



Companion Animal Welfare Laws in India: A Comparative Analysis of Liability of Pet Owners in Care, Breeding and Abandonment

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Abstract. Companion animals are pets that ensure affective wellbeing of people. In a developing country like India, there is a normative gap in its legal framework for the protection of companion animals. The law does not recognise companion animals, and thus the cases of cruelty and abandonment go unnoticed. In most of the cases, the owners choose to inflict injury, show negligence in care and abandon the companion animals, leaving them vulnerable. A comparative analysis of the Indian laws with the laws of the United Kingdom showcases a possible solution to protect companion animals. There is a need to balance the liberty of owners with the rights of the animals. Countries around the world regulate and protect wildlife, and such frameworks can be created for the welfare of companion animals as well. Creation of rules and empowering the local governance bodies to intervene and regulate pet animal ownership will be a progressive step in congruence with the ethical values of the Indian Civilisation in the contemporary world.

Keywords: Companion Animals, Cruelty, Animal Rights, Animal care obligations, Pet Ownership regulation.

1 INTRODUCTION

Human beings are creatures of their thoughts and beliefs; these two elements form the cultural and religious practices, which, in the long run, frame the collective morality, and finally, the formalisation of collective morality develops a legal framework [I]. The legal systems around the world create an artificial construct or legal fiction that is dependent on the morality of the society brewed through the ages of history. The idea of human rights is one such construct that grants immunity to human beings from illegal extermination.

The development of Animal rights in the contemporary world can be seen through this analogy. We have evidence from various cultures around the world that recognise the co-existence of humans and animals. Still, very scanty evidence is available to verify the nature of this relationship. In most of the civilization's, this relation was a

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means to an end, and the animals were seen as objects or property possessions as the owners used them to consume or use to soothe their needs. Oriental societies are divided based on their cultural and religious practices regarding treatment of animals, religious scriptures from Hinduism recognise some of the animals in a distinct category and provide them protection if the animals are a Vahana of any of the deity [2], cultural believes and practices of certain communities too played a crucial role is protecting the animals, the practices of Bishnoi Community from Bikaner region of Rajasthan is a testimony of animal conservation practices, Soliga tribe from Karnataka uses its traditional knowledge for conservation of wild animals, the Hornbill festive form Nagaland have their customary believes for conservation of wildlife [3].

With the development of positive law and constitutionalism in modern political states, we find the adoption of some of the values of environmental conservation and animal welfare. In India constitution, we find Article 48 which states that the state shall organise agriculture and animal husbandry, and in furtherance of this objective, it provides a prohibition of the slaughter of milch animals like cows, buffalo, calves, but in the past 75 years Indian Judiciary has limited this protection only to the animals that are fit for producing milk. The Indian Parliament in the year 1976 passed the 42nd Constitutional Amendment to incorporate Article 48A into the Indian Constitution. The new addition put a duty on the state to protect the environment, flora, fauna, and wildlife of the country. So, the Animals in the wild got protection due to the development of environmental conservation legal norms at national and international levels, but the protection of cattle and domestic animals remained a subject of the state policy that was heavily dependent on the historical and cultural practices of the regions of the world [4].

The concept of animal rights still suffers from various limitations, as it is still subservient to the rights of humans or their masters. Human beings are considered creatures of reason, and thus, the conservation laws around the world follow the ethnocentric approach [5]. Animals are seen as objects, and the protection being provided to them gets validations to satisfy the moral, customary or legal requirements of society. In common law jurisdiction the court developed principles to protect the animals from any harm inflicted to them if the owners choose to file a complaint for loss of property for instance a farmer's dog chased and killed pheasants of another farmer then the owner of the dog was held liable for trespass to property (*Read v. Edwards*, 1864), in another case where an infected sheep trespassed on to the farm of a neighbour and infected the livestock, the court held the owner of infected sheep for trespass and causing property damage (*Thayer v. Purnell*, 1918). On the contrary, in some cases the courts decided otherwise if the incidents did not amount to a violation of any trots like, in one of the cases, a framer's pigeons were killed by the cat of a neighbour but the court held that it is the nature of the cat to kill birds so there is no liability on the owner of the cat (*Buckle v. Holmes*, 1926). Thus, the current legal framework available for the conservation of animals is fragmented and lacks sound epistemological justification.

2 Limitations of the current animal rights framework in the protection of companion animals

Development of animal rights jurisprudence is a new field of study, but unlike human rights, the field lacks consensus on the nature of absolute rights that can be granted to animals. The lack of *Erga omnes* norms, as we have for human rights, adds to the misery of the advocates of animal rights. Another issue is the lack of independent representation from the animals, unlike human beings, who are capable of expression, organization, and protest; the animals are subject to the representation of their human owners or patrons. Thus, the advocacy for a strong *Erga omnes* norms for animal conservation suffers from a vice of conformity to human moral standards.

Another approach for weaker animal rights is the prevalent usage and economic legitimization of the meat industry. Globally majority of communities, irrespective of their stage of development, consume meat; there has been a significant increase in meat-based food consumption to get the required protein in the diet. In the past 20 years, from 1998 to 2018 there has been an increase of 58% in the total volume of meat consumption [6]. More than 120 countries around the world have included meat as an important part of the daily diet of their citizen [7]. India, in recent years, has come up as one of the largest producers and consumers of meat. As the Ministry of food processing industries report, India produces 10.5 MT of meat and 149.11 bn eggs annually [8].

The society at large becomes permeable to the legitimization of meat consumption, which also affects the cruelty against animals, unethical practices of meat, poultry and dairy production [9]. Some of the research highlights that animals have a relatively lower degree of sentience, yet they feel pain and cruelty they undergo in the meat, poultry and dairy industry [10].

An analysis of existing animal welfare legal frameworks brings us to some preliminary rules and regulations that are not well-defined and are not universal. The majority of the legal jurisdictions have divided the animal conservation legal framework into parts, one of which aims to protect the wild animals. India enacted the Wildlife Protection Act, 1972 (The Wildlife Protection Act, 1972) to conserve the animals found in the wild. In Schedule I of the act, animals, depending on the varying degree of their population, have been given protection from hunting or commercial exploitation. Similar legislation across different jurisdictions creates an institutional framework for the conservation of animals. But the list of animals getting protection varies from one jurisdiction, mostly depending on the number of remaining animals in the wild. At the international level, CITES was enacted after the Washington Convention of 1963. CITES has failed to protect wild animals as it aims to regulate illegal trade in the animals and animal products, but fails to grant any direct rights to them [11]. The second category under which the legal systems provide conservation to the animals is by regulating the domesticated animals. The states in this category recognize the rights of owners over their pets and thus indirectly the domesticated animals get protection from harm from third parties [12]. But the domesticated animals do not get protection in instances where the owner is the one inflicting cruelty, as if a farmer chooses to kill the beast for a feast, it cannot be illegal. The laws permit people

to have a choice in choosing the pet and determine the fate of the pet. This strict proprietary approach for the regulation of domestic animals leads to undetected cases of animal cruelty [13].

Some legal jurisdictions, like India, have developed laws like the Prevention of Cruelty Against Animals Act to ensure that the pain and cruelty inflicted against animals can be reduced. The recent judicial trend regarding the cases on Prevention of Cruelty fails to paint a clear picture regarding what kinds of cruelty the act is preventing [14]. These judicial decisions have failed to define the conceptual framework of cruelty, the extent and application of cruelty, and the stakeholders who can compel the state to take action against cases of cruelty against animals [15]. Some of the studies highlight that the Indian legal system fails to offer a reliable apparatus to prevent cruelty, as the function of the executive is not well defined, and the police officers in general are ordered to take action on a complaint, the officials are not trained to collect evidence, and the punishment is not adequate in case any person commits cruelty against animals [16].

3 A Case for separate rights and regulatory framework for companion Animals.

The term “Companion Animals” has not been defined, but some of the relevant scholarly work available on the topic creates a genealogy to help us distinguish the term. As we have seen, the animals are categorised as domesticated and wild animals. Further, the legal systems around the world categorise them as livestock or feral animals and some of the animals that come from these categories but are taken in by humans as pets come under the category of companion animals [17]. The human animal relationship has been a part of the myths of every ancient culture. In the stories of the Mahabharata, when the Pandavas depart for the Himalayas, a stray dog follows them and becomes their companion [18]. In Ramayana we find mention of lord Rama taking help from the Vanar sena. We also read about the selfless sacrifice of Jatayu, the Vulture king. In other civilisations as well, we find evidence of animals who are accompanying the humans. Many archaeological findings present evidence of human animal burials; thus, the history of humanity is full of references to human animal bonhomie [19]. This friendship leads to the development of a special cultural and moral framework that puts these companion animals in the category of pets and results in the accrual of an additional set of rights for these animals [20]. These animals provide emphatic support to humans and, in return, they get a place to reside in the household, they get food and care from their owners [21].

The companion animals, thus, are not viewed from an economic perspective, and they find a place in households across the world. There is no uniformity or universal framework to decide which animals can be pet and it depends on the cultural and religious practices around the world [22]. In most of the American Household we find a cat or a dog, but sociologists have noticed that many other animals and reptiles, too, have been adopted by families as pets [23]. In Islamic societies the households do not prefer to keep dogs as pets due to religious beliefs and customary practices [24]. In

Hinduism, we find a mixed belief and practices as different sects keep different animals as pets. It includes the animals under different categories, like cows are considered as pious animals and thus killing of cows is strictly prohibited, along with the cows' various other animals like Lion, Mice, Snake, Owl, Swan, Peacock etc. have been given the status of a Vahana and thus they get care and protection from the community, and many households keep dogs or cats as pets as well [25]. Other religions, such as Christianity and Judaism permits ownership of pets and put no restrictions. Both these religions promote care and compassion by the masters towards their pets; thus, we witness a robust culture of companion animals as pets in Christian and Jewish households [26]. In some of the East Asian societies, we see that the dogs are not treated as pets, and the culture does not prohibit the consumption of dog meat. Many city hubs in China have developed a commercial supply chain of dog meat. So, the rights and recognition of companion animals end here, and every animal becomes consumable [27].

Companion animals have been a part of human evolution, and the current relations between humans and animals have transformed with the development of society [28]. It has become a social fact and social necessity, and with modernization of society, the roles and methods of care of companion animals have changed [29]. The owner shares an emotional connection with the pet and thus takes care of them like a member of the family [30]. The death of a pet affects the owner at emotional and psychological level [31]. We all have seen what John Wick does to the people who killed his dog.

The cultural acceptance and emotional bonding with companion animals lead to a lack of a regulatory framework in modern legal society, and thus, in instances of abuse, the animals fail to get justice. An analysis of the core issues aggravating neglect of companion animals can be reframed in a systematic way. Firstly, due to historical, religious and cultural moral frameworks, the modern governments have ignored the regulation of companion ownership. This has led to a governance void grossly affecting the rights and well-being of companion animals in instances of abuse by the pet owner. Secondly, since the companion animals are the property of the pet owners, they remain undetected due to the right to privacy of the pet owners, resulting in suppression of atrocities and neglect by the pet owner or any other member. Thirdly, since the companion animal does not offer any commercial output to the owners, once the emotional needs are fulfilled, the owners abandon their pets. The recent wave of urbanisation [32] has created a new set of challenges for companion animals, as the urban spaces are compact spaces and urban society mostly showcases organic solidarity [33]. The pets sometimes find it difficult to survive in an urban environment and suffer emotionally and physiologically due to neglect by their owners.

4 Legal Framework in India

The legal framework for conservation of animals in India consists of constitutional provisions, Statutory rules and regulations. Some of the landmark judicial decision to have shaped animal rights in recent years. Under Article 48 of the Constitution of India provision for the protection of milch animals was added by the forefathers of the Indian

constitution. Article 48 thus creates an obligation on the state to ensure that the slaughter of cow buffalo and other milch animals is regulated. It does not prohibit the slaughter of animals that are unfit for agriculture or producing milk. The Supreme Court of India in the *Mirzapur Moti Qureshi Kasab Jamat case (State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat, 2005)*, looked at the question of the scope of Article 48 of the Indian Constitution and its impact on Article 19(1)(g). The court held that the state can put restrictions on the slaughter of cows, bulls, and calf but the court failed to justify why the ambit of animal rights shall be narrow and only cows and bulls shall enjoy such protection.

The constitution of India, through the 42nd constitutional amendment, added Article 48A to protect the wild life. The amendment expanded constitutional protection to wild animals in conjunction with the provisions of the Wildlife Protection Act, 1972. The act provides an umbrella protection to the wildlife in the country. Section 2(1) of the act defines animals as “animal” includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs. Section 2(16) of the act defines hunting as any act of killing, capturing, destroying or taking any part of the animal. And under Section 9, the act prohibits the hunting of wild animals. Here, the act does not differentiate between milch and non-milch animals, unlike what we see under the Prevention of Corruption Act. Secondly, the scope of protection has been kept very wide and thus the Wildlife Protection Act provides a concrete framework for animal rights and protection. But the act under sections 11 and 12 gives power to the chief warden officer to cull any animal which is vermin, or sick or is causing a threat to human life. We can argue that the act adds a layer of due process that prohibits ordinary citizens from killing or torturing animals. Even if in such a situation the intent of the state is to adhere to an ethnocentric approach, it is not shy in granting a set of well-defined rights to animals. But such a protective legal framework is non-existent for the domesticated animals; rather, the protection provided under the Prevention of Cruelty to Animals Act and other associated rules is narrower than the Wildlife Protection Act (The Wildlife Protection Act, 1972).

The Prevention of Cruelty to Animals Act was enacted to give limited powers to the government to intervene in cases where they receive a complaint, or they see cruelty against animals and take *Suo Motu* action, but the punishments prescribed are nominal; the act has no deterrence (The Prevention of Cruelty to Animals Act, 1960). The act creates an executive body under section 4, as the Animal Welfare Board and gives it powers under section 8 to make suggestions to the government on animal welfare policies, provide conservation and protection to animals. The act under section 11 provides a wide definition of cruelty which covers beating, over-exploitation, starving, confinement, wilfully causing injury to the animal and the use of animals for fighting. If any person is found guilty of any such activity falling under section 11 they can be fined up to 100 rupees or imprisoned for 3 months. The act under subclause 3 of section 11 excludes nose roping, killing stray dogs in a prescribed manner, or killing other animals for the protection of people and property. Chapters IV and V of the act provide regulations for conducting experimentation on animals and performing animals. In the year 2023, the government enacted the rules to support the act, which deals with the procedure for castration, nose roping, branding, euthanasia and makes

an attempt to reduce cruelty to animals (The Prevention of Cruelty to Animals (Animal Husbandry Practices and Procedures) Rules, 2023).

Along with these two major provisions the Animal Welfare Board of India has enacted a set of industry-specific regulations like the Animal Birth Control rules (The Animal Birth Control Rules, 2023) which under rule 11 bestows responsibility on the local bodies to capture sterilize and release animals, under rule 7 it divides the animals under stray and pet category and under rule 14 the local bodies can inspect any premise where the animals are sheltered. The Animals Welfare board has enacted the Dog Breeding and Marketing Rules (The Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017), which regulate breeding and the sale of dogs and issue licences to the breeders. The animal welfare board has enacted other regulations for the transfer of animals, property animals and livestock animals.

The companion animals are dependent on their owner for food and shelter, so when they are abandoned, they suffer immensely. Lack of regulation regarding adoption and ownership of companion animals thus makes it difficult to fix accountability. The United Kingdom provides a robust and time-tested legal framework to regulate the ownership and control of pets and companion animals.

5 A Comparative Analysis of Liability of Pet Owners in Care, Breeding and Abandonment

The United Kingdom is a common law country and a vibrant democratic country. We have chosen the laws regulating adoption, breeding, care and abandonment of pets in the United Kingdom to argue that India too can take a stride towards animal rights and their welfare by adopting best practices. The Animal Welfare Act, 2006 (hereinafter “AWA”) protects all vertebrate animals living in any household or any establishment where permanently or temporarily (The Animal Welfare Act, 2006). Section 3 of the act makes owners of animals responsible for care and protection. Sections 4 to 9 of the Act cover offences like abuse, mutation, poisoning and fighting. These provisions are analogous to the provisions of the Prevention of Cruelty to Animals Act and Rules. But the scope of AWA is wider as it covers all the vertebrates in any facility.

Further, the AWA under sections 9 to 12 creates a duty of welfare on the owners and creates a mechanism of inspection by the officials to ensure welfare and in cases where the owners fail to comply with the welfare measures, the Act under sections 11 and 16 creates a mechanism for taking away the ownership and transferring the animal to another facility. The act under section 13 creates a process to grant licenses and regulate ownership to establish accountability. Unlike India, whether the Animal welfare create a licensing abrogation on breeders of dogs under the Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017.

The local bodies under AWA are empowered to take strict action against the owners in case of violation of the provisions; they may cancel licences, search and seize the animals found during search, cancel the license of ownership, and impose a penalty. The punishment for violation of the AWA provision inflicts serious liability on the offenders. As per Section 6, the offence of tail docking is punishable with imprisonment

up to 51 weeks and a fine up to 20,000 pounds. Some of the scholars have suggested that having a procedural mechanism for the enforcement of these rights creates a legal safety net for the companion animals in the United Kingdom [34]. Having compassion for animals and the creation of a legal framework depend on the democracy and highlight modern liberal values of the society [35].

6 Conclusion

India is a democratic country with a sense of empathy and compassion gushing from its constitutional values, indigenous culture and religious ethos. The modern values of animal conservation often flourish under the penumbra of an anthropocentric approach, and thus, we view animals as mere resources or commodities. The common law traditions, from time to time, have given compensation to the owners for the voluntary actions of an alien leading to the death or decapitation of the cattle or the pet. But the role of the state or third parties has been secondary as the animals have been considered as property. Even the other civil law jurisdictions have enacted laws to compensate the owners, but the idea of considering animals as sentient beings for the accrual of separate rights still looks like a distant dream. Pushing the state to grant animals rights at par with humans and consider them sentient beings may look like a far-fetched demand, but seeking a robust regulatory mechanism for the protection of companion animals looks plausible and a necessary step in the direction of animal welfare.

The government regulates the lives and well-being of animals in the wild, and they regulate and take care of stray animals, but so far, there is a reluctance to regulate the pets or companion animals. Rapid urbanisation and the growth of cosmopolitan culture have changed the habitat and lifestyle of the companion animals. Thus, it is the right time for the government to regulate ownership and ensure that the owners are taking responsibility for their pets. Adoption of proper registration and guidelines regarding care can reduce the incidence of abuse of companion animals.

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