the estimated number of dogs. In order to do this, detailed project reports shall have to be prepared and submitted to the State Monitoring and Implementation Committee and coordination established with the state government through the said Committee. The infrastructure shall be designed to conduct area-wise ABC, and in a phased way ensure that at least 70% dogs in the targeted area are sterilized and vaccinated against rabies before a new area is taken up. The infrastructure shall include, but not be limited to pre-operation preparation areas, Operation Theaters, post-op care, kennels, kitchen, store rooms for rations and medicines, parking area, residential rooms for veterinarians and attendants, quarantine wards, ambulances, etc.

STEP IV: Identification of ABC Implementing Agencies

The practice of tendering, i.e. inviting bids from interested ABC 'contractors', and awarding ABC 'contracts' to the lowest bidder being followed by many local authorities, has more often than not led to violations of the Rules and the Act. For instance, the lowest bidder may not be an organisation recognised by the AWBI, which is a mandatory requirement under the Animal Birth Control (Dogs) Rules. Furthermore, it has been widely observed that many competitive lowest bidders disregard best practices necessary to ensure the welfare of animals in their care, and fail to adhere to other essential requirements under the Rules in order to find profit margins within the lowest price. This in turn leads to significant pain and suffering being caused to the animals, and the success of the program being adversely impacted and jeopardized.

This module prescribes that the rate of sterilization per dog shall be fixed and reviewed annually by the Central Coordination Committee, thereby ensuring uniformity. Once this is done, an expression of interest may be sought with technical bid as sole criterion for selection

of ABC Implementing Agencies for execution of the animal birth control program. Needless to state, the agency short-listed for implementation, must be thoroughly trained and recognized by the AWBI. The local authorities, whilst calling for an expression of interest, will ensure that the ABC Implementing Agencies entrusted with execution of the animal birth control program have an adequate number of trained veterinarians, para-vets, catchers and drivers. The staff of the ABC Implementing Agency should have obtained training from an AWBI recognised training establishment.

The ABC Implementing Agency must have been in existence for a minimum of 3 years. A Memorandum of Understanding shall be executed between the ABC Implementing Agency and either the local authority or the state government or both, as the State Monitoring and Implementation Committee decides.

Responsibilities of the local authorities in collaboration with ABC Implementing Agencies:

The ABC Implementing Agency shall be responsible for catching, transport, surgery, post-op care and release of the dogs. The local authority too may be involved in this process, but not without personnel deputed by the Implementing Agency to oversee the same, or participate in the concerned process. Additionally the ABC Implementing Agency shall devise a mechanism to deal with complaints received regarding man-dog conflict in a scientific, rational and humane manner. Additional expenses incurred for this purpose shall also be reimbursed by the local authority.

STEP V: Monitoring and Evaluation The process of monitoring shall include the following key aspects:

i) Keeping the estimated number of dogs as the baseline, the State Monitoring and Implementation Committee shall set targets for the required number dog sterilizations within specified periods, in each district comprised in the state. These targets shall be spelt out in the Memorandums of Understanding executed with the ABC Implementing Agencies. The State Monitoring and Implementation Committee shall then monitor the collaboration between local authorities and ABC Implementing Agencies to ensure that the targets are met, and any challenges to the same are smoothly overcome.

ii) The targets specified shall be binding on the local authority and the ABC Implementing Agency. The Animal Birth Control Monitoring Committee of the local authority shall ensure timely release of funds, and oversee that adequate infrastructure is created by the local authority so that targets are met. The expenses incurred by the ABC Implementing Agencies must be reimbursed every fortnight.

iii) The Animal Birth Control Monitoring Committee shall, through a team comprising of at least 3 (three) persons who may be its representatives or any other person/s authorized by it, conduct a weekly organ count of the operated dogs (ovaries and testes), and shall also scrutinize the records being maintained by the ABC Implementing Agency to assess compliance with the Animal Birth Control (Dogs) Rules, 2001, and adherence with provisions contained in this module.

iv) The Animal Birth Control Monitoring Committee shall meet at least once every month, to evaluate progress of the ABC program, and assess its impact. Impediments to the smooth conduct of the ABC program shall be discussed, and steps taken to remove the same.

To assess the impact of the ABC program in each targeted area, the Animal Birth Control Monitoring Committee may either undertake such assessment by itself, or through an independent agency. The following parameters shall be the guiding factors to assess impact:

- i. Lesser number of pups seen than previous years,
- ii. Reduction in number of lactating females seen,
- iii. Decrease in number of complaint calls,
- iv. Decrease in number of dog bites cases reported,
- v. Decrease in incidence of rabies.

13. Animal and Birds Charitable Trust and Ors Vs. Municipal Corporation of Greater Mumbai and Ors,

2015 (4) ABR 242, 2015 (4) Bom CRI

In this Public Interest Litigation, the attention of the Court is invited to the plight of the horses and ponies used for victorias and horse carriages in the City of Mumbai. It is pointed out that the victorias/horse carriages are being used in the City of Mumbai only for joyrides and not as a mode of public conveyance. The attention of the Court is also invited to the conditions of horse stables in the City of Mumbai.

The First Petitioner made an Application under the Right to Information Act, 2005 seeking information about the licences granted to the stables of horses and ponies used for pulling the carriages and joyrides in the City of Mumbai. The information was furnished by the First Respondent Mumbai Municipal Corporation. The Municipal Corporation stated that a licence under Section 394 of the Mumbai Municipal Corporation Act of 1888 is issued for horses' stables. It was, however, contended that the subject of granting permission to keep the horses for entertainment/horse rides/joy carts does not come within the purview of the Public Health Department of the said Corporation. It was stated that the prosecutions have been lodged against the four horse stables from "D" Ward Office. there were four horse stables existing in the city of Mumbai which are unlicensed for which the prosecutions have been lodged. The Municipal Corporation forwarded to the Petitioners special conditions which are incorporated in the licenses granted for keeping the horses. In the said stables, the horses are consistently standing in their own dung for hours. The dung is thrown into dustbins and is allowed to flow into the drains. The stables are maintained in a very unhygienic condition. The dung of the horses and ponies can cause tetanus on coming in contact with a human wound. Majority of

the horses and ponies used for carriages in the City of Mumbai do not have proper stables or a shelters to live in.

Various instances of cruelty to horses and ponies used for victorias and joyrides have been set out in the Petition. The horses are forced to overwork and they regularly suffer from various injuries. The instances of accidents suffered by the horse carriages/victorias used for joyrides are pointed out in which the horses have suffered injuries. The provisions of the Prevention of Cruelty to Animals (Licensing of Farriers) Rules, 1965 have been violated. No horse or pony is registered under the Performing Animals (Registration) Rules, 2001

The high court relied upon the law laid down by the Apex Court in the case of *Animal Welfare Board of India*. The law laid down in Paragraph 72 of the said judgment reads thus:

"72. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering.

Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act."

The law laid down by the Apex Court in the said decision can be summarized as under:

- (a) Under Clause (g) of Article 51A of the Constitution of India, it is the fundamental duty of every citizen to have compassion for living creatures which means concern for their suffering, sympathy, kindness, etc.;
- (b) Clause (h) of Article 51A of the Constitution of India provides that it shall be the duty of every citizen to develop humanism which includes sensibility for our species;

- (c) Clauses (g) and (h) of Article 51A of the Constitution of India will have to be read into the PCA Act and especially into Sections 3 and 11 thereof;
- (d) Article 21 of the Constitution of India protects any disturbance from the basic environment which includes animal life which is necessary for human life;
- (e) So far as the animals are concerned, life means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity;
- (f) Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Clause (g) of Article 51A of the Constitution of India;
- (g) Right to dignity and fair treatment is not confined to human beings alone, but it applies to animals as well;
- (h) Right not to be beaten, kicked or overridden is also a right recognized by Sections 3 and 11 of the PCA Act;

High Court's decision was as follows:

- a) The use of horse driven carriages/victorias in the city of Mumbai for joy rides is completely illegal
 - b) All the Authorities of the State shall ensure that use of such horse driven carriages and/or victorias in the city of Mumbai shall be completely stopped on expiry of a period of one year from today.
 - c) The State Government shall also formulate a scheme for rehabilitation of the horses used for plying victorias in the city of Mumbai. If any Animal Welfare Organization comes forward to take care of the horses, the State Government shall be free to consider the said option.
 - d) All the concerned Authorities of the State to take action in accordance with the provisions of the PCA Act in case of violation of the provisions of the PCA Act by use of horses and ponies for joyrides in the city of Mumbai. The Petitioners and the interveners are free to point out the instances of violations to the Concerned Authorities who shall be under an obligation to take action in accordance with law.
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14. People for Animals Vs. Mohazzim and Ors.

2015 (3) RCR (Criminal) 94 [High Court of Delhi]

An intimation was given to SHO PS Lajpat Nagar, New Delhi for violation of various provisions of Prevention of Cruelty (Capture of Animals) Rules, 1979. Police on 13th October, 2004 seized birds and animals and registered FIR against the owner. The same was shifted to recognized body of the Ministry of Environment and Forest, Govt, of India. The owner moved the application for release of the birds on superdari. The same was allowed by

releasing the birds on superdari. The complainant, i.e., People for Animal filed the revision petition. The revision petition was dismissed despite of arriving at a finding that the respondent is not the owner of the birds as they are not exotic and the respondent/alleged owner has not committed any cruelty and therefore, the respondent cannot be deprived of his property if he is otherwise entitled for the same. The order at present is only confined to birds. Coloured photographs have been filed on behalf of NGO people for animals which would show that the birds were kept in small cages though it is not sure whether their wings and tails were cut or not. No order was passed to be released them in the open sky. I have been informed by the learned counsel for the petitioner i.e. NGO People for Animals that more than thousands of birds are subjected to pain as the so called owner put them in small cages and sell them in the commercial market for his vested rights, despite of statutory and constitutional right to live with dignity.

The Supreme Court has recently recognized the five fundamental rights of the animals including the right to live with dignity and announced twelve stringent measures/directives for the Govt. and other implementing authorities to stop cruelty on animals in the case of A. Nagaraja & Ors. v. Animal Welfare Board of India on 7th May, 2014.

It is argued that the so-called owners were given superdari of birds without hearing the petitioner.

Held:

After hearing both sides, this Court is of the view that running the trade of birds is in violation of the rights of the birds. They deserve sympathy. Nobody is caring as to whether they have been inflicting cruelty or not despite of settled law that birds have a fundamental right to fly and cannot be caged and will have to be set free in the sky. Actually, they are meant for the same. But on the other hand, they are exported illegally in foreign countries without availability of proper food, water, medical aid and other basic amenities required as per law. Birds have fundamental rights including the right to live with dignity and they cannot be subjected to cruelty by anyone including claim made by the respondent. Therefore, I am clear in mind that all the birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages for the purposes of their business or otherwise. The petition requires consideration.

15. Laxmi Narain Modi Vs. Union of India (UOI) and Ors.,

(2014) 3SCC 143

The Court highlighted the extreme necessity of constituting State Committees for the purpose of supervising and monitoring the implementation of the provisions of the Prevention of Cruelty to Animals (Establishment and Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000, the Environment Protection Act, 1986, the Solid Waste (Management and Handling) Rules, 2000, the Prevention of Cruelty to Animals (Slaughter House) Rules,

2000 etc. The Court also directed the various State Committees to file an Action Taken Report. Few Committees have filed their Action Taken Reports.

Now the Court noticed that there was no periodical supervision or inspection of the various slaughter houses functioning in various parts of the country. Action Taken Reports would indicate that, in many States, slaughter houses are functioning without any licence and even the licenced slaughter houses are also not following the various provisions as well as the guidelines issued by the MoEF, which we have already referred to in our earlier orders. The Court felt that the presence of an experienced Judicial Officer in the State Committees would give more life and light to the Committees, who can function as its Convener. The Convener, so appointed, would see that the Committees meet quite often and follow and implement the provisions of the Act as well as the guidelines issued by the MoEF, which has been made a part of our order dated 27.8.2013.

In such circumstances, the Supreme Court requested the Chief Justices of the various High Courts in the country to nominate the name of a retired District Judge for a period of two years as a Convener of the Committee so as to enable him to send the quarterly reports to this Court. First report be sent within two months. Communicate this order to the Chief Justices of the various High Courts in the country, along with a copy of this Court's orders dated 23.8.2012, 10.10.2012 and 27.8.2013. The Court fix a consolidated remuneration of Rs. 20,000/- per month as honorarium to be paid to the District Judge (Retd.), which will be borne by the respective State Governments/Union Territories, as the case may be. Union of India and various State Governments have raised no objection in adopting such course, so that the Committees could function efficiently and the provisions of the Act and the framework prepared by the MoEF could be given effect to in its letter and spirit.

16. Ramesh Sharma vs. State of Himachal Pradesh

CWP No. 9257 of 2011 and CWO Nos. 4499 and 5076/2012 , MANU/HP/0934/2014 [High Court of Himachal Pradesh]

Sacrifice of Animals in Religious Ceremony

This petition was about the slaughtering of thousands of animals in the name of religious sacrifice held by devotees throughout the State of Himachal Pradesh. Petitioner had placed on record photographs of the animal sacrifice being performed. The State of Himachal Pradesh had not taken any effective steps to prevent the sacrifice of innocent animals. According to the petitioner, this practice is not in conformity with Article 51-A(h) of the Constitution of India. Animals are beaten up mercilessly and dragged up to mountain slopes to meet their death. The scenic beauty of the religious places is not maintained. According to the petitioner, it takes 25 minutes to kill a buffalo bull. At times, buffalo runs amuck to save itself. The animals are

mercilessly beaten up and chilies are thrown into their eyes. Petitioner has laid great stress for improved scientific and rational thinking by the people, who are indulged in this practice. Petitioner has also filed representation before the Deputy Commissioner, Kullu requesting to prevent sacrifice of animals at Dhalpur Maidan, Kullu. The larger beneficiaries of this practice are priests and the Mandir Committee, animal breeders and designated butchers community of the temples. Petitioner has sought direction to the State to stop illegal animal slaughtering in the temples and public places. She has also sought direction to the Deputy Commissioners of all the District of Himachal Pradesh to ensure complete ban on animal sacrifices in temples and public places. An action is also sought to be taken against the persons, who are indulging in this practice.

Held:

The core issue involved in these petitions is whether animal sacrifice is an essential/central theme and integral part of Hindu religion or not? The Apex Court, in the case of *The Commissioner, Hindu Religious Endowments, Madras vrs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, reported in AIR 1954 SC 282,, have held that a religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion and the forms and observances might expand even to matters of food and dress. What constitutes the essential/integral part of Hindu religion is primarily to be ascertained in respect of the doctrine of that religion itself. The High Court could not find it from the material placed on record that animal sacrifice is an essential part of the religion by making reference to the doctrines of Hindu religion itself. The overt act of sacrificing animals in the temples or its premises is not obligatory overt act to reflect religious belief and idea. Their lordships of the Hon'ble Supreme Court in the case of *Durgah Committee, Ajmer* (supra), have held that even practices though religious, may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are bound to constitute an essential and integral part of a religion, the protection under Article 26 of the Constitution of India is not available.

As regards the contention that the scope of judicial review in these matters is very limited is concerned, is no more res integra in view of the law laid down by the Hon'ble Supreme Court in the case of *Tilkayat Shri Govindlalji Maharaj etc. vs. State of Rajasthan and others*, reported in AIR 1963 SC 1638. Their lordships of the Hon'ble Supreme Court have held that the question will always have to be decided by the Court whether a given religious practice is an integral part of religion or not and the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion.

In the case of *A.S. Narayana Deekshitulu vs. State of A.P. and others*, reported in (1996) 9 SCC 548, their lordships of the Hon'ble Supreme Court held that the integral or essential part of religion is to be ascertained from the doctrine of that religion itself according to its tenets, historical background and change in evolved process. Their lordships have further held that

whether the practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the Court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. In the case of N. Adithayan vs. Travancore Devaswom Board and others, reported in (2002) 8 SCC 106, their lordships of the Hon'ble Supreme Court have held that custom or usage, even if proved to have existed in pre-Constitutional period, cannot be accepted as a source of law, if such custom violates human rights, human dignity, concept of social equality and the specific mandate of the Constitution and law made by the parliament. Their lordships have also highlighted that the vision of the founding fathers of the Constitution was to liberate society from blind adherence to traditional superstitious beliefs sans reason or rational basis. The animal sacrifice can not be treated as fundamental to follow a religious belief and practice. It is only if taking away of that part of practice can result in a fundamental change in the character of that religion or belief that could be treated as essential or integral part. We reiterate that if animal sacrifice is taken out, it will not result in fundamental change in the character of the Hindu religion or in its belief. Their lordships of the Hon'ble Supreme Court in the case of State of Karnataka and another vs. Dr. Praveen Bhai Thogadia, reported in (2004) 4 SCC 684 have held that the core of religion is based upon spiritual values which the Vedas, Upanishads and Puranas were said to reveal to mankind, seem to be "love others, serve others, help ever, hurt never."

The hymn of Rig Veda were much occupied with some ritual and animal sacrifices are indicated by the Apri Suktas. However, these practices were prevalent only in pre-historic times. Now, in this era, these practices have no social sanction but merely based on superstition and ignorance.

What can be gathered from the facts enumerated, hereinabove, is that the practice of animal sacrifice is prevalent in some areas of the State. There is ample material placed on record by the petitioners and the persons who have filed individual affidavits that the animals are put to a lot of suffering, pain and agony at the time of their sacrifice. The methods adopted to kill these innocent animals are barbaric. It is stated in the affidavits by various individuals that at times it takes about 15 blows to kill the animal. The animal runs amok to save his life. The animals are sacrificed in the presence of other animals, which must be an agonizing experience for those animals.

Articles 25 and 26 of the Constitution of India protects, of course, the religious beliefs, opinions and practices but not superstitions. A religion has to be seen as a whole and thereafter it can be seen whether a particular practice is core/central to the religion. It can be a hybrid also. In the instant case, offerings in the temples can be made by offering flowers, fruits, coconut etc. According to us, there are compelling reasons and grounds to prohibit this practice. A democratic polity is required to be preferred to a system in which each one's conscience is a law unto itself. The State has also the obligation under constitutional mandate to promote the health, safety and general welfare of the citizens and animals.

The Vedas were composed in 1500 B.C. There is reference to sacrifices made in Upanishads and Puranas. The Vedas are eternal, Puranas are the governing of mythological beliefs and the manner in which the 'pooja/archana' is to be offered to the Gods. The Bhagwat Gita does not

deal with this aspect of sacrifices as contained in the Puranas. The Vedas, Upanishads and Puranas were composed during the earliest phase of civilization. The devotees in these days were put to fear and were also afraid of the wrath of natural calamities. The society has advanced. We are in a modern era. The rituals, which may be prevalent in the early period of civilization have lost their relevance and the old rituals are required to be substituted by new rituals which are based on reasoning and scientific temper. Superstitions have no faith in the modern era of reasoning.

As far as Puranas are concerned, they only refer to the manner in which the sacrifices are to be performed. There is reference of "tradition of human sacrifice". The devotees are made to believe that the deity would be happy for a number of years as per the sacrifices of each species of animals/birds. The deity, as per this Purana, would be much happier if a man is sacrificed. These practices have outlived and have no place in the 21st century. The animal sacrifice of any species may be a goat or sheep or a buffalo, can not be, in our considered view, treated as integral/central theme and essential part of religion. It may be religion's practice but definitely not an essential and integral part of religion. Hindu Religion, in no manner, would be affected if the animal sacrifice is taken out from it. We have to progress. A society should look forward, of course, by following values of all religions. The essentials of any religion are eternal. The non-essentials are relevant for some time. The animal/bird sacrifice cannot be treated as eternal. We should experience religion. We have to stand up against the social evils, with which the society at times is beset with. Social reforms are required to be made. We are required to build up a new social order. We have

to take a pragmatic approach. The new Mantra is salvation of the people, by the people. The Hindus have to fulfill the Vedantic ideas but by substituting old rituals by new rituals based on reasoning.

The animals have basic rights and we have to recognize and protect them. The animals and birds breathe like us. They are also a creation of God. They have also a right to live in harmony with human beings and the nature. No deity and Devta would ever ask for the blood. All Devtas and deities are kind hearted and bless the humanity to prosper and live in harmony with each other. The practice of animal/bird sacrifice is abhorrent and dastardly.

The welfare of animals and birds is a part of moral development of humanity. Animals/birds also require suitable environment, diet and protection from pain, sufferings, injury and disease. It is the man's special responsibility towards the animals and birds being fellow creatures. We must respect the animals. They should be protected from the danger of unnecessary stress and strains.

Article 48 of the Constitution of India provides for organization of agriculture and animal husbandry. Article 48-A talks of protection and improvement of environment and safeguarding of forests and wild life. It is the fundamental duty of every citizen as per Article 51-A(g) of the Constitution of India to protect and improve natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Article 51-A(h) stresses to develop the scientific temper, humanism and the spirit of inquiry and reform. Article 51-A(i) talks of safeguarding public property and to abjure violence. 'Ahimsa' is also

the central theme of the Hindu Philosophy though later on expounded by Buddha. The State's affidavit talking of vegetarian and non-vegetarian food is wholly misplaced. The core issue has never been addressed in the reply filed by the State government to the issues. The Court can always see whether a particular practice is essential or non-essential by taking into evidence, including by going through the religious scriptures. It is not a forbidden territory but the Court has to tread cautiously. The Court has to necessarily go into the entire gamut of Articles 25 and 26 the statutes pertaining to religion. Every citizen has a freedom of conscience including right to freely profess, practise and propagate religion and also to manage its own affairs in the matter of religion. The right to freedom of conscience and right to profess, practise and propagate religion and manage its own affairs in the matter of religion would not be affected if the practice of animal sacrifice is discontinued. It may strengthen the religion. The discontinuation of animal sacrifice would not in any manner violate

Articles 25 and 26 of the Constitution of India. Articles 25 and 26 of the Constitution of India are to be read with Articles 48, 48-A and 51-A of the Constitution of India.

Section 11 and Section 28 of the Prevention of Cruelty to Animals Act, 1960 are to be interpreted as per Articles 48, 48-A, 51-A(g), 51-A(h) and 51-A(i). The underlying principle of Section 28 is that it would not be an offence to kill any animal in the manner required by the religion of any community. It does not permit, in any manner, to sacrifice an animal in temple. Mostly the temples are open to public and the conscience of all the devotees are to be taken into consideration. It has come on record that the killing of animals in a brutal manner causes immense pain, strain, agony and suffering to the animals. The animals are left to bleed after inflicting injuries on their parts. The blood is strewn all over. The Apex Court, as we have already noted above has held that killing of cows on Bakrid is not an integral part of Muslim religion.

The Hon'ble Supreme Court, in the case of Sardar Syedna Taher Saifuddin Sahib vs. State of Bombay, AIR 1962 SC 853, have already held human and animal sacrifice to be deleterious. We have advanced by another half century but till date, the practice of animal sacrifice is still prevalent in this part of the country. The killing of various species of animals/birds is not an integral/central and essential part of Hindu religion. According to rule 3 of the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, no person is authorized to slaughter any animal within a municipal area except in a slaughter house recognized or licensed by the concerned authority. No animal, which is pregnant, or has an offspring less than three months old, or is under the age of three months or has not been certified by a veterinary doctor that it is in a fit condition can be slaughtered. According to sub-rule (1) of rule 6, no animal can be slaughtered in a slaughter house in sight of other animals and according to sub-rule (3) of rule 6, slaughter house shall provide separate sections of adequate dimensions sufficient for slaughter of individual animals to ensure that the animal to be slaughtered is not within the sight of other animals. Sub-rule (5) of rule 6 provides that knocking section in slaughter house is so planned as to suit the animal and particularly the ritual slaughter, if any, and such knocking section and dry landing area associated with it is so built that escape from this section can be easily carried out by an operator without allowing the animal to pass the escape barrier. If the animal cannot be slaughtered in a slaughter house in sight of other animals, how human can see sacrifice of animal, that too, in a holy and pious places like temples.

The prominence of values enshrined in the Constitution is above any religious values or values enshrined in any personal or religious law. They have no right, whatsoever, to issue any mandate/dictate in violation of basic human rights of the human beings as well as animal rights. The animals have emotions and feelings like us. Religion cannot be allowed to become a tool for perpetuating untold miseries on animals. If any person or body tries to impose its directions on the followers in violation of the Constitution or validly enacted law, it would be an illegal act (see: *Visha Lochan Madan vs. Union of India and ors.*, reported in (2014) 7 SCC 707).

The Court invoked the '*doctrine of parens patriae*' alongwith other constitutional provisions, as discussed hereinabove, to protect the basic rights of animals. we allow the writ petition CWP No. 5076/2012 and issue the following mandatory directions, prohibiting/banning animal/bird sacrifice in the temples and public places as under:

1. No person throughout the State of Himachal Pradesh shall sacrifice any animal or bird in any place of religious worship, adoration or precincts or any congregation or procession connected with religious worship, on any public street, way or place, whether a thoroughfare or not, to which the public are granted access to or over which they have a right to pass;
2. No person shall officiate or offer to officiate at, or perform or offer to perform, or serve, assist or participate, or offer to serve, assist, or participate, in any sacrifice in any place of public religious worship or adoration or its precincts or in any congregation or procession, including all lands, buildings near such places which are ordinarily used for the purposes connected with religious or adoration, or in any congregation or procession connected with any religious worship in a public street;
3. No person shall knowingly allow any sacrifice to be performed at any place which is situated within any place of public religious worship, or adoration, or is in his possession or under his control;
4. The State Government is directed to publish and circulate pamphlets henceforth to create awareness among the people, to exhibit boards, placards in and around places of worship banning the sacrifice of animals and birds;
5. The State Government is further directed to give due publicity about the prohibition and sacrifice in media both audio and visual, electronic and in all the newspapers; and
6. All the duty holders in the State of Himachal Pradesh are directed to punctually and faithfully comply with the judgment. It is made clear that the Deputy Commissioners and Superintendents of Police of all the Districts shall personally be responsible to prevent, prohibit the animal/bird sacrifices throughout the State of Himachal Pradesh.
7. The expression 'temple' would mean a place by whatever designation known, used as a place of public worship and dedicated to, and for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship. The temple premises shall also include building attached to the temple, land attached to the temple, which is generally used for the purposes of worship in the temple, whether such land is in the property of temple area or place attached to the temple or procession is performed.

17. People for Animals through Mrs. Norma Alvares and Anr Vs. The state of Goa through its Chief Secretary and Ors.

1998 (100(1)) BOMLR 226, 1997 (4) Bom CR271

The petitioners approached the Court with the complaint that the statutory authorities are either hesitant or negligent in taking appropriate steps to prevent the cruelty to the animals that is being inflicted in the course of the game of bull fights taking place in the State of Goa. According to the petitioners, bull fights are in contravention of section 11(1) of the Prevention of Cruelty to Animals Act, 1968, hereinafter called as "the said Act". It is the contention of the petitioners that inspite of their efforts to bring this fact to the notice of the authorities concerned, such illegalities are being committed in the State of Goa and further that inspite of requests to such authorities to take appropriate steps in the matter to prevent the same, no action is being taken by the respondents and the bull fights are continuing to take place in Goa. It is further contended by the petitioners that the immediate occasion for the petitioners to approach this Court is the incident of killing of a person in a most brutal fashion by a violent bull at one of such bull fights organized at Fatorda near Margao on 17th September 1996 and that further bull fight which was scheduled to take place on 2nd October 1996.

The petitioners claimed that the bull fights are recent introduction in the State of Goa and though initially, no money or gambling was associated with it, in the recent times, due to the patronage of local politicians, the frequency of bull fights have increased enormously and they have become completely commercialised. Besides the fact that they prove fatal to some animals, even spectators have occasionally fallen victims. Such bull fights are locally known as 'dhirio' and they are in direct contravention of the provisions contained in section 11(1)(m) and section 11(1)(n) of the Prevention of Cruelty to Animals Act, 1960 and that the authorities are duty-bound to take action against the said offenders.

Issue involved:

1. Whether organizing bull fights or 'dhirio', by itself amounts to commission of an offence under section 11 of the Prevention of Cruelty to Animals Act, 1960?
2. Whether the state agencies should enforce law prohibiting such activities?

HELD: The petition succeeds. The bull fights or 'dhirios' are in contravention of the provisions of the said Act &, therefore, illegal & cannot be permitted to be organized. The respondents are, therefore, directed to take immediate steps to ban all types of animal fights including bull fights and 'dhirios' in the State of Goa and to see to it that the direction is fully complied with in letter and spirit which the Act seeks to achieve. Rule made absolute accordingly in aforesaid terms.

The Bombay High Court also made the following significant observations:

“The enactment of the law to prevent cruelty to the animals is not an end in itself. What is more important is the implementation of that Act and to see to it that the activities which are prohibited under the said Act do not take place in the State & in case of infringement of the provisions of the said Act, to take strict action against the offenders. It cannot be disputed that all animals are born with an equal claim for life without any cruelty to them. Perhaps if this right was given proper recognition by the human-beings, there would have been no necessity to bring on the statute book the said Act. Unfortunately, even though the said Act has been brought in force in the State, still there appears to be either lack of courage or wilful negligence on the part of the respondents to implement the provisions of the said Act and, therefore, in our considered opinion, the petitioners are justified in making grievance about the same. In fact, to prevent such cruelty to animals it is obligatory upon the state agencies to take action under the various provisions contained in the said

Act. Tolerance of infringement of the provisions of the Act is worse than not enacting the law itself. Merely because infringement of the provisions of the said Act was tolerated for some time, that cannot create any right on the intervenors to insist upon the continuation of tolerance of infringement of the provisions of the said Act.

Before we conclude we must say that considering the materials brought on record regarding the cruelty sought to be inflicted on the animals in the process of such bull fights, we are reminded of the words of Justice Krishna Iyer in his Lectures on Human Rights. While expressing deep anguish and sigh of great displeasure over torture inflicted on innocent animals in this country & that too despite the Vedas, the Bible, the Koran, the Buddha and Mahavire and the Supreme miracle and revolutionary apostle of Ahimsa, Mahatmaji, Justice Krishna Iyer has warned us that we have forfeited the right to be heirs of a culture of Karuna, Samata and Dharma. Justice Krishna Iyer further reminds us that humanism cannot be halved by denying it to pre human brethren and compassion is beyond division by refusing it to the Darwinian species; all life is too divinely integral to admit of unnatural dichotomy as man and animal in the wholeness of ecology. Justice Krishna Iyer, therefore, reminds us the message of kindness found in Koran which reads as under:

"There is not an animal on the earth, nor a flying creature on two wings, but they are people like unto you."

18. Karnail Singh & Ors. V/s State of Haryana

Discussion on: <https://www.theweek.in/news/india/2019/06/02/all-animals-in-haryana-to-be-legal-persons-orders-high-court.html>

(Date of Decision: 31st May, 2019 by High Court of Punjab and Haryana)

The Punjab and Haryana High Court has ruled that animals in Haryana will be accorded the status of “legal person or entity” and declared all citizens ‘persons in loco parentis’ (in place of a parent or guardian) to promote welfare of animals. The order grants animals in Haryana “corresponding rights, duties and liabilities of a living person”. The verdict comes nearly a year after Uttarakhand High Court passed a similar order “to protect and promote

greater welfare of animals” . The order was passed by Justice Rajiv Sharma, who was transferred from Uttarakhand to the Punjab and Haryana High Court at Chandigarh last year.

“Live and let live,” Justice Sharma said in the 104-page order. Justice Sharma was also part of the Bench in Uttarakhand that had declared rivers Ganga and Yamuna as living entities in 2017. The verdict, however, was stayed by the Supreme Court.

Justice Sharma ruled that animals had a right to life and bodily integrity, honour and dignity, and could not be treated merely as property. “The corporations, Hindu idols, holy scriptures, rivers have been declared legal entities and thus, in order to protect and promote greater welfare of animals including avian and aquatic, animals are required to be conferred with the status of legal entity/legal person,” he stated.

Justice Sharma said that animals might be mute but “we as a society have to speak on their behalf” .

“The animals should be healthy, comfortable, well nourished, safe, able to express innate behavior without pain, fear and distress. They are entitled to justice. The animals cannot be treated as objects or property,” the verdict reads. The single Bench of Justice Sharma also fixed load to be carried by animals and banned their deployment for pulling vehicles in extreme weather conditions. The Haryana government must ensure that no person was permitted to keep in harness any animal to draw vehicles between 11 am and 4 pm in summers when temperature exceeded 37 degrees Celsius, and between 10 pm and 7 am when the temperature fell below 5 degrees Celsius in winter. The use of spike sticks, harness, knobs and other sharp instruments were also banned. Animals carrying load are to be covered with reflectors for identification at night.

Extracts from the JUDGMENT:

The prosecution examined three witnesses in support of its case. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The petitioners were convicted and sentenced by the learned trial Court to undergo imprisonment for a period of two years and to pay a fine of Rs.1500/- each for the offence under Section 4-b/8 of the Punjab Prohibition of Cow Slaughter Act and in default of payment of fine, to further undergo imprisonment for a period of 15 days. The Punjab Prohibition of Cow Slaughter Act, 1955 is applicable to the State of Haryana as amended by the Haryana Adaptation of Laws (State and Concurrent Subjects) Order, 1968, also amended by Haryana Act 17 of 1971, again amended by Haryana Act 6 of 1980 and Haryana Act 13 of 1981. The Act has been made to prohibit the slaughter of cow and its progeny in Haryana. Section 2 defines “cow” including bull, bullock, ox, heifer, or calf. Section 2(cc) defines “export” to take out from the State of Haryana to any place outside the State of Haryana. Section 2(e) defines “slaughter” . It means killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course will cause death. Section 3 provides that notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary, no person shall slaughter or cause to be slaughtered.

Their Lordships of the Hon’ ble Supreme Court in 2010 (1) SCC 234, in the case of “**Bharat Amratlal Kothari & another vs. Dosukhan Samadkhan Sindhi & others**” , have

held that animals killed in trucks in a cruel manner and being transported, seized by police on complainant's report and sent to pinjrapole and the owner of animals claiming custody of animals. In these circumstances, normal cost of maintenance and treatment of animals under Section 35(4) would be payable by the persons claiming custody and not by the complainant.

Their Lordships of the Hon'ble Supreme Court in 2014 (7) SCC 547, in the case of “**Animal Welfare Board of India vs. A. Nagaraja & others**”, have held that animal welfare laws have to be interpreted keeping in mind the welfare of animals and species best interest subject to just exceptions out of human necessity. Their Lordships have further held that there are internationally recognized freedoms of animals as under:- (i) freedom from hunger, thirst and malnutrition; (ii) freedom from fear and distress; (iii) freedom from physical and thermal discomfort; (iv) freedom from pain, injury and disease; and (v) freedom to express normal patterns of behavior. These five freedoms have to be read into Sections 3 and 11 of PCA Act and have to be protected and safeguarded by the States, Central Government, Union Territories, MoEF and AWBI. Though no international agreement ensures protection of animals' welfare, campaigns like UDAW and WSPA's and OIE's effort in this regard, taken judicial note of. It is the duty to protect welfare of animals and not to put them to avoidable pain and suffering. Their Lordships have also explained the meaning of “pain and suffering”. Pain informs an animal which stimuli it needs to avoid and suffering informs it about a situation to avoid. Their Lordships have held that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity.

Author Albert Schweitzer has said:

*“Until we extend the circle of compassion to all living things, we will not find peace.
” The first American law prohibiting cruelty to animals was passed by the Puritans of the Massachusetts Bay Colony in 1641: “No man shall exercise any tyranny or cruelty towards any brute creatures which are usually kept for man's use.”*

“On the frontiers of legal change, there is a growing global movement to recognize non-human animals as legal persons, a radical change that would endow them with the variety of legal rights. Animal rights advocates are not saying primates, cetaceans, or elephants are people. A ‘legal person’ is not necessarily a human being, but rather an entity to which the law grants specific rights. A corporation is considered a legal person, as are ships, churches and municipalities. The rights and responsibilities of a legal person vary according to the nature of the entity. Corporations and human beings have different sets of legal rights and duties. For example, corporations may assert freedom of expression, but are not protected by the right to life.”

The obligations of human species towards animals are discussed in **Corpus Juris Secundum**, as under:-

“In Corpus Juris Secundum, Volume III, page 1087, it is stated “that the wild animals at large within its borders are owned by the State in its sovereign as

distinguished from its proprietary capacity and neither such animals nor any part thereof are subject to private ownership except insofar as the State may choose to make them so. ”

In American Jurisprudence, Volume II, page 694, the following passage occurs “in the United States the ownership of wild animals and fish not reduced to actual possession by private person is in the People of the State in their collective sovereign capacity, or in the State as representing all the people.”

HELD: The State of Haryana is directed to enforce the provisions of Prevention of Cruelty to Animals (Aquarium and Fish Tank Animals Shop) Rules, 2017; Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules 2017; and the Prevention of Cruelty to Animals (Pet Shop) Rules, 2018, in letter and spirit. The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Haryana are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.