

# THE DESPISED AND DISHONoured: THE NON-HUMAN ‘BEAST’ AND THE NON-CONFORMING ‘KHAIRATI’

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*Historically, the movements for queer and feminist liberation in India have been, at best, dismissive of and, at worst, antagonistic towards, activism on behalf of animals. This paper documents how a trans-species solidarity is emerging — even if in contested ways — among feminism, queer rights, and animal welfare, around the issue of animal sexual assault. This is articulated through a growing recognition that children, women, queers and animals exist on similar fault lines of gendered violence. This paper examines several publicized Indian case studies of animal sexual assault by human men in an attempt to raise real concern for violence against animals and their continued suffering. It also addresses debates around §377 of the Indian Penal Code, 1860, the “unnatural acts” law, which was rendered partially unconstitutional in 2018 after a legal battle which has pitted these movements against one another and been the impetus for new forms of alliance. I demonstrate how class, gender, and animal lives intersect — violently and otherwise — in the Indian metropolis, through an examination of carnal politics and power.*

## TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	SHIFTING THE LENS FROM SEXUAL PERVERSITY TO SEXUAL CRIME .....	5
A.	PETA DEFENDS THE LIMITED ‘BESTIALITY’ FRAMEWORK .....	5
B.	ANIMALS AS GENDERED INSTRUMENTS: SHIFTING THE LENS TO SEXUAL CRIME.....	6
1.	WORKING ANIMALS AS HUMAN PROXIES.....	7
2.	STREET AND FARM ANIMALS.....	7
III.	ANIMAL SEXUAL ABUSE IN INDIA: A PERVASIVE REALITY .....	9
A.	CREATING A CITIZEN’S PUBLIC RECORD OF ANIMAL SEXUAL ABUSE.....	9
B.	INTERSPECIES SEXUAL ASSAULT AGAINST ANIMALS .....	11
C.	CONTROL OVER SEXUAL REPRODUCTIVE BODIES AND THE WEAK LINK .....	14
IV.	LAW’S RIFT WITH ANIMAL AND TRANSGENDER SEXUAL ABUSE .....	15
A.	ENTRENCHED SPECIESISM AGAINST ANIMAL VICTIMS IN CRIMINAL AND ANIMAL WELFARE LAW .....	16
B.	SEXUAL ASSAULT, GENDER NEUTRALITY AND THE EXCLUSION OF TRANS AND ANIMAL VICTIMS.....	19
V.	THE EXPANSION OF OUR ‘PUBLIC CONSCIENCE’ TOWARDS RIGHTS OF NON- HUMAN ANIMALS.....	20
VI.	A TRANSPECIES QUEER POLITICS OF EMPATHY AND SOLIDARITY.....	22

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## I. INTRODUCTION

“We are familiar with Black Liberation, Gay Liberation, and a variety of other movements. With Women’s Liberation some thought we had come to the end of the road. Discrimination on the basis of sex, it has been said, is the last form of discrimination that is universally accepted and practiced without pretense, even in those liberal circles which have long prided themselves on their freedom from racial discrimination. But one should always be wary of talking of “the last remaining form of discrimination.”<sup>1</sup>

On July 25, 2018, in the village of Nuh, Nagina in the Mewat region of Haryana, Aslup Khan — who kept many goats, and was frequently used to people stealing them — that evening went looking for another stolen goat. To his complete shock and horror, at around 11 P.M. he found the goat being sexually abused by three village men whom he knew, while five others watched. As they saw him, they smashed the goat’s head against the wall and ran away. The goat died the following day (‘Nagina goat case’).

Aslup’s grief and the love for his goat — as part property, part companion animal, and part source of other goats that she was about to deliver — led him to pursue the matter with the authorities. He demanded one lakh rupees in compensation. Unable to forgive the perpetrators, he referred to the goat as his ‘child’ who was about to deliver.<sup>2</sup> He mourned her suffering as a sentient being: she “was injured and lying on the ground. It was not even able to walk. I took it home and applied medicines on the wounds on its head and nose. It did not eat anything the next day and was lying as if it was paralysed”.<sup>3</sup> As per news reports, the three accused who were caught were let off after a decisive village beating “as they were allegedly in an inebriated state and were regular offenders”.<sup>4</sup> According to the police, one of the accused met Aslup the next day and mocked him over the condition of the goat. This inspired Aslup to take the matter to the police as a criminal case, where initially a case was registered under the highly lenient and inadequate Prevention of Cruelty to Animals Act, 1960 (‘PCA, 1960’) which punishes crimes of cruelty against animals with a fine of fifty rupees.<sup>5</sup>

This became the most public of Animal Sexual Abuse (‘ASA’) cases from India; a simple google news search will confirm over a hundred Indian and International news reports. The case remains unacknowledged by women’s rights groups as an act of violence against the gendered body of a captive farm animal — an argument, we will explore further in this paper. The media only festered fears of the sexually depraved. The character of the accused in terms of their background, community and antecedents became a national obsession. Some reports identified them as ‘history-sheeters’, ‘arms dealers’, young men involved in ‘betting’, ‘multiple cattle and motorbike thefts’.<sup>6</sup>

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<sup>1</sup> Peter Singer, *Animal liberation*, THE NEW YORK REVIEW OF BOOKS, April 5, 1973 available at <https://www.nybooks.com/articles/1973/04/05/animal-liberation/> (Last visited on September 29, 2020).

<sup>2</sup> HINDUSTAN TIMES (Leena Dhankhar), *Haryana police arrest two of the 8 men accused of raping pregnant goat in Nuh*, August 3, 2018, available at <https://www.hindustantimes.com/indi...goat-in-nuh/story-WBpKwfKviqrdZuFm71UZn.html> (Last visited on September 29, 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The Prevention of Cruelty to Animals Act, 1960, §11(1).

<sup>6</sup> *Id.*

The Mirror in the UK reported that the accused were ‘drunk and also drug addicts’<sup>7</sup>. As per the Superintendent of Police, Bhasin, the assault of the goat was being investigated with ‘complete sympathy against the inhuman cruelty by some uncivilized people’.

And very soon (and unsurprisingly in a communally charged India) the target of the outrage became Islam itself. Mewat where the incident took place remains the only post-Partition Muslim dominated area of Haryana. A twitter hashtag “#justiceforgoat” was started in an act of public outrage which soon took a communal angle.<sup>8</sup> BigleaguePolitics.com became the first American far right portal to lift the news from the wire and give it a communal twist with the headline “Pregnant Goat dies after being gangraped by 8 Muslim men (emphasis added)”, concluding in crude irony that “the religion of peace strikes again”<sup>9</sup> This soon got clubbed with another hashtag, “#TalktoAMuslim” and in the twisted logic of the social media soldiers of the Hindu Right this case became a window into the criminal Muslim mind and an attack on the claim that Islam is a peaceful religion.<sup>10</sup> This unfortunate and highly dangerous characterization of the perpetrator in the above case as uncivilized, poor, a habitual criminal, sexually depraved and a Muslim has remained unquestioned in liberal Indian discourse. Meanwhile, actual concern for the goat victim was absent from across all political spectrums.

People for Ethical Treatment of Animals, India (‘PETA’) was the first organization to step in and actually rally for justice for the dead goat. Its lead cruelty responder, Meet Ashar, convinced the police to conduct an immediate post-mortem confirming the presence of human seminal discharge.<sup>11</sup> Dr. Ramvir Bhardwaj, veterinary surgeon of animal husbandry at Nagina, confirmed that the goat died of brain haemorrhage. He also added that she “was 50 days pregnant and would have delivered two babies in the last week of November. There were two foetuses found in the abdomen during the autopsy”.<sup>12</sup> Emboldened by the medical report that confirmed the goat was subjected to penetrative sex, Mr. Ashar lobbied with the police to register an offence under §377 of the Indian Penal Code, 1860 (‘IPC, 1860’). The Indian police notoriously resist lodging criminal complaints, but since the case was now trending national news, an amended complaint was lodged under the stricter §§377 (the sodomy provision) and 429 (assault against the animal property of humans) of the IPC, 1860 along with §§ 11(1)(a) and 11(1)(l) of the PCA, 1960 which punish violent acts of cruelty against animals.<sup>13</sup> Pivotal to all the above charges remains §377, which is also the reason why a pathological obsession with the sexual depravity of the perpetrator masks concern for the animal victim.

<sup>7</sup> Toby Meyjes, THE MIRROR, *Pregnant goat dies after being ‘gang-raped by eight men’ as horrified owner catches them in the act*, July 29, 2018, available at <https://www.mirror.co.uk/news/world-news/pregnant-goat-dies-after-being-12998644> (Last visited on September 29, 2020).

<sup>8</sup> INDIA TV NEWS, *Twitterati fumes after alleged gang-rape of a pregnant goat by 8 men*, July 30, 2020, available at <https://www.indiatvnews.com/buzz/news-twitterati-fumes-after-alleged-gang-rape-pregnant-goat-by-8-men-455311> (Last visited on September 29, 2020).

<sup>9</sup> BIG LEAGUE POLITICS (Laura Loomer), *Pregnant Goat Dies after Being Gang Raped by 8 Muslim Men*, July 30, 2018, available at <https://bigleaguepolitics.com/pregnant-goat-dies-after-being-gang-raped-by-8-muslim-men/> (Last visited on September 29, 2020).

<sup>10</sup> See Results of search on twitter for “justiceforgoat” with “talktoamuslim”.

<sup>11</sup> Interview on 23<sup>rd</sup> October 2019 at the PETA India office in Mumbai, on record with the author.

<sup>12</sup> HINDUSTAN TIMES, *supra* note 2.

<sup>13</sup> DEVDISCOURSE, *PETA asks Ministry to amend PCA Act to include “bestiality” as cognizable offense*, August 1, 2018, available at <https://www.devdiscourse.com/article/science-environment/98189-peta-asks-ministry-to-amend-pca-act-to-include-bestiality-as-cognizable-offense> (Last visited on September 29, 2020).

Just a week before the Nagina goat case, on July 17, 2018 the Supreme Court of India had concluded final arguments in the case of *Navtej Singh Johar v. Union of India* ('Navtej'), which partially challenged the constitutionality of §377 to the extent that it punished consensual sexual acts between adults of the same sex, essentially seeking decriminalisation of homosexuality.<sup>14</sup> §377, a colonial relic, punishes 'unnatural' sex between men, including sex with animals, collectively as sexual perversities, irrespective of consent. Similar to cases of child sexual abuse and non-consensual sex with men (cis, queer or transgender) — animal rights activists in India have also been using §377 to punish sexual crimes against animals. While I celebrate the gay rights victory of Navtej, leaving animals and transgender folks to the mercy of §377 to punish perpetrators of sexual crimes, continues to dishonour them as victims. In cases of sexual crimes, the Indian rape law only sees the cis-female as a victim<sup>15</sup> and all other gender non-conforming victims, including animal victims, are relegated to §377.

Sexual crimes against animals are viewed through the lens of sexual perversities and even though §377 is regularly used to prosecute the crimes of non-consensual sexual acts against men, transgender folks and animals, in the eyes of the law the victims remain complicit perverts. This is additionally so because the pre-Navtej jurisprudence of §377, had shifted the inquiry of intention to commit sodomy to a pre-existing condition of a negative psychological trait, like the idea of *perversity*.<sup>16</sup> The extension of this is the 'link' argument, that people who commit crimes against animals are more likely to commit crimes against women and children.

This paper is an attempt at embarking new conversations around animal rights in India. In the limited exercise ahead in this paper, I consider: How do we also talk about the animal victim in the larger discussion about sexual crimes? One of the ways is to reject the focus on the psychology of the criminal and shift it to the culture of violence in our society that builds on structures of gender and speciesism. Part II of the paper lays out the complexity created by the prevailing Law Commission of India Recommendations for deletion of §377 and the partial eclipse of the provision in Navtej, which leaves animal rights organisations like PETA to depend upon the remnants of §377 to prosecute sexual crimes against animals, despite its sordid legislative and jurisprudential history. In Part III, I highlight that ASA is not an aberration but a rampant problem. These are not isolated cases, but occur at a pervasive scale that requires our immediate attention. In Part IV, through a discussion on criminal law, sexuality and gender rights politics, I argue for parity of victimhood for animals. Animals are victims of sexual abuse not because of a pathological sexual depravity (an unfortunate colonial language which we must reject) but because of a deeper culture of violence in our society against the weak, who are necessarily gendered as sexual victims either as women, children, transgenders or animals.

The relegation of transgender and animal victims of sexual violence to §377 to seek justice, is the unfinished legacy of Navtej. This requires an interspecies remapping of rights through the doctrine of public conscience discussed in Part VI, wherein I conclude with a quest for a new politics of parity.

<sup>14</sup> *Navtej Singh Johar & Ors. v. Union of India*, (2018) 10 SCC 1.

<sup>15</sup> Indian Penal Code, 1860, §§ 375, 376.

<sup>16</sup> See Alok Gupta, *The Presumption of Sodomy* in LAW LIKE LOVE: QUEER PERSPECTIVES ON LAW (Alok Gupta & Arvind Narrain, Yoda Press, 2011)

## II. SHIFTING THE LENS FROM SEXUAL PERVERSITY TO SEXUAL CRIME

The list of everyday violent crimes towards animals in India is endless. It often gets reported and highlighted, but we never see any concerted efforts from our civil society, or people on the left working on social justice, apart from a handful of animal rights activists. Indeed, violence towards animals is already marginalized in left-wing circles and sexual assault on animals is doubly so.

### A. PETA DEFENDS THE LIMITED ‘BESTIALITY’ FRAMEWORK

A fresh plea to prosecute sexual crimes against animals emerged from PETA. In a letter dated July 31, 2018 to the Ministry of Home Affairs (a week before the judgement in Navtej was announced), while supporting the legalization of homosexuality, PETA sought partial retention of §377 for sexual crimes against animals. The letter sought the retention of criminalization of ‘bestiality’ under §377, but erroneously defined it as “sexual assault by a human being on an animal”. Bestiality, a biblical relic, means *beast-like* or inferring “earthy and savage qualities allegedly inherent in non-human animals”.<sup>17</sup> Thus, the term bestiality negates the coercive nature of the sexual act and the violence on the animal victim. We must invoke a new language of sexual crimes against animals, away from bestiality.

PETA insisted on this partial retention because of an impending fear that the Indian Parliament may implement the pending recommendations from March 2000 of the 172<sup>nd</sup> Law Commission of India Report which recommended deletion of §377 entirely (by making all sexual crimes gender-neutral under section 375, thus making 377 redundant).<sup>18</sup> The Law Commission report in fact dismissed the entire category of sexual crimes against animals stating “the only content left in Section 377 is having voluntary carnal intercourse with any animal. *We may leave such persons to their just deserts* (emphasis added)”.<sup>19</sup> This is a critical proof of the continuation of the pathological language of sexual depravity that denies justice and dishonours the animal victims of sexual crimes by pretending they don’t even exist as victims.

To be fair, there were also no submissions by animal rights organisations before the Law Commission in 2000, or before the Supreme Court during the Navtej hearing in 2018. On the contrary, the fear of rise in perversions of incest and bestiality were cited as reasons before the Supreme Court in Navtej by some petitioners opposing the case, to which Justice D.Y. Chandrachud famously retorted that the Court was not considering “*kinks* in sexual behaviour (emphasis added)”.<sup>20</sup> The long pathological association of ‘bestiality’ with sexual perversities silences the non-consensual animal victim of violent sexual crimes, rendering it an incorrect framework to address sexual assault.

PETA based its submission on the ‘mental health and law-enforcement’-based ‘link’ between unchecked animal sexual abuse and vulnerability of women and children, based on numerous

<sup>17</sup> Piers Biene, *Rethinking Bestiality: Towards a concept of interspecies sexual assault*, Vol.1(3), THEORETICAL CRIMINOLOGY, 320 (1997).

<sup>18</sup> Law Commission of India, Review on Rape Laws, Report No. 172 (March 2000), available at <http://www.lawcommissionofindia.nic.in/rapelaws.htm> (Last visited on September 29, 2020).

<sup>19</sup> *Id.*, ¶3.6.

<sup>20</sup> Anoo Bhuyan, *Homosexuality, Bestiality, Incest: Why Govt and Opponents Fear Scrapping Section 377*, THE WIRE, July 13, 2018, available at <https://thewire.in/lgbtqia/homosexuality-bestiality-incest-opponents-section-377> (Last visited on September 29, 2020).

studies ('link argument').<sup>21</sup> Thus, according to the letter those who commit acts of cruelty to animals are more likely to hurt and even kill human beings.<sup>22</sup> In a powerful editorial, Dr. Manilal Valliyate, the head of PETA India, followed up this argument:

"Horror stories of humans raping dogs, goats, cows, and other animals already appear in our newspapers, and if India's laws no longer adequately punish these unsettling crimes with the severity they demand, the unchecked deranged individuals who commit them may move on to unleashing their cruelty on humans, too... It is imperative that India's government continue to protect animals from sexual assault by keeping bestiality criminalised under Section 377. Not only will this safeguard India's animals—who are revered—it will also protect our beloved citizens."<sup>23</sup>

In this article I wish to critically engage with aspects emerging from PETA's approach to ASA. Firstly, I address the faulty reliance on §377 and highlight the need for a parity in victimhood between cis-female, transgender and animal victims of sexual crimes.<sup>24</sup> Further, I aim to debunk the over-reliance on the link argument. We do not protect women and children from sexual crimes because of other potential causalities; we protect them as victims, period. For a fair valid concern over the animal victim to emerge, animal activists like PETA need to make a fresh claim for non-human animal rights, and instead of settling on compromises such as a partial retention of §377. Finally, in reference to the debate around gender neutrality (which is presently contested with respect to cis-female as against trans women and male victims of sexual violence), I argue that animal bodies are also gendered and hence sexual violence against them also ought to be covered in the protection which the framework of victim 'neutrality' espouses. Ultimately, they are all victims of sexual violence, and not merely a product of sexual kinks and depravities from whom protection is to be withheld on the notion that it could lead to an overall social collapse.

## B. ANIMALS AS GENDERED INSTRUMENTS: SHIFTING THE LENS TO SEXUAL CRIME

Animals make for classic victims of sexual violence based on two entrenched beliefs: that animals possibly do not feel the same level of pain as humans, and even if they do, they cannot complain – the ideal silent victim. The concept of gender as an instrument of dominance must include the vulnerable non-human animal as well. While deeply held beliefs of the difference of species, vis-

<sup>21</sup> Angela Campbell, *The Admissibility of Evidence of Animal Abuse in Criminal Trials for Child and Domestic Abuse*, Vol.43(2), BOSTON COLLEGE LAW REVIEW, 463 (2002); Sarah DeGue & David DiLillo, *Is Animal Cruelty "A Red Flag" for Family Violence?: Investigating Co-Occurring Violence Toward Children, Partners and Pets*, Vol.24(6), JOURNAL OF INTERPERSONAL VIOLENCE, 1036-1056 (2009); Frank Ascione, *Animal Abuse and Youth Violence*, U.S. DEPARTMENT OF JUSTICE, September, 2001, available at <https://www.ncjrs.gov/pdffiles1/ojdp/188677.pdf> (Last visited on September 29, 2020); Arnold Arluke et al., *The Relationship of Animal Abuse to Violence and Other Forms of Antisocial Behaviour*, Vol.14(9), JOURNAL OF INTERPERSONAL VIOLENCE, 963 (1999).

<sup>22</sup> PETA INDIA, *Goat's Rape Prompts PETA India Appeal to Ensure Bestiality Remains Punishable Under the Indian Penal Code*, August 2, 2018, available at <https://www.petaindia.com/blog/goat-rape-peta-bestiality-punishable-under-the-indian-penal-code/> (Last visited on September 29, 2020).

<sup>23</sup> Manilal Valliyate, *Criminalising bestiality safeguards society*, DOWNTOEARTH, August 20, 2018, available at <https://www.downtoearth.org.in/blog/wildlife-biodiversity/criminalising-bestiality-safeguards-society-61415> (Last visited on September 29, 2020).

<sup>24</sup> Until the Protection of Children from Sexual Offences Act, 2012 (POSCO) was enacted, children victims of sexual crimes also resorted to §377 for criminal redressal. This had actually been one of the reasons given by the State in justifying the retention of §377 before the Delhi High Court in 2009. See *Naz Foundation v. Government of NCT of Delhi & Ors.*, 2009 SCC OnLine Del 1762, ¶11.

à-vis speciesism, may explain the disparity in response to ASA, the sexual violence towards animals remains gendered. Sexual violence thus continues a ‘gendered’ control over their bodies.

Our unequal relationship with animals, where they are largely objects with little or no valid interests, is based on a structural hierarchy. This hierarchy of speciesism — the otherness of the non-human animal (as humans are animals too) — manifests in multiple ways.

## 1. WORKING ANIMALS AS HUMAN PROXIES

Many instrumental relations with animals are based on a semi-human proxy status, where the animal, either for its similarities in strength, shape, physiology, folk lore or even as a proxy family member are subjected to violence that would not be permitted on a human. Thus, we use mules and donkeys to lift hundred kilo loads as it is beyond the physical extent to which poor humans can be exploited; we experiment drugs, cosmetics, vaccines, etc. on a range of animals for their physiological similarity as the detrimental outcome of death or permanent damage to the human body would never be permitted in the civilised world of laws which protects only humans. Tragically, the replacement of animals as slave labor with machines only worsens their condition in many cases, their economic usefulness being reduced to “bare life” lived out in factory farms and other internment camps.<sup>25</sup>

We also exploit the companionship with certain animals for religious gains to discharge a sacred duty of loss. Govindarajan writes: “Pilgrims thronged the inner courtyard of the temple ... pujari ... touched a drop of water to the mouth of each goat, inducting them into the Bhandari family gotra. Puran, and later the priest, explained to me that by being inducted into the family gotra, the goat had taken a samkalp, a vow to complete a particular religious task. The goat was, in essence, taking a vow to sacrifice himself to a deity on behalf of the family of which he was now part”.<sup>26</sup> The folklore here extends beyond the goat being declared a human to actually consenting to being killed: “A mixture of uncooked rice and water was then sprinkled on the goats’ backs. The family held their breath until each goat shook his body, a movement ... described as jharr. This jharr was read as a sign that the goat had consented to his own death and that the deity was pleased with and had accepted the sacrifice”.<sup>27</sup>

Both sacrifice and sexual abuse of animals parallel each other in the manner in which they presume consent on behalf of the animal to serve a human need. This withdrawal of the agency to make an informed decision about their bodies — either as working, farm, or animals used for sacrifice — by a devious substitution of presumption, positions the animal on the fault lines of speciesism and gender.

## 2. STREET AND FARM ANIMALS

In contrast, street animals are relatively free, but share a living space with humans and, based on a colonial policy, are to be destroyed and killed.<sup>28</sup> This has generated a constant inquiry of

<sup>25</sup> GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Stanford University Press, 1995).

<sup>26</sup> RADHIKA GOVINDARAJAN, *ANIMAL INTIMACIES: INTERSPECIES RELATEDNESS IN INDIA’S CENTRAL HIMALAYAS*, Chp. 2, 32-33 (The University of Chicago Press, 2018).

<sup>27</sup> *Id.*, 33.

<sup>28</sup> Krithika Srinivasan, *The biopolitics of animal being and welfare: Dog control and care in the UK and India*, Vol.38(1), *TRANSACTIONS OF THE INSTITUTE OF BRITISH GEOGRAPHERS*, 106-119 (2013).

population control and management either of street dogs, cattle or wild ‘vermin’.<sup>29</sup> Indians in cities and villages are constantly pitched against animal rights activists in Courts in highly exaggerated battles over the survival of the humans over the animals.<sup>30</sup> In the cities it is their battle over street dogs, cats and monkeys; in the villages it is over changing the characterisation of animals as scavengers to that of vermin to be destroyed on sight.<sup>31</sup>

The animal victims of sexual abuse essentially form two patterns – free street dogs and ‘not free’ dairy cattle. Srinivas *et al* explained an important distinction between an inherent Indian idea of free living street dogs, who belong to the public spaces, in contrast with a colonial policy of mass culling of street dogs as a protection against zoonotic rabies, where dogs “were increasingly treated as symbols of uncivilised urban cultures and blamed for spreading rabies”.<sup>32</sup>

Dogs on the streets of India — whether free living or not — are often seen as an unwanted and despised public nuisance, and both in protecting and harming them we exercise an uncontested access over their bodily integrity and reproductive sexual health. While the modern ‘ethical’ public health consensus regularly catches free living street dogs under the national Animal Birth Control (ABC’) policy for spaying and neutering, farm and dairy animals on the other hand undergo sexual assault and coerced breeding through artificial insemination.

How do we even start a conversation about sexual crimes against farm animals? The social license wherein some animals are farmed for meat renders them lesser beings in the human created intra-species hierarchy of animals. A feminist colleague sympathetic to animal rights issues, in reference to the Nagina goat case, commented “how do we express outrage about an animal, whose eventual fate was to be killed, and slaughtered for food?”<sup>33</sup> Therefore, the second class of animals addressed by the upcoming report of the Federation of Indian Animal Protection Organisation, and All Creatures Great and Small (‘FIAPO-ACGS’),<sup>34</sup> are all cattle, often assaulted by workers from the dairy industry for sexual gratification. Could the licensing and distinction between the workers’ insertion of his hand inside the cow’s vagina as ‘work’ during the day and his penis in the night as an ‘unnatural offence’ be the greatest living hypocrisy of our times?

Despite views to the contrary I believe that both - ABC (however necessary) and farm breeding (deeply abominable) - are an infringement of the animals’ right to make decisions regarding

<sup>29</sup> See The Wildlife Protection Act, 1972, Schedule VI (It lists vermin animals that can be hunted, and killed at will, by anyone at any scale).

<sup>30</sup> For the past decade a case seeking extermination of all street dogs in India filed by the People for Elimination of Stray Dogs remains pending in the Indian Supreme Court. See *Animal Welfare Board of India v. People for Elimination of Stray Troubles*, SLP(C) No. 691/2009 (IX).

<sup>31</sup> Soutik Biswas, *Do Street Dogs in India kill more people than terror attacks?*, BBC, May 6, 2006, available at <https://www.bbc.com/news/world-asia-india-36035456> (Last visited on September 29, 2020); Girish Shahane, *Its unpleasant but culling cattle, dogs and monkeys is becoming a necessary evil in India*, SCROLL, May 27, 2019, available at <https://scroll.in/article/917974/its-unpleasant-but-india-needs-to-cull-cattle-dogs-monkeys-to-deal-with-rampaging-animal-problem> (Last visited on September 29, 2020); Coomi Kapoor, *A bizarre and unscientific policy is behind the menace of stray dogs all over India*, INDIAN EXPRESS, July 31, 2020, available at <https://indianexpress.com/article/opinion/columns/stray-dogs-india-coronavirus-pandemic-6524760/> (Last visited on September 29, 2020).

<sup>32</sup> Krithika Srinivasan et al., *Reorienting rabies research and practice: Lessons from India*, Vol.5, HUMANITIES AND SOCIAL SCIENCES COMMUNICATIONS (2019).

<sup>33</sup> A private conversation between the author and a feminist friend.

<sup>34</sup> FEDERATION OF INDIAN ANIMAL PROTECTION ORGANISATION & ALL CREATURES GREAT AND SMALL (Alok Gupta), *Crimes Against Animals in India* (forthcoming) (The Report is part of an ongoing documentation project on violence against animals in India. See Annexure for a table from the report).



their sexual integrity. These widely practiced policies and trades, respectively, feed into a gendered culture of violence against animals, as we will see ahead with the cases of Black Lill and Marguerite.

### III. ANIMAL SEXUAL ABUSE IN INDIA: A PERVASIVE REALITY

“The shepherd...replied ‘from every point of view [the sheep] are superior to our wives. But above all they do not talk’.”<sup>35</sup>

#### A. CREATING A CITIZEN’S PUBLIC RECORD OF ANIMAL SEXUAL ABUSE

The record of crimes in India is published annually by the National Crime Records Bureau (NCRB). Their annual report provides state and district wise data on violent crimes, assault, theft, sexual abuse of women and children and murders across the country. There is no mention of animal victims. Crimes of ‘cruelty’ under the PCA, 1960 are clubbed in a miscellaneous category of Special and Local Laws (SLL), with no separate data.<sup>36</sup> A visit by me to the Delhi office of the NCRB confirmed that in the elaborate collection of state and district-wise data of various crimes across India, animals are not a class of victims any data is sought for. While Indian news reports are flooded with cases of animals being raped, beaten, assaulted, tortured and killed, we have no official, published Government data on any crimes against animals, let alone sexual crimes against animals.

The first step lies in creating information, data and a dialogue on cases of animal sexual abuse. Whether it is a combination of CCTV and phone cameras or more alert networks of citizen animal activists on the streets, the reporting of cases of animal sexual abuse has gone up to its highest in recent years. The 2014 Voice of Stray Dogs (‘VoSD’) report is the first attempt by an animal rights organisation to consolidate data and also arrive at an estimated percentage figure of animal sexual abuse cases. With records from across the country, and based on interviews with animal activists in Mumbai, Delhi, Hyderabad and Bangalore the report lists a total of thirty-three cases of animal sexual assault (‘ASA’) between (almost always) a human male perpetrator and dog, cows, and young calves as victims. By taking an approximation of 90% underreporting, the report concludes that animal sexual abuse stands at the same occurrence rate as human rape cases — twenty per 1,00,000 — calling at the very least, for a parity in response.<sup>37</sup>

The FIAP0-ACGS project has, so far, documented eighty-two cases of crimes against animals of a sexual nature, either as a sexual act of gratification or assault and torture, over a period of ten years.<sup>38</sup> The cases are often widely reported in the media, come from across states and cover a range of animals such as cows, dogs, cats, donkeys, buffaloes and monkeys.<sup>39</sup> While no animal is spared, the cases only compete with each other on the scale of violence and brutality. A table from

<sup>35</sup> DURREL LAWRENCE, PROSPERO’S CELL, 148 (Faber Faber, 2000).

<sup>36</sup> Ministry of Home Affairs, National Crime Records Bureau, *SLL Crimes - 2014-16* (The Note to the Table which lists other SLL Crimes includes cases under Prevention of Cruelty to Animal Act)

<sup>37</sup> THE VOICE OF STRAY DOGS (‘VoSD Report’), *Sexual Abuse of Street Dogs in India: An analysis of the phenomenon, the law, 1<sup>st</sup> hand accounts & press reporting*, 12 (October 23, 2014), available at <https://vosd.in/2014/10/23/sexual-abuse-of-street-dogs-in-india-an-analysis-of-the-phenomenon-the-law-1st-hand-accounts-press-reporting/#> (Last visited on September 29, 2020).

<sup>38</sup> FIAP0-ACGS, *supra* note 34.

<sup>39</sup> A US report which records seventy-seven reported cases of ASA from pet-abuse.com also comprises a range of animals such as dogs, puppies, cats, horses, foals, miniature horses, goats, pigs, show hogs, lambs, cows and mice. See Fransi Weinstein, *To end animal sexual abuse we have to first stop keeping it a secret*, GET LEASHED, April 11, 2019, available at <https://getleashedmag.com/2019/04/11/when-it-comes-to-abuse-silence-is-not-golden/> (Last visited on 29 September, 2020).

the report compiling instances of ASA for the period 2004-2020, extrapolating from the VoSD Report, along with other newspaper reports, is contained in the Annexure.

In the age of citizen social media surveillance, the benchmark for evidence and truth has transformed, with many of these reports made possible because of video recordings. This paper cannot completely verify the veracity of all the claims made in these reports, but they certainly confirm a widely present culture of ASA in Indian society. Many of these incidents have CCTV camera footage to confirm the incident, and in some (because of timely efforts of animal activists) there are medical reports by government veterinarians confirming sexual assault. Because of the public space that street and working animals inhabit, cases against them are first to come to light.

Crimes of the most unspeakable brutality, physical attacks, burning, severing a body part, or just simply throwing young puppies from rooftops are rampant.<sup>40</sup> Social media feeds of activists and animal organisations across the country record cases of sexual crimes against animals often, if not regularly. Even performing a simple trace on the hashtag #justiceforgoat revealed a recent incident from January, 2019 in Bihar, where again a pregnant goat was sexually abused and killed.<sup>41</sup>

The victims are not always goats – mostly in the cases studied they are dogs, but even the holy cow is not spared. And most reports leave no doubt that the sexual activity is committed for immediate sexual gratification. An earlier case from 2011 — similar to the Nagina goat case — a villager in Coimbatore, Tamil Nadu heard one of his calves crying only to find four semi-clad drunk men sexually abusing her.<sup>42</sup> The four young men were identified as migrant workers from Orissa. The complainant said “that he had rushed out of his house on Perumal Kovil Street in Chettipalayam on hearing the cries of his one-and-a-half year old calf. He found the calf bleeding from its tongue because the youth had beaten it and smashed its tongue in a bid to silence it”.<sup>43</sup> The bone-chilling attempt to silence the victim is a recognition of the shame and violence involved in the act. It is also a running affirmation of the gendered nature of the crime.

Obsession with ‘otherness’, if this time not religion (perhaps the four accused with names that were Hindu, Muslim and Christian made an Islamophobic focus difficult), was shifted to a paternalistic image of poverty, as drunk, working class, migrant workers from another state.<sup>44</sup> We want to shift this continuous emphasis or inquiry into the character of the accused(s) to a definition of what took place not as an aberration but an act of brutal violence. It is important to note the

<sup>40</sup> FIAPPO-ACGS, *supra* note 34.

<sup>41</sup> TIMES NOW NEWS, *Raped by drunken labourer, three-months pregnant goat dies in Bihar's Parsa Bazaar area*, January 16, 2019, available at <https://www.timesnownews.com/mirror-now/crime/article/bihar-rural-patna-parsa-bazaar-pregnant-goat-raped-drunken-labourer/348734> (Last visited on 29 September, 2020)

“A probe was launched into the matter after a complaint by the goat's owner, a local woman who claimed that the animal was raped by one Mohammed Simraj. Based on her complaint, police officials brought in the accused who is a resident of Madhepura. Latest reports assert that the accused confessed to his crime and has been charged with relevant sections of the Indian Penal Code (IPC) and the Wildlife Protection Act, 1972. A daily wage labourer by profession, the accused allegedly consumed alcohol before he abducted the goat who was three-months pregnant at the time from outside her owner's residence. He then sexually abused the animal which led to her death. The goat's dead body was found lying outside her owner's residence later that day. Police have now sent the body for post-mortem and other medical examinations which will enable them to build a case against the accused in court”.

<sup>42</sup> THE NEW INDIAN EXPRESS, *Four Orissa Youth held for bestiality*, September 13, 2011, available at <https://www.newindianexpress.com/states/tamil-nadu/2011/sep/13/four-orissa-youth-held-for-bestiality-290424.html> (Last visited on 29 September, 2020).

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

<sup>44</sup> *Id.* (The news report identifies the youth as P. Nisdhar, 18, E. Binoth, 19, A. David, 20 and D. Pedohar, 22).

similarities of vulnerable rural farm animals in the cases from Tamil Nadu (2011),<sup>45</sup> Haryana (2018),<sup>46</sup> and then Bihar (2019)<sup>47</sup> These animals are repeatedly procreated through forced insemination and then killed to produce dairy, meat and leather – often at the hands of the same migrant, poor workers employed to perform the daily tasks in a farm in the day, who then end up sexually exploiting them in the night.<sup>48</sup>

However, the obsessive, almost pathological depiction of the person engaging in ASA as one committing an unimaginable, almost non-humanly act across an untraversable species barrier deflects from the violence on the animal and creates the medical ‘bestialists’.<sup>49</sup> The focus on the question of ‘why’, with the absence of any organized collated data on the scale of pervasiveness of sexual crimes against animals creates a false exceptionalism against something that is in fact extremely common. I debunk the myth of rarity of sexual crimes by the numerous reported cases above, and further call for a new definition of physical harm that is grave, sexual, gendered and requires our urgent attention. As the crime is not exceptional, the animal is not a generic entity but an individual sentient being which is facing a gross sexual violation.

### B. INTERSPECIES SEXUAL ASSAULT AGAINST ANIMALS

Are the animals discussed above victims of crimes of A sexual nature or just of violence and assault? Should acts of sexual penetration against animals by humans (mostly only men) not be seen as sexual crimes? There are multiple ways to look at it. The classic way which we have seen above is the Pathological Eye; Someone is committing this act, hence that person has a pre-existing condition which pre-disposes them to force a sexual act with an animal. The condition, whether as clinical zoophilia or a social perversity, focuses on the perpetrator. The suffering animal is never the central concern, and in most cases ASA is feared to be a ‘link’ in an investigative puzzle to stop violence towards women and children.<sup>50</sup>

<sup>45</sup> THE NEW INDIAN EXPRESS, *supra* note 42.

<sup>46</sup> HINDUSTAN TIMES, *supra* note 2.

<sup>47</sup> TIMES NOW NEWS, *supra* note 41.

<sup>48</sup> Gabriel Rosenberg, *How Meat Changed Sex: The Law of Interspecies Intimacy after Industrial Reproduction*, Vol. 23(4), GLQ: JOURNAL OF LESBIAN AND GAY STUDIES, 473–507 (2017).

<sup>49</sup> See, e.g., Sujata Satapathy et al., *An Adolescent with Bestiality Behaviour: Psychological Evaluation and Community Health Concerns*, Vol.41(1), INDIAN JOURNAL OF COMMUNITY MEDICINE, 23-26 (2016)

(“This case report of 18 year old male presented here highlighted the importance of psychological assessment to emphasize on its implications for the further risk assessment of the person, family psycho-education and non-pharmacological intervention for bestialists. The findings portrayed physical and sexual inadequacies, emotional and sexual immaturity, difficulty in emotional attachment, internalized hostility, voyeuristic tendencies and infantile social behaviour, excitement seeker, inability to delay gratification of impulses, lacks empathy, poor self-discipline, less conscientiousness and less sensitive to criticism. The report also emphasized the role of child sexual abuse on sexual behavior later life.”

Much like their predecessor Freud, the medical community continues to create new pathological identities among ‘sexual perversities’).

<sup>50</sup> Given that the concern for child victims stems from their vulnerability, the silence over animal victims is certainly palpable. See, e.g., Navtej Singh Johar & Ors. v. Unon of India, (2018) 1 SCC 791, ¶8. The three-judge bench in the Navtej case, when referring the matter to a larger bench, stated

“It is necessary to note, in the course of hearing on a query being made and Mr Datar very fairly stated that he does not intend to challenge that part of Section 377 which relates to carnal intercourse with animals and that apart, he confines to consenting acts between two adults. As far as the first aspect is concerned, that is absolutely beyond debate. As far as the second aspect is concerned, that needs to be debated. The consent between two adults has to be the primary precondition. Otherwise the children would become prey, and protection of the children in all spheres has to be guarded and protected.”

We have to acknowledge the speciesism inherent in questioning the animal victim's claim to the same protection provided in the politics of sexual violence, as we set out to define sexual crimes against animals. Firstly, animals are silent victims. The presumption of consent by animals in any instrumentality as working, companion or farm animals must be critically examined or challenged altogether. There is no ethical way to interpret consent of an animal be it a reliance on folk lore or the culture of sacrifice, or even a false belief of mutual sexual gratification in sexual violence. Consent must be presumed to be absent in cases of sexual assault as it is in any form of violence. Frank Ascione attributes a lack of consent because of animals' inability to be "fully informed, communicate consent, or to speak out about their abuse"<sup>51</sup> whereas Bierne argues it is "by nature sexual coercion because animals are incapable of genuinely saying 'yes' or 'no' to humans",<sup>52</sup> who have power and control over the animal, often in all aspects of the animal's care and well-being. Any reading of presumption of consent is at best deficiently anthropomorphic, and must be rejected. Therefore, for the purpose of this paper, sexual acts with animals are non-consensual and coercive.

From the documented cases,<sup>53</sup> three classes of offences based on intent or motivation emerge. *Firstly*, there are offences of sexual gratification — whatever be the background, job, religion of the person, they are using animals as proxy-sexual objects for sexual gratification. It may be a function of sexual arousal (preparation for similar acts on humans) or machinations of a super criminal mind; regardless, it results in the commission of a sexual crime as an act of specific violence. Sometimes the motivation is linked to the capacity to use the animal to its maximum potential, as seen in the case of the pony Marguerite, given below.<sup>54</sup> These offences are 'specific' because animals are assaulted regularly in multiple ways, beaten, burned and killed; but the performance of coercive sexual acts upon them are crimes with a particular sexual intention, and not of general harm. Further, it is not the concupiscence in the nature of assault that deems the framework of animal sexual abuse, but in fact, the 'gendered' violence. It is because the animal is gendered which validates the assumption that it is weak, meek and silent — making it a target which can be abused.

*Secondly*, offences may take the form of intentional violence on the sexual and reproductive bodies of animals. In a 2015 case in Mumbai, a male street dog was discovered with his jaw and spine broken, penis cut off and bleeding profusely.<sup>55</sup> The veterinarian examination — the only irrefutable confirmation of speculations — confirmed that he was sexually abused and tortured, possibly by multiple people. The dog succumbed to injuries two days later. In a similar horrific incident the body of a pregnant cat was found hanging from a rope tied to her neck in Trivandrum.<sup>56</sup> As with the Nagina Goat case, the news went through the wires of Indian media, perhaps indicating something about the selective anthropomorphic rage at a maternal pregnant mammal. But overwhelmingly the rage is selectively about the "physiological consequences of bestiality for humans" and rarely about the "internal bleeding, the ruptured anal passages, the bruised vaginas and the battered cloaca of animals, let alone the animals' psychological and emotional trauma".<sup>57</sup>

<sup>51</sup> Frank R. Ascione, *Children Who are Cruel to Animals: A Review of Research and Implications for Developmental Psychopathology*, Vol.6(4), ANTHROZOÖS, 226-247 (1993).

<sup>52</sup> Bierne, *supra* note 17, 325-326.

<sup>53</sup> See Annexure.

<sup>54</sup> *Infra*, 12.

<sup>55</sup> This case was documented by YODA, an animal rescue center in Mumbai, on their social media page. — I can't find this — he had originally written this line in the text, when we asked him for citation he just put this in the footnote.

<sup>56</sup> THE TIMES OF INDIA, *Pregnant cat found hanged to death in Kerala house*, November 12, 2019, available at [http://timesofindia.indiatimes.com/articleshow/72014308.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/72014308.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last visited on September 29, 2020).

<sup>57</sup> Bierne, *supra* note 17, 324.

*Thirdly* and finally, are the offences of plain torture; the torture again is not generic, but particularly sexual in nature. The horrific case of the Vellore Medical Students who tortured and murdered a monkey or the watchman who took a metal rod and tore down the intestines of a dog for barking at home is violence targeted at the sexual bodies of the animals with a crude recognition of animals as sexual beings.<sup>58</sup> The most notable of this class of offences is the case of the stray dog Black Lill, discussed ahead.<sup>59</sup>

I concur with Bierne in his comprehensive typology of interspecies sexual assault that includes acts of “sexual fixation, commodification, adolescent sexual experimentation” and “aggravated cruelty” – as intentional violence and torture – different attributes confirmed by the assault table annexed.<sup>60</sup> ISA covers a wider range and motivations of crimes of a sexual nature against animals, and brings it within the framework of sexual assault.

With the above discussion I am not attempting a new definition at this stage, but expressing the need for a process which takes on that task on an *urgent* basis. The new definition or a set of definitions in the Indian context must conceptualise sexual crimes against animals as sexual assault in parity with gendered human victims.

#### **Marguerite: The Racing Pony from Sangli**

The unregulated utilitarian *commodification* with a deep *sexual fixation* comes together in the horrific case of a racing pony rescued by the team of Animal Rahat in Sangli, Maharashtra in July 2019. Nigel Otter, one of the founders of Animal Rahat, on his routine visit saw a young pony being raced across the highway tethered to a motorbike undergoing forced training for an upcoming competition. Animal Rahat staffers reported that ‘beyond the dangers posed by her proximity to traffic... she was struggling so hard to breathe that her whole body was heaving.’<sup>61</sup>

A simple attempt at dialogue and potential rescue revealed horrors that even Mr. Otter - a famed Indian animal rescuer working for decades - was not prepared for.<sup>62</sup> The examination revealed that the vulva of the pony, Marguerite, was sown together with a thick copper wire to prevent her from mating, while at the same time keeping her ready as a prime racing horse.<sup>63</sup>

The Caslick surgery or stitch invented to prevent certain infections in the breeding mares and ponies is also used as a way to control unwanted breeding.<sup>64</sup> The copper wire is selected to ensure no infection takes places, and the control over the animal reproductive sexual body exercised in full force. The racing animal as a trading commodity which must yield returns licenses surgical sexual manipulation which in the eyes of the trade will never be seen as a form of abuse.

<sup>58</sup> See Annexure, 2016, *infra* note 103.

<sup>59</sup> See *infra* Part. III.C.

<sup>60</sup> Bierne, *supra* note 17, 328; See Annexure.

<sup>61</sup> ANIMAL RAHAT, *VIDEO: Once Run Nearly to Death, Now She Only Runs if She Wants To*, July 2, 2019, available at <https://www.animalrahat.com/latest-news/video-once-run-nearly-to-death-now-she-only-runs-if-she-wants-to/> (Last visited on September 29, 2020)

<sup>62</sup> Interview with Mr. Nigel Otter in July 2019.

<sup>63</sup> ANIMAL RAHAT, *supra* note 61.

<sup>64</sup> Michael Ball, *Caslicks Procedure*, THE HORSE, May 1, 1997, available at <https://thehorse.com/14818/caslicks-procedure/> (Last visited on September 29, 2020).

### C. CONTROL OVER SEXUAL REPRODUCTIVE BODIES AND THE WEAK LINK

I conclude the narration of cases of *animal sexual assault* with this final story of *Black Lill*, a black female street dog from a small tourist-fishing village in Siolim, North Goa.<sup>65</sup> In July 2018, Jill Killick, an animal feeder and rescuer who leads a community initiative to feed, treat and spay/neuter street dogs found *Black Lill* lying on the side of a lane, sickly and not moving. *Black Lill* had a reputation of being truly independent, fierce and strong minded. Despite all attempts Jill, an expert catcher of street dogs for ABC, was never able to get hold of her, as *Black Lill* produced litters after litters through the seasons. When Jill finally found her, *Black Lill* was bleeding from her vagina and was immediately taken to the local animal rescue and ABC centre. But no one was prepared for what they saw.

A medical report dated August 1, 2018, by Dr. Karlette Ann Fernandes, Clinical Director of WVS Hicks ITC - Goa states “on incising the abdominal region [...] a firm rod like structure was palpable ...[upon further] exploring the abdominal cavity, a screwdriver (handle) was found wedged in the internal organs.”<sup>66</sup> The report ruled out that the four inch green screw driver handle was swallowed by the dogs as the intestines and the bladder seemed intact. It was concluded that handle was “wedged in the body of the uterus, just proximal to the cervix”.<sup>67</sup> It was most likely done as a village revenge to prevent her from mating again. And possibly, states Killick it was done “by someone she trusted and allowed to come that near to her.”<sup>68</sup>

This spurned off a huge activist outrage. Humane Society International and Kabir Gama Roy (a local Goa based animal welfare activist) complained to the police and added a strong appeal to go beyond this incident and connect to a greater fear of attacks of sexual nature against women and children based on what happened to *Black Lill*. They sought a case be registered under §377 of the IPC, 1860. A huge furore rose through villages of North Goa against the fear of a sexual culprit who ‘raped’ a dog and could come after women and children. Posters in Hindi and English offering cash awards were pasted across the neighbouring villages.

The complaint of Mr. Gama Roy even drew parallels with the Nirbhaya case, in which the accused were sentenced to death, and in shocking similarity had also raped the deceased victim with a metal object. This ‘link’<sup>69</sup> is highlighted in several social, psychological and criminology studies, however due to its anthropocentric focus it merely shifts the attention from Judeo-Christian sexual perversity of unnatural offences, to risk to humans. Thus, the concern is not about violence against the animal, but limited to what it could lead to other human victims.

The link argument makes an obvious point but with a limited reach. It is likely that the same people who are raping women and children, have at some point also sexually abused animals - as occurred in the case of Ameerul Islam, who raped and murdered a woman in Kerala in 2016.<sup>70</sup> I accept that for people growing up in a culture of abuse, animals can be an easy target of the same

<sup>65</sup> An interview with Jill Killick in May 2019, detailing the incident, is on file with the author.

<sup>66</sup> Copy of the medical report available with the author.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> For greater detail on the ‘link’ drawn between unchecked Animal Sexual Abuse and sexual abuse against women and children, see *supra* Part II.A. on “PETA defends the limited ‘bestiality’ framework”.

<sup>70</sup> PETA INDIA, *After PETA India Complaint, Jaipur Police File FIR For Dog Rape*, August 24, 2018, available at <https://www.petaindia.com/media/after-peta-india-complaint-jaipur-police-file-fir-for-dog-rape/> (Last visited on September 29, 2020) (The Police investigation revealed past history of animal sexual abuse).

abuse which they encounter.<sup>71</sup> Animals have been used as human-proxies for everything; animal experimentation, entertainment, to carry goods, to work, to be eaten – for everything where we can or cannot morally use a human the animal becomes a proxy.<sup>72</sup> It is the physiological ability of the animal to mirror the human that is the basis of the utilitarian idea of animal use. Hence the use of animals as subjects of sexual assault should hardly surprise us.

So even without going into why someone would want to do that to an animal, we should ask — why not? When we are cruel to animals in so many innumerable ways in our daily lives, why should we be surprised that people are sexually abusing them? This is further complicated by the limitation of criminal law which presumes violence against an animal to be a mere misdemeanor, as discussed in the following Part. Therein, I find that the draconian colonial provision of unnatural offence in Indian law relegates animal sexual abuse to a sexual perversity and not an assault.

And I repeat, however strategic it may be as a rallying point, the inter-species migration of abuse that the link argument relates to, fails to address the perspective of the animal victim. I argue that we should be outraged and concerned about animal sexual abuse *per se*; not because it may function as a signal of things to come, but because animals are part of the same gendered violence to which women, children, trans and queer folk are subject.

#### IV. LAW'S RIFT WITH ANIMAL AND TRANSGENDER SEXUAL ABUSE

“Anti-speciesist feminists are not comparing the experiences of animals to our own experiences. We are extending the definition of rape to include people of all species. The definition of rape is constantly being expanded in order to encompass victims who have been silenced: wives raped by their husbands, male victims, and victims who were coerced, to name a few. It is healthy and vital that social justice advocates, lawmakers, and the general consistently analyze their inclusivity and make changes accordingly.”<sup>73</sup>

The silence around ASA operates at an intersection of criminal law, gender rights and speciesism. It also builds on historic silence around gendered sexual violence of queer and trans victims. Having outlined the pervasiveness of ASA in the section above, I will proceed to discuss the building of a politics of alliance with queer and trans victims of sexual abuse caught in a prolonged battle in the reform of sexual assault laws in India.

Both queer and animal rights share a strong colonial footprint — §377 of the IPC, 1860 for the queer rights struggle, and the limited protection framework of 'unnecessary suffering' in the common law-rooted PCA, 1960 (which essentially follows the logic of the 1890 legislation).<sup>74</sup> Central to both the queer and animal rights struggle is an implicit State control over the 'queer' or the

<sup>71</sup> William M. Fleming, Brian Jory & David L. Burton., *Characteristics of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals*, Vol.10(1), SOCIETY & ANIMALS, 31-45 (2002).

<sup>72</sup> For greater detail, see *supra* Part. II.B. on “Animals as Gendered Instruments: Shifting the Lens to Sexual Crime”.

<sup>73</sup> Amanda Houdeschell, *The Case for Seeing Animals As Rape Victims And How to Respectfully Advocate for All*, SPECIES REVOLUTION, July 8, 2018, available at <https://www.speciesrevolution.org/2018/07/08/the-case-for-seeing-animals-as-rape-victims/> (Last visited on September 29, 2020).

<sup>74</sup> *Statement of Objects & Reasons of The Prevention of Cruelty to Animals Act, 1960* (“An Act to prevent the infliction of unnecessary pain or suffering on animals...”)

'animal' body. The queer body is presumed to be sexually depraved and the animal body meant to serve a human purpose, and neither is free.

In this Part, I address the entrenched speciesism embedded in criminal and animal welfare law creates an institutional disparity between human and animal victims. I then discuss the similar disparity persisting between women and trans victims as evinced from the debate around gender-neutral rape laws, to argue in favour of a trans-species politics of avowal.

#### A. *ENTRENCHED SPECIESISM AGAINST ANIMAL VICTIMS IN CRIMINAL AND ANIMAL WELFARE LAW*

In the majority of cases of ASA discussed in Part III, criminal complaints are filed under §377 of the IPC, 1860. In the absence of any specific law that punishes ASA, animal activists take refuge under § 377 — a draconian colonial vestige rooted in Judeo-Christian values. This is done by activists lobbying with the police authorities, in light of the latter's reluctance to take cognisance of any crimes against animals. Over seventy percent of cases involving sexual crimes against animals have complaints lodged under §377 of the IPC, 1860 yet almost none are prosecuted well, or lead to convictions.<sup>75</sup>

The primary reason for this is the inadequacy in the only animal welfare legislation in India to punish sexual crimes against animals. Even though the PCA, 1960 is a modern, post-constitutional law, it is in fact an insufficient development of the Colonial Prevention of Cruelty Act, 1890. While the PCA, 1960 applies to all animals and punishes various forms of animal abuse it does so with a dilution of the abuse and violence to 'cruelty' with a minimum punishment of a fine of ten rupees for the first offence which ranges to a maximum of fifty rupees, effectively rendering animal abuse a mere misdemeanour.<sup>76</sup> Even more so, it makes cognisance of any abuse against animals conditional against a test of necessary suffering, thereby only punishing a narrow window of 'unnecessary' abuse. Bilchitz traces the root of this utilitarian logic of 'cruelty only as unnecessary suffering' to English Common law, where violence *per se* against an animal is not an actual crime.<sup>77</sup>

The IPC, 1860 covers a list of all crimes against humans. What is important for us in this discussion are Chapters XVI and XVII which cover the offences affecting the human body and offences against human property, respectively. Defining and punishing crimes against animals has never been the intention or purpose of the IPC. Cruelty in the eyes of the law is gendered, and appears once in the entire IPC, in §498A, in reference to a female spouse in a domestic violence law. Cruelty as a framework, in the context of animals, is too invested in continuing their exploitation by only curbing 'unnecessary pain or suffering',<sup>78</sup> and therefore cannot be the appropriate framework for addressing brutal and violent acts of physical violence. For instance, while the punishment for criminal assault under the PCA, 1860 (which is limited to 'cruelty', under §11) is fifty rupees fine, the IPC for humans defines assault as 'hurt'<sup>79</sup> or 'grievous hurt'<sup>80</sup> under Chapter XVI and punishes it under §§323 and 325 with a maximum imprisonment term of one year (or fine, or both) and seven

<sup>75</sup> FIAPPO-ACGS, *supra* note 34.

<sup>76</sup> See The Prevention of Cruelty to Animals Act, 1960, §11(1) ("[...] in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both").

<sup>77</sup> David Bilchitz, *When is animal suffering 'necessary'?*, Vol.27(1), SOUTHERN AFRICAN PUBLIC LAW, 3-27 (2012).

<sup>78</sup> See *Ford v. Wiley*, (1889) 23 QBD 203 (Queen's Bench Division, United Kingdom).

<sup>79</sup> The Indian Penal Code, 1860, §319.

<sup>80</sup> The Indian Penal Code, 1860, §320.



years (with fine) respectively. The disparity in how crimes against animals are viewed as radically different, underlies the absence of a sentience-based understanding of animal suffering. It entrenches a deep speciesist hierarchy between the human animal and the non-human animal victims of the same crime.

Often, cases of ASA are filed inadvertently through a provision meant only to protect the animal property of a human. These are §§ 428<sup>81</sup> and 429<sup>82</sup> of the IPC which protects the owner of an animal against any violence or killing of an animal valued (with no inflationary adjustments in 160 years) at ten rupees and fifty rupees, respectively. These sections belong to Chapter XVII which covers offences against human property, including theft, dacoity and robbery. While the strategic importance of using these listed offences to punish a violent crime against animals cannot be denied, in doing so we tacitly accept the monetised slavehood of the animal.

The inadequacy of the framework for cruelty against animals under the PCA, 1960 and IPC, 1860 may be the motivation for the problematic strategy of seeking refuge in, and thereby retention of, §377 of the IPC, 1860.<sup>83</sup> §377 is the IPC formulation of the colonial offence of buggery, which in modern parlance we understand as the anti-homosexual or anti-gay law. It reads as follows:

“377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman *or animal*, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. — Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section (emphasis added).”

With this contested definition animals and queers find themselves located alongside each other in the text of §377, as their bodies too lie on the fault lines of similar sexual violence. §377 punishes ‘carnal intercourse’ defined necessarily as penetrative sex that is against the order of nature which does not lead to ‘procreation.’<sup>84</sup> The arrest of Khandu in 1935, the only historically recorded

<sup>81</sup> See The Indian Penal Code, 1860, §428 (“Mischief by killing or maiming animal of the value of ten rupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”).

<sup>82</sup> See The Indian Penal Code, 1860, §429 (“Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.—Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both”).

<sup>83</sup> See Manilal Valiyate, *supra* note 23.

<sup>84</sup> Alok Gupta, *supra* note 16

(“The first set of the reasoning was clinical and defined the order of nature as ‘the possibility of conception of human beings’. Therefore any form of oral or anal sex is criminal as it does not lead to procreation, and worse is akin to bestiality. However, no thought was or has been given to the fact that other forms of penetrative sex, for example peno-vaginal sex with contraception, squarely falls within the same logic, and distributing of condoms should therefore also be an offence. In the next step, carnal intercourse was defined as, ‘a temporary visitation to one organism by a member of the other organization, for certain clearly defined and limited objects. The primary object of the visiting organization is to obtain euphoria by means of a detent of the nerves consequent on the sexual crisis. But there is no intercourse unless the visiting member is enveloped at least partially by the visited

case of sex with an animal under §377, where he was arrested for inserting his penis in the nostril of a bull, confirms the colonial juridical obsession with penetration with an orifice.<sup>85</sup>

This law reflects a draconian understanding of the crime of sodomy as an aberration, and not an act of violence in a modern society. It is rooted in an anthropocentric Judeo-Christian ‘bestiality’ which refers to “beast-like, earthy and savage qualities allegedly inherent in non-human animals”<sup>86</sup> in which both the human perpetrator and the suffering animal were both co-culprits. The animal was never the intended victim under §377. In its original thought it is in fact, an accomplice.<sup>87</sup> The colonial Pathological Eye that classifies sexual deviance as ‘perversity’<sup>88</sup> and a medical condition masks the violence of animal sexual abuse.

In possibly the first ever recorded case under §377 in India, in 1887, Khairati was an unnamed, unknown, transgender, hijra who was arrested just because she was presumed to be sexually depraved.<sup>89</sup> The case of Khairati represents the creation and deletion of a non-gender conforming sexual victim. It is the testimonial on which the Indian queer movement stands defined today. She represented the outliers who were both the worst victims of §377 and also (in evil irony) at the receiving end of the sexual violence for which they were criminalised. Narrain and I write that in spite of her arrest and anal examination ‘her chosen gender survives’.<sup>90</sup> Khairati is arrested for gender transgression, “a reality [she] never denies but instead continues to stubbornly own. The insistence on the gender of her choice, gives Khairati a dignity, which is difficult to obliterate.”<sup>91</sup> The law was never designed to protect the Khairati, just as it was not designed to protect the animal.

Consent is irrelevant for this provision, as its primary purpose has always been to criminalise sexual perversity, and never sexual violence. It was this rationale through which the 2018 Navtej Johar decision of the Indian Supreme Court carved out a limited space of legality within the quagmire §377 – the adult consenting homosexual. While consensual penetrative sex between men was decriminalised as unconstitutional and made free of the clutches of §377, all other sexual activities largely understood as non-consensual between humans and with animals remain punishable.

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organism, for intercourse connotes reciprocity.’(circa). Thus as long as there is an orifice (in this instance, the mouth) which can envelop the ‘penis’ and provide sexual climax, it qualifies as carnal intercourse. As it cannot lead to procreation it becomes an ‘unnatural offence’.”

Discussion on *Khanu v. Emperor*, 1924 SCC OnLine Sind JC 49).

<sup>85</sup> *Khandu v. Emperor*, 1933 SCC OnLine Lah 601.

<sup>86</sup> Bierne, *supra* note 16.

<sup>87</sup> *Id.*

<sup>88</sup> See *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, 2018 SCC Online Guj. 732, ¶34 (“Unnatural offence indicates sexual perversion which takes shape in manifold forms going by different names such as sodomy, buggery, bestiality, tribadism, sadism, masochism. The term unnatural offence implies sexual perversity.”).

<sup>89</sup> Alok Gupta & Arvind Narrain, *Introduction* in *LAW LIKE LOVE: QUEER PERSPECTIVES ON LAW*, xx-xxi (Alok Gupta & Arvind Narrain, Yoda Press, 2011):

(“The Civil Surgeon conducts an anal examination and finds that the shape of the anus indicates that sodomy was committed. The District authorities of Moradabad find the practice of singing dressed as a woman sufficient to arrest Khairati and Justice Straight appreciates the desire of the authorities to ‘check these disgusting practices’. [...] We can infer that Khairati though born a man identified as a woman and lived her life one. The fact that Khairati never denies or defends that she ‘dressed and ornamentated [sic] as a woman’ can be read as an indication of how important her chosen gender was for Khairati.”)

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

<sup>91</sup> *Id.*

## B. SEXUAL ASSAULT, GENDER NEUTRALITY AND THE EXCLUSION OF TRANS AND ANIMAL VICTIMS

“[...] sexism and speciesism operate not in opposition to each other but in tandem. Interspecies sexual assault is the product of a masculinity that sees women, animals and nature as objects that can be controlled, manipulated and exploited.”<sup>92</sup>

Through a discussion on §377 and how it stands apart from §§ 375 and 376 of the IPC, 1860 in punishing sexual violence, I propose a new politics of victimhood, where we put the victim at the center irrespective of gender or species. Through this I argue that just as the exclusion of queer and transgender victims of sexual violence from sexual assault laws is unfair, the continued exclusion of the animal victim of sexual violence — and more so, a complete silence with regards to the animal victim — requires a politics that responds to the nature of crime in our society. Cases after cases are showing that animals are also victims of sexual crimes — whether for gratification, as assault or plain torture — and our silence remains a travesty of justice.

The taxonomy of §377 alongside the traditional rape offence of §375 and the queer-feminist contestation seeking victim gender neutrality to include transgenders (so far oblivious to the animal interest) provide an opportunity for an intersectional ‘more-than-human’ public politics of avowal and solidarity.<sup>93</sup> The colonial definition of rape in §375 was confined to the peno-vaginal penetration of cis-women. Decades of work of the women’s rights movement led to the 172<sup>nd</sup> Law Commission of India report that recommended an expanded definition of rape as sexual assault. It went two steps further in an attempt to rectify the anomaly of §377 and recommended that the victim be made gender neutral and §377 deleted – again, oblivious to the animal victim. If implemented, it would have been a huge strategic loss to the community of animal activists who rely on the deficient §377 to at least punish penetrative sexual assault of animals.

However, gender neutrality of victimhood would allow parity and judicial access to the transgender victims of sexual violence. People’s Union of Civil Liberties - Karnataka (in a fashion similar to the VoSD and FIAPPO-ACGS reports) produced the first documentation of cases of sexual abuse of transgender sex workers in the city of Bangalore. The report records how integral sexual violence is to the everyday life of a transgender individual, often at the hands of the police authorities who are required to prevent non-conforming sexual acts. Narrain writing in the report states “since sexuality is often the most intimate part of a person, sexual abuse and violence can be seen as the most systematic tool of dehumanizing an individual”.<sup>94</sup> The sexual nature of assault becomes an “apt punishment for a transgressive sexuality”.<sup>95</sup>

Naisargi Dave believes “gender neutrality in sexual assault law” bears the potential of “radically unsettling the heteronormative scaffolding of Indian law, namely, the premise of woman as universally victim and man as universally perpetrator — or the ineffably anti-queer maxim that women are of a certain vulnerable nature, men are of a certain powerful nature.”<sup>96</sup> It stands without

<sup>92</sup> Bierne, *supra* note 17, 327.

<sup>93</sup> See Krithika Srinivasan, *Caring for the Collective: Biopower and Agential Subjectification in Wildlife Conservation*, Vol.32(3), ENVIRONMENT AND PLANNING D: SOCIETY AND SPACE, 501–517 (2014).

<sup>94</sup> PEOPLE’S UNION FOR CIVIL LIBERTIES, *Human Rights Violations against the Transgender Community: A Study of Kothi and Hijra Sex Workers in Bangalore, India*, 39 (September, 2003).

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

<sup>96</sup> Naisargi Davi, *Ordering Justice, Fixing Dreams* in LAW LIKE LOVE: QUEER PERSPECTIVES ON LAW, 27 (Alok Gupta & Arvind Narrain, Yoda Press, 2011)

question that the entire LGBT rights movement in India has been carried on the shoulders of marching transgender protestors on the streets. However, a “combination of a poor socio-economic background”, ‘a transgressive sexuality/ gender expression’ and historic silence by progressive rights movements’ has sanctioned a neglect towards extreme forms of violence against the transgender community.<sup>97</sup>

Despite burgeoning solidarities between the women and sexual minorities movements, the old guard of the women’s movement came out heavily against the proposal of gender neutrality. Through their decades of work on unaddressed rape and sexual assault cases of women, the promise of gender neutrality was perceived as a political failure of their commitment to protect the rights of cis-women alone. Finally, the much-contested Criminal Law (Amendment) Act, 2013 in expanding rape to sexual assault,<sup>98</sup> only protected cis-women, even when it had the potential to also provide recourse to victims of same-sex sexual assault. Dave recognises the shift to gender neutrality as “philosophical, practical, symbolic and deeply optimistic” despite which it garnered support from certain queer groups who “banned together with autonomous women’s groups to *oppose* gender-neutral sexual assault law.”<sup>99</sup> In this opposition the concerns of the transgender victims were ignored by queer women themselves, and a revised demand to just make the victim gender neutral also stood rejected.

The idea that gender — the primary driving force creating a patriarchal structure of dominant hierarchy — could extend beyond the biological female was rejected. The *Khairatis*, ‘as gender coded bodies’,<sup>100</sup> are now both transgender and animal victims who stand jointly forgotten and relegated to §377 — a law designed to criminalise them — for protection. In the following Part, I imagine a common geographic space of a ‘more-than-human-public’ of a transgender, queer, transpecies alliance of politics that promises a higher justice.

## V. THE EXPANSION OF OUR ‘PUBLIC CONSCIENCE’ TOWARDS RIGHTS OF NON-HUMAN ANIMALS

I am invoking the Ambedkarite notion of an absence of “public conscience” which had been argued in the context of caste-based violence and atrocities to try and understand the silence around sexual abuse of animals by civil society:

“Public conscience means conscience which becomes agitated at every wrong; no matter who is the sufferer and it means that everybody whether he suffers that particular wrong or not, is prepared to join him in order to get him relieved. We are talking much about South Africa but it is strange that almost every village of India has similar incidents like South Africa and yet I have very seldom found anybody not belonging to the Scheduled Class taking up the cause of the Scheduled Class and fighting, and why? Because there is no “public conscience.”<sup>101</sup>

<sup>97</sup> *Id.*

<sup>98</sup> The Criminal Law (Amendment) Act, 2013, §9.

<sup>99</sup> Naisargi Dave, *supra* note 96.

<sup>100</sup> Nivedita Menon, *Sexuality, Caste, Governmentality: Contests over ‘Gender’ in India*, Vol.91, FEMINIST REVIEW, 95 (2009).

<sup>101</sup> DR. BABASAHEB AMBEDKAR WRITINGS AND SPEECHES, Vol. XX, 445–455 (Narake Hari, Dr. Ambedkar Foundation, 2014).

The women's movement, along with queer and trans communities in turn, continue to operate at an amnesia of their own struggle of inclusion in larger progressive movements and struggles. The traditional left found women's liberation too indulgent, the women's movement considered lesbian and bisexual women as sex-obsessed and they all in turn chided the transgenders as a flamboyant nuisance. Writing in *Humjinsi* (a formative Indian LGBT text) a Bombay based women's collective Forum Against Oppression of Women attributes perceptions "of a frivolous, petit bourgeois deviation" to the failure of the human rights movement in supporting LGBT rights.<sup>102</sup>

The silence around transgender, queer, sex workers rights as movements point to "cracks in the façade of heteronormativity".<sup>103</sup> Bhutalia admits that the traditional feminist battles were "solely focused on sexual violence, dowry, marriage laws, sexual harassment at the workplace, equal wages for equal work and health", and the mainstream women's movement stayed away from both sex worker and transgender movements and communities.<sup>104</sup> The old guard was challenged by queer women who "brought the politics of queerness to the attention of the so-called mainstream movement. They attacked activists for being blind to issues of sexual identity, for practicing a sort of untouchability".<sup>105</sup> A similar hierarchy of priorities combined with disdain has kept the women's movement away from the concerns of animals.

Queer feminist records in *Humjinsi* acknowledge that only through years of common understanding, the lens through which women's oppression is understood shifted to the structure of patriarchy "both at the material and ideological levels" which controls women's "labour, sexuality, fertility, and mobility".<sup>106</sup> This emerging redefinition of women's rights that embraces sexuality does so with an espousal of "other people's movements like dalits, tribals, workers, and other minorities".<sup>107</sup> This signaled the promise of a society as the book *Law like Love* argues, in which there will be equality between different classes, castes, religious communities and also across gender and sexual orientation.<sup>108</sup>

We need an echo of the Ambedkarite agitation of public conscience towards animals. The onus lies on us to embark on a new queer, transpecies, political dialogue which elevates the animal interest, for the violence against them is also gendered. Adams insists that "violence against animals cannot be understood without a feminist analysis, because this violence is one aspect of patriarchal culture-arising within and receiving legitimation from the way male sexual identity is constituted as dominance".<sup>109</sup> In a patriarchal heteronormative system "animal victims, too, become feminized".<sup>110</sup> An overarching hierarchy comes into play which substitutes and reconfigures our understanding in which, more appropriately, "men have power over women, (feminized) men, and (feminized) animals."<sup>111</sup>

<sup>102</sup> HUMJINSI: A RESOURCE BOOK ON LESBIAN, GAY AND BISEXUAL RIGHTS IN INDIA, (Bina Fernandez, India Centre for Human Rights And Law, 2002).

<sup>103</sup> Nivedita Menon, *supra* note 100, 102.

<sup>104</sup> Urvashi Butalia, *Queer and trans women are essential to Indian feminism*, THE GUARDIAN, May 29, 2017, available at <https://www.theguardian.com/lifeandstyle/2017/may/29/indian-transgender-feminism-urvashi-butalia> (Last visited on September 29, 2020).

<sup>105</sup> *Id.*

<sup>106</sup> *Humjinsi*, *supra* note 102.

<sup>107</sup> *Id.*

<sup>108</sup> LAW LIKE LOVE, *supra* note 89, xxxvi.

<sup>109</sup> Carol J. Adams, *Women Battering and Harm to Animals* in ANIMALS AND WOMEN: FEMINIST THEORETICAL EXPLORATIONS, 80 (Carol J. Adams & Josephine Donovan, Duke University Press, 1995).

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

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

Thus, an acknowledgement of a basic tenet of the animal rights argument is needed: that all animals are sentient beings and they do not just experience pain, but also suffer, and experience a range of emotional experiences of loss, trauma, devastation even at the hands of an abuser. Their gendered suffering, which mirrors speciesism, is equally valid and must be part of our collective public conscience.

## VI. A TRANSPECIES QUEER POLITICS OF EMPATHY AND SOLIDARITY

Thus, we find that the present approach to securing justice for animal victims of sexual crimes through §377 is inherently flawed, as it inherently presumes the complicity of animals as ‘beasts’ engaging in ‘bestiality’. There is a need to shift the focus of sexual abuse against animals from the lens of sexual perversity to that of the suffering of the animal victims. To this end, a database of sexual crimes against animals would facilitate the debunking of the myth that such crimes are aberrations performed by deviants, rather than the norm. The link drawn between animal abuse and the vulnerability of women and children, however strategic, must be abandoned in order for us to focus on the sexual abuse against animals *per se*. Consent must be presumed to be absent so that animals are not subjected to inherently inadequate anthropomorphic assessments of their consent.

A new definition of animal sexual abuse, thus, must be considered along these lines. The entrenched speciesism in the existing framework is evident – the conception of cruelty in the PCA, 1960 is clearly inadequate, while the IPC, 1860 addresses animals only so far as they are human property. Consequently, animal victims are left relegated to §377 much in the same manner as transgender persons and queers. Thus, animals must be included in the movement for gender-neutrality (or victim-neutrality) as they too are gendered victims. This calls for a parity in victimhood between cis-women, transgender, queer and animals which may be invoked through the politics of Ambedkarite public conscience and a new politics of avowal – of a coming together of different issues.

The idea of a trans-species queer alliance as a ‘radical moment’ in politics is not new.<sup>112</sup> Edward Carpenter, a nineteenth century English philosopher, perceived his homosexuality to embody a capacity for a radical kinship. He disobeyed “identity” or “single issue politics”, ‘creating the most ‘unlikely ideological bedfellows.’<sup>113</sup> Thus, not only was he openly homosexual but supported anti-vivisectionists, vegetarianism, the rights of prostitutes and was a vocal opponent of British colonialism.<sup>114</sup>

However, a true commitment to ‘public conscience’ is not as simple as mere multi-issue support. The lived realities of joint oppression requires a layered understanding and acceptance of the interconnectedness of violence. Indian feminists and queers created a dialogue of intersectionality of oppression across marginalised communities as ‘counter hetero-normative movements’, both as a means of a politics of avowal and redefining open-ended multi-issue alliances. Nivedita Menon identified these as the “most productive points for the ‘women’s’ movement in the twenty-first century”.<sup>115</sup> They did this through placing rights such as gender equality, autonomy, personal integrity among essential freedoms which were continuously breached by structures of

<sup>112</sup> See Nivedita Menon, *supra* note 100, 111.

<sup>113</sup> Arvind Narrain, *Queering Democracy: The Politics of Erotic Love* LAW LIKE LOVE: QUEER PERSPECTIVES ON LAW, 15-16 (Alok Gupta & Arvind Narrain, Yoda Press, 2011)

<sup>114</sup> *Id.*, 15.

<sup>115</sup> See Nivedita Menon, *supra* note 100, 111.

heteronormative patriarchy within the critique of capitalism, caste and religion in India. Therefore, in India you see hijras marching for Dalits and protesting against Hindutva politics, without compromising their own personal demands but uniting against the injustice, even if minority groups at the receiving end of Hindutva violence may not be fully ready to espouse gender and sexuality rights.

Public conscience through the recognition of joint oppression has to emerge from a politics of empathy that acknowledges the lived realities and hierarchies in human and non-human societies. This does not necessarily mandate a compromise over the claim of animal rights, but it should not blind us to the manner in which animals are misused to malign certain minorities in India, namely Muslims and Dalits, in what Claire Jean Kim calls the “ethics of avowal” which is “the entanglement of oppression of minorities and animals.”<sup>116</sup>

Therefore, the animal rights community should speak against the Hindutva radicalization of the rape of the pregnant goat from Nagina, Haryana, and the queer, feminist and civil liberties organizations must extend the politics of intersectionality to non-human (and also similarly *gendered*) victims of sexual crimes. In this way, we may complete the unfinished legacy of Navtej. The judgment may be a milestone in a long journey, which I hope will eventually emancipate even the bonded farm goat from Nagina, Haryana.

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<sup>116</sup> CLAIRE JEAN KIM, DANGEROUS CROSSINGS: RACE, SPECIES, AND NATURE IN A MULTI-CULTURAL AGE (Cambridge University Press, 2015).

# ANNEXURE

## TABLE OF ANIMAL SEXUAL ABUSE FOR 2004-2020, FIAPO-ACGS REPORT

Year	Description of documented incidents of ASA for each year
2004	“In a bizarre incident that smacks of sheer desperation and sadism, two men in south Delhi's Tughlaqabad area allegedly raped a cow. The two also repeatedly stabbed the cow after the assault. The incident occurred at about 4 am, when the two accused, in inebriated state, were walking back home. The two reportedly tied the cow's legs to a tractor and also tied up its snout and after sexually assaulting the animal, stabbed it repeatedly. The owner, Amar Singh went to the police station, but he says the police were hesitant initially to lodge a complaint. It was only when there was a public backlash that they registered a complaint.” <sup>117</sup>
2009	In possibly the first recorded case where a charge of §377 was made for ASA, Mahesh Kamat a taxi driver was arrested for having sex with a street dog. Eyewitnesses and medical reports were the only evidence on which the Tardeo Police Station in Mumbai based the case. The news report stated that the police and law experts had never heard of or represented such a case. “Anuradha Sawhney, head of PETA India: ‘He [the accused] needs to be taken to a psychiatrist. People who commit such a crime are <i>mentally ill</i> (emphasis added). They should be severely punished.’ Vikram Doctor, gay activist: ‘It's simply wrong because of the <i>issue of consent</i> (emphasis added). Animals can't give consent to what people do to them’.” <sup>118</sup>
2011	Based on repeated complaints by residents of Chandigarh, Neeru Sidhu the secretary of the local chapter of the Society for the Prevention of Cruelty to Animals (SPCA), filed a complaint that the staff hired to look after the dogs by SPCA were indulging in ‘bestiality’. A man named Manglu was arrested for investigation. <sup>119</sup>
2012	A First Information Report was registered under §377 against a man for having sex with a three month-old calf. While the calf is being raised in a Gaushala, the accused had reportedly jumped bail. <sup>120</sup>
2013	The case of Blacky, a street dog, was elaborated on in the VoSD report through extensive interviews with Save Our Strays (‘SOS’), a suburban Mumbai-based animal welfare organization. Blacky had been tortured sexually by a man living in the same locality. He had inserted multiple metal objects into her, and she was rescued in an extremely weak condition by SOS. Shirley Menon who founded SOS was quoted as stating: “We have a particular spot in Andheri West from where we get repeat complaints. It is a spot where junkies hang out and even the police stay away from there. We had sent a few cops there one night when a late-night feeder witnessed a man sexually abusing a dog and called me. The cops reached there, stopped the commotion, (a lady and her young daughter got into a fight with the junkies and were cornered by them) shouted at the lady and told her never to feed on the streets at

<sup>117</sup> VoSD Report, *supra* note 37, 16.

<sup>118</sup> *Id.*, 13.

<sup>119</sup> THE INDIAN EXPRESS, *SPCA reports alleged bestiality with dogs*, December 9, 2011, available at <http://archive.indianexpress.com/news/spca-reports-alleged-beastiality-with-dogs/885772/> (Last visited on September 29, 2020).

<sup>120</sup> THE TIMES OF INDIA (Pratiksha Ramkumar), *Man accused of bestiality missing, trial yet to begin*, April 10, 2013, available at <https://timesofindia.indiatimes.com/city/chennai/Man-accused-of-bestiality-missing-trial-yet-to-begin/articleshow/19470183.cms> (Last visited on September 29, 2020).



	that late hour, that too with a young 18 year old daughter. I wanted to file a complaint, but the lady backed out.” <sup>121</sup>
2014	“Residents of Nallasopara, a north-western suburb of Greater Mumbai, caught a man red handed while he was having ‘sex’ with a two-month-old puppy last week. He had lured the puppy by offering some food, then took the animal to a secluded place and had ‘sex’.” The puppy's shrill voice raised an alarm for the residents who immediately collected at the scene and thrashed the man. According to them the man was fully drunk. While the police did arrive, they let the man off with a warning saying it was just a puppy. Witnesses claimed this was not the perpetrator's first attempt at sex with animals. <sup>122</sup>
2015	From a student-made documentary on sexual crimes against animals, “Bestiality - the Unheard Rape”, an animal rights activist, Aditi, recounts the case of a watchman found raping a female dog in the housing society premises. Police and members of an NGO arrived, took the accused to the station and filed a case under §377. The perpetrator was taken into custody, then granted bail due to political pressure and lack of forensic evidence. The dog was treated and recovered. This highly important twenty-minute long documentary from the city of Mumbai narrates several horrific stories shared by animal activists of sexual crimes against animals. <sup>123</sup>
2016	In a horrific incident, medical college students from Vellore, Tamil Nadu brutally killed a female monkey after she entered their hostel room. They tied up the monkey's hands, legs and neck with a phone wire, took her to the hostel terrace and thrashed her brutally in front of thirty other students. They also stabbed her in the back with a sharp object, and raped her with an iron rod. “The monkey was abused by the worst means,” said Antony Robin, one of the activists involved in exhuming the body. “Her hand was tied in the rear side and a telephone wire was tied to her neck. We observed fractures in the knee, ankle, neck and other places. We also noticed a sharp object was inserted from behind and came in front. This is by far the worst case [of animal cruelty] we have seen.” <sup>124</sup>

<sup>121</sup> VoSD Report, *supra* note 37, 8.

<sup>122</sup> INDIA TV NEWS, *Man in Mumbai let off by police after he was caught having sex with a puppy*, March 27, 2014, available at <https://www.indiatvnews.com/crime/news/man-in-mumbai-let-off-by-police-after-he-was-caught-having-sex-with-a-puppy-5720.html> (Last visited on 29 September, 2020).

<sup>123</sup> Pratik Rajankar, *Bestiality - the Unheard Rape*, YOUTUBE, May 7, 2018, available at <https://www.youtube.com/watch?v=5TWefdOSjjw&noapp=1&client=mv-google&app=desktop> (Last visited on September 29, 2020).

<sup>124</sup> SCROLL (Anand Kumar), *As medical students stab and burn a monkey in Vellore, activists demand stricter animal welfare laws*, November 24, 2016, available at <https://scroll.in/article/822413/as-medical-students-stab-and-burn-a-monkey-in-vellore-activists-demand-stricter-animal-welfare-laws> (Last visited on September 29, 2020).