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INTROSPECTING THE ADEQUACY OF PENALTY FOR CRUELTY TO ANIMAL- THE LEGAL VOID

AUTHORED BY - DR. MERCY K KHAUTE

ABSTRACT

In 2020, a pregnant elephant bit an explosives-filled fruit and died. In Jodhpur a man allegedly ties a dog to his car, simply to drag it around the city. Acts of stoning or beating animals is not an uncommon sight at times such inhumane acts takes on perverse and grotesque forms. The subject of animal welfare falls within the realms of Concurrent list¹ leading pretty much to a situation where the laws for welfare of animals have not gained predominance much as the issue requires. Not until lately, India has witnessed uproar among lovers of animals and animal rights activists against the absence of penalties proportionate to such treatment on animals.² The Prevention of Cruelty to Animal Act, 1960 ('PCA') widely criminalises actions of cruelty inflicted by offenders. However the imposition of penalty under the PCA is highly insufficient for the pain and harm inflicted on the sentient beings, which thus becomes inevitable that the Act must provide pragmatic penalties to fulfil the preventive objective of the legislation

Towards this idea, the current framework and the application of PCA is perused in part I of the paper. Thereafter, the common law principle of 'Doctrine of Proportionality' is adopted to study the suitability of the PCA in countering the injuries inflicted to animals and the corresponding penalties. Part III examines the effect of non-cognisability under the Act. The article concludes with the latest development and proposals on the Act.

Keywords- Animals, prevention, cruelty, penalties, amendments.

¹ The Constitution of India, 1950, Schedule VII, Concurrent List, Entry No. 17.

² Neha Madan, "Activists plan to seek legal remedy", The Times Of India, November 6, 2016, available at <http://timesofindia.indiatimes.com/city/pune/Activists-plan-to-see-legal-remedy/articleshow/55269741.cms> (Last modified on May 11, 2023).

I. THE PREVENTION OF CRUELTY ON ANIMAL ACT (PCA)- A BRIEF OVERVIEW

The PCA 1960 replaced the Act of 1890³ through the tireless efforts of persons like Rukmini Devi, a renowned Bharatnatyam dancer who through the language of her dances was able to highlight the necessities to protect animals. The new Act was introduced as a private member bill, and moved by the heartfelt speech delivered by her in 1954⁴, the then Prime Minister, Pandit Jawarhlal Nehru set up a committee especially designed to look into the aspect of animal protection and their welfare, thereby developing a comprehensive document that will address the issues that were addressed by Smt. Rukmini Devi.

Some of the key highlights of the current PCA is that it contains broad framework for penalising any form of cruelty against animals. To this end the Animal Welfare Board of India (AWBI) has been set up whereby the powers and duties of the board have been laid down to meet the objective of the law. Amongst the various provisions, the primary section that imposes punishments for instances of cruelty against animals is provided in section 11⁵, the provision also describes various forms of cruelty on animals. Several specific offences that are listed in the said section are considered to be to be non-cognisable offences.⁶ The fine for these offences is fixed at a maximum of meagre fifty rupees in case of first instance of offence (without any jail term), and a sum of hundred rupees in cases of the offence being committed the second time.⁷

Given the financial development India has witness over the years, a meagre sum of fifty-rupee as penalty only appears to be a mockery and by any standard of measurement is highly insufficient. the instances of cruelty on animals have been witnessed at rather inhuman scale, an instance where a dog had been thrown off the terrace by a resident in the city of Chennai.⁸ This case serves as a classic example of the PCA being a very weak legislation. Soon after the arrest was made, the accused person was granted bail and a sum of Rs. 50 only was paid by him in accordance with the

³ *Avanthi Meduri, Rukmini Devi Arundale (1904-1986): A Visionary Architect of Indian Culture and the Performing Arts* (68)(Motilal Banarsidass Publishers, January 2005).

⁴ *Supra* note 3 at 68.

⁵ The Prevention of Cruelty to Animals Act, 1960, s 11. .

⁶ Animal Welfare Board of India, *Animal Protection Laws for the guidance of Police, HAWOs, NGOs and AWOs*, available at <http://www.awbi.org/awbi-pdf/APL.pdf> (Last modified on May 11, 2023).

⁷ *Supra* note 5 at s. 11(1).

⁸ Shyam Balasubramanian, "Dog thrown from Chennai rooftop found alive", *The Times of India*, July 6, 2016 available at <https://timesofindia.indiatimes.com/city/chennai/dog-thrown-from-chennai-rooftop-found-alive/articleshow/53068399.cms>(last modified on May 11, 2023).

provision of the law.⁹ It may not be wrong to state that the law at this juncture had been a disabling factor that constraint the law keepers to take stringent action against the perpetrators. Violent instance of puppies being burnt alive¹⁰, slaughtered,¹¹ etc. was also reported around the same time. One must admire the initiative to prevent if not end such atrocities on the sentient beings, the #nomore50 movement has been started by animal lovers and animal rights activists urging the Government to take appropriate measures to ensure that the law imposes adequate penalties and the punishments be made more stringent on this subject matter¹²

In the wake of raising instances of cruelty on animals, the Smt. Poonam Mahajan, member of the Parliament had introduced a private member bill on the need to amend the law.¹³ The Bill proposed amendments especially in the imposition of higher fines and penalties so as to bring it in tandem with the objective of the law thereby ensuring the deterrence against any act of cruelty on the animals, of any form. Angel Trust¹⁴, an animal rights NGO filed a public interest litigation being filed at the court against the rising instances of harm caused to the animals in various forms, While the Apex court had issued a notice to the Central Government to inquire into the inadequacy of PCA,¹⁵ Based on the incidents listed in the petition, the Bench headed by Justice Dipak Misra, directed the government that it shall in a time bound manner determine the adequacy of the penalties.¹⁶

However with regards to the aspect of penalty, there are three setbacks that manifests predominantly - the offences undertake PCA being non-cognisant in nature, the penalty amount being grossly and the ease in obtaining bail for the offender under the Act. The following

⁹ *Ibid.*

¹⁰ Srinivasa Rao, "Hyderabad: 8 youngsters detained for burning puppies alive", *Hindustan Times*, July 21, 2016 available at <https://www.hindustantimes.com/india-news/hyderabad-8-teenagers-detained-for-burning-three-puppies-alive/story-2RrfOa8EPZjZhZ79F7QVSN.html#:~:text=Eight%20boys%20were%20held%20on,were%20believed%20have%20told%20police> (Last modified on May 11, 2023).

¹¹ *Supra* note 1.

¹² Humane Society International, "Parliamentarians, Indian Celebrities say #NoMore50 to Demand Stronger Penalties for Animal Cruelty", May 12, 2016, available at <http://www.hsi.org/world/india/news/releases/2016/05/nomore50-campaign-launch-increase-animal-cruelty-penalties-051216.html> (Last modified on May 11, 2023).

¹³ P. Oppilil, "Poonam Mahajan moves bill to raise penalties for animal cruelty", *The Times of India* August 5, 2016, available at <https://timesofindia.indiatimes.com/india/poonam-mahajan-moves-bill-to-raise-penalties-for-animal-cruelty/articleshow/53560663.cms> (last modified on May 11, 2023).

¹⁴ Angel Trust v. Union of India, Civil Petition (SC) of 2016 (Unreported), available at <https://drive.google.com/file/d/0BzXilfcxe7yuS2xSR24zTmhhT1U/view> (Last modified on May 11, 2023).

¹⁵ M.A. Rashid, "SC issues Notice on PIL seeking stricter penalty in cases of Animal Cruelty", *LiveLaw*, May 12, 2016, available at <http://www.livelaw.in/sc-issues-notice-pil-seeking-stricter-penalty-cases-animal-cruelty/> (Last updated on November 7, 2016);

¹⁶ *Ibid.*

discussion here from is an attempt to highlight the inadequacy of the PCA through the application of theories and principles.

II. SENTENCING POLICIES UNDER THE PCA

Animals have played a significant role in our societies ever since mankind has been able to decipher history, it is certainly iswell deserving of deliberations that the law must be one that can effectually protect the rights of these beings. The PCA being the sole primary law must be postured to sufficiently achieve its objective of animal welfare and protection in accordance with the principles of welfare laid down in our Constitution. Unfortunately, the PC Act in the present scenario, is unable to achieve the objectives envisioned due the inherent flaws in the Act itself. To dress the flaws, discourse on the penalty and punishments becomes essential which is discussed in the following part.

A. NEGLIGABLE PENALTIES

The standard of penalties need to be measured against the gravity of the offences by taking into consideration the objectives of imposing the penalty.¹⁷ The PCA provides fifty-rupee as penalty for offences committed against animals.¹⁸ To establish the efficacy of the penalty, the penalising provisions are required to be scaled against the scheme of the Act towards which the 'Proportionality doctrine may be applied as the yardstick to draw a clearer idea on this issue. In India this principle has not been codified like other jurisdictions of United States, Canada orGermany, but rather diffused in most laws as a feature of administrative law.¹⁹

This doctrine of proportionality in the realms of - criminal law jurisprudence proposes that, the punishments should be pitted against the gravity of the offence committed,²⁰ in order that the conformity between the two fulfils a twofold purpose,²¹ this will ensure firstly that the penalty imposed towards the perpetrator is fair and in accordance with the law, and secondly, it will secure the assurance from the citizens of the performance of their obligation towards the law.²² To quote Immanuel Kant on the theory of imbibing justice in punishment stated "Juridical punishment can

¹⁷ Andrew von Hirsch, "Proportionality in the Philosophy of Punishment: From "Why Punish?" to "How Much?"", 1 *Criminal Law Forum* 259, 262 (1990).

¹⁸ *Supra* note 7.

¹⁹ Ajoy P.B., "Administrative Action and Doctrine of Proportionality in India", 1(6) *Journal of Humanities and Social Science* 16 (2012).

²⁰ I.P.Massey, *Administrative Law*, 367 (Eastern Law Book Company, Lucknow, 8th ed., 2012).

²¹ *Supra* note 19 at 262.

²² Joel Goh, "Proportionality: An Unattainable Ideal in the Criminal Justice System", 2(41) *Manchester Law Review* 41, 48 (2013).

never be administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime.”²³ It therefore becomes imperative especially in a democratic set up that punishments when imposed should not be disproportionate to the crime committed. To this end, one may say, acts as a caution against the arbitrary deprivation and wrongful interpretation of the idea of justice. Pitted against this backdrop, the essence of penalties is also to imply deterrence which fails to be projected in the the PCA as the penalty fails to qualify to be considered even harsh leave alone punitive from the perspective of the accused nor from the perspective of the society! Viewed from the angle of proportionality, the punishment under the Act fails to meet the standard of crime committed which is an offence against the State in general as the state is duty bound to protect the beings.²⁴ and so prevent the occurrence of such crimes.²⁵

Viewed from such an angle it thus becomes imperative to determine the perspective of the citizens presumably by looking into the underlying principle set forth by the Act which is chiefly to prevent cruelty of all forms against animals. Various provisions of the Act enumerates this objective, the primary highlight being the Statement of Objects and Reasons of the PCA (‘Statement of Objects’), read with the relevant provisions in the Indian Constitution. The Statement of Objects in short states that the PCA aim is “to prevent the infliction of unnecessary pain or suffering on animals and to amend the laws relating to the prevention of cruelty to animals”.²⁶ During the drafting of the PCA 1960, this objective was the foundational inspiration to counter the inadequacies in the old Act. It is disheartening to notice, that the objective of the PC Act has failed to fructify as was envisioned.

In continuation on the objective of the Act, needless to mention the Constitution of India ought to be looked into as well. The forty-second amendment Act in 1976 two provisions were added which are Article 48A and Article 51A(g) that advocates for protection of animals. In Part IV under the Directive Principle of State Policy, Article 48A, states that “the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”²⁷ Under Part IV A, Article 51A(g), imposed the Fundamental Duty on every citizen “to protect and

²³ *Supra* note 24 at 46.

²⁴ [Michael Cavadino, James Dignan](#), et. al., *The Penal System: An Introduction* (SAGE Publications Ltd; 6th edition, 2 December 2019).

²⁵ Richard S Frase, “Excessive Prison Sentences, Punishment Goals, and the Eighth Amendment: “Proportionality” Relative to What?”, 89 *Minnesota Law Review* 571, 592 (2004).

²⁶ *Supra* note 5.

²⁷ The Constitution of India, 1950, Forty-Second Amendment, Article 48A.

improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”²⁸ The two provision specifically emphasises the importance to protect animals and maintain their well beings. The judiciary has also play crucial role in reasserting the emphasis on this subject matter and that it is in public interest that determines the adequacy of laws- in general. In *Buffalo Traders Welfare Association v. Maneka Gandhi*,²⁹ the contention was on the question whether unhygienic conditions in animal slaughterhouses were violative of the Constitutional provisions Articles, the Delhi High Court delivered an obiter that Article 48A and Article 51A(g) may not be strictly structured to have the force of law but nevertheless the relevancy of these provisions is unquestionable where there is the involvement of large public interest.³⁰

The case of *Animal Welfare Board of India v. A. Nagaraja* (‘Nagaraja’)³¹ provides a landmark in regard to this issue. The said Articles of 48(A) and 51 A(g) were read in light of section 11 of the PCA, and held that it is the duty of every person to not just uphold the well being idealistically but to also ensure the physical well being of these animals. ³² The “well-being” can also be interpreted as the prevention of infliction of any form cruelty. The Apex Court held that; “Sections 3, 11(1)(a) & (o) and other related provisions have to be understood and read along with Article 51A(g) of the Constitution which cast fundamental duties on every citizen to have “compassion for living creatures”. Parliament, by incorporating Article 51A(g), has again reiterated and re-emphasised the fundamental duty on human beings towards every living creature. All living creatures have inherent dignity and a right to live peacefully and right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering etc. Human life, we often say, is not like animal existence, a view having anthropocentric bias, forgetting the fact that animals have also got intrinsic worth and value. Section 3 of the PCA Act has acknowledged those rights and the said section along with Section 11 cast a duty on persons having charge or care of animals to take reasonable measures to ensure well- being of the animals and to prevent infliction of unnecessary pain and suffering.”³³

Subsequently, a plethora of decisions began to emerge that accorded e tremendous amount of importance on “a duty-based” approach as against the general “rights based” on the matters

²⁸ The Constitution of India, 1950, Forty-Second Amendment, Article 51A(g).

²⁹ (1996) 11 SCC 35.

³⁰ *Ibid.*

³¹ (2014) 7 SCC 547.

³² *Ibid.*

³³ *Supra* note 33 at 32.

pertaining to the prevention and ensuring of animal well being. In this regard the case of *Animals and Birds Charitable Trust & Ors. v. Municipal Corporation of Greater Mumbai & Ors.*,³⁴ provides a riveting approach wherein the Bombay High Court encapsulated several aspects of cruelty against animals;

*[...] 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.; 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; 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; Article 21 of the Constitution of India protects any disturbance from the basic environment which includes animal life which is necessary for human life; 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; 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; Right to dignity and fair treatment is not confined to human beings alone, but it applies to animals as well; Right not to be beaten, kicked or overridden is also a right recognised by Sections 3 and 11 of the PCA Act.*³⁵

Similarly in the recent High Court case of *People for Animals v. Md Mohazzim*,³⁶ the Court followed the ratio in *Nagaraja*, and held that it is the inherent and fundamental right of birds to fly. Although Justice Manmohan Singh mindful mentioned that the order passed by the court involved caging of birds hence the order is restricted only to birds. He compendiously opined 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,*

³⁴ 2015 (4) ABR 242.

³⁵ *Ibid.*

³⁶ 2015 SCC OnLine Del 9508.

*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.*³⁷

At this juncture, it is important to note that due deliberation is laid on the importance of issues pertaining to slaughter of animals in the context of duty to protect and not intentionally inflict harm. The court have re-emphasised on incidents that involve the gruesome slaughter of cattle, that the duty to prevent such incidents lay with the humans and none other.³⁸ Assumably the justification and rationale for adopting this approach by the courts may be owing to the fact that humans have conscientiousness and the capability of judging their actions as either being right for wrong. Therefore, one way to view this could be that the infection of cruelty on non humans by human beings, it is undeniable that every person is aware of his/her action, and the cruelty meted out on the sentient beings have been done with the knowledge that the act is inappropriate and wrong.

The awareness and knowledge in humans to understand their actions dispenses question on the Scierter Rule. The Scierter Rule has been typically developed in common law with the purpose of imputing liability on humans themselves for all the actions³⁹and conduct on animals⁴⁰. Although the rule, originally was not designed to - benefit animals *per se* but rather to acknowledge animals as property, the underlying theory was that “knowledge of wrongness of a conduct should be punished.” Taking this rule in the context of cruelty on animals in India it may be asserted that humans blessed with wisdom of comprehending the nature of their actions, the incorrectness of their conduct every time animals are inflicted with cruelty, which can barely find justifications. This also means that one may conclude on the theory of Peter Singer that when the rights based model fails to do good, the duty based model is befitting to understand the subject of animal rights.⁴² And because of the fact that humans possess conscientiousness, there is a higher obligation on humans to take mindful actions towards the non-human beings. Owing to this peculiar position bestowed on humans it only appears appropriate that the meagre penalty for cruel

³⁷ *ISupra* note 38 at 5.

³⁸ *Maneka Gandhi v. Union of Territory*, 1984 SCC OnLine Del 67, para89.

³⁹ Peter North, *Civil Liability for Animals* 3 (OUP Oxford, 1st ed., 2012).

⁴⁰ *Filburn v People's Palace and Aquarium Co. Ltd* (1890) 25 QBD 258.

⁴¹ Abigail Saunders, “*The Animals Act 1971 places a disproportionate burden on the keeper of animals and is in need of reform*”, 1 *Plymouth Law and Criminal Justice Review* 199 (2016);

⁴² Renzo Llorente, “*The Moral Framework of Peter Singer’s Animal Liberation: An alternative to utilitarianism,*” 16(1) *Ethical Perspective* 61 (2009).

actions on the animals to not be considered enough for their sufferings. The awareness and knowledge of the improperness of the wrongful action itself warrants penalty higher than a mere sum of fifty rupees imposed under the PCA.

Evidently, it is thus quite obvious bearing in mind the Constitutional provisions read with the objectives of the PCA, assisted by case laws provided an indication that protection of animals is an essential responsibility and obligation on both the State and citizens alike. Therefore, in view of the penalty laid down in the Act is certainly un-equivalent to the duty. It is not wrong to assert that the penalty, suffering caused by the act of cruelty fails to match up thereby failing to adhere to the doctrine of proportionality in this regard.

Further, the doctrine of proportionality is essential to be complied alongside in every form of penalties and or restrictions that may or are to be imposed by the law to satisfy the theory of deterrence⁴³ as described by Jeremy Bentham, proponent of the deterrence theory rightfully described it as having the ethos of utilitarian function.⁴⁴ Renzo writes “Bentham asserted that punishments should have a utilitarian function and so must be proportional to the gravity of the crime in order to maximise efficiency in public resource allocation because the greater an offence is, the greater reason there is to hazard a severe punishment for the chance of preventing it.”⁴⁵ while in cases under the PCA, there are certain crimes which may not be right only be classified as cruelty, but often crimes are heinous in nature. The challenge however lies in the fact that the act makes no classification of the offences yet the penalty of Rs.50/- is uniformly applied irrespective of the degree of cruelty inflicted. In this context of proportionality and deterrence theory, the insufficiency of penalty in section 11 of the Act is noteworthy and requires serious deliberations on the revision of the same.

B. EASE IN BAIL

Offences under section 11 are primarily categorised as non-cognisable bailable offences,⁴⁶ with minimal penalty and absence of jail term, obtaining bail becomes all the more simple and easy. The ease at which bail are obtaining stands to defeat the very purpose of bail application. If one looks into the historic anecdote into the introduction of bail, it was evolved as a concept in the Anglo-Saxon law which was originally looked upon as a remedy to aid in the avoidance of pre-

⁴³ *Supra* note 24,

⁴⁴ *Supra* note 24 at 48.

⁴⁵ *Ibid.*

⁴⁶ *Supra* note 7.

trial imprisonment.⁴⁷ This rationale of bail as a remedy was perhaps based in economics. “Because the amount of the pledge was identical to the amount of the fine upon conviction, the system accounted for the seriousness of the crime and fulfilled the debt owed if the accused did not appear for trial.”⁴⁸ The inference one may draw hence, is that bail was issued as an assurance that the public resources was not wasted on detain of the accused behind bars. With the development and progress in the criminal justice system, bail is interpreted more in sync with the deterrence theory. Bail was more of a reserved privilege based on the gravity of crime committed as against the heinous ones.⁴⁹ Even in India, bail continues to be granted in those cases strictly judged on the severity. And yet again, the lack of categorisation of crime in the PC Act, the concept of non-bailable offence does not arise at all thereby resulting in the negation of the the deterrence factor and the very purpose of bail.

C. NON-COGNISABILITY OFFENCES

The PCA lists sixteen offences of which only three are noted as cognisable offences,⁵⁰ under section 11(1)(l), 11(1)(n) and 11(1)(o),⁵¹ the status of cognisability status is given mostly likely due to the crimes under these sections as being graver in terms of methodical mutilation, usage of animals for fighting games or as a bait, and using the animals in competitive activities usually for pleasure and gambling. The microscopic listing of these offences creates an umbrella which shields the aspect of cognisability from being effectively addressed. The Criminal Procedure Code, 1973 (‘CrPC’) in section (c) states that cognisable offences are those situations in which the Police Officer may arrest without warrant based on the First Information Report (‘FIR’) filed under his jurisdiction while in non-cognisable offences under section 2(1) of the CrPC warrant from the Magistrate has to be obtained by the concerned police forcer before any arrest is made. Non-cognisable offences are typically viewed as lesser crimes in terms of the gravity, magnitude and nature of their crime committed. The elaborate procedure contained in the law itself makes it a difficult task to arrest leading in some circumstance failure to secure justice for the victim. Under the PCA, any complaint or information, the option available is to submit in the written form to proceed undertake Act. A provision to be noted here is the presence of Section 428 of the Indian Penal Code, 1860 (‘IPC’), which enables the immediate filing of an FIR as the offence under this

⁴⁷ Timothy Schnacke, Michael R. Jones, et al, *The History of Bail and Pretrial Release*, (PJI, Pretrial Justice Institute, 2010).

⁴⁸ June Carbone, “Seeing Through the Emperor’s New Clothes: Rediscovery of Basic Principles in the Administration of Bail”, 34 *Syracuse Law Review* 517 (1983).

⁴⁹ *Supra* note 40 at 7.

⁵⁰ *Supra* note 7.

⁵¹ *Ibid.*

provision is termed as cognisable. Section 428 of the IPC is a general provision, that penalises the mischief of maiming any animal. However on a careful observation, the legal provision is one that penalises the owner of the animal as opposed to the animal itself.⁵² The intention of the law, appears to protect the owner of the animal or such other persons who may have suffered owing to the harm inflicted on the animal and not really benefit the being. This also means that such animals like only cattle or companion animals enjoy this protection as they are owned by their owners while stray animals are not included within the ambit of the provision. Unfortunately this also implies that a party not privy to the issue may suffer from the disability of not being able to sue for lack of *locus standi* unless one is able to establish a connection to the cause of action. Therefore, what then appears is that section 428 of the IPC though permits registration of an FIR, its falls short of being a viable option that makes its appearance only when the animal in question has an owner and can be conveniently deemed a “property”. Although few instances have been noted under this section⁵³ which possibly may be a result of lack of knowledge which does not permit third parties to do actually lodged a complaint under this specific provision. Regardless, it is quite obvious that the non cognisability of more offences under section 11 of the PCA usher situations wherein cruelty inflictions on animals have gone unaddressed. there is a compelling need to address and amend the present state of affairs with respect to animal cruelty. Some suggestions are proposed subsequently.

III. THEORISING SOLUTIONS TO THE DEFICIENCIES UNDER THE PCA

The defects in the contemporary liabilities imposed by the PCA can be countered through two channels, i.e. relevant amendments to the PCA and an expanded liability approach as adopted in certain cases by the Supreme Court coupled with a coordinated work force.

A. LEGISLATIVE AMENDMENTS

Relevant amendments to counter the deficiency in the present PCA calls for an increase in the penal liability for acts of offences, establishing the status of cognisable and non-bailable to all offences listed under section 11 measured on the severity of the offence in every case.

⁵² Smt. Amrutha Shankeraiah v State of A.P through Public Prosecutor, 2010 SCC OnLine AP 365; Keshub Mahindra v State of M.P., (1996) 6 SCC 19.

⁵³ *Supra* note 11.

It is suggested that the amendments in the law are required at dual levels. Firstly, the distinction of offences listed under section 11 of the PCA, based on the gravity of the crime and the resultant harm the offence is expected to cause. For instance, under section 11(1)(a), the offence like “beating, kicking, over-riding, over-driving, over-loading, torturing, causing unnecessary pain or suffering to any animals”⁵⁴ is made punishable, but the vagueness of language falls short of resonating weight, action of beating an animal could range from mild beating to beating the animal to death. The leaves of of seriousness in both the act of beating is not the same but rather in the the two acts, the range of the crime is obvious which requires to be reflected in the statute as well as the penalty for the offender. In the coon parlance, criminal laws in particular employ ‘different punishments for different offences’ standard to conform to the doctrine of proportionality. Under the IPC the cognisability for simple hurt⁵⁵ vis-a-vis grievous hurt⁵⁶ are not the same. The degree of capability is an element that ought to be considered in such matters. This trend may be followed to enable the effective implementation of the legislation.

B. LIABILITY BASED APPROACH

It has been witnessed in the last few year that the judiciary appears to be following a trend whereby the doctrine of vicarious liability has been extended on the State making it pay compensation while also awarding penalties beyond the prescribed amount. The liability of the State has been justified on account of its failure to prevent the acts of the perpetrators, even when the doctrine vicarious liability is not clearly visible. This is quite a departure from the usual practise of awarding such compensation to victims of crimes namely, custodial deaths, hit and run, rape etc.⁵⁷ It is well within the jurisdiction of the courts to impose penalties higher than what has been codified in the laws, an notable case on this point is *Anita Kushwaha v. Pushpa Sudan*,⁵⁸ the Supreme Court passed judgment directing multiple jail terms followed by life sentence, each to operate consecutively, in case of heinous crimes like rape-cum-murder cases. The rationale for doing this has been that it was the duty of the State to protect its citizens, and since it failed to do so, the State is required to pay a certain amount of compensation. One may argue that indeed it is the State whose the guardian of the sentient beings.

⁵⁴ Supra note 5, s11(1)(a).

⁵⁵ The Indian Penal Code, 1860, section 323.

⁵⁶ The Indian Penal Code, 1860, section 325.

⁵⁷ Rudul Shah v State of Bihar, (1983) 4 SCC 141; Cherian v Union of India, (1992) 1 SCC 397.

⁵⁸ (2016) 8 SCC 509.

IV. THE ROAD AHEAD

The Ministry of Fisheries, Animal Husbandry and Dairying prepared the draft Prevention of Cruelty to Animal (Amendment) Bill-2022⁵⁹ to overhaul the six-decade-old law on Prevention of Cruelty to Animal Act, 1960. Altogether 61 proposals have been made while the most significant aspect of the proposed amendments seeks to widen the definition of crime by inserting a new provision that will include bestiality under the new category of ‘gruesome cruelty’. Gruesome cruelty is sought to be defined as “an act that leads to extreme pain and suffering to the animals which may cause lifelong disability or death”.

The draft set forth the tone for stringent punishments for gruesome cruelty and killing an animal. The penalty amount may vary from a minimum fine of Rs 50,000, if circumstances demand the said fine imposed maybe increased to Rs 75,000. To hike the fine amount, the concerned judicial magistrate is required to consult the veterinarians within the local jurisdiction. The term of imprisonment may also be extended from 1 year to three years depending on the facts and severity of every case. While a maximum imprisonment of 5 years has been proposed for unjustified and ruthless killing of an animal.

The outstanding feature of the draft amendments is the proposal for insertion a new provision in section 3A which sets out the five freedoms to animals. The undertone of this provision will ensure that duty based approach that will enable the sentient beings enjoy these freedom - (a) from thirst, hunger and malnutrition, (b) from discomfort due to environment, (c) from pain, injury and diseases (d) to express normal behaviour for the species and nasty (e) from fear and distress. Alongside the introduction of ownerless “community animals” born within the jurisdiction of a community are to be in the care of the concerned local community.

It is pertinent to highlight that the Animal Welfare Board of India (AWBI) was set up in the year 1962 under Section 4 of the Prevention of Cruelty to Animals Act, 1960 and has jurisdiction across the country. It is the apex body that frames rules and grants recognition the Animal Welfare Organizations (AWOs) including Gaushalas when are made. However it was soon after realised that the AWBI could be more effective with branches across the country and upon the direction of the Hon’ble Supreme Court in 2008, directions were issued for the constitution of State Animal Welfare Board at State and district levels. To state a few examples, in 20.4.2011 the Governor

⁵⁹ Available at <https://dahd.nic.in/sites/default/files/Public%20notice-Draft%20PCA%20bill-2022.pdf> (last modified on May 11. 2023).

of Mizoram⁶⁰ constituted the State level Animal welfare Board with member drawn from civil society organisations, concerned departments, etc. The state government of Goa in 2021 had formulated a scheme for the purpose providing financial aid to financial assistance to the Societies for Prevention of Cruel (SPC)⁶¹ aimed at preventing cruelty towards and protecting animals from being subjected to unnecessary pain and torture. Following the frequent incidents of killing stray dogs, in April 2023, the Delhi government⁶² announced the establishment of Animal Welfare Board, along side an order to set up Delhi's first veterinary college.

In the attempt to enforce the PC Act, the Central Government had notified the Prevention of Cruelty to Animals (Care and Maintenance of Case Property) Animals Rules, 2017 for the maintenance of those animals seized in raids and or in violation of the Act, and Rules. Shelter homes are to be set up for such rescued animals. An important commitment taken by the Board is sensitise all the states governments and Union Territories to implement law and rules on animal welfare and their protection. This requires the states to undertake projects of modernising and developing the cities in an environment friendly manner with special provision particularly for the care and concern of animals. To this end a concerted effort is required to be discharge by various ministers of the State required specifically the Ministry of Urban Development, Government of India to play a vital role in designing Modal Bye-Laws containing provision of Animals Shelters / Animals Shelters in the Smart City and other Metro City Development Plan to ensure the successful achievement of the objective of welfare in tune with the Prevention of Cruelty to Animals Act, 1960. The AWBI has played a significant role in creating general awareness and Launching of campaign against sacrifice of animals.⁶³ The atrocities against the dogs, feeders of dogs, care givers and dissensions among many urban residents began to be frequently reported in recent times, in addition to the sporadic incidences of dog bites in the cities of Delhi, Faridabad, Mumbai, Noida, Pune, Nagpur, Gurgaon etc. The Animal Birth Control (Dog) Rule, 2001 was framed by the Central Government while the duty to implement the rules was on the local authority

⁶⁰ The Mizoram Gazette, available at <https://mizoramassembly.in/storage/gazettes/February2021/YnkUKCt4811vtcQMHW.pdf> (Last modified on May 11, 2023).

⁶¹ Non-profit animal welfare bodies to receive financial aid from govt., September 16, 2021, available at <https://timesofindia.indiatimes.com/city/goa/non-profit-animal-welfare-bodies-to-receive-financial-aid-from-govt/articleshow/86244413.cms> (Last modified on May 11, 2023).

⁶² Neha Khan, "Delhi govt forms Animal Welfare Board", Siasat.com/News/Delhi, April 26, 2023 available at <https://www.siasat.com/delhi-govt-forms-animal-welfare-board-2576705/> (Last modified on May 11, 2023).

⁶³ Mandate of Animal Welfare Board is to prevent cruelty, suffering and pain to all creatures, Press Information Bureau Government of India, June 14, 2018 available at <https://pib.gov.in/newsite/PrintRelease.aspx?relid=179970> (Last modified on May 11, 2023).

which also included underling necessary steps with the main focus on anti-rabies vaccination of stray dogs and neutering of stray dogs to the control the population of stray dogs.⁶⁴

Needless to mention, laws alone cannot be effective. Strong coordination among the various organs of the state, a well informed society with emotive sensitivity towards sentient beings will yield results a lot better than simply having good legislations but confined to the letters of the law. For our commitment to non-violence will surely and most accurately be judged on how we treat the sentient being. To conclude in the words of Gandhiji, “The greatness of a nation and its moral progress can be judged by the way its animals are treated.”



⁶⁴ Animal Welfare Board of India issues advisories with regard to stray dogs and pet dogs, Ministry of Fisheries, Animal Husbandry & Dairying, December 7, 2022, available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1881462&RegID=3&LID=1> (last modified on May 11, 2023).