

# BROADENING THE SCOPE OF LIABILITIES FOR CRUELTY AGAINST ANIMALS: GAUGING THE LEGAL ADEQUACY OF PENAL SANCTIONS IMPOSED

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*Recently, several incidents pertaining to cruelty being inflicted on animals have come to light, questioning whether an amendment to the present Prevention of Cruelty to Animals Act, 1960 is indispensable. The Act, which was framed several decades prior, envisages a sentencing policy and penalties that were probably adequate during that period, but need to be re-examined now in terms of the adequacy and nature of liability imposed. This requires looking into whether the criminal penalty and the provisions for receiving bail as provided under §11 of the Act are sufficient in present times, in light of lack of proportionality between the offence and the punishment meted out. Further, we note that the imposition of criminal liability altogether may not be completely adequate, and thus civil liability needs to be considered. We suggest the imposition of civil liability along with criminal liability for offences against animals. Civil liability would grant the State the status of ‘guardians’ or ‘trustee’ of animals and the power to sue the offenders to receive remedies. Hence, a solution is suggested in the form of statutory amendments and better implementation mechanisms. We also enumerate hypothetical applications of these solutions with respect to the imposition of liability, to determine their potency. The paper shall conclude on the note that an amendment to the current sentencing provisions and penalties of the Act is imperative, along with imposition of civil liability, to prevent rampant occurrences of animal cruelty in the future.*

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## I. INTRODUCTION

Animals in India occupy a non-human status, wherein they are treated as a commodity or property.<sup>1</sup>The property status is indicative of a lower position occupied by animals,<sup>2</sup> as a result of which sufficient liability is not imposed in instances involving harm and infliction of cruelty upon them. This is reflected in the penal sanctions available under the Prevention of Cruelty to Animals Act, 1960 (‘the PCA’ or ‘the Act’) which deals with cases of animal cruelty. However, the PCA only imposes a maximum criminal liability of fifty rupees on the perpetrators based on its current application.<sup>3</sup>

The rise in the number of cruelty incidents towards animals, such as throwing a dog from the rooftop, burning animals alive, etc., have compelled animal rights activists and the judiciary alike, to question the adequacy of the meagre criminal liability imposed for such acts.<sup>4</sup>This legal introspection has also led to the #nomore50 movement on social media, which

<sup>1</sup> David Favre, *Living Property: A New Status for Animals Within the Legal System*, 93(3) MARQ. L. REV. 1021, 1046 (2010); *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶65.

<sup>2</sup> *Id.*

<sup>3</sup> The Prevention of Cruelty to Animals Act, 1960, §11(1).

<sup>4</sup> The Times of India, *Dog thrown from Chennai rooftop found alive*, July 5, 2016, available at <http://timesofindia.indiatimes.com/city/chennai/dog-thrown-from-chennai-rooftop-found-alive/articleshow/53068399.cms> (Last visited on November 7, 2016); Hindustan Times, *Hyderabad: 8 youngsters detained for burning puppies alive*, July 21, 2016, available at <http://www.hindustantimes.com/india-news/hyderabad-8-teenagers-detained-for-burning-three-puppies-alive/story-2RrfOa8EPZjZhZ79F7QVSN.html> (Last visited on November 7, 2016); The Times of India, *Activists plan to seek legal remedy*, November 6, 2016, available at <http://timesofindia.indiatimes.com/city/pune/Activists-plan-to-seek-legal-remedy/articleshow/55269741.cms> (Last visited on November 7, 2016); Humane Society International,

challenges the present status of fifty rupees being the highest possible punishment for acts of cruelty towards animals. But this challenge has been only through various media platforms.<sup>5</sup> For a legal challenge, the current liability imposed under the PCA needs to be questioned in light of its flaws, so as to adopt viable alternative legal solutions. This paper aims at achieving the aforementioned objective by exploring the different forms of liability that can be imposed in cases of animal cruelty.

Part II of the paper explores the history and objective of the PCA. It highlights the societal urgencies existing then that required the incipience of such a law. This section also discusses the approach adopted by the courts in giving effect to constitutional mandates dealing with the protection of animals and for the application of the PCA. Further, based on the present application, the deficiencies in the liability imposed by the PCA are analysed in Part III. Deficiencies in the law are broadly categorised into paltry sum of penalty, non-cognisable status of the offences, statutory limitation and easy grant of bail, by applying the doctrine of proportionality and the deterrence theory of punishment.

Upon discovering the faulty application of the PCA, the next step is to enhance the imposition of criminal liability, and to identify and explore imposition of civil liability as a possible recourse. Part IV of the paper ventures into the possibility of amending the aforementioned flaws in the present criminal liability imposed by the PCA; and the elements of civil liability and also, its application in case of animal cruelty. We suggest that not only should the penal provisions of the PCA be amended, as has already been reiterated through several proposed amendments and the discourse surrounding them, but also that civil liability be added as a mechanism to sanction offenders. For civil liability, the guardianship test is analysed and applied wherein, the state is made the guardian of animals by applying the doctrines of *parens patriae* and Public Trust, wherein animals are given 'equitable self-ownership title'. Thereupon, based on the previous analysis of the liabilities imposed by the PCA, suggestions to the present application of the PCA are made in the form of amendments to the law and imposition of civil liability. The paper concludes on the note that such reforms may possibly lead to the protection of animals by facilitating a decline in the number of cruelty cases, thereby, ultimately achieving the original aim undertaken by the State of protecting and promoting animal welfare.

## II. PRESENT SCENARIO AND APPLICATION OF PCA

The PCA was enacted with the aim to prevent the infliction of unnecessary pain or suffering on animals.<sup>6</sup> It came into force in 1960 and its penal provisions have not been amended since.<sup>7</sup> The PCA has been heavily criticised for being inadequate and for lacking the necessary force to prevent atrocities towards animals. However, considering the fact that the PCA is the primary legislation in India dealing with animal welfare, it is important, while discussing why and how the PCA is ineffective, that we delve firstly into what it actually entails

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*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 visited on November 7, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> The Prevention of Cruelty to Animals Act, 1960, Statement of Object & Reasons.

<sup>7</sup> Change.org, *Amendment of the PCA (Prevention of Cruelty to Animals Act, 1960)*, July, 2016, available at <https://www.change.org/p/animal-welfare-government-of-india-amendment-of-the-pca-prevention-of-cruelty-to-animals-act-1960> (Last visited on June 16, 2017).

in terms of its provisions, in its current form. To review the PCA in its current form, first, the history of the Act is discussed. Thereupon, the scope and application of the PCA is analysed, while taking into account the judicial interpretation of its content. This requires a discussion on how the judiciary has, sometimes explicitly and sometimes through interpretation, accorded rights and entitlements to animals and has given these rights constitutional status. Finally, this section of the paper concludes with an overview of the proposed amendments to the PCA, which are in line with recent judicial interpretations of the PCA and which propose to make the PCA more suited to achieve its aims and objectives.

#### A. BACKGROUND OF THE PRESENT PCA

The PCA came into existence largely due to the efforts of Rukmini Devi Arundale.<sup>8</sup> In 1952, she, introduced a private member's bill in the Rajya Sabha to replace the existing the Prevention of Cruelty to Animals Act, 1890 ('PCA, 1890'), so as to overcome its inadequacies.<sup>9</sup> It was after her vehement and ardent speech in the Rajya Sabha in 1954, highlighting the need and importance of protecting animals, that Prime Minister Nehru set up a committee to look into the matter and formulate a comprehensive legislation.<sup>10</sup> He requested Rukmini Devi to withdraw her bill and assured her that his government would undertake the preparation of a proper legislation for the protection of animals and their rights.<sup>11</sup> This paved the way for the enactment of the PCA.

The PCA replaced the older PCA, 1890. The PCA, 1890 was restricted in its scope. It only applied to urban areas within municipal limits and it defined the term 'animal' as any domestic or captured animal.<sup>12</sup> This meant that it excluded animals other than domestic and captured animals from its ambit, such as, stray animals, who in fact, face the most amount of cruel and inhuman treatment, birds which have not been domesticated etc. Also, it only covered very few, specific types of cruelty towards animals<sup>13</sup> and, additionally, the penalties enumerated under it were also inadequate.<sup>14</sup>

<sup>8</sup> Gopalkrishna Gandhi, *The woman who said no: How Rukmini Devi chose dance over presidency*, HINDUSTAN TIMES, March 4, 2016, available at <http://www.hindustantimes.com/columns/the-woman-who-said-no-how-rukmini-devi-chose-dance-over-presidency/story-5OKAXIRON46d8QfiUX1QWI.html> (Last visited on May 4, 2017) (Rukmini Devi was a Theosophist, Dancer, Choreographer and Teacher of Bharatnatyam, Founder of Chennai's iconic Kalakshetra, a nominated member of the Rajya Sabha, Champion of animal rights, and the first Chair of the Animal Welfare Board).

<sup>9</sup> CHINNY KRISHNA & MANEKA GANDHI, *RUKMINI DEVI AND ANIMAL WELFARE IN RUKMINI DEVI ARUNDALE, 1904-1986: A VISIONARY ARCHITECT OF INDIAN CULTURE AND THE PERFORMING ARTS* 67-70 (2005).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The Prevention of Cruelty to Animals Act, 1890, §2(1); *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶¶32, 81.

<sup>13</sup> For instance, under the PCA, 1980, wilful administration of injurious drugs to animals and failure to provide sufficient food, drink and shelter were not offences which are offences under §11 of the PCA, 1960. Under the current Act, the owner of an animal is required to provide such animal with adequate food and drink, under §11(h). However, under the PCA, 1890, the only requirement was that such animal may not suffer by reason of thirst or starvation. This shows that while animals under the current Act are required to be adequately and sufficiently nourished, under the previous Act, only starvation due to absolute neglect, would have amounted to cruelty.

<sup>14</sup> The Prevention of Cruelty to Animals Act, 1890 (The penalties for any of the offences outlined by it did not exceed 100 rupees or a prison term, duration of which was one month or a maximum of three months in cases of subsequent offences).

The PCA, thus, aimed to overcome the defects and inadequacies of the existing PCA, 1890. For the first time, it also extended protection to animals in the sphere of research and experimentation, and made provisions for the proper treatment and protection of performing animals.<sup>15</sup> It brought into existence the Animal Welfare Board of India, a statutory body that has been given the mandate to oversee and promote the welfare of animals<sup>16</sup> and to make recommendations to the Central Government for the same.<sup>17</sup> The PCA is thus the most widely applicable set of laws in the sphere of animal rights.

## B. SCOPE AND APPLICABILITY OF THE PCA

### 1. Offences

The PCA lists several offences and prescribes penalties for the same. §11 of the PCA is the main section which punishes instances of cruelty by listing specific offences. It renders beating, kicking, over-riding, over-driving, over-loading, torturing, which causes unnecessary pain or suffering to any animal punishable.<sup>18</sup> The Orissa High Court interpreted this section in *Bali Parida v. Nira Parida*<sup>19</sup> to mean that beating an animal as such is not punishable under §11(1) of the Act and does not constitute an offence under this sub-section, unless the beating is such as to subject the animal to unnecessary pain or suffering.<sup>20</sup> Thus, according to this case, §11 requires a nexus between the action of cruelty and unnecessary pain or suffering, with main emphasis being on the latter.

This brings us to a debate on the concept of ‘unnecessary suffering’ when it comes to the standards of animal welfare. There is general consensus on the principle that animals should not be made to suffer unnecessarily.<sup>21</sup> This principle has been used as the basis for most animal welfare legislations in several countries<sup>22</sup> However, we are yet to demarcate between necessary and unnecessary suffering.<sup>23</sup> The Supreme Court in *Nagaraja* also spoke about the concept of ‘unnecessary pain’. It held that in cases of offences against animals it was important to see whether the suffering caused to the animal, could have been reasonably avoided or reduced or whether the conduct causing the suffering was for a ‘legitimate purpose’, i.e. for instance, to benefit the animal, protect the another animal, a human being or property, etc. However, this was observed while interpreting §3 of the PCA. The Court opined that §3 does not confer any right upon any person ‘to inflict necessary/unnecessary pain or suffering’.<sup>24</sup>

<sup>15</sup>The Prevention of Cruelty to Animals Act, 1960, §§14-20.

<sup>16</sup> The Prevention of Cruelty to Animals Act, 1960, §4(1).

<sup>17</sup> The Prevention of Cruelty to Animals Act, 1960, §9.

<sup>18</sup> The Prevention of Cruelty to Animals Act, 1960, §11(1)(a).

<sup>19</sup>*Bali Parida v. Nira Parida*, 1969 SCC OnLine Ori 129.

<sup>20</sup> *Id.*, ¶5.

<sup>21</sup>F. Hurnik & H. Lehman, *Unnecessary suffering: Definition and evidence*, 3(2) INTERNATIONAL JOURNAL FOR THE STUDY OF ANIMAL PROBLEMS 131-137 (1982).

<sup>22</sup> *Id.*

<sup>23</sup> ROBERT GARNER, *THE POLITICAL THEORY OF ANIMAL RIGHTS* (2005).

<sup>24</sup> The Court further went on to argue that although no unnecessary pain is to be inflicted on animals, out of necessity, certain acts such as destruction of stray dogs in a humane way, or using animals for food is allowed. However, it must be noted that extermination of “irretrievably ill or mortally wounded” stray dogs when done, is to be done in a “humane manner following proper procedure” as per the Supreme Court. Cattle slaughter and transportation also have to be done in such a fashion so as not to cause animals distress, pain and suffering. See *The Prevention of Cruelty to Animals Act, 1960, §§11(1), 11(3)*; DNA India, *Supreme Court allows killing of irretrievably ill or mortally wounded stray dogs*, November 19, 2015, available at

David Favre, a well-known scholar in the field of animal rights, also talks about how the interest of animals have to be balanced alongside those of humans, and how sometimes human interests may be allowed to take precedence over the interests of animals, in being free from torture and suffering.<sup>25</sup> Cass Sunstein, another renowned scholar also believes that animals must not be subjected to more suffering than is absolutely necessary.<sup>26</sup> According to Sunstein any practice where the suffering of the animal far outweighs the benefit to mankind, and where not much can be done to minimise such suffering, should be abolished.<sup>27</sup> But if decent treatment can be given to animals, even those who for instance are going to be used for food, animals may then justifiably be used for food. However, if an activity calls for unacceptably high levels of suffering then it should be prohibited.<sup>28</sup>

Thus, these scholars do not suggest that we stop using animals for food, or labour in agricultural fields. However, they argue that in using animals, humans should limit their suffering to a bare minimum. In this regard, Sunstein argues that an overwhelming majority of animals that are bred and used for food are beyond the coverage of anti-cruelty laws, thereby rendering most modern farming techniques unregulated.<sup>29</sup> Thus, Sunstein argues for greater regulation in those areas which have been the subject of wide exceptions and exemptions in anti-cruelty statutes, such as scientific experiments, entertainment, and farming. Therefore, any kind of suffering should be convincingly justified, so as to prevent overriding injury to animal interests.<sup>30</sup> What then amounts to necessary or unnecessary suffering in the context of animal welfare? This has been satisfactorily summed up by Sunstein by stating that; “if we focus on suffering, as I believe we should, it is not necessarily impermissible to kill animals and use them for food; but it is entirely impermissible to be indifferent to their interests while they are alive.”<sup>31</sup> This seems to drive home the idea that considering the fact that animals have, since the dawn of time been of immense importance to humans for food, agriculture, etc, it is probably impossible to absolutely abstain from using them for fulfilling certain human needs. Nevertheless, it cannot be ignored that animals are sentient beings and have intrinsic moral worth. Therefore, we must actively strive to minimise, to the greatest extent, any sort of pain that may be caused to them, when being employed by humans to fulfil certain needs that are deemed to be reasonable and legitimate. Thus, what is relevant is a balancing of the interests of humans and those of non-humans. Any avoidable suffering, purely for selfish human gains, should be illegal. This seems to be the import of the words “unnecessary pain or suffering” in §11 of the PCA.

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<http://www.dnaindia.com/india/report-supreme-court-allows-killing-of-irretrievably-ill-or-mortally-wounded-stray-dogs-2146625> (Last visited on July 20, 2017). See also *Krushni Goseva Sangh v. State of Maharashtra*, 1987 SCC OnLine Bom 309; *GovanshRakshaAbhiyan-Goa and Ors. v. State of Goa and Ors.*, 2016 SCC OnLine Bom 7032.

<sup>25</sup>David S. Favre, *Judicial Recognition of the Interest of Animals- A New Tort*, MICH. ST. L. REV. 333, 346 (2005) (He gives two examples of such a situation, where human interests supersede those of animals: “Thus, if a horse has to be hit to make him start pulling the wagon, or if an animal has to be killed to be eaten, such actions do not violate the law”).

<sup>26</sup> Cass R. Sunstein, *The Rights of Animals*, 70 UNIV. OF CHICAGO L. REV. 387, 390-395 (2003).

<sup>27</sup>*Id.*

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*, 394.

<sup>31</sup>*Id.*, 393.

§11, has also been discussed by the Supreme Court in the case of *Animal Welfare Board of India v. A. Nagaraja* ('Nagaraja'), in which, the Court recognised that acts of cruelty towards animals, enumerated under the said provision of the PCA, when allowed, is unconstitutional.<sup>32</sup> In *Nagaraja*, it banned the sport of Jallikattu,<sup>33</sup> as, in the opinion of the Court, the sport violated §3, §11(1)(a), §11(1)(m), §11(1)(n) and §22 of the PCA (which relate to competitions or matches between animals, wherein animals are made to fight or perform), and Art. 51-A(g) and (h) of the Constitution (which are Fundamental duties under the Constitution).<sup>34</sup> The Court, in *Compassion Unlimited Plus Action v. Union of India*, also held that any action, which causes unnecessary pain and suffering to animals, is an offence, for such action, is in contravention of the statutory rights under §11 and §3 of the PCA that are granted to animals.<sup>35</sup>

Moreover, under §11(1)(c), unreasonably or wilfully administering any injurious substances or drugs to animals is a punishable offence. The Supreme Court applied this section in *Nagaraja*, and held that rubbing irritant solutions into the eyes of bulls to agitate them during the sport of Jallikattu and forcing fluids and alcohol down their throats were offences under the PCA.<sup>36</sup> In the same case, the Court further held that the practice of keeping the bulls in cramped, narrow waiting corridors, in blistering heat, with no space to lie down or rest, for long hours, causing great distress and discomfort to the animals, was a violation of §11(1)(f) of the PCA, which prohibits tying any animal, for an unreasonable time with an unreasonably short rope.<sup>37</sup>

Failure on the part of owners to provide animals with sufficient food, drink or shelter is also an offence under §11(1)(h) of the PCA.<sup>38</sup> Further, confining any animal in any cage or any receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement;<sup>39</sup> or conveying or carrying any animal, either in or upon any vehicle in such a manner as to subject it to unnecessary pain or suffering are also offences under §11(1)(e) of the PCA. In consonance with these provisions of the PCA, the Bombay High Court held, in *Krushji Goseva Sangh v. State of Maharashtra*, that the transport of cattle, in cages not proportionate to their size is an offence under the PCA.<sup>40</sup> Non-abidance of the rule even for transportation of animals for slaughter amounts to an offence under this section, since, in *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi*,<sup>41</sup> where the issue was regarding transportation of animals for slaughter via truck, in which they had been filled in a cruel manner,<sup>42</sup> the Supreme Court not only imputed liability for the offence on the drivers and the cleaners but also on owners of the trucks.<sup>43</sup>

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<sup>32</sup>*Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶¶89, 90.

<sup>33</sup>*Id.*

<sup>34</sup>*Id.*; *Compassion Unlimited Plus Action v. Union of India*, (2016) 3 SCC 53.

<sup>35</sup>*Id.*

<sup>36</sup>*Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶21 (Referring to reports submitted by Animal Welfare Board of India on Jallikattu events conducted in Southern parts of Tamil Nadu).

<sup>37</sup>*Id.*

<sup>38</sup>The Prevention of Cruelty to Animals Act, 1960, §11(1)(h).

<sup>39</sup>The Prevention of Cruelty to Animals Act, 1960, §11(1)(e).

<sup>40</sup>*Krushji Goseva Sangh v. State of Maharashtra*, 1987 SCC OnLineBom 309.

<sup>41</sup>*Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234.

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

The PCA also contemplates certain duties that humans owe to animals.<sup>44</sup> Failure to discharge these duties amount to offences and thereby invite penalties. Duties may be positive or negative.<sup>45</sup> Positive duties imply positive actions that are prescribed by law, while negative duties are negative injunctions that prohibit certain actions.<sup>46</sup> The PCA includes both negative and positive duties that humans owe to non-humans. For example, §11(1)(a) makes it an offence to beat, kick, over-ride, over-drive, over-load, torture or otherwise treat any animal so as to subject it to unnecessary pain or suffering. This is a negative duty imposed upon humans by the PCA, such that they are obligated under law to refrain from causing any animal unnecessary pain or suffering. On the other hand, §11(1)(g) makes it an offence if the owner of a dog that is habitually chained up or kept in close confinement, neglects to exercise or cause to be exercised reasonably. §11(1)(h) also makes it an offence if the owner of any animal fails to provide it with sufficient food, drink or shelter. These are positive duties imposed upon humans to exercise their dogs, and to provide animals with food, drink and shelter. Thus, owners of animals are obliged under law to perform the said duties. Consequently, as a corollary, animals under the PCA have positive and negative rights. In respect of negative duties imposed upon humans, such as the duty not to beat, kick, over-drive etc, animals have the negative liberty or right against cruelty. Contrarily, for the positive duties owed by humans, animals have corresponding positive liberties, such as, the right to be exercised or properly fed. However, it must be noted that the PCA majorly incorporates negative duties that humans owe to non-humans, but very few positive duties that may achieve for animals better and more dignified conditions of living.<sup>47</sup>

The duties imposed and rights conferred by the PCA have also been discussed by the Supreme Court while analysing §3 and §11 in *Nagaraja*. Such an analysis is in tandem with the rights and duty based approaches. In *Nagaraja*, the Court laid down that the first limb of §3 of the PCA<sup>48</sup>, confers rights upon the animal to ensure their well-being and the second limb of §3<sup>49</sup> casts a duty on the persons in-charge or in care of animals to prevent the infliction upon such animals, of unnecessary pain or suffering.<sup>50</sup> Such analysis implies that §3 is a preventive provision, which casts no right on the persons in-charge or in care of animals, but only imposes duties and obligations. §3 of the PCA, therefore, confers corresponding rights on the animals as against the persons in-charge or care, as well as the Animal Welfare Board of India ('AWBI'), to ensure their well-being and to protect them from the infliction of any unnecessary pain or suffering.<sup>51</sup> The same has been held with respect to §11. According to the Court, §11 is penal in nature, and confers rights upon animals and duties, and obligations on all persons, including those who are in care of the animals, the AWBI etc. to look after their well-being and welfare.<sup>52</sup>

## 2. Penalty

<sup>44</sup>The Prevention of Cruelty to Animals Act, 1960, §§3, 11.

<sup>45</sup>Marcus G. Singer, *Negative and Positive Duties*, 15(59) THE PHILOSOPHICAL QUARTERLY 97 (1972).

<sup>46</sup>*Id.*

<sup>47</sup>Jessamine Therese Mathew & Ira Chadha-Sridhar, *Granting Animal Rights under the Indian Constitution: A Misplaced Approach? An Analysis in light of Union of India v. A Nagaraja*, 7(3-4) NUJS L. REV. 349 (2014).

<sup>48</sup>The Prevention of Cruelty to Animals Act, 1960, §3 ("It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal...").

<sup>49</sup>The Prevention of Cruelty to Animals Act, 1960, §3 ("It shall be the duty of every person having the care or charge of any animal to... prevent the infliction upon such animal of unnecessary pain or suffering.").

<sup>50</sup> *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶¶35,36.

<sup>51</sup>*Id.*, ¶36.

<sup>52</sup>*Id.*, ¶37.



Subjection of an animal to any of the acts, specified under §§11(1) (a) to (o) of the Act, makes the offender (in the case of a first offence) liable to pay a fine that may extend to only fifty rupees.<sup>53</sup> In the case of a second offence or a subsequent offence committed within three years of the previous offence, the offender shall be made to pay a fine of not less than twenty-five rupees, the quantum of which may also extend to one hundred rupees or the offender may be imprisoned for a term which may extend to three months or both.<sup>54</sup> Further, in the case of second offence, the offender's vehicle is to be confiscated, and he shall be barred from keeping an animal again.<sup>55</sup>

The laws in our country, which have been enacted for the protection and safety of animals, are ineffectual and toothless, considering the meagre penalties prescribed, which are neither proportional to the gravity of the offences committed nor are enough to prevent such offences. The severity or the degree of the punishments prescribed by these laws is no match for the gravity of the crimes that offenders commit against animals. A fine of fifty rupees is not adequate punishment when it comes to offences which may result in the death of or in severe injury to animals. Consequently, offenders get away easily, having suffered no major consequences for their reprehensible actions.<sup>56</sup> §11 lists several grave offences which may cause extreme discomfort and severe pain to animals, and sometimes even result in death. The consequences of such minor sentences and fines for such grave and serious offences are the recurring incidents of animal abuse.<sup>57</sup>

### C. STATUS OF ANIMALS AS RECOGNISED BY THE CONSTITUTION

In India, apart from there being domestic legislations<sup>58</sup> preventing cruelty towards animals, further recognition has been given to the rights of animals under the Constitution itself. This section briefly summaries the various constitutional provisions which grant animals rights or impose duties upon humans towards non-human animals. The way these provisions have been judicially interpreted, has also been discussed.

#### 1. Fundamental Duties and Directive Principles of State Policy

The inclusion of fundamental duties in the Constitution of India, was done to provide valuable assistance in the interpretation and resolution of legal and constitutional

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<sup>53</sup>The Prevention of Cruelty to Animals Act, 1960, §11(1).

<sup>54</sup> The Prevention of Cruelty to Animals Act, 1960, §11(1).

<sup>55</sup> Animal Welfare Board of India, *Animal Protection Laws for guidance of Police, HAWOs, NGOs & AWOs*, July 4, 2014, available at <https://awbi.org/?q=node/177> (Last visited on May 16, 2017).

<sup>56</sup> The Time of India, *Paltry fine of Rs 50 allows abusers to get away with animal cruelty*, March 18, 2016, available at <http://timesofindia.indiatimes.com/india/Paltry-fine-of-Rs-50-allows-abusers-to-get-away-with-animal-cruelty/articleshow/51450261.cms> (Last visited on June 18, 2017); Huffingpost, *Penalty for Torturing An Animal In India Is Less Than A Cup Of Coffee*, July 7, 2016, available at [http://www.huffingtonpost.in/2016/07/07/animal-cruelty-india\\_n\\_10856308.html](http://www.huffingtonpost.in/2016/07/07/animal-cruelty-india_n_10856308.html) (Last visited on June 18, 2017).

<sup>57</sup>See *supra* note 4.

<sup>58</sup>See, e.g., The Prevention of Cruelty to Draught and Pack Animals Rules, 1965; The Performing Animals Rules, 1973; The Transport of Animals, Rules 1978; Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001.

issues.<sup>59</sup> The constitutional validity and the ambit of statutory provisions must be judged with reference to our fundamental duties. The provisions of the PCA which are concerned with issues of animal welfare and prevention of cruelty must also be in consonance with our collective fundamental duties, that is, to have compassion for living creatures<sup>60</sup> and to develop and inculcate the spirit of humanity as well as a scientific temper,<sup>61</sup> when dealing with animals so as not to harm them. The fundamental duties of the citizens of the country are collective duties of the State.<sup>62</sup> The adequacy and applicability of statutory provisions are therefore, to be determined with reference to the fundamental duties, as also the Directive Principles of State Policy.

A commitment to animal welfare also finds reflection in constitutional provisions, such as Article 48, a Directive Principle of State Policy, which provides that the State shall seek to preserve, improve breeds, and prohibit the slaughter of cows and calves and other milch and draught cattle.<sup>63</sup> Article 48A, also directs the State to protect the environment and wild life of the country. The implication of the said Fundamental Duties and the Directive Principle of State Policies is that it is also the moral and ethical duty of the State to make such laws which invoke the performance and furtherance of the duties as contained in the Constitution of India.<sup>64</sup>

The Courts have also enjoined the fundamental duties under Articles 51A(g) & (h), to prevent cock fighting,<sup>65</sup> to ban bull-fighting,<sup>66</sup> to accord birds with the right to fly<sup>67</sup> etc. Courts have placed liberal interpretations on constitutional provisions and have read them into other statutory provisions dealing with both animals and wildlife. Furthermore, in reference to the Fundamental Duties and Directive Principles of State Policy, the Supreme Court, in *Nagaraja*,<sup>68</sup> opined that that the PCA must be read in conjunction with Articles 51A(g)<sup>69</sup> and 51A(h)<sup>70</sup> of the Constitution of India.

It also becomes pertinent to note that fundamental duties are at par with and have the same force as that of the Directive Principles of State Policy.<sup>71</sup> The Supreme Court in the case of *N.R. Nair v. Union of India*,<sup>72</sup> while upholding the validity of a notification issued by the Central Government, banning the training and exhibition of bears, monkeys, tigers and panthers, under §22(ii) of the PCA, opined that even though such duties are not legally enforceable in courts of law, the courts will uphold a reasonable restriction on relevant fundamental rights of humans if the State were to make a law which prohibited any act or conduct in violation of any

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<sup>59</sup>State of Gujarat v. Mirzapur Moti KureshiKassabJamat and Ors.,(2005) 8 SCC 534, ¶ 52.

<sup>60</sup>The Constitution of India, 1950, Art. 51A (g) (“to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”).

<sup>61</sup>The Constitution of India, 1950, Art. 51A (h) (“to develop the scientific temper, humanism and the spirit of inquiry and reform”).

<sup>62</sup>State of Gujarat v. Mirzapur Moti KureshiKassabJamat and Ors. (2005) 8 SCC 534, ¶ 52.

<sup>63</sup> The Constitution of India, 1950, Art. 48.

<sup>64</sup> N.R. Nair v. Union of India, AIR 2000 Ker 340.

<sup>65</sup>S.Kannan v. The Commissioner Of Police, W.P.(MD)No.8040 of 2014 (Madras H. C.) (Unreported).

<sup>66</sup>Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.

<sup>67</sup>People for Animals v. Md. Mohazzim, 2015 SCC OnLine Del 9508.

<sup>68</sup> Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.

<sup>69</sup> The Constitution of India, 1950, Art. 51(g).

<sup>70</sup> The Constitution of India, 1950, Art. 51(h).

<sup>71</sup>N.R. Nair v. Union of India, AIR 2000 Ker 340, ¶9.

<sup>72</sup>*Id.*

of the duties towards animals.<sup>73</sup> Thus, courts have made it especially clear that animals are not to be treated as instruments who exist solely for the benefit and the use of humans. Along with a guarantee of rights to animals, courts have interpreted the constitutional provisions so as to impose corresponding duties upon humans, not to infringe those rights. Furthermore, the Courts have also recognised a positive duty to ensure the well-being of animals, which applies to the State, including its citizens.

## 2. Fundamental Rights

Animals have been granted rights majorly through judicial interpretation of the existing statutory as well as constitutional provisions concerning them. It is therefore, apt to discuss these rights by analysing the seminal cases which have accorded rights to non-human animals.

In *N.R. Nair v. Union of India*,<sup>74</sup> the Supreme Court opined that legal rights must be granted to animals and should not be restricted to humans alone. The courts have subsequently reiterated the idea that animals must be protected as they have an intrinsic value themselves.<sup>75</sup> On the basis of this justification, the Supreme Court, in *Nagaraja*, accorded animals, certain rights, such as, the right to live with dignity; freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behaviour.<sup>76</sup> These rights were recognised by the Court, as the five internationally recognised rights of animals, referred to in the Universal Declaration of Animal Welfare,<sup>77</sup> the Guidelines of the World Health Organisation of Animal Health, of which India is a member and in the Food and Agricultural Organisation's (FAO) 'Legislative and Regulatory Options for Animal Welfare'.<sup>78</sup> The Supreme Court likened these freedoms to the rights enjoyed by citizens of India under Part III of the Indian Constitution, that is, the Fundamental Rights guaranteed by the Indian State.<sup>79</sup> It also said that these five freedoms were 'fundamental principles of animal welfare', and read them into §§ 3 and 11 of the PCA.<sup>80</sup>

Similarly, on the basis of the premise that animals have intrinsic worth and the right to live with dignity, it was held in the case of *Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai*,<sup>81</sup> that the use of horse-driven carriages for joyrides was solely for human pleasure and was an avoidable human activity. Such non-essential,

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<sup>73</sup>*Id.*

<sup>74</sup>*Id.*

<sup>75</sup>*Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547; *Compassion Unlimited Plus Action v. Union of India and Ors.*, (2016) 3 SCC 85; *Centre For Environmental Law, WWF-I v. Union Of India & Ors.*, (2013) 8 SCC 234.

<sup>76</sup> *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶64.

<sup>77</sup> It is a campaign led by World Society for Protection of Animals. It aims at achieving recognition of animal welfare principles and animal rights internationally.

<sup>78</sup> *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶¶62-64.

<sup>79</sup> *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶64.

<sup>80</sup>*Id.*

<sup>81</sup> 2015 SCC OnLineBom 3351.

avoidable human activities thus, violate the basic rights granted to animals, under the Constitution and the concerned statutes.<sup>82</sup>

This understanding of the Courts is based on eco-centric principles, which have been discussed and applied in several cases.<sup>83</sup> According to the eco-centric ethic, all animals have an intrinsic value in themselves, that is, they have some moral worth, and also interests that need to be protected, which thereby implies that humans should be guided by certain moral considerations in their treatment of animals.<sup>84</sup> This ideological approach adopted by Indian courts shows a rejection of the anthropocentric school. Anthropocentrism suggests that humans are morally superior and their interests reign supreme, over and above those of non-humans.<sup>85</sup> Anthropocentrism has been used to justify the cause of animal welfare by adopting the argument that, protecting the interests of nature, is in the interests of the human race too.<sup>86</sup> While courts have made an exception by allowing certain kinds of activities which use animals for human benefit, such as using animals for food, the Indian judiciary has largely rejected this ideological position, in favour the eco-centric philosophy when deciding cases dealing with animal welfare.<sup>87</sup> This implies that even when using animals for absolutely necessary activities, we are required to make sure we are not indifferent to their moral and intrinsic value, as well as their basic interests.<sup>88</sup>

It is also interesting to note that the Delhi High Court has, in *People for Animals v. Md. Mohazzim*,<sup>89</sup> recognised the fundamental right of birds to fly in the sky as against the right of humans to keep them in small cages for the purpose of their trade or business.<sup>90</sup> However, most importantly, in a radical decision, the Supreme Court, in *Nagaraja* recognised the fundamental right of animals to live with dignity and honour, by expanding the definition and scope of Article 21 of the Constitution of India, so to include within its ambit animal life as well.<sup>91</sup> The Court laid down that ‘life’ meant more than “mere survival or existence or instrumental value for human beings.”<sup>92</sup> The Court insisted that animals have the right under Article 21 to live a life with some intrinsic worth, honour and dignity.<sup>93</sup> In the said case, the Court said that the right of animals to live in a healthy and clean atmosphere and their right to be protected from unnecessary pain and suffering, were guaranteed under §§3 and 11 of the PCA and Art. 51A(g).<sup>94</sup> Their right to be fed, nourished and properly housed are also protected by §§3 and 11 of the PCA, and the Rules

<sup>82</sup> *Animal Welfare Board of India v. A. Nagaraja* (2014) 7 SCC 547, ¶71; *Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai*, 2015 SCC OnLine Bom 3351, ¶40 (Referred to the Supreme Court’s decision in *A. Nagaraja* to come to this conclusion).

<sup>83</sup> *T. N. Godavarman Thirumulpad v Union of India*, (2012) 3 SCC 277, Centre For Environmental Law, WWF-India v. Union Of India & Ors., (2013) 8 SCC 234, *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547.

<sup>84</sup> Garner, *supra* note 23.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *T. N. Godavarman Thirumulpad v. Union of India*, (2012) 3 SCC 277, Centre For Environmental Law, WWF-India v. Union Of India & Ors., (2013) 8 SCC 234, *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547.

<sup>88</sup> *Supra* note 24.

<sup>89</sup> *People for Animals v. Md. Mohazzim*, 2015 SCC OnLine Del 9508.

<sup>90</sup> *Id.*

<sup>91</sup> *But see Mathew et. al., supra* note 47.

<sup>92</sup> *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶72.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

framed under it.<sup>95</sup> Thus, the right to live with dignity and honour, which includes the right to be protected from beating, kicking, overloading, starvation etc, has been granted and recognised by the PCA. It appears that since the sum and substance of the Right to Life is already reflected in the PCA, the Supreme Court only had to elevate the rights of animals under the PCA, to the status of a fundamental right under Art. 21 of the Constitution of India.

Animals, thus, have been accorded the right to live with dignity and honour. This is reflected in the Constitution, the PCA, and in the various cases in which the judiciary has curtailed the rights of humans to a reasonable extent so as to prevent the suffering of animals at their hands. Statutory provisions when read along with the constitutional provisions display a willingness on the part of the State to protect the rights of animals. However, the penal provisions of the PCA, lack the force which is necessary to achieve the goals envisaged by the Constitution of India and the PCA.

#### D. *ATTEMPTS TO INTRODUCE AMENDMENT BILLS*

Those dedicated to the cause of animal welfare have perceived an urgent need to raise general awareness about the rights of animals and to increase the stigma that is attached to acts of animal cruelty, so as to make such practices socially unacceptable. The punishments that acts of animal cruelty attract, should cause significant detriment to the perpetrators so as to deter them and also to pose a threat to their reputation in society. Only then will the object of adequate deterrence and greater regard for animal rights be achieved. Therefore, we need to revisit the laws against animal cruelty, to make them more stringent, so that they may adequately address the malaise of animal cruelty in society. Moreover, we need to reformulate statutory provisions to bring them in line with judicial interpretation of the rights of animals under statute as well as the constitution.<sup>96</sup>

There have, in fact, been several failed attempts at introducing amendments to the PCA, to make it more comprehensive and to bring its provisions, more in line with its aims and objectives. It is however, surprising how the attempts to amend the PCA have fallen through considering the fact that the Indian judiciary has time and again reiterated the importance of preserving and protecting animal rights.

##### 1. Animal Welfare Act 2011

In 2011, a draft bill titled the Animal Welfare Act 2011 ('Draft Act, 2011') was introduced by the AWBI in the Parliament to replace the present PCA. The Draft Act sought to bring a shift from a defensive position to a positive, welfare-driven and well-being oriented approach, by strengthening animal welfare organisations and enlarging the definition of animal abuse, in keeping with the times and in consonance with judicial pronouncements.<sup>97</sup>

The draft bill, besides, adding a few more categories of cruelty to animals and making the bill more comprehensive, also prescribed greater and more apt penalties for cruelty

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<sup>95</sup>*Id.*

<sup>96</sup>*See supra* Part II.

<sup>97</sup> The Hindu, *Massive Hike proposed in animal cruelty fines in Draft Act*, February 21, 2011, available at <http://www.thehindu.com/news/national/massive-hike-in-animal-cruelty-fines-proposed-in-draft-act/article1475211.ece> (Last visited on May 16, 2017).

towards animals by multiplying the old fines, under the PCA, by a factor of a thousand.<sup>98</sup> For the first offence, it provided that the offender would have to pay a fine of not less than ten thousand rupees but which may extend to twenty-five thousand rupees, or be imprisoned for up to 2 years, or both.<sup>99</sup> Further, in the case of a second or subsequent offence the offender would be punished with a fine, not less than fifty thousand rupees but which may extend to one lakh rupees, and with imprisonment for a term that shall not be less than one year but may extend to three years.<sup>100</sup> Unfortunately, while such strict penalties are the need of the hour, the bill, has not yet been passed.<sup>101</sup>

## 2. Animal Welfare Bill, 2014

Post-Nagaraja, the AWBI drew up a fresh draft, the Animal Welfare Bill, 2014. It incorporated substantially higher penalties for animal abuse, but is yet to be passed by the Parliament, despite massive furore among animal rights activists and organisations regarding the inconsequential and pitifully scant punishments that the current PCA Act provides for.<sup>102</sup> With a rise in incidents of animal abuse recently, such as the assault on the police horse Shaktiman,<sup>103</sup> murder of puppies in Delhi<sup>104</sup> and Bengaluru<sup>105</sup> as well as the acid attack on a pony in Hyderabad,<sup>106</sup> the AWBI as well as other animal rights activists along with several NGOs such as the Humane Society International, appealed to the Ministry of Environment, Forest and Climate Change to consider the bill and get it enacted by the Parliament. However, the bill still remains in cold storage.

## 3. The Private Member Bill of 2016

Nevertheless, recently, on August 5, 2016, BJP MP Poonam Mahajan, moved a private member's bill in the Parliament seeking an amendment to the PCA, incorporating

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<sup>98</sup>*Id.*

<sup>99</sup> The Animal Welfare Act, 2011, §17(1).

<sup>100</sup>*Id.*

<sup>101</sup> The draft bill of 2011 met with a lot of opposition from the medical research lobbies because of provisions which would severely affect scientific research using laboratory animals. Moreover, when Ministry of Environment and Forests released the draft to the public for comments, there were considerable objections to the drastic changes that the draft proposed. Such objections were to things such as omission of §28 of the PCA, which allows killing of animals as prescribed by religion, in the Draft Act, 2011; inclusion of §37 in the Draft Act, 2011, which provides that in certain cases the presumption as to guilt and the burden of proving innocence would lie on the accused; omission of § 36 of the PCA, in the Draft Act, 2011, which prescribed the limitation period of prosecution for offences, as three months; and so on.

<sup>102</sup> The Hindu, *Centre urged to enact Animal Welfare Bill*, March 13, 2016, available at <http://www.thehindu.com/news/national/centre-urged-to-enact-animal-wwelfare-bill/article8414140.ece> (Last visited on June 20, 2017).

<sup>103</sup> The Hindu, *Police horse 'Shaktiman' dies*, April 20, 2016, available at <http://www.thehindu.com/news/national/Police-horse-Shaktiman-dies/article14247725.ece> (Last visited on May 16, 2017).

<sup>104</sup> Hindustan Times, *Man stabs 3 dogs, 1 puppy outside Green Park Station*, March 21, 2016, available at <http://www.hindustantimes.com/delhi-news/man-stabs-to-death-3-dogs-1-puppy-outside-green-park-station/story-UU1olIJeZfZID0DDKxXf2H.html> (Last visited on May 16, 2017).

<sup>105</sup> The Times of India, *Bengaluru woman kill 8 puppies to teach their mother a lesson*, March 22, 2016, available at <http://timesofindia.indiatimes.com/city/bengaluru/Bengaluru-woman-kills-8-puppies-to-teach-their-mother-a-lesson/articleshow/51513219.cms> (Last visited on May 16, 2017).

<sup>106</sup> The Hans India, *50,000 reward for info on pony attackers*, May 15, 2017, available at <http://www.thehansindia.com/posts/index/Telangana/2016-03-25/50000-reward-for-info-on-pony-attackers/216169> (Last visited on May 16, 2017).

stringent penalties and making all offences under §11 of the PCA, cognisable offences.<sup>107</sup> However, the chances of this Bill being passed also seem bleak, considering the fact that it is a private member bill. Over the years, a large number of private member bills have been introduced in parliament.<sup>108</sup> However, till date only 15 private member bills have been passed.<sup>109</sup> This is because only half a day is reserved in a week for private member business, and thus, a majority of private member bills do not even get debated in parliament.<sup>110</sup> Besides, private members generally end up withdrawing their Bills at the behest of the Ministry, mostly without extracting an assurance that the government will introduce a similar bill.<sup>111</sup>

At this point in time, there is greater demand for revamping the existing animal welfare legislation than there has ever been. Judicial recognition of this need has been more than satisfying. However, the Parliament is reticent in this respect. A failure to improve the animal welfare legislation will mean that greater atrocities towards animals will continue to take place and those concerned will walk away scot-free. However, public outrage against animal cruelty is palpable at this juncture and thus, the Parliament cannot choose to ignore it for long. Having considered this, we shall subsequently suggest ways to overhaul and improve the existing legislative framework governing animals and their rights.

### III. PALTRY NATURE OF THE CRIMINAL LIABILITIES IMPOSED

PCA occupies the status of the principal legislation that protects animals from acts of cruelty. Other delegated legislations<sup>112</sup> on specific matters of animal cruelty are made by keeping the PCA as a benchmark. However, the PCA as discussed above is largely inadequate and ineffective. The inadequacy and ineffectiveness of anti-cruelty laws can be attributed to a ‘species bias’ or the concept of ‘speciesism’, which is the idea that humans are superior to animals.<sup>113</sup> Public policy makers assume that humans are inherently superior to animals and thus, deserve more rights than them, and sometimes also at their expense.<sup>114</sup> This species bias is also seen amongst citizens who take the rights of animals for granted, for they believe that animals do not deserve equal treatment.<sup>115</sup>

Speciesism is a “prejudice or bias in favour of the interests of members of one's own species and against those of members of other species.”<sup>116</sup> According to Peter Singer, a utilitarian philosopher, speciesism is the reason why we humans choose to ignore the suffering of

<sup>107</sup>Humane Society International/India, *Mumbai MP Poonam Mahajan Introduces Private Member Bill to Amend The Prevention of Cruelty To Animals Act, 1960*, August 5, 2016, available at <http://www.hsi.org/world/india/news/releases/2016/08/private-member-bill-introduced-to-increase-animal-cruelty-penalties-080516.html?referrer=https://www.google.co.in/> (Last visited on May 16, 2017).

<sup>108</sup> PRS Legislative Research, *Parliament needs to find its voice*, March 2, 2010, available at <http://www.prsindia.org/media/articles-by-prs-team/parliament-needs-to-find-its-voice-1535/> (Last visited on May 16, 2017).

<sup>109</sup>*Id.*

<sup>110</sup>*Id.*

<sup>111</sup>*Id.*

<sup>112</sup>*See, e.g.*, The Prevention of Cruelty to Draught and Pack Animals Rules, 1965; The Performing Animals Rules, 1973; The Transport of Animals, Rules 1978; Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001.

<sup>113</sup>*See* Peter Singer, *Speciesism and Moral Status*, 40 (3-4) METAPHILOSOPHY 567 (2009).

<sup>114</sup>TZACHI ZAMIR, *ETHICS AND THE BEAST: A SPECIESIST ARGUMENT FOR ANIMAL LIBERATION* (2007).

<sup>115</sup>*Id.*

<sup>116</sup>PETER SINGER, *ANIMAL LIBERATION* 11 (1975).

non-human animals.<sup>117</sup> Singer equates speciesism with racism and points out that, since we have acknowledged the basic moral principle that all human beings are equal irrespective of their race or the colour of their skin, we must renounce speciesism as well and extend the same courtesy to animals.<sup>118</sup> Singer talks about equal consideration of interests and points out that since, animals have the capacity to suffer, there can be no moral justification for not taking their suffering into consideration.<sup>119</sup> Thus, equal weight should be given to the protection of the interests of humans as well as that of non-human animals, because, both species feel pain equally and have equal capacities for suffering or for feeling happiness.<sup>120</sup>

Speciesists, however, forward the argument that the superior mental powers of humans lead to greater suffering, as opposed to animals who lack such an advanced mental faculty.<sup>121</sup> Nevertheless, Singer rejects this argument. He says that by way of this argument, lunatics, retarded humans, and infants who lack the capacity to reason should be put into the same category as animals, as their suffering will also be much less than that of humans who are completely mentally sound.<sup>122</sup>

Singer, however, advocates that animals have interests in being protected from suffering and cruelty not because they are more rational than a mentally ill person or an infant, but because, they have the capacity to suffer.<sup>123</sup> This ideological position is akin to that of Bentham, according to whom the, “question is not, Can they reason? nor, Can they talk? but, Can they suffer?”<sup>124</sup> Thus, the appropriate standard is not intelligence but consciousness or sentience,<sup>125</sup> as Singer believes rationality or intelligence is an arbitrary standard to judge the capacity to possess interests of any kind.<sup>126</sup> It is however, true that Singer’s arguments have been criticised heavily. Peter Harrison, has criticised Singer by trying to argue that humans and animals do not respond to stimulus in the same way and as such, their capacity to suffer and feel pain differ, and such capacity is higher in case of humans because they are more intelligent and rational.<sup>127</sup> However, the premise on which Harrison bases his argument, that pain is largely a psychological phenomenon and is associated with higher mental faculties, is fallacious, for the studies that he cites from the 1950’s to support such a premise are largely outdated or discredited.<sup>128</sup> On the other hand, there is overwhelming evidence that supports the premise that animals feel pain.<sup>129</sup> Similar physiological build-up of humans and non-humans, similar nervous systems, similar demonstration of pain behaviour, etc show that animals also have the capacity to

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<sup>117</sup>PETER SINGER, PRACTICAL ETHICS 3 (2<sup>nd</sup> ed., 1993).

<sup>118</sup>*Id.*

<sup>119</sup>*Id.*

<sup>120</sup>*Id.*

<sup>121</sup>*Id.*,59.

<sup>122</sup>*Id.*,59-60.

<sup>123</sup> Peter Singer, *All Animals are Equal* in ANIMAL RIGHTS AND HUMAN OBLIGATIONS 148-162 (1989).

<sup>124</sup> Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* in THE WORKS OF JEREMY BENTHAM, VOL. 1, 143-44 (1962).

<sup>125</sup>Anita Dichter, *Legal Definitions of Cruelty and Animal Rights*, 7 B.C. ENVTL. AFF. L. REV. 147 (1978).

<sup>126</sup>SINGER, *supra* note 116.

<sup>127</sup> Peter Harrison, *Do Animals Feel Pain?*, 66(255) PHILOSOPHY 25 (1991).

<sup>128</sup>EVELYN B. PLUHAR, BEYOND PREJUDICE: THE MORAL SIGNIFICANCE OF HUMAN AND NON-HUMAN ANIMALS (1995), 28.

<sup>129</sup>*Id.*



suffer,<sup>130</sup> thereby, lending support to Singer's arguments that the capacity to suffer should allow for equal consideration of the interests of animals.

Speciesism also finds reflection in the current state of animal welfare legislation in India. This can be understood by looking into the way in which most of society construes the concept of animals as right-holders. Most people view anti-cruelty laws as fulfilling human interests, instead of animal welfare being the true concern of such statutes.<sup>131</sup> This ideological standpoint can be explained through a discussion on Kant's theory on the duties owed by humans to animals, because according to Kant, the supposed duties that we have, to prevent cruel treatment of animals are not direct duties that we owe to such animals, but duties to ourselves.<sup>132</sup> Such duties are indirect with reference to animals. These duties are towards ourselves, that is, towards the human race, inasmuch as our behaviour towards animals affects the interests of human beings. We perform these duties only because we have a duty to ourselves and to other fellow human-beings, to cultivate dispositions, like compassion, that are morally useful to humans.<sup>133</sup> According to Kant, meaningless destruction or harm to animals mars the moral character of humans, and, therefore, in observing our duties towards animals, we are merely serving the human race, by preserving the respectable moral and ethical standards that humans must adhere to. As such, animals are just recipients of minimal protection from harm because we as society wish to rein in malicious and cruel behaviour.<sup>134</sup> This is in direct opposition to the belief of philosophers such as Singer and Bentham, who believe in protecting the interests of animals because they deserve such protection, as they are sentient beings.<sup>135</sup> As such, quite contrarily, Kant believes in protecting the interests of animals only to such extent, as is needed to fulfil human interests.<sup>136</sup>

The Kantian philosophy is reflected in the fact that the scope of animal rights is still defined, subject to the protection given to human interests under the doctrine of necessity.<sup>137</sup> This reinforces our conclusion that anti-cruelty laws are largely restricted for the fulfilment of human interests. We still allow scientific experimentation on animals, as an essential human activity, for the purpose of medical research with only limited amount of regulation.<sup>138</sup> Also the prescription of grossly inadequate penalties for violations of anti-cruelty laws bears testimony to the fact that animal interests are subservient to human interests and are not worth protecting at the cost of causing inconvenience to humans. Moreover, due to this lack of adequate penal sanctions, social stigma is generally not attached to crimes against animals, thereby, failing to draw boundaries of what is legal and what law prohibits, when it comes to the

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<sup>130</sup> ANTHONY FARRANT, *LONGEVITY AND THE GOOD LIFE* 52 (2010).

<sup>131</sup> *Id.*

<sup>132</sup> Nelson Potter, *Kant on Duties to Animals*, FACULTY PUBLICATIONS- DEPARTMENT OF PHILOSOPHY, Paper No. 18 (2005).

<sup>133</sup> Cheshire Calhoun, *But What About the Animals?*, available at <http://cheshirecalhoun.com/wp-content/uploads/2013/05/ButWhatHill.docx.pdf> (Last visited on May 29, 2017).

<sup>134</sup> Dichter, *supra* note 125.

<sup>135</sup> SINGER, *supra* note 116.

<sup>136</sup> Calhoun, *supra* note 133.

<sup>137</sup> *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶¶69-70.

<sup>138</sup> The Prevention of Cruelty to Animals Act, 1960, §14; Ashna Ashesh & Zubin Dash, *Inadequacies of Clinical Trial Regulations in India*, 5(3) NUJS L. REV. 379 (2012).

treatment of animals.<sup>139</sup> Such unwillingness among humans and the State to grant equal rights to animals and to protect their interests can only be attributed to an inherent species bias or speciesism. Animals are granted only those rights, which seem reasonable and conducive to the furtherance of human interest.<sup>140</sup>

However, it is necessary that the PCA is efficient and effective in all aspects of its application, especially imposition of liabilities, considering it is the prime anti-cruelty legislation in India. In this part, the vacuum in the present structure and functioning of the PCA, primarily with respect to the insufficient penalty, non-cognisability of offences and easy receipt of bail, is analysed to conclude the dire need for certain changes.

#### A. MEAGRE PENALTY

The criminal penalties for offences must be imposed depending on the intensity and the objective of punishing the offence. Thus, the threshold for imposition of penalty must be measured based on the proportionality between these factors, in light of deterrence and monetary value.

##### 1. Lack of Proportionality between the penalty and the offences

The proportionality doctrine is not codified explicitly, but rather features in all legislations as a component of administrative law.<sup>141</sup> Proportionality specifically in cases of imposition of punishment needs to satisfy a two-fold purpose, *viz.* fairness towards the offender and fairness towards the society.<sup>142</sup>

The first equivalency of penalty is measured against the accused, wherein the punishment should not be harsher than the crime committed. With respect to justice in punishment, Immanuel Kant had opined “juridical punishment can 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.”<sup>143</sup> Presently, the maximum punishment of fifty rupees is not even close to being considered of a harsh nature. Therefore, from the perspective of the offender, it cannot be said that the liability imposed is unfair, and thus not proportional.

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<sup>139</sup> Alvin W. L., *Challenges in the Enforcement of Animal Protection Laws in Singapore*, 8 RESEARCH COLLECTION SCHOOL OF LAW 1,14(2014) (This paper talks about the deterrence effect of prosecution, due to social stigma. However, the meagre criminal penalties prescribed by the PCA fail to deter animal abuse in India); Justin F. Marceau, *Killing For Your Dog*, 83(3)THE GEORGE WASHINGTON L. REV.943, 947 (2015) (“The criminal law, even in a pluralistic society, is arguably “unique in its ability to inform, shape, and reinforce social and moral norms on a society-wide level.” Even if the criminal law does not always accurately reflect existing moral norms, there are still compelling reasons for considering the normative value of a defense of animals, whether it merely reflects or also shapes social values. The justifications and desirability of a defense of animals are of substantial import.” The penal sanctions in the PCA however, fail to achieve this because we attach very little importance to the defense of animals, which leads to an absence of social values that stigmatise offenders).

<sup>140</sup> Dichter, *supra* note 125.

<sup>141</sup> See Abhinav Chandrachud, *Wednesbury Reformulated: Proportionality and the Supreme Court of India*, 13(1) OXFORD UNIVERSITY COMMONWEALTH LAW JOURNAL 191, 193 (2013); PAUL CRAIG, ADMINISTRATIVE LAW 646 (7<sup>th</sup> ed., 2012).

<sup>142</sup> Joel Goh, *Proportionality: An Unattainable Ideal in the Criminal Justice System*, 2(41) MANCHESTER L. R. 41, 48 (2013)

<sup>143</sup> IMMANUEL KANT, *The Retributive Theory of Punishment* in THE PHILOSOPHY OF LAW, Part II (1887).

But, by scaling the second equivalency of proportionality of PCA, with respect to the society, it is evident that this standard has not been satisfied the second time. Fairness towards society is required since commission of a crime in criminal law jurisprudence is considered to be a crime against the society as a whole.<sup>144</sup> Proportionality between the crime committed and the punishment imposed in case of societal perspective is scaled based on the objects and the aims with which the law was made.<sup>145</sup> The object and aim of a law can determine the extent to which it is supposed to be imposed and what mischief it aims at curbs.<sup>146</sup>

Presently, the State's objectives towards prevention of cruelty against animals are determined based on first, the Statement of Objects and Reasons of PCA ('Statement of Objects') and second, the objectives set out through Constitutional mandates. The Statement of Objects summarise the aim of the PCA as "prevention of the infliction of unnecessary pain or suffering on animals and to amend the laws relating to the prevention of cruelty to animals."<sup>147</sup> Such an aim was envisaged after the old PCA of 1890, so as to ensure that PCA is consistently amended such that at given point of time, the law is fashioned in a manner that it adequately prevents cruelty towards animals.

The second source of Constitutional mandates also adheres to such an aim sought by the State. Article 48A and Article 51A(g) of the Constitution are evincive of the State's responsibility to prevent infliction of cruelty on animals and ensure their wellbeing. In *Nagaraja*, the State's objective was demonstrated when the Supreme Court adjudged that, "[...] 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."<sup>148</sup>

Subsequently, a plethora of judgments<sup>149</sup> pronounced by the Indian judiciary have revealed that humans by virtue of the Constitutional mandates are required to ensure the well-being of animals. Therefore, the aims provided by the legislature and the judiciary would require that the laws should have the capacity to successfully prevent the infliction of cruelty on to animals. This would be possible only by making the present penalties adequate to the harm inflicted.

## 2. Monetary value of the penalty

The purpose of having penal sanctions under the PCA for first offence (and not imprisonment) is to ensure that it has a deterrent effect on the perpetrators.<sup>150</sup> Jeremy Bentham,

<sup>144</sup> MICHAEL CAVADINO & JAMES DIGNAN, *THE PENAL SYSTEM: AN INTRODUCTION* 39 (2<sup>nd</sup> ed., 1997); Richard S. Frase, *Excessive Prison Sentences, Punishment Goals, and the Eighth Amendment: "Proportionality" Relative to What?*, 89 MINN L REV 571, 592 (2004).

<sup>145</sup> E.H. Van Coller, *Proportionality review- the battle between community standards and English domestic law*, 39(3) COMPARATIVE & INTERNATIONAL LAW JOURNAL OF SOUTH AFRICA 469, 472 (2006); Julian Rivers, *Proportionality and Variable Intensity of Review*, 65(1) CAMBRIDGE LAW JOURNAL 174, 181 (2006).

<sup>146</sup> See *The Prevention of Cruelty to Animals Act, 1960*, Statement of Object & Reasons.

<sup>147</sup> *The Prevention of Cruelty to Animals Act, 1960*, Statement of Object & Reasons.

<sup>148</sup> *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶ 32.

<sup>149</sup> *Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai*, 2015 SCC OnLine Bom 3351; *People for Animals v. Md. Mohazzim*, 2015 SCC OnLine Del 9508; *Maneka Gandhi v. Union Territory of Delhi*, 1984 SCC OnLine Del 67.

<sup>150</sup> In case of the §11 offences of the PCA, deterrence effect is relied on because the offences do not contemplate a retributive punishment of imprisonment.

an advocate of the deterrence theory, stated that the purpose of penalties is so that they can perform the utilitarian function of efficient allocation of public resources to prevent commission of offences.<sup>151</sup> Bentham argued 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.”<sup>152</sup> Hence, the penal sanctions should result in equitable allocation of the State’s resources by comparing the gravity of the crimes against the liabilities imposed.

Anglo-Saxon laws act as paean for India which derives the basis for setting a benchmark for criminal penalties, from these laws.<sup>153</sup> To ensure proportionality with respect to the monetary value of the penalties imposed by the PCA, the three tenets of Anglo-Saxon or English law rule for criminal proportionality, are referred to, *viz.* ends-benefits, alternative means and limiting retributive.<sup>154</sup> To put it simply, the rule states that the monetary value (or damages) of a penalty for a crime has to be of such a nature that, there is equivalency between the cost and burden of imposing the penalty and the benefit of retributive effect.<sup>155</sup> Thus, the economics of imposing a penalty would require that the amount imposed should be equivalent to the retributive penalty.

Assuming the Indian Penal Code, 1860 (‘IPC’) as the benchmark for determining the monetary value of criminal penalties and the term of imprisonment, it would be evident from its provisions<sup>156</sup> that even a ten-rupee penalty is accompanied and considered to be equivalent to a minimum of twenty-four hours of imprisonment.<sup>157</sup> But under the PCA, in case of first offence, there is no imprisonment even imposed. Applying the Anglo-Saxon rule, if a ten-rupee fine is equivalent to a twenty-four hours of imprisonment under a criminal legislation, then a fifty-rupee fine should also be accompanied with at least some term of imprisonment. This means that, due to the lack of any form of retributive punishment for §11 offences of the PCA, equivalence with the penalty imposed is not achieved.

Hence, taking into account the purpose of penal sanctions, by measuring them against the offences committed and the aims of the legislations; in light of doctrine of proportionality, the deterrence theory, and the rationale for monetary value of criminal penalties, it can be concluded that the §11 offences of the PCA do not impose an adequate enough penalty.

#### B. *NON-COGNIZABILITY OF OFFENCES*

A complaint against a person, who has committed an offence under the PCA, can be made to the police, by any person who has knowledge of commission of such act that amounts to an offence under the PCA. However, it is pertinent to note that, only §§11(1) (l),(n) and (o)

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<sup>151</sup> JEREMY BENTHAM, *THEORY OF LEGISLATION* 326 (1748-1832).

<sup>152</sup> *Id.*

<sup>153</sup> See DAVID M. BEATTY, *THE ULTIMATE RULE OF LAW* (2004).

<sup>154</sup> Richard Singer, *Proportionate Thoughts about Proportionality*, 8 OHIO JOURNAL OF CRIMINAL LAW 217, 218 (2010).

<sup>155</sup> *Id.*

<sup>156</sup> The Indian Penal Code, 1860, §510.

<sup>157</sup> The Indian Penal Code, 1860, §510 addresses misconduct in public by a drunken person, which imposes the smallest fine and term of imprisonment.

and §12 of the PCA are the cognisable offences, while all other offences under §11 are non-cognisable offences.<sup>158</sup>

§2(c) of the Criminal Procedure Code, 1973 ('CrPC') defines offences wherein a police officer is empowered to arrest the accused/offender without warrant. Whereas non-cognisable offences under §2(1) of the CrPC have been defined as offences where the Police Officer is not empowered to arrest the accused/offender without warrant. In the commission of any non-cognizable offences, the Police Officer should obtain a warrant from the Magistrate concerned to arrest the accused/offender. The cognisability status to offences is typically given to offences, which are graver in comparison to other offences, and demand immediate attention from the law enforcement.<sup>159</sup>

Due to the classification of most offences as non-cognisable, and additional procedural barriers involved with such classification, effective actions cannot be taken against the accused that commit these offences.<sup>160</sup> Further, such a status of the majority of the §11 offences of the PCA results in the non-achievement of the objectives or the purposes of the Act.<sup>161</sup> The PCA was enacted with the intention that unnecessary harm would not be committed towards animals,<sup>162</sup> but due to the non-cognisable status of §11 offences, it has been proven difficult for several animal activists to bring the accused persons to justice. For instance, whenever an animal cruelty case is reported at the police station, actions are rarely undertaken due to the non-cognisability of the offences.<sup>163</sup> But at the same time, there are several simple offences like making or selling false weights and measures for fraudulent use,<sup>164</sup> keeping a lottery office,<sup>165</sup> false rumours to create enmity,<sup>166</sup> etc. in Indian criminal jurisprudence which are given the status of cognisable offences. Yet an offence involving actual physical harm to an animal is not given the same status. Thus, it has become imperative to change the cognisability status of certain §11 offences of the PCA based on the gravity of offences.

### C. EASY GRANT OF BAIL

<sup>158</sup> The Prevention of Cruelty to Animals Act, 1960, §31.

<sup>159</sup> MoinBashaKurnooli v. The State Of Karnataka, Cr.P.No. 100319/2014 Kar HC (2014).

<sup>160</sup> The Times of India, *Dog thrown from Chennai rooftop found alive*, July 5, 2016, available at <http://timesofindia.indiatimes.com/city/chennai/dog-thrown-from-chennai-rooftop-found-alive/articleshow/53068399.cms> (Last visited on November 7, 2016); Hindustan Times, *Hyderabad: 8 youngsters detained for burning puppies alive*, July 21, 2016, available at <http://www.hindustantimes.com/india-news/hyderabad-8-teenagers-detained-for-burning-three-puppies-alive/story-2RrfOa8EPZjZhZ79F7QVSN.html> (Last visited on November 7, 2016); The Times of India, *Activists plan to seek legal remedy*, November 6, 2016, available at <http://timesofindia.indiatimes.com/city/pune/Activists-plan-to-seek-legal-remedy/articleshow/55269741.cms> (Last visited on November 7, 2016); 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 visited on November 7, 2016).

<sup>161</sup> Mansi Jain & Sarthak Jain, *Animals...are we?*, July 7, 2016, available at <https://newsd.in/tag/the-prevention-of-cruelty-to-animals-act/> (Last visited on May 15, 2017).

<sup>162</sup> The Prevention of Cruelty to Animals Act, 1960, Statement of Object & Reasons.

<sup>163</sup> See e.g., *supra* note 4.

<sup>164</sup> The Indian Penal Code, 1860, §267.

<sup>165</sup> The Indian Penal Code, 1860, §294A.

<sup>166</sup> The Indian Penal Code, 1860, §505.

The offences that are maintained under §11 of the PCA are predominantly are categorised as bailable offences. Further, due to the low penalty it is easier to obtain bail for these offences, leading to the very purpose of bail being granted lost. Bail was introduced as a remedy for avoiding pre-trial imprisonment, by Anglo-Saxon law, with its rationale based in economics. The amount of money pledged was required to be identical to the fine that would be imposed upon conviction, to signify the seriousness of the crime. In the event that the accused did not appear for the trial, the money pledged would be considered as the fine imposed, and thus the State would not suffer a loss, due to non-appearance at trial by the accused.<sup>167</sup> This means that bail is granted as an assurance that public resources are not wasted, and therefore have to be scaled against the degree of intensity of the offence committed.

Moreover, with the advancement of the criminal justice system, it has been considered that bail is reserved only for those crimes, which are not as grave as the others.<sup>168</sup> This is a furtherance of the interpretation of the deterrence theory.<sup>169</sup> India follows a similar standard of granting bail only to those offences, which are classified as severe in nature.<sup>170</sup> But due to the lack of distinction between the various offences maintained under §11 of the PCA, it cannot be determined as to what offence qualifies as either grave or ordinary. And therefore, bail is granted to all offences alike under the PCA, effectively nullifying the purpose of deterrence factor. Ideally, bail should be granted only for those §11 offences of the PCA, which can be considered to be 'not grave', but not offences which can qualify as serious in nature. Hence, a stance of differentiating between the offence under §11 of the PCA is required, as required for addressing the aforementioned cognisability issue, is also required to address the bailability aspect.

The factors enumerated in this section of paper are indicative of the immediate change required with respect to the penalties imposed under the PCA. Therefore, the next part of the paper addresses this concern in the form of possible solutions that may be implemented to comply with the aims and objectives sought by the State through the PCA and constitutional mandates.

#### IV. PROPOSING THE APPLICATION OF AN EXPANSIVE SCOPE FOR THE LIABILITIES IMPOSED

The previous part of the paper analysed issues pertaining specifically to the criminal liability aspects in animal cruelty, since PCA imposes only this singular form of liability, which needs to be improved. But alongside, to effectively address the laxity of criminal liability, another form of liability, *viz.* civil liability can also be imposed to address the insufficient penalty and lack of adequate protection granted by the State to animals, against the crimes committed towards them. Thus, among the changes required to prevent cruelty towards animals, it is first necessary to amend certain aspects of the PCA, so that it cannot be regarded as a toothless law; and second, imposition of civil liability can be looked into.

##### A. AMENDMENTS TO THE PRESENT PCA

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<sup>167</sup> June Carbone, *Seeing Through the Emperor's New Clothes: Rediscovery of Basic Principles in the Administration of Bail*, 34 SYRACUSE L. REV. 517 (1983).

<sup>168</sup> Timothy Schnacke et al, *The History of Bail and Pretrial Release*, PRETRIAL JUSTICE INSTITUTE REPORT 7 (2010).

<sup>169</sup> *Id.*

<sup>170</sup> Prahlaad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280.

Based on the analysis of the insufficient PCA, certain amendments are necessary to ensure effective prevention of cruelty against animals. These amendments can be broadly categorised into two types; first, increase in the monetary penalty imposed and second, differentiating between the various offences listed under §11 of the PCA based on their severity, such that the graver offences are made non-cognisable and non-bailable in nature.

1. Increasing the fifty-rupee penalty

The present penalty of fifty rupees can hardly be considered to be adequate in light of the multiple offences committed under §11 of the PCA in the present times. Thus, there is a need to increase the penalty to the extent that it can be deemed as sufficient.

American jurisprudence that dominates the literature on prevention of cruelty on animals, dictates a high penalty to the tune of ten to twenty thousand dollars.<sup>171</sup> But probably since India's societal conditions are not such wherein a high penalty can be afforded, the penalty has to be placed at a lower degree. Although the penalty imposed must be sufficient to the crimes committed, such that it can have a deterrent effect, wherein the commission of §11 offences is substantially reduced. The penalty of ten thousand rupees to a maximum of twenty-five thousand rupees, as recommended in the Draft Act, 2011, could be possibly considered to be ideal benchmark for the imposition of criminal liability. We do not advocate this specific amount as the exact penalty to be imposed, but the numerical threshold is indicative of the need to depart from the fifty-rupee penalty.<sup>172</sup>

2. Differentiating the offences under §11 of the PCA

Only four offences listed under the §11 of the PCA are considered to be cognisable, viz. §§11(1) (l), (n) and (o). To address the flaws of the PCA, differentiating between offences under §11 of the PCA can be done for achieving a two-fold purpose; providing higher penalty for graver offences and recognising graver offences as cognisable and non-bailable offences. Achieving this two-fold purpose primarily involves segregating the offences enumerated based on their intensity.

Several laws in the ambit of criminal law jurisprudence employ a standard of 'differential punishments', wherein punishment and status of the offence varies according to the gravity of the offence.<sup>173</sup> For example, under the IPC itself, differentiation between simple hurt<sup>174</sup> and grievous hurt<sup>175</sup> is made wherein the former is considered to be non-cognisable, since it is a less graver crime, while the latter is cognisable due the greater intensity of the crime.

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<sup>171</sup>See e.g., California Animal Abuse & Cruelty Laws (Penal Code 597 PC); Texas Penal Code, 1974.

<sup>172</sup> Often several Indian laws suffer from meagre penal sanctions, but this does not negate the aspect that there is need to change the flawed laws, including the PCA. Example can be taken from the recent action of the Law Commission of India, wherein it advocated the need to increase the criminal penalty for food adulteration under §§272 and 273 of the Indian Penal Code, 1860, because the present law failed to have deterrent effect. See LAW COMMISSION OF INDIA, *The Criminal Law (Amendment) Bill, 2017 (Provisions dealing with Food Adulteration)*, Report No. 264, January, 2017.

<sup>173</sup> John A. Boeglin & Zachary Shapiro, *A Theory of Differential Punishment*, February 2, 2017, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2910719](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2910719) (Last visited on May 16, 2017).

<sup>174</sup> The Indian Penal Code, 1860, §323.

<sup>175</sup> The Indian Penal Code, 1860, §325.

Presently, under §11(1)(a) of the PCA, for instance, a vague language of “beating, kicking, over-riding, over-driving, over-loading, torturing, causing unnecessary pain or suffering to any animals”<sup>176</sup> being punishable is used. This particular language of the provision can include a wide-ranging spectrum of offences. It would include mild beating of an animal as well as beating it to death. But irrespective of the difference in the gravity of the two offences, both will be similarly punishable and would be considered to be on a similar footing. Therefore, in furtherance of the concept of proportionality, there needs to be a provision under §11 of the PCA as per which the offences are differentiated with respect to penalty, cognisability and bailability based on their degree of intensity.

These amendments *vis-à-vis* the PCA in the form of higher penalties and differential treatment of offences could probably result in changes in the criminal liability. But to further ensure that protection of animals against instances of cruelty is holistically achieved, an additional step in the form of imposition of civil liability has to be taken, which is subsequently discussed.

### B. IMPOSITION AND APPLICATION OF CIVIL LIABILITIES VIS-À-VIS ANIMAL CRUELTY OFFENCES

Having appreciated the need for making the PCA more stringent, we realise the need for a more effective means of preventing or dealing with animal rights offence. It is here we suggest that any subsequent amendment to the PCA, which is long overdue, must provide for the imposition of civil liability as well. Civil liability is not a concept completely alien to India, but to this date it has not been imposed in case addressing animal cruelty nor has it been suggested before by any of the proposed amendments to the PCA, which have been discussed previously.<sup>177</sup> Civil liability as an option has been considered by certain animal welfare scholars like David Favre<sup>178</sup> and Cass Sunstein<sup>179</sup>, wherein they give an alternate explanation for how such a liability can be possibly imposed for non-human persons. In light of the high number of instances of animal abuse,<sup>180</sup> it is now imperative that other possible avenues for curbing animal cruelty be explored. We suggest that civil liability should to be imposed simultaneously, and not as a substitute for criminal liability, which shall be imposed by the same Act. Civil liability is generally recognised in the field of tort law, which is related, yet distinct from criminal law.<sup>181</sup> Due to this feature of civil liability, it is often imposed along with the penal sanctions applicable.<sup>182</sup> A similar practice can be employed under the PCA as well, wherein the criminal liability is addressed through §11 of the PCA penalties and civil liability through the §9 of the Act regarding powers of AWBI.

#### 1. Why civil liability is required?

<sup>176</sup> The Prevention of Cruelty to Animals Act, 1960, §11(1)(a).

<sup>177</sup> See Part II-D.

<sup>178</sup> See David Favre, *Living Property: A New Status for Animals within the Legal System*, 93 *MARQUETTE LAW REVIEW* 1021 (2010); Favre, *supra* note 25, 333.

<sup>179</sup> Sunstein, *supra* note 26; Cass R. Sunstein & Jeff Leslie, *Animal Rights without Controversy* (John M. Olin Program in Law and Economics, Working Paper No. 283, 2006).

<sup>180</sup> *Supra* note 4.

<sup>181</sup> JENNY STEELE, *TORT LAW: TEXTS, CASES AND MATERIALS* (3<sup>rd</sup> ed., 2014).

<sup>182</sup> *Id.*



As has been discussed previously, the penal sanctions imposed by the PCA have failed to adequately safeguard the interests and rights of animals. In such a situation, we need to broaden the scope of liabilities for cruelty against animals. Violations of the PCA take place every day and most of them go unpunished. Imposition of civil liability as well, apart from criminal liability will mean that State authorities such as the AWBI can take action against those who violate animal welfare legislations. Civil suits on behalf of animals will lead to greater enforcement of law, and will help mitigate the effects of the species bias which exists presently. When private individuals who are committed to the cause of animal welfare approach the AWBI, it then can move to the Court, so as to enforce the rights of animals, their grievances will find redress despite there existing a prejudice against animals, in terms of the validity of their rights and interests. State failure to raise general awareness and to create better mechanisms for protection of animals can be best overcome by allowing the imposition of civil liability.

Furthermore, along with fines being paid to the State, the imposition of civil liability entails that the violators will have to pay damages as well. This money received in damages, can be used to alleviate the suffering of animals.<sup>183</sup> This will not only help in recognising the rights of animals, as they will have access to remedies when there is violation of their rights, but also, increase general awareness about the rights animals possess as sentient beings.

## 2. How can civil liability be imposed?

In civil actions, suits are brought by private persons (claimants) against private persons (defendants) for personal injuries or economic losses suffered as a result of the actions of the alleged defendant.<sup>184</sup> If civil liability is established, the defendant has to pay monetary damages, as is decided by the Court, for the loss caused.<sup>185</sup> But before venturing into the ingredients of civil liability, it first needs to be considered whether civil suits can be brought for personal injuries suffered by animals.

This question is answered in the affirmative by giving effect to certain theories, which state that animals would not occupy a purely juristic personality, but would be capable of having similar rights due to the concepts of ‘trusteeship’ or ‘guardianship’. It is realised that in India, neither the Constitution nor the judiciary accords animals a status similar to that of humans. But irrespective of this, by reading jurisprudence on animal welfare into the case precedents and laws pertinent to animal cruelty, it can be considered that animals have rights, but not to the same extent as humans.

Animals are considered to be non-humans as advocated by Singer. But they are not completely devoid of possession of rights since humans still have a duty towards them. Singer mentions how ‘capacity to reason’ cannot be used as a standard to differentiate between humans and non-humans in terms of right holders, since in that case there would be an exception of persons suffering from *doli* incapacity (mainly babies and mentally insane persons), who do possess rights but do not have such capacity. Rather he relies on Bentham’s idea of ‘capacity to

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<sup>183</sup>Dichter, *supra* note 125.

<sup>184</sup> US Legal, *Private Wrong Law and Legal Definition*, available at <https://definitions.uslegal.com/p/private-wrong/> (Last visited on February 22, 2017).

<sup>185</sup> *Id.*

feel pleasure and pain' as the threshold for determining who possesses rights.<sup>186</sup> Since both non-humans as well as all humans have this form of capacity, there is a duty towards animals as well, with respect to guaranteeing their rights.

David Favre argues that animals should be given equitable self-ownership in themselves. Misleading, as the status may seem, it actually suggests that animals have rights but are incapable of performing or enforcing them.<sup>187</sup> Therefore, animals should be the legal titleholders, whereas their human counterparts would be the trustees ensuring the rights. Even Cass Sunstein makes a similar argument that animals can sue, but only through juristic persons.<sup>188</sup>

a) *Who shall bring in suits on behalf of animals?*

This is where the principles of 'trusteeship' or 'guardianship' come into picture. For the imposition of civil liability, it is necessary that the State acts as trustees or guardians of the animals, which involves taking into account the best interests of animals while enforcing their rights.

In light of this, it is pertinent to note that the Himachal Pradesh High Court, in *Ramesh Sharma v. State of Himachal Pradesh*,<sup>189</sup> applied the doctrine of *parens patriae*, and declared a ban on the sacrifice of animals and birds in temples.<sup>190</sup> The Supreme Court also recently invoked the doctrine of *parens patriae* to ban the event of Jallikattu.<sup>191</sup> This is relevant because the doctrine of *parens patriae* provides that the State has the duty and authority to protect those legally unable to act on their own,<sup>192</sup> such as minors, insane or incompetent persons.<sup>193</sup> The doctrine that took shape under English common law<sup>194</sup> originally meant that the King was "the guardian of his people," and was able to exercise authority to take requisite care of people who were legally unable to take care of themselves or their property.<sup>195</sup> In India, the doctrine roughly implies that it is the duty of the State to protect and take into custody the rights and privileges of its citizens who are not able to protect their own interests.<sup>196</sup> Courts may also assume the role of *parens patriae* in India.<sup>197</sup> The doctrine has been used by Indian courts in custody cases,<sup>198</sup> as a basis for development of juvenile justice system,<sup>199</sup> as a justification for special provisions for the

<sup>186</sup> Singer, *supra* note 123.

<sup>187</sup> David Favre, *A New Property Status for animals: Equitable Self-Ownership* in ANIMAL RIGHTS 234 (2004).

<sup>188</sup> Cass R. Sunstein, *Can Animals Sue?* in ANIMAL RIGHTS 252 (2004).

<sup>189</sup> *Ramesh Sharma v. State of Himachal Pradesh*, CWP No. 9257 of 2011 (HP HC) (Unreported).

<sup>190</sup> *Id.*, ¶84.

<sup>191</sup> *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547, ¶33 (The Court found that it had a duty under the doctrine of *parens patriae* to protect the rights of animals).

<sup>192</sup> George B. Curtis, *The Checkered Career of Patens Patriae: The State as Parent or Tyrant?*, 25 DEPAUL L. REV. 895, 895-97 (1976).

<sup>193</sup> *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613 ¶¶ 35, 36.

<sup>194</sup> Deborah G. Musiker et al, *The Public Trust and Parens Patriae Doctrines: Protecting Wildlife in Uncertain Political Times*, 16 PUB. LAND L. REV. 87 (1995).

<sup>195</sup> *Id.*

<sup>196</sup> *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613.

<sup>197</sup> *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454.

<sup>198</sup> *Kamla Devi v. State of Himachal Pradesh*, AIR 1987 HP 34.

<sup>199</sup> *Review of the Juvenile Justice System in India*, available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/31588/8/08\\_chapter%202.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/31588/8/08_chapter%202.pdf) (Last visited on May 29, 2017).

care and protection of children,<sup>200</sup> in cases of mentally incompetent persons,<sup>201</sup> etc. Similarly, the doctrine of *parens patriae* can be used as a basis for making special provisions for animals and their well-being, in light of their inability to enforce their own rights.

Under American common law, the doctrine of *parens patriae*, however, has a wide scope of application.<sup>202</sup> This is because in the United States of America, the State can bring a suit in respect of damage to its resources in which it has direct interest, a proprietary or quasi-sovereign interest,<sup>203</sup> and independent of a particular individual's interest.<sup>204</sup> That is, a state for instance can also bring a suit for damage done to wildlife as part of the environment.<sup>205</sup> This principle should also be extended to the sphere for harms done to animal life in general.

Interestingly, India, in the Union Carbide case, based its suit on the doctrine of *parens patriae*,<sup>206</sup> in order to sue, so as to protect the well-being of its citizens when no citizen had standing to sue.<sup>207</sup> The district court, however, dismissed the case without discussing the *parens patriae* issue.<sup>208</sup> Invoking *forum non conveniens*, the court dismissed the suit because according to it India would be a more appropriate forum to hear the suit.<sup>209</sup> This has however, been criticised, as individual citizens could have sought relief in their own right, and there was no legal necessity for, or even plausibility of invoking the doctrine of *parens patriae* since, those who were being protected were able to protect themselves.<sup>210</sup> Nevertheless, although, such a case has not come before any Indian Court, the Indian State has recognised, as part of the doctrine of *parens patriae*, the right of the sovereign to sue for civil damages, on behalf of those incapable to do so themselves, in the sphere of public international law.

On similar lines is the 'public trust' doctrine, which allows the State as the trustee to supervise and preserve the natural resources that are owned by the State in trust for the people.<sup>211</sup> The origins of the public trust doctrine can be traced back to the *Corpus Juris Civilis*, a codification of Roman statutes and laws.<sup>212</sup> A portion of the 'Corpus, the Institutes of Justinian' contained origins of the doctrine.<sup>213</sup> The doctrine developed under common law as the principle by the virtue of which the Crown had ownership of waters and the beds below them so as to

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<sup>200</sup> *Id.*

<sup>201</sup> Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.

<sup>202</sup> See *supra* note 194.

<sup>203</sup> Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907); Georgia v. Pennsylvania Railroad Co., 324 U.S. 439 (1945) (The United States Supreme Court in these cases, observed that interests of the State were not restricted to only proprietary interests, but also extended to 'quasi-sovereign' interests which are "independent of and behind the titles of its citizens, in all the earth and air within its domain").

<sup>204</sup> Curtis, *supra* note 192, 895, 907.

<sup>205</sup> In re The Exxon Valdez, 236 F. Supp. 2d 1043 (2002).

<sup>206</sup> Lisa Moscati Hawkes, *Parens Patriae and the Union Carbide Case: The Disaster at Bhopal Continues*, 21(1) CORNELL INTERNATIONAL LAW JOURNAL 182 (1988).

<sup>207</sup> In re Union Carbide Corp., 634 F. Supp. at 876.

<sup>208</sup> Hawkes, *supra* note 206.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892).

<sup>212</sup> Melissa Scanlan, *The Evolution of the Public Trust Doctrine and the Degradation of Trust Resources: Courts, Trustees and Political Power in Wisconsin*, 27 ECOLOGY L.Q., 141 (2000).

<sup>213</sup> *Id.* (The Institutes of Justinian, states that some things are "common to mankind- the air, running water, the sea, and consequently the shores of the sea [and] the right of fishing in a port, or in rivers, is common to all men").

controlcommerce and navigation in the interest of the public.<sup>214</sup>Hence, in other words, the sovereign, under the public trust doctrine held property in trust for the people.

The Public Trust doctrine has now developed well beyond public navigation, commerce and fishing, and applies to various natural resources and environmental issues.<sup>215</sup> The public trust doctrine has continuously expanded in its scope of application, so as to meet the challenges to natural resources.<sup>216</sup>The public trust doctrine has also been applied in the United States, to preserve wildlife. In *Geer v. Connecticut*,<sup>217</sup> the U.S. Supreme Court first recognized the wildlife trust doctrine.<sup>218</sup> According to this doctrine, states have a duty “to enact such laws as will best preserve the subject of the trust (i.e., wildlife) and secure its beneficial use in the future to the people of the state.”<sup>219</sup>In the case, the Supreme Court held that states have the right to “control and regulate the common property in game.”<sup>220</sup>The Court found that the state had authority to regulate game because of wildlife’s “peculiar nature” and “common ownership by the citizens of the State.”<sup>221</sup>The Court of Appeals of New York in *Barrett v. State*<sup>222</sup> also justified the protection of wildlife not only in respect of human benefit or public good but also went much further than that.<sup>223</sup> The Court held that the New York legislature's reintroduction of wild beaver into the Adirondacks was done not only in public interest, but also because of their inherent importance.<sup>224</sup> Under this doctrine, the State can also sue for damages for harm sustained by wildlife.<sup>225</sup>The State as a custodian or trustee of these resources has a duty to maintain the natural resources not simply for the benefit of the humans but also to secure the best interests of wildlife animals.<sup>226</sup>

However, there is no recognition of a duty to protect animals in general under the public trust doctrine.<sup>227</sup> Nevertheless, it has to be conceded that animals would stand to gain if

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<sup>214</sup> *Id.*

<sup>215</sup> Arnold L. Lum, *How Goes the Public Trust Doctrine: Is the Common Law Shaping Environmental Policy?*, 18 NAT. RESOURCES & ENV'T. 73(2003-2004).

<sup>216</sup>Anna R. C Caspersen, *The Public Trust Doctrine and the Impossibility of “Takings” by Wildlife*, 23 B.C. ENVTL. AFF. L. REV. 357 (1996).

<sup>217</sup>*Geer v. Connecticut*, 161 U.S. 519 (1896).

<sup>218</sup>*Id.*

<sup>219</sup> *Geer v. Connecticut*, 161 U.S. 519, 534 (1896)

<sup>220</sup>*Id.*, 528–29.

<sup>221</sup>*Id.*, 161.

<sup>222</sup> *Barrett v. State*, 116 N.E. 99,100 (N.Y. 1917).

<sup>223</sup>*Id.*

<sup>224</sup>Caspersen, *supra* note 216; *Barrett v. State*, 116 N.E. 99,101 (N.Y. 1917):

“The police power is not to be limited to guarding merely the physical or material interests of the citizen. His moral, intellectual and spiritual needs may also be considered. The eagle is preserved, not for its use but for its beauty. The same thing may be said of the beaver. They are one of the most valuable of the fur-bearing animals of the state. They may be used for food. But apart from these considerations their habits and customs, their curious instincts and intelligence place them in a class by themselves. Observation of the animals at work or play is a source of never-failing interest and instruction. If they are to be preserved experience has taught us that protection is required.”

<sup>225</sup> *In re Stuart Transportation Co.*, 495 F. Supp. 38 (E.D. Va. 1980), ¶¶39, 40.

<sup>226</sup>*Manilal Valliyate (Dr.) v. State of Maharashtra*, (2014) 3 Mah LJ 209.

<sup>227</sup> Stacey L. Gordon, *The Legal Rights of all Living Things: How Animal Law can extend the Environmental Movement’s Quest for Legal Standing for Non-human Animals* in WHAT ANIMAL LAW CAN LEARN FROM ENVIRONMENTAL LAW 233-234(2015).

such a duty were to be recognised. Application of the public trust doctrine will not only mean that the Government will have the right to protect animals, but also will have a duty to ensure the well-being of at least some animals.<sup>228</sup> Moreover, the Supreme Court of India has already recognised the wildlife trust doctrine. In *M.C. Mehta v. Kamal Nath*,<sup>229</sup> the Supreme Court discussed the doctrine of public trust, and said that it applied to common property such as reserve forests and wildlife etc.<sup>230</sup> Furthermore, by invoking the public trust doctrine along with the fundamental duty under Article 51A(g), the Bombay High Court directed the relocation of an elephant being kept at a temple to a sanctuary, on account of the cruelty being meted out to the elephant, named *Sunder*.<sup>231</sup>

However, a legitimate concern, that is an impediment to the application of the public trust doctrine to animal rights, is that the argument taken by most animal rights activists, that non-human animals are sentient and therefore, like humans, may not be owned as property, defeats the basic premise of the Public Trust Doctrine or wildlife trust doctrine, according to which, wild animals are a publicly owned resource held by the State in trust for the public.<sup>232</sup> This hurdle, nevertheless, may not be too difficult to overcome if the State's role as the trustee is viewed strictly, as that of a guardian, in terms of the doctrine of *parens patriae*, and not as the "owner" of common property in animals. What can be borrowed from the wildlife trust doctrine is the State's right to claim damages for legal injury to animals (since under the doctrine of *parens patriae*, India has not yet recognised such a right), and the recent recognition of the duty towards wildlife (in our case, animals) because of their inherent importance and value.<sup>233</sup> Apart from this, a duty to protect animals, because of their inability to do so themselves should be imposed upon the State, under the doctrine of *parens patriae*. Thus, a combination of the two doctrines would be ideal, without jeopardising the philosophical positions taken by animal rights activists.

The position of the State as the guardian or trustee of animal life under the public trust doctrine has not been statutorily recognised or even acknowledged by the State, although the Indian judiciary has attempted to invoke these doctrines while deciding cases on wildlife protection and animal welfare. Thus, drawing from the above discussion, it would be safe to conclude that the Indian Legislature could import certain legal doctrines from common law and customise them, so that they may be applied to animals in general. The State should have the ability to bring suits in respect of animals as animals are legally incapable of protecting their own rights. The State can show a duty to do so on their behalf, by citing a legitimate and compelling interest in protecting animals from cruelty.<sup>234</sup>

b) *How shall the suggested civil liability model function?*

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<sup>228</sup> Caspersen, *supra* note 216.

<sup>229</sup> *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> The Wildlife Society, *The Public Trust Doctrine: Implications for Wildlife Management and Conservation in the United States and Canada*, September 2010, available at [http://wildlife.org/wp-content/uploads/2014/05/ptd\\_10-1.pdf](http://wildlife.org/wp-content/uploads/2014/05/ptd_10-1.pdf) (Last visited on May 29, 2017).

<sup>233</sup> *Geer v. Connecticut*, 161 U.S. 519, 530 (1896); *Barrett v. State*, 116 N.E. 99, 100 (N.Y. 1917).

<sup>234</sup> *Hughes v. Oklahoma*, 441 U.S. 322 (1979); *United States v. Stevens* 559 U.S. 460 (2010).

Ideally, a duty of trusteeship or guardianship should be performed by the State based on the doctrine of *parens patriae* and the Public Trust Doctrine. But in the civil liability model suggested by us, the ideal performer of the duty would be the AWBI. AWBI is formed by the Central Government,<sup>235</sup> and thus functions on behalf of the government. Further, even the functions listed under §9 of the PCA require that the AWBI undertake necessary actions to ensure prevention of unnecessary pain and infliction on to animals. AWBI is in a better position than the Government in itself to address the issues pertaining to animal cruelty and therefore should be granted the power and responsibility to impose civil liability against the accused. The AWBI has been statutorily set up to specifically to protect and promote the welfare of animals.<sup>236</sup> It is also constituted of such persons that have engaged in work associated with animal welfare or environmental and wildlife protection.<sup>237</sup> As such its sole responsibility is ensuring the well-being of animals, its members are also equipped to handle such a responsibility. It is also set up by the Central Government, and thus, is the appropriate trustee or guardian of animals. The AWBI can also set up State Animal Welfare Boards<sup>238</sup> to assist in performing its role as the guardian of non-human animals. Further, as a result of civil liability being imposed, the judiciary would not be restricted by the penalties prescribed under the PCA. Rather it would be empowered to advocate penalties as it would deem fit, including those greater than the ones imposed by the present letter of the law.

In the interest of animal welfare, the model for imposition of civil liability would also require that the monetary sums collected through imposition of civil liability be transferred to the AWBI Fund. Presently this fund receives “grants made to it from time to Board time by the Government and of contributions, subscriptions, bequests, gifts and the like made to it by any local authority or by any other person.”<sup>239</sup> Consequently, the moneys received in the Fund are used for the implementation of the AWBI aims mentioned under §8 of the Act. Hence, in a suit for imposition of civil liability, the monetary sums received would be transferred to the AWBI Fund, which in turn would be used for the benefit of the animals, such as facilitation of animal welfare programs like the Animal Birth Control scheme,<sup>240</sup> stray feeding,<sup>241</sup> supporting animal NGOs, setting up of shelters, etc.

Presently, the legal backing for the imposition of civil liability can be addressed through the PCA, since it lists the indicative offences as well as the features of AWBI, which are relevant for the imposition of civil liability. This can be done by adding a clause to the powers of the AWBI, which allows it to sue in case of animal cruelty. The clause would thus also be effectively implying that AWBI has the ‘trusteeship’ or ‘guardianship’ over the animals of India, which allows it to impose civil liability towards the benefit of animals.

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<sup>235</sup> The Prevention of Cruelty to Animals Act, 1960, §4.

<sup>236</sup> The Prevention of Cruelty to Animals Act, 1960, §4.

<sup>237</sup> The Prevention of Cruelty to Animals Act, 1960, §5.

<sup>238</sup> Animal Welfare Board of India, *Policy of the Animal Welfare Board of India*, available at <http://www.awbi.org/?q=node/10> (Last visited on June 23, 2017).

<sup>239</sup> The Prevention of Cruelty to Animals Act, 1960, §8.

<sup>240</sup> The Animal Birth Control Rules, 2001.

<sup>241</sup> Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Stray Feeding Guidelines (May 26, 2006) Letter no.F.No.30/9/2006.

This demonstrates that civil liability can be imposed on the accused by virtue of trusteeship or guardianship, and thus result in the benefits of easier and greater imposition of liabilities.

c) *Elements of civil liability*

To further establish civil liability, four elements are required to be present, i.e. existence of a duty which the defendant owes to the plaintiff, a breach of that duty, causation, and an actionable injury.

i. Legally enforceable duty

There should be a legally enforceable duty that the defendant owes to the plaintiff.<sup>242</sup> This limb requires that the defendant act with ordinary care and prudence so as to discharge the duty.<sup>243</sup> The standard of care that needs to be adopted depends on various legal tests. In cases of personal injuries, as will be the case in situations of harm caused to animals, the test that would apply is the test laid down by Lord Atkin in *Donoghue v. Stevenson*.<sup>244</sup> In this case, Lord Atkin expostulated the ‘neighbour principle’. The neighbour test for establishing a duty of care encompasses two requirements of reasonable foresight of harm,<sup>245</sup> and a relationship of proximity.<sup>246</sup>

Thus, the Courts will recognise a duty of care as long as the nature of harm caused was a foreseeable consequence of the acts of the defendant and, such animal as was injured by the said acts, must have also been likely to be affected by the actions of the defendant. Besides these two elements, a third element has been added to the test. The claimant must also put forward policy reasons for imposing liability.<sup>247</sup> This means that, it should be “fair, just and reasonable”<sup>248</sup> to impose such a duty of care. The requirement of the imposition of duty to be “fair, just and reasonable”, has to be understood as a question involving public policy, interpreted by the judiciary at any point of time.<sup>249</sup> Relevant policy issues can be used to negate the imposition of a duty and such policy issues can also be raised to support the imposition of such a duty. Hence, a duty of care, towards animals can be established by citing policy considerations, which will inevitably involve moral and ethical duties owed by humans to non-humans. A moral obligation to minimise suffering of animals can be universally recognised as a basic policy ground to impose a reasonable duty of care towards non-humans, in cases of animal cruelty.

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<sup>242</sup>Steele, *supra* note 181.

<sup>243</sup>*Id.*

<sup>244</sup>*Donoghue v. Stevenson*, [1932] UKHL 100 (per Atkin J.).

<sup>245</sup>*Id.* (“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour”).

<sup>246</sup>*Id.* (“Who then in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question”).

<sup>247</sup> *Caparo Industries Plc v. Dickman* [1990] 2 AC 605.

<sup>248</sup> *Id.* (Lord Bridge's three stage test for imposing a duty of care, known as the Caparo test: 1. That harm was reasonably foreseeable; 2. That there was a relationship of proximity; 3. That it is fair, just and reasonable to impose a duty of care).

<sup>249</sup> VIVIENNE HARWOOD, *MODERN TORT LAW* 40 (7<sup>th</sup> ed., 2009).

Besides, the identification of a general duty of care may not be necessary, as the Courts have, in any case listed various duties towards animals, which are to be discharged by humans.<sup>250</sup> Not only do we have duties under the PCA, but also fundamental duties under the Constitution. Thus, according to the provisions of the PCA, read along with our fundamental duties under the Constitution, we owe non-humans the duty to “take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.”<sup>251</sup>

## ii. Breach, Causation and Legal Injury

A breach of these duties, either negligently or deliberately, is a necessary requirement for imposing civil liability. The breach of the legally imposed duty must have caused damage or injury, whether directly or indirectly to the victim. The animal must have suffered damage or injury on account of such breach. Such injury is actionable in a civil suit. The claimant must also prove, on the balance of probabilities, that the defendant's breach of duty caused the harm. Causation can be established through a number of tests. Most commonly applicable is the ‘but for’ test.<sup>252</sup> The defendant is liable if the harm to the claimant would not have occurred but for the defendant's breach of duty.<sup>253</sup> Several other tests apply where there are more than one causes. A detailed discussion of the same is outside the scope of this paper.<sup>254</sup> Finally, the claimant must prove that as a result of the actions of the defendant, the claimant suffered a legal injury.

The proper imposition of these liabilities by virtue of amendments to the PCA would ensure that the aims of the Act and the Constitution with respect to animal welfare might be eventually achieved in the future. But at the current stage as well, it is aspired that implementation of these liabilities would act as a deterrent for persons to commit offences of cruelty against animals, and subsequently reduce the number of such instances.

## V. CONCLUSION

In the course of this paper we have attempted to critique the existing deficiencies in the animal welfare provisions of our country. We have also attempted to suggest the inclusion of civil liability for violation of the rights of animals, in legislations protecting the rights of animals. First, the scope of the PCA and its interpretation by various courts has been examined, only to conclude that the provisions of the primary animal welfare legislation in India (that is the PCA), are toothless and the penalties prescribed by it neither offer adequate protection to animals, nor deter acts of cruelty. However, it has also been identified that the judiciary is increasingly attempting to accord rights to animals under the Constitution and also impose duties upon citizens to protect such rights. This recognition of animal's rights and our corresponding

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<sup>250</sup> N.R. Nair v. Union of India, AIR 2000 Ker 340; Animal Welfare Board of India v. A. Nagaraja (2014) 7 SCC 547; *See also* Part II.

<sup>251</sup> S. Kannan v. The Commissioner Of Police, W.P.(MD)No.8040 of 2014 (Madras H. C.) (Unreported); The Prevention of Cruelty to Animals Act, 1960, §3.

<sup>252</sup> Snell v. Farrell (1990), 72 D.L.R. (4th) 289, 293-294 (The but for test is the “traditional principle in the law of torts”).

<sup>253</sup> Hillel David et al, *Proving Causation where the But For Test is Unworkable*, July 22, 2005, available at [http://mccagueborlack.com/uploads/articles/43/hd-pm-py\\_proving-causation.pdf?1299245845](http://mccagueborlack.com/uploads/articles/43/hd-pm-py_proving-causation.pdf?1299245845) (Last visited on May 16, 2017).

<sup>254</sup> *Id.*



duty to not only prevent any infringement of such rights but also to protect their rights, paves the way for recognising a legal duty to base civil liability upon.

Thereafter, the reasons for revamping the PCA have been discussed, in light of defects such as meagre penalties, non-cognisability of offences, statutory limitations, and easy grant of bail. Based on the flaws highlighted, possible amendments have been proposed, so that the defects identified may be removed. These changes include imposing higher penalties, and ensuring differential treatment of offences, so as to ensure proportionality of punishments and effective deterrence.

But since improving the position of criminal sanctions may not be a sufficient enough action, imposition of civil liability for offences committed against animals is imperative. There is a need to do away with 'speciesism' which characterises most policies and laws, aimed at protecting animals and thus, we suggest the imposition of civil liability which will allow citizens to bring suits for harm done to animals. For this it is necessary to recognise the status of animals as legal persons, so as to enable the bringing of civil suits on their behalf, through the acknowledgement of the State's position as trustee or guardian of animals under the doctrine of *parens patriae* and the Public Trust Doctrine and by giving animals 'equitable self-ownership title'.

Due to the inadequacy of the legislations, which seek to protect animals' rights and the Parliament's inefficacy to recognise the rights of animals and prescribe any effective measures to protect basic rights; change in the law is necessary. Three amendments to the PCA have already been proposed. However, they are yet to be passed by the parliament. Every day, there are new cases of animal cruelty being written about and spoken of. In light of the situation, solutions to mitigate the suffering of animals have to be found. Therefore, proposed changes are required to the PCA, such as civil liability being imposed on those who violate the rights of animals, for their failure to perform their duty of protecting the rights of animals. The provision for imposing civil liability, can be included in the PCA, because of the intrinsic worth of animals and their ability to feel pain as sentient beings. Animals do not merely exist for human benefit. Thus, we must stop denigrating them to an inferior position and must offer them adequate safeguards and rights, since it is our duty to do so.