
REGULATIONS GOVERNING ANIMAL RIGHTS IN INDIA

Hariom Tiwari, Kishinchand Chellaram College of Law,
Sanjeevani Sethi, Government Law College &
Vedanti Gharat, Government Law College, Mumbai University

ABSTRACT

Animals are given the status of property in India? Why is this? why is a dog, who is considered as a “man’s best friend” given a title as a property? Does it not demean the relationship that animals and humans have? Are animals not entitled to Art. 21 of the constitution of India?

The article will be looking at various regulations which have been enforced by the government of India for the protection of animals- irrespective of them being wild or domesticated. The article will differentiate between the two, then compare the protection which both the categories receive. Finally, the article will raise specific questions in relation to exotic animals as well as animals those do not quantify under protection of the law as well are the victims of neglect and abuse. This article is meant as to create awareness to the people about the plight of animals.

Keywords: wild animals, domesticated animals, constitutional law, status of property, exotic animals

Introduction

Black's law dictionary defines animal as any animate being who is endowed with the power of voluntary motion. In the language of the law, animals could be defined as any living creature other than a human being¹. Yet an animal is certified as a property- as in the animal belongs to someone. Doesn't this dampen the relationship we have with animals? Animals are seen as our best companions- "Man's best friend" is a title given to the dog (who is in fact deemed as an animal). The question arises as to what is a property? "Property" means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.² But normally when one thinks of property, don't they mean inanimate objects. We have seen plenty of examples of property being animate as well as inanimate? A car is a movable inanimate property and a piece of land is inanimate immovable property. So how is an animate object- an animal a property? To understand this, one must understand the concept of property. Rights which are available to an owner of a property include right of enjoyment to property. The owner's right gets infringed when property is damaged or stolen. It is the owner who brings a complaint to the attention of authorities and it is the owner who asks for remedy. This is the standard rule for any property. This is done with a stereotype that all property is inanimate. But what about animate property? Don't they have a say in this? the inanimate object cannot speak- but the animate objects have the volley of emotions that they show. On further research, it has been found that a living thing which is not capable to understand the consequences of its own actions is to be termed as a property.

Animals are currently classified into different types based on their characteristics. It could be a land based animal or a water based animal, a vertebrate or an invertebrate, cold blooded or hot blooded and many many more. But law is known to simply this by classifying them just on the basis of whether they are wild or domesticated. Domesticated animals are "any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose for the use of man or which, although it neither has been nor is being nor is intended to be so tamed, is or has become in fact wholly or partly tamed³". The word "tamed" here means- an animal, such as wildlife, purposefully seeking out human company and social interaction, care or attention, does not reject human handling and learns not to fear humans- all of the above factors

¹ Prevention of cruelty to Animals act, 1960.

² Section 2(c) of the Benami Transactions (Prohibition) Act, 1988.

³ Acc. To S.2 of prevention of cruelty of animal's act, 1960.

hindering animal's return to the wild.⁴ The source of domestication can be traced back to as early as when communities started farming instead of foraging. Our great ancestors are responsible for domesticating wolves- the earlier ancestor of dogs. These animals assisted us in hunts, securing our kills etc. it is due to this that George Graham Vest rightly said that "the one absolute, unselfish friend that a man can have in this selfish world- the one that never proves ungrateful or treacherous-is his dog"⁵

All animals who are on the soil as well as in waters of Indian jurisdiction are normally governed under the following regulations-

- S. 428 and S. 429 of the IPC [Indian Penal Code].
- Responsibility of owners of domestic animals under tort law.
- Art. 48A and Art. 51A(g) of the Indian constitution.
- Prevention of cruelty of animal's act, 1960.

Other than this, other laws too apply which will be discussed in detail later on.

Protection by Indian Penal Code

The Indian Penal Code, which was drafted in 1860, is India's official criminal code. Its goal is to give the nation a comprehensive penal law. It lists crimes along with their definitions and penalties in 511 sections spread across 23 chapters. The IPC has undergone numerous amendments and is currently supplemented by additional Acts. Its founder is Sir Thomas Macaulay. Hence it is often known as Macaulay code.

The provisions dealing with animals are listed under S. 428 and S. 429 of the IPC. These provisions do not differentiate between wild or domesticated. These are-

"Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either

⁴ Acc. To oxford dictionary.

⁵ George Graham Vest

description for a term which may extend to two years, or with fine, or with both.”⁶

&

“Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.”⁷

As we just saw above, imprisonment is given to those who are convicted of cruelty against animals. The aforementioned laws were introduced to prevent needless animal suffering, and other laws of a similar nature continue to be passed in response to evolving conditions. In addition to specific regulations, important legal principles like tort law, constitutional law, etc. provide further protections for animals.

Protection of animals by tort law

Tort means 'to twist'. This type of law is often associated with civil law whose main goal is compensatory in nature. The whole concept of animals in tort law have been divided into 2 parts- i.e. possession of animal either of *ferae naturae* or *mansuetae naturae*. Animal *ferae* means animal of a feral nature (naturally those animals which are not domesticated). These animals are usually seen as responsibility of zoos which keep them. Animal *mansuetae* refers to animal of a domesticated nature. This include animals like dogs, cats, sheeps, goats etc.

The idea of *Scienter's Rule* applies when damage occurs as a result of the ownership of an animal, whether hazardous or non-threatening, and the person keeping it is held accountable differently in different instances. To clarify, the defendant is liable for injuries caused by domestic animals when he is aware of the vicious proclivity; nevertheless, in the case of wild animals, knowledge of a vicious proclivity is unquestionably implied.

We see that most incidents reported, have the primary ingredient or the damage being done by a domesticated animal, it seems natural that tort law provides some laws for the same. Tort laws say that all owners have absolute liability towards their pets. The term 'absolute liability'

⁶ S. 428 of IPC.

⁷ S. 429 of IPC.

here means that in case of any accidents, the owner of the pet will be held liable. But if the owner had taken all reasonable precautions and still failed to stop the incident, he is not liable.

Protection by Constitution

The father of all Indian laws, or *Lex loci*, is the Indian Constitution. In essence, this means that the Constitution serves as the supreme law-making authority for both the federal government and state legislatures. The Constitution gives the legislative, executive branch, and judiciary of India their respective powers. The Constitution of India is divided into - 25 parts and 12 schedules⁸. Part IV of the Constitution is Directive Principles of State Policy beginning from Article 36 to Article 51. These are the duties of the government. These are non-justiciable (they cannot be brought before a court of law). Part IVA of the constitution is in relation to Fundamental Duties- these are the duties of every citizen. They include every duty under Art. 51A.

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”⁹. This Article was added by the 42nd Amendment, 1976 and placed a duty on the State to protect the environment and wildlife.

““It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”¹⁰. This is one of the duty of the Indian citizens.

The 42nd Amendment introduced both of the aforementioned constitutional protections in 1976. While they are not immediately enforceable in Indian courts, they do establish the framework for legislation, policies, and governmental directives promoting animal protection at the national and state levels. Furthermore, they can be enforced in court by applying a broad judicial interpretation and bringing them within the scope of Article 21's judicially, enforcing the basic right to life and liberty.

Protection provided under Lists

Article 245 of the Indian Constitution states that, subject to the Constitution, the Indian

⁸ <https://byjus.com/ias-questions/what-are-the-25-parts-of-the-indian-constitution/>

⁹ Art. 48A of the Indian constitution.

¹⁰ Art. 51A(g) of the Indian constitution.

Parliament may adopt legislation for the entire or a portion of India's territory. India's territory consists of states, union territories, and additional areas such as enclaves inside India.

Article 246 specifies the subject matter of laws enacted by Parliament and state legislatures. The subject content is divided into three lists in the Seventh Schedule.

- The Union list- it refers to all the matters in which the parliament has control to make laws.
- The State list- it refers to all the matters in which the state legislature makes laws.
- The Concurrent list- it refers to all the matters in which both the parliament as well as state legislature can make laws.

The matters of animal welfare have been allocated in the state as well as concurrent list.

The States have the power to “preserve, protect and improve stock and prevent animal diseases and enforce veterinary training and practice.”¹¹ This is a part of the state list.

Concurrent list includes the following- Prevention of cruelty to animals ¹²& Protection of wild animals and birds¹³.

Protection under Cruelty of Animals Act, 1960.

The Prevention of Cruelty to Animals Act 1960 is India's fundamental cruelty law. The Act's object is to avoid the inflicting of needless pain or suffering on animals and, to reform policies relevant to animal cruelty prevention. In accordance with Chapter II of the Act, the Government of India established the Animal Welfare Board of India (AWBI). This board is responsible for-

1. Advising the central government regarding amendments and rules to prevent unnecessary pain while transporting animals, performing experiments on animals or storing animals in captivity.

¹¹ Item 14 of the State List provides that

¹² Item 17 of the Concurrent list.

¹³ Item 17B of the Concurrent list.

2. Encouragement of financial assistance, rescue homes and animal shelters for old animals.
3. Advising the government on medical care and regulations for animal hospitals.
4. Imparting education and awareness on humane treatment of animals.
5. Advising the central government regarding general matters of animal welfare.

The Act enumerates different variants of cruelty to animals-

- a. Beating, kicking, overriding, overloading, torturing and causing unnecessary pain to any animal.
- b. Using an old or injured or unfit animal for work (the punishment applies to the owner as well as the user).
- c. Administering an injurious drug/medicine to any animal.
- d. Carrying an animal in any vehicle in a way that causes it pain and discomfort.
- e. Keeping any animal in a cage where it doesn't have reasonable opportunity of movement.
- f. Keeping an animal on an unreasonably heavy or short chain for an unreasonable period of time.
- g. Keeping an animal in total and habitual confinement with no reasonable opportunity to exercise.
- h. Being an owner failing to provide the animal with sufficient food, drink or shelter.
- i. Abandoning an animal without reasonable cause.
- j. Wilfully permitting an owned animal to roam on streets or leaving it on the streets to die of disease, old age or disability.

- k. Offering for sale an animal which is suffering pain due to mutilation, starvation, thirst, overcrowding or other ill-treatment.
- l. Mutilating or killing animals through cruel manners such as using strychnine injections.
- m. Using an animal as bait for another animal solely for entertainment.
- n. Organizing, keeping, using or managing any place for animal fighting.
- o. Shooting an animal when it is released from captivity for such purpose.¹⁴

But certain loopholes in the act can still be found. Nowhere is it written in the Act about the dehorning/castration of cattle in a prescribed manner, destruction of stray dogs in lethal chambers in prescribed manner and extermination of any animal under the authority of law. This provides somewhat of a leeway and people use this leeway a lot to get acquittals in a court of law. Part IV of the Act addresses animal experimentation. The Act does not make animal testing illegal for the improvement of physiological knowledge or knowledge to battle disease, whether of humans, animals, or plants. It envisions the central government establishing a Committee for the control and oversight of animal experiments, with the authority to forbid experimentation if necessary. This is why we still see chimps, rabbits etc. in factories being experimented upon. Even animal sacrifice on the pretext of religion is not banned under this law. “Nothing contained in the Act shall render it an offence to kill any animal in a manner required by the religion of any community”¹⁵. Considering the diversity of religions and traditions in India, this Section was considered imperative. But animals have been shown to have no decent rights at all.

India took its first steps in protection of animal rights with the introduction of prevention against the cruelty of animals act, 1960. However, there is still a long way to go before India has a sound foundation for animal law. The provisions in the Indian Constitution for animal protection remain ideas- rather than tangible law enforceable in courts. The penalties for animal cruelty under the Prevention of Cruelty to Animals Act of 1960 are just insufficient to prevent crimes against animals. The law is not strictly enforced and provides many provisions that

¹⁴ Section 11 of cruelty of animals, 1960.

¹⁵ S. 28 of the cruelty of animals act, 1960.

allow for culpability to be avoided. Extensive revisions are required in this area to provide India with a stronger animal protection law.

While these legislations take care of the animals on land and water, what about wild birds or wild animals in general? We all are familiar with the process of migration that many birds undertake. This is responsible for bringing many foreign species of birds on our land. Are there any laws protecting them? While it is seen that the wildlife protection act is responsible for protection of indigenous birds, exotic birds or even animals are not included in this. Wildlife protection act was passed in 1972 and has been a huge boon for wildlife. It is issued for the benefit of wild flora and fauna. According to this,

- Animals include amphibians, birds, mammal and reptile. It also includes their young and in the cases of animals which lay eggs- their eggs too.
- Wild animal refers to any animal specified in schedule 1 to 4 and are found in wild in nature.
- Captive animal refers to any animal specified in schedule 1,2,3 or 4 which have been captured or kept or bred in captivity.

The act is the one responsible for the ban on hunting of animals. It does that in S.9 of the act wherein it prohibits hunting. It says that any animal specified in Schedule- 1,2,3 and 4 cannot be hunted unless it falls under the following exceptions:

1. Animal becoming dangerous to human life.
2. Killing or injuring an animal in self defence.
3. Education purposes.
4. Scientific research purposes.
5. Scientific management purposes

Section 39 of the act declares to all that "All Wild Animals are government's property". This one also includes dead animals too- so the carcass of a dead animal belongs to the government.

But what about people who have inherited animals? We all are familiar with stories of kings who had tamed lions, monkeys or even donkeys as pets. Do those animals too belong to the govt? Section 40 of the act declares that a declaration of inheritance is to be made before the Chief Wildlife Warden or an authorised office.

For the protection of exotic animals, India has been a signatory of the CITES¹⁶ (Convention On International Trade of Endangered Species of Wild Flora And Fauna) convention. Due to this some over the top laws have been made but no real action has been undertaken. Over the years, pet ownership trends in India have changed dramatically. While dogs, cats, rabbits, hamsters and guinea pigs are still popular pets for families and children, exotic wildlife such as iguanas, macaws, parakeets, turtles, lemurs, pygmy, marmosets and sugar gliders continue to be popular. Bird and reptiles are the species which have been commonly found amongst India's illegal trade. An option developed for young people and individuals who want to mark by owning a 'wild' pet. With the advent of globalization, this took a turn for the worst with Wildlife Trafficking.

“Possessing exotic wildlife as a pet is legal in India if one have paperwork, however, the domestic regulation of the rampant trade and transport, is non-existent. Hefty amounts of money are paid to acquire these pets, and the growing demand is thus met with horrific acts of poaching from the wild, smuggling, or illegal breeding followed by incomprehensible trauma that these animals go through during transit and transport,”¹⁷ In addition to animal suffering, the wildlife trade poses significant risks to biodiversity and disease transmission. This is the fourth-largest illegal and systematic transnational crime after drug, arms and human trafficking, and undeniably contributes to terrorist activities and threats to national security. These are normally governed under the Customs act, 1962 and Foreign trade act, 1992. However the main purpose of these 2 acts are to track and stop smuggling. So a loophole is seen as to when the animal enters Indian land, is not caught by security then it can be freely traded here. There is wildlife protection for protection of indigenous wildlife but there is no laws for protection of exotic species.

On June 11, 2020 the govt. brought forward a voluntary disclosure scheme¹⁸. This scheme

¹⁶ <https://cites.org/eng/disc/what.php>

¹⁷ Sumanth Bindumadhav, Senior Manager, Wildlife, Disaster Response and Dharwad Program, Humane Society International/India.

¹⁸ <https://www.ecojust.eu/indias-exotic-pet-trade/-information>.

enabled the people to declare their exotic pets. The purpose of this scheme was more of a census type- recording the numbers so they can be used at a later stage. The people of India were given a time period of 6 months to declare(which was later extended to 9 months). However it did not extend any further due to the pandemic on 15 March 2021. The numbers given are staggering. By 26 May 2021, the MoEF had received a total of 43,693 declarations from 25 states and five union territories. In this,

- 30% of declarations came from West Bengal
- 26% came from Kerala.
- 13% came from Tamil Nadu.
- 8% came from Maharashtra.

This just forms the 77%. If a state is not found here, it does not mean that it is not a part of trafficking exotic animals. Exotic animals are found everywhere if one searches for strongly. Critics have strongly said that this 9 months declaration time was a window which greatly benefitted the smugglers and traffickers. They brought the animal in India, declared it and then sold it legally. These animals are protected by the CITES convention to which India is a signatory, meaning they should have been taken under the custody of govt. or MoEF at least. But it seems to be not that important.

One does not understand the problem that is to be seen with introduction of exotic species in India. The problem is that this is not their natural habitat and without their habitats- an animal only has 2 options. Either it will adapt/evolve or it will die. We have already realised that evolution takes a long time. Anyone can just ask Charles Darwin¹⁹. His book "Origin of Species" primarily talks about how human beings evolved through neanderthals which took over a span of over a 1000 centuries. But when a species evolve, a lot of problems emerge. Problems of overhunting is common due to which species have gone extinct. An invasive species of predators can endanger the food chain which may lead to calamitous effects. Whole species can be wiped off the face of the earth due to this disaster. This is not all. We have to remember that an animal also moulds the environment. So this can also lead to more problems.

¹⁹ Charles Darwin- the author of "Origin of Species" and the primary advocate being the theory of evolution.

As we saw, the problem of exotic animals is huge (it is a multimillion dollar business) and won't go down easily. Fortunately, there is a solution to that. It is in the form of an amendment in the wildlife protection act. The bill was passed by lok sabha on Aug 3, 2022 and was introduced by the union ministry in Dec 2021. The proposed Bill has significantly increased and doubled general fines for infractions from Rs. 25,000 to Rs. 1,00,000, which may also help augment the fear of consequences for wrongdoers and drive the implementation of the Wild Life (Protection) Act 1972 and its amendments thereafter.

The Bill lets in for people to voluntarily give up any captive animal covered below the regulation, and not using an economic repayment in exchange, and then the animal will become the belongings of the nation government. While this will save you the arbitrary abandonment or launch of those animals with the aid of using people who do now no longer need to take the problem to sign in their animals and are available below the purview of the regulation and its regulations, the control of those uncommon and doubtlessly invasive species goes to require big ability constructing efforts in phrases of infrastructure and educated employees to make sure captive animal welfare.

In addition to offering bodily control of stay animals, enforcing government may also want to undertake strong virtual infrastructure to music and make sure lifetime captive welfare. Currently, the Maharashtra wooded area branch makes use of a web device to hold a test on all brief and completely housed captive Indian natural world found in zoos, rescue, and remedy transit centres. Such structures might be doubtlessly had to efficaciously control data, together with an stock of animals, registration, deaths and transfers, in an effort to optimally use resources, mainly with the aid of using wooded area departments in states like West Bengal, Kerala, Tamil Nadu and Maharashtra that preserve a primary share of uncommon natural world traders.

Conclusion

As Justice Kaul has rightfully said " Law has to change with time"²⁰. We have seen the regulations which are currently in use are obsolete. The penalties of ₹50, ₹100 or even ₹1000 does not serve as a deterrant for those who by selling the animal carcasses or the child of the

²⁰ As world changes, judiciary needs to keep pace with change in expectations: Justice Kaul | India News - Times of India <https://timesofindia.indiatimes.com/india/as-world-changes-judiciary-needs-to-keep-pace-with-change-in-expectations-justice-kaul/articleshow/74272181.cms>

animals get in lacs of rupees or even crores. India is said to be rich in both flora and fauna. But it seems that we are about to lose both. The plant kingdom is getting destroyed on the name of development by humans. The concept of sustainable development is not followed at all. The animal kingdom will suffer tremendously due to this. We all are aware of the terror of leopards in Arrey Colony, Mumbai as well as the terror of a herd of elephants in any area- they stomp the people, destroy crops and are a pain to kill. But one always forgets that this happens because we destroy their homes. We are responsible. In the name of progress we have foraged through all our exhaustive non renewable resources. When the talk happens on saving environment, everyone speaks but when its time to amend- being energy efficient, everyone comes up with an excuse. From not being able to afford to the idiotic phase- don't mend what is not broken. But one has to realise that animals don't speak our language- otherwise in these environment summits it would be their voice which would be heard. They would be able to explain how human beings have catastrophically destroyed their habitat environment, for their own selfish needs. Hence, it is to be known that saving the animals could be the first step in repairing earth. To put back earth on the pristine conditions- animals have to be saved. But this cannot be done by outdated laws or half heartedly. Full work is to be enforced in this.