Animal Rights in India: A Mirage of Law?

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Abstract

This paper assails the validity of the Prevention of Cruelty to Animals Act, 1960, which is the premiere legislation on protection of the interests of animals in the country and purports to protect their interests vis-a-vis the interests of the human beings, while at the same time, taking into account certain necessities, exempts certain acts from the scope of the legislation regardless the nature of the act involved. This legislation is repugnant to its own objects and principles as also being ultra-vires the Constitution in the light of the ruling of the Hon'ble Apex court in AWBI v. A. Nagaraja. The rhetoric of this legislation seems to be undermining its own objectives which on its own, brings to light the dichotomous nature of the legislation. It is nothing but a remnant of the Victorian ideologies that have been blatantly paraphrased to purport at their surface benevolence, while actually being malignant underneath.

I. Introduction: The illusion of Protection of Animals in India

The Prevention of Cruelty to Animals Act[2] was enacted by the legislature with the objective of protecting the rights of animals in the wake of the modern human society. This legislation purportedly provided adequate safeguards to the animals so as to protect them from harm, unreasonable pain or suffering and torture at the hands of human beings, unless such acts fell into the necessities as defined categorically in the act itself. This, however, proved to be nothing more than a dead letter of law and could not stand the test of time owing to the diminutive punishments that it was armed with, which ultimately rendered the legislation otiose and the objective that it sought to achieve, unaccomplished. It also resulted the law falling, for the most part, into desuetude, thus, leading to a dearth of judicial precedents at the same time. In order to solidify the stand taken as well as to understand, in depth, the misgivings that this enactment presents, we have to categorically examine various provisions of the enactment. These provisions, along with their individual critique, have been reproduced infra.

The legislation is primarily focused around Section 11, which has to be viewed in tandem with Section 9 (a)[3]as these two provisions are more interdependent than the rest. The major problem presents itself from the bare perusal of the provisions themselves, i.e., Clause (a) of Section 9 lays down that it is the responsibility of the constituted board to make sure that the laws related to Section 11 specifically, and this Act in general, stay up to date and for the same, it has to constantly keep making recommendations to the appropriate government. This however, is a dead letter in law. As to why this has been iterated becomes clear as we peruse the substantive part of section 11(1)[4] which lays down the 'considerable' punishments of Rupees Ten to Rupees Fifty on first conviction and Rupees Twenty-Five to Rupees Hundred. Moreover, to put a cherry on top of the cake, the second conviction will only be considered, with the provided higher degree, when the subsequent offence is committed within 3 years from the commission of the

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[2] The Prevention of Cruelty to Animals Act, 1960, 59/1960.

[3] Id., Section 9.

[4] Id., Section 11(1).

first offence. Granted that the provision in case of second conviction also provides for imprisonment of 3 months, but even so, this limb of argument in favour of the provision falls flat on the basis of the following two assertions:

a. That the Supreme Court has equated the right to life of animals with Article 21[5] of the Constitution, in the light of which it becomes crystal clear that it is lacking severely in proportionality with regards to the gravity of the offence committed and the punishment provided. The offence committed either takes away the life of the animal and if not anything else, their dignity and feeling of intrinsic worth is tarnished. Whatever the case may be, it is violative of the right to life of the animals, however the 'substantive' punishment provided for the offence brings to light the perversity of the lawmakers in framing laws for those who cannot speak up for themselves. The law was introduced in 1960, the amount of fine provided herein could have acted somewhat as a deterrent then, but such a law has failed to stand the test of time. Even the authorities charged with the responsibility of keeping such a law up to date have miserably failed to do so knowing that the affected parties themselves cannot advocate for their own rights.

b. Another major shortcoming of the argument in favour of this provision comes to light when we direct our attention towards the proviso to sub-section 2 of section 11.[6] This sub-section lays down the law for such owners who treat the animals under their care with cruelty, if such a person were to be guilty within the ambit of Section 11(1),[7] then, according to the proviso such person has to be given the option to pay the fine instead of going to prison. Even common-sense dictates at this point that the more likely scenario would be the payment of 25 to 100 rupees in lieu of avoiding imprisonment. This is highly violative of the animal's rights regardless of which theory of punishment we may use to interpret it. It does not deter the perpetrator, nor does it reform them, therefore it is not reformative either. It neither inculcates the sentiment of retribution nor does it encourage prevention. There is no theory of punishment that this seems to fit in, which only further reinforces the belief of these provisions being perverse and malignant.

Even when we take into account Section 12[8] of the Act which criminalises the activities such as Phooka & Doom Dev, the punishment only grows to a fine of rupees one thousand or an imprisonment of 2 years. These punishments are, even though, much greater than the ones provided in the previous provision, however, still grossly inadequate by and large. The relative analysis of such a law has to be done not in the light of its own provisions but in the light of the principles of justice and the constitutional mandate. A mandate which anyway requires as a fundamental duty vide Article 51A (g) respect for all living beings. When we juxtapose such a provision with laws made for humans or with the gravity of the acts themselves, it is not difficult to understand why one would classify them as being namesake protections.

The extent of abhorrence of such ineffective and diminutive punishments is then further coupled with an inactive judiciary to safeguard them even in the state that they do exist, and thereby increases the ineffectiveness manifold. Let us consider at this juncture the

[5] Indian Constitution, Article. 21.
[6] The Prevention of Cruelty to Animals Act, 1960, Section 11 (2).
[7] Id., Section 11.
[8] Id., Section 12

stand taken by the judiciary on various instances of animal abuse to further bolster the assertion of prevalence of a general bias against the rights of animals in the society at large.

In Goushala Pashupalan Bahu v. State of Maharashtra,[9]a FIR was lodged for transporting 18 cattle in a cruel manner by stuffing them in a cramped space. This resulted in an apparent violation of Rule 56 (c) of the Transport of Animal Rules,[10] which allows only six animals to be transported in a single vehicle so that the animals being transported have sufficient room while in transit. The primary issue that arose in the present lis was of custody of the cattle. At the first instance, the police handed over the custody of such cattle to the Petitioner, which was a registered trust qualified to be an animal shelter. However, as the matter was thereafter placed under the discretion of the Magistrate, the custody was transferred back to the Respondent, who had not yet provided any documents to prove his ownership and was merely relying on his word as well as the fact that the animals were found to be in his custody while being transported. The Magistrate reasoned that unless the offence under the FIR was proven, the respondent should retain the custody as per the PCA Act. The Bombay High Court, however, granted an ad–interim stay on the Magistrate's order thereby returning custody to the Petitioner during the pendency of the lis. Even though this judgment of the Bombay High Court played a major role in setting a precedent on the matter, the fact that cannot be ignored is the non-application of mind by the Judicial Magistrate as well as his insensitivity towards the situation. The Magistrate had the requisite power to grant Petitioner the right of custody during pendency of the lis by the virtue of Section 35 of the PCA Act[11] read with Rule 3 of the PCA Rules,[12] however, the Magistrate thought it better to let the alleged perpetrator continue with the custody of the voiceless victims. The non-application of judicial mind of the Magistrate is further aggravated by the fact that the Respondent had no documents to even provide prima facie evidence of his ownership of the animal victims. All that he had was word of mouth, and the Court, merely relying on the word of an interested party, chose to rule against the interest of the animal victims. Even though the position was reversed by the Bombay High Court, what remains is the lack of sensitivity at the grass roots level of judiciary. The Courts of first instance are the ones charged with the duty of providing a quick and effective remedy to the victims, however,

[9] Goushala Pashupalan Bahu v. State of Maharashtra, W.P. (C) 338/2018 (Bom. H.C.).

[10] The Transport of Animal Rules, 1978.

[11] (1) The State Government may, by general or special order, appoint infirmaries for the treatment and area of animals in respect of which offences against this Act have been committed, and may authorize the detention therein of any animal pending its production before a Magistrate.

(2) The Magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animal concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a pinjrapole, or, if the veterinary office in charge of the area in which the animal is found or such other veterinary office as may be authorized in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

The Prevention of Cruelty to Animals Act, 1960, §35.

[12] When an animal has been seized under the provision of the Act or the rules made there under-

(a) the authority seizing the animal shall ensure health inspection, identification and making such animal, through the jurisdictional veterinary officer deployed at Government Veterinary Hospital of the area and marking may be done by ear tagging or by chipping or by any less irksome advance technology but marking by not branding, cold branding other injurious marking shall be prohibited

(b) the magistrate may direct the animal to be housed at an infirmary, pinjrapole, SPCA, Animal Welfare Organization or Gaushala during the pendency of the litigation.

The Prevention of Cruelty to Animals Rules, Rule 3.

in the present scenario the lack of sensitivity and concern becomes quite apparent no matter one may interpret the order of the Judicial Magistrate.

The extent of such negligence can very well be understood when we juxtapose the present predicament of the animal victims with instances of Domestic Violence. In case of Domestic Violence, the victim is tortured physically, mentally or economically, and is vested with enforceable protection under the law as against such abuse. An interesting remedy that the Domestic Violence Laws provides is of Right of Household, wherein the Courts have the authority to even throw out the husband from the matrimonial property, even though he might own it, and grant the right to live in such property exclusively to the victim. The end that such a law seeks to achieve is protection of the victim from further mistreatment at the hands of the alleged perpetrator during the pendency of the lis as a precautionary measure. However, when a similar situation occurred herein, the Court of first instance appeared to be least bothered about the possibility of further abuse and thought it better to grant custody to a person who merely had his word as proof of his ownership. It is not being argued herein that in a similar fashion to the domestic violence laws the alleged perpetrator be thrown out of his property and the animals shall have the right to stay in it, what is being argued herein is the principle associated to such law, *i.e.*, precaution on the basis of possibility of further abuse being inflicted on the victim(s), shall be upheld regardless the species of the victim. Not only did the interpretation provided by the Magistrate make room for the abuser to mistreat the victim further but could have also led to infliction of aggravated harm on the animal victims. The Court, of first instance herein, perhaps forgot that even though animals might not be able to speak the same language as humans, but they still have a sense of dignity and intrinsic worth which is required to be protected as per the mandate of the Constitution itself. It has to be understood that animal cruelty does not limit itself to mere physical harm. The torment, the torture and the fear inflicted on the victim, causes immeasurable psychological distress which is also covered within the ambit of animal cruelty as the animals may not be able to convey through words, their agony, but they are also sentient towards trauma. Another assertion which is pertinent to be noted, herein, is that overloading of animals is a common site on Indian roads; however, it is seldom noticed or reported. This shows the insensitivity of human populace, in general, towards animals. It is mind boggling how such acts of apparent and unabashed cruelty do not prick the conscience of so many who witness it daily. We claim to be the Apex beings on this planet; it is high time that we start acting that way.

Another major shortcoming of the said Act presents itself in the very next provision, *i.e.*, Section 13.[13] Herein it becomes pertinent to note that it deals with not killing or taking the life of an animal but with its 'destruction'. This is problematic primarily because the use of the word 'destruction' itself is Orwellian in nature. To put it simply, the actual act itself is undermined in gravity due to the word used for the same. Destruction is something which is not normally used when referring to taking of a life, here however, it seems that the lawmakers deemed it better as opposed to using the actual words like 'killing' or "taking away their life". This provision specifically deals with taking the life of such animals who, due to the cruelty of their masters are in such a condition that it would be better to kill them rather than letting them live in agony. The use of a lesser term, *i.e.*, 'destruction' also goes on to undermine the gravity of the offence committed by the perpetrator. The animal is driven by his 'master' to a point where death is the

[13] The Prevention of Cruelty to Animals Act, 1960, § 13.

lesser evil than life itself, but when we say that such an animal is then destroyed, we take away the substantive meaning from the offence committed by the wrongdoer. The perverseness of the legislative rhetoric, however, does not end on merely having made the provision Orwellian. In the provision itself the proviso states that unless the owner of such animal gives his assent to such destruction, it shall not be ordered. Granted, this is overridden by the prescription of a veterinarian, but even so, the power still lies to some extent in the hands of the perpetrator himself even when the Court deems it better that the animal be put out of his misery. Axiomatically, this too goes against every theory of punishment of crimes. The perpetrator is still left in control of the fate of the victim even when the matter is before the adjudicating authority for the same person having tortured the victim in the first place. This is sadistic in its own right to say the least.

Let us at this juncture turn our attention towards Section 17(2) (e) & (f).[14] Section 17[15] primarily deals with experimentation on animals, wherein the former provides for unequal treatment of animals on the basis of their size whereas the latter provides for not experimenting 'preferably' for merely the purpose of acquiring manual skill. These by themselves open up a Pandora's box of misgivings about the intentions of the legislature. Even though it is easier to experiment upon smaller animals, the same has not been listed as the reason for the same, in fact, no reasoning whatsoever has been provided. It seems that even amongst animals, human beings do not seem to be affording equality. Addressing the concerns raised by the latter clause of the sub section, it is 'preferred' by the legislature that the persons conducting such experiments should not do it merely for the purpose of acquiring manual skill, which basically means that it is alright to do it, the law may just not 'prefer' it. It may be frowned upon, yes, but not punishable in isolation. Directing our attention towards the substantive part of the same we find that even if such acts are punished, the offenders will have to pay a 'substantive' sum of Rupees 200. This provision does not even warrant further analysis as doing so would probably amount to putting more effort in interpretation than the framers of this provision did in its framing.

Moving on, we stumble upon Section 24[16] of the Act, which gives exclusive power to the police officer or an officer authorised for this purpose specifically to make a complaint to the Court if they find an animal being subjected to unnecessary pain or suffering in the process of being trained for exhibition or performances. This might look like a benevolent provision, but on the bare perusal it comes to light that the powers are restricted to certain specific authorities and are not vested in any other person who might come across such an offence being committed. Even the Courts have noticed in several cases, instances where the authorities themselves chose to turn a blind eye out of their own volition to the commission of such an offence. In such a scenario, when the power to complaint itself has been confined to such authorities, the rights of the animals are bound to be violated. The Apex Court, in the Jalikattu Judgment, at one point asserted that "when collection yards were not present or not used, injured, exhausted bulls were tormented by spectators as they exited. Parallel Jallikattu events happened at each venue as the aggressive crowds agitated the bulls exiting the arena by shouting at them, beating them and jumping on them. Many people, including police officials, beat exhausted bulls

[14] "(e) that experiments on larger animals are avoided when it is possible to achieve the same results by experiments upon small laboratory animals like guinea-pigs, rabbits, frogs and rats;
(f) that, as far as possible, experiments are not performed merely for the purpose of acquiring manual skill;" Id., Section17.
[15] Id., Section 17.
[16] Id., Section 24.

with sticks and jumped in front of the bulls in an effort to frighten them."[17] This confirms that the police officials themselves are part of the crowd that exploits and not among those who protect. In fact, this conduct has been called out by the Court itself by observing that "We are sorry to note, in spite of the various directions issued by this Court, in the conduct of Jallikattu, bullock cart race, etc., the regulatory provisions of the TNRJ Act and the restrictions in the State of Maharashtra, the situation is the same and no action is being taken by the District Collectors, police officials and others, who are in-charge to control the same, to see that those directions are properly and effectively complied with and the animals are not being subjected to torture and cruelty. Being dumb and helpless, they suffer in silence". [18] It has to be understood that the police officials/appointed authorities are also a part of the same society that propagates exploitation of such animals on grounds like religion and tradition, therefore, confining the power exclusively to such officials limits severely the efficiency and effectiveness of the law thereby diluting its intended effect and rendering it otiose.

II. 'Bali': A Misplaced Legacy of Religion?

Section 28[19] of the Act seems to be the most problematic out of all the provisions in the Act. On a bare perusal itself section 28 establishes its malicious nature by not extending the protection of law to such animals which are offered as a 'sacrifice' in religious practices. This in itself defeats the purpose of the legislation wherein a basic rule of law, i.e. use of common sense is thrown out of the window. In *Ashok Kumar Gupta*[20] the Court very fairly observed that common sense has always served in the Court's ceaseless striving as a voice of reason to maintain the blend of change and continuity of order which are the *sine qua non* for stability in the process of change in a parliamentary democracy. The Court ruled that it is not bound to accept an interpretation which retards the progress or impedes social integration. The legislation on the face of it seeks to destroy instances of cruelty towards the animals. Any instances that cause pain and suffering to the animals are sought to be penalised by such enactment, however, the law provides a loophole within the confines of the legislation itself. India is a country with several religions, therefore, there is no shortage of arbitrary customs, traditions and religious practices that requires slaughtering of animals. Yes, the term used herein is not sacrifice but slaughter, and that ought to be the case as well. Sacrifice means to offer something of value to save another or for the benefit of another.[21] Even though the word 'sacrifice' also includes within its cognate meanings the act of killing offered to gods, however, it still associates with it a positive meaning, that is why the same word is used for soldiers martyred at the battlefield. 'Slaughter', on the other hand, connotes something negative, which is precisely what the legislation ought to convey. The very fact that the positive term is being used to reproduce the bare provision encourages the brutal act as well as points towards the inherent bias of the lawmakers, and their willingness to undermine the real meaning of what actually transpires under the garb of such a provision.

[17] Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.
[18] Id.
[19] The Prevention of Cruelty to Animals, 1960, Section 28.
[20] Ashok Kumar Gupta v. State of UP, (1997) 5 SCC 201.
[21] Cambridge Dictionary, (10th ed. 2014).

If the right of an animal to live is also covered within the ambit of Article 21,[22] as interpreted by the Hon'ble Supreme Court,[23] then, one fails to understand how can a religious mandate then go on to override the grundnorm itself. Is this not giving religion power over law merely because it does not concern humans? This scenario can be easily juxtaposed with the Practice of Sati in the Indian society. Even in the Victorian Era, a custom as brutal as Sati was recognised as being arbitrary and unnecessarily painful and was, thus, abolished, but when the fate of animals is similarly placed, it suddenly becomes alright to overlook such occurrences. Same as sati, someone is sacrificed at the altar due to the unreasonable beliefs of certain persons, but it is deemed to be 'okay' merely because human lives are not at stake altogether and in fact, it provides a sense of satisfaction to the human beings, who, having slaughtered the animal, feel at ease believing that it will bring them good luck of some kind. In this era of progress, the Indian lawmakers seem to be regressing instead, because not moving with the world also amounts to being left behind and, thus, passively regressing. Animal rights are put at the bottom of the priority list, as we humans instinctively are not sensitised towards the animals in the same way as we are towards our own species. That is exactly what is the origin of speciesism. It becomes pertinent to assert herein the observations of the Hon'ble Court itself to shed some more light on the matter, "Experimenting on animals and eating their flesh are stated to be two major forms of speciesism in our society. Over and above, the legislature, by virtue of Section 28, has favoured killing of animals in a manner required by the religion of any community. Oxford English Dictionary defines the term as the assumption of human superiority over other creatures, leading to the exploitation of animals. Speciesism is also described as the widespread discrimination that is practised by man against the other species, that is, a prejudice or attitude of bias towards the interest of members of one's own species and against those of members of other species. Speciesism as a concept used to be compared with racism and sexism on the ground that all those refer to discrimination that tend to promote or encourage domination and exploitation of members of one group by another..."[24]. This assertion of the judiciary, however, changes soon enough when it iterated in the later part of the judgment that, "The legislature through Section 28 also saved the manner of killing of animals in the manner prescribed by religions, those are, in our view, reasonable restrictions on the rights enjoyed by the animals under Section 3 read with Section 11(1). Evidently, those restrictions are the direct inevitable consequences or the effects which could be said to have been in the contemplation of the legislature for human benefit, since they are unavoidable."[25] At this point, one fails to see reason in the self-contradictory assertions of the judiciary on the matter, wherein, on one hand it recognises Sections 17 and 28 as means of exploitation of the animals, on the other hand, it calls such instances unavoidable and necessary. The judiciary has perhaps forgotten in this particular instance that religion is not the driving force behind the moving cogs of our great democracy; it is the Constitution, of which the judiciary is supposed to be the guardian. But when the judiciary passes such contradictory statements, which not only contradict one another but the essence of the constitution as well as the impugned legislation itself, one cannot help but feel the influence of religion infecting the roots of our upstanding judicial system. The position is made even worse when the judiciary itself acknowledged that section 28 propagates killing in a manner required by the religion of any community,[26] however,

[22] Constitution of India, Article 21.
[23] Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.
[24] Id., 9.
[25] Id.
[26] Id.

failed to make a direction stating it to be against the right to life of animals. This is abhorrence of justice at the altar of law to say the least.

Section 28 also makes the interpretation of the act in the light of the *AWBI* judgment[27] somewhat paradoxical. The Hon'ble Supreme Court in its ruling specifically mentioned that the animals rights against cruelty emanate from the same Article 21 which ensures right to life for humans, the same becomes problematic and in fact, paradoxical when we consider the fact that herein the animal, which is sacrificed, is not one on the brink of death or one which has to be killed due to certain disease lingering inside them, rather, it is probably a healthy animal which would otherwise had led a considerable life span. This is a scenario wherein the animals are slaughtered merely because a religion commands it, and without any application of mind the same has been allowed by both the legislature and the judiciary. There is no procedure established by law that is followed in a religious sacrifice and the same is only governed and dictated as per the religious scripture to which the human executor prescribes. This is paradoxical because it violates the very right from which it emanates, it runs parallel to it and never intersects it. However, as we all know, two parallel lines have to emanate from different points to ensure that they run parallel which means that the point of origin cannot be the same unless the lines originated from the same point and then bent as an afterthought to run parallel to each other. Herein, the Court's interpretation also seems to be an afterthought only, trying to bend two parallel lines in such a way as to make their point of origin the same. That however, is not how law is supposed to be working.

This section has been aforementioned to be the most problematic of all the provisions in the legislation and was, in a similar fashion, also extensively critiqued in the case of Ramesh Sharma v. State of Himachal Pradesh[28] wherein three writ petitions were filed before the Hon'ble High Court of Himachal Pradesh seeking relief against the religious sacrificial practices involving animals. The petitions provided several details of the gruesome acts that transpired under the garb of offering religious sacrifice, thereby subjecting the animals to not only unnecessary pain and suffering, but also stripping them of the purported protections of the PCA Act due to the religious nature of the practices. As the petitions iterated at several junctions, "The animals are beaten up mercilessly and dragged up to mountain slopes to meet their death… the goats, sheep and rams are held by four people and then the head is attempted to be cut off by one other person, which is not always successful in the first attempt as there is no check on the sharpness of the weapon/equipment being used for the sacrifice which may be blunt. At times, inexperienced people try and participate in the ritual' killing and it is abominable to see that sometimes it may take up to 15 blows to kill the sacrificial animal that keeps struggling in a brutally injured and bleeding condition."[29] The series of horrific and barbaric incidents, categorically listed in the petition are enough to strike at the conscience of any person, except for those blinded by religion. Perhaps, that is why the domain of law is supposed to be completely separate from the domain of religion so as to take away the power of religion to have any undue influence on the framing of laws, otherwise, the society will never be able to progress and break away from the shackles of the primordial practices and move towards progress and equality. The incidents listed in the petitions filed, that takes place in Himachal Pradesh every year draped as

[27] Id.
[28] Ramesh Sharma v. State of Himachal Pradesh, CWP 9257/2011 (Himachal Pradesh HC).
[29] Id., Para 11.

necessarily required by religion raise several questions on the competence of law as well as its effectiveness vis-a-vis religion. The court in this reformist judgment enunciated that even though Articles 25 and 26 of the Constitution[30] and Sections 11 and 28 of the PCA Act, provide the freedom to participate in any religious sacrificial practices, the same cannot be read in isolation. It has to be read in tandem with the Fundamental Duty that the same grundnorm imposes on its subjects under Articles 51–A (g), Article 48 and 48-A.[31] The court further propounded that safeguards provided against religious sacrifice of animals are qualified and limited only to the essential and integral practices mandated by religions, beyond which such protection shall not extend. One might then ask, what is an essential and integral practice? It is simply a practice which is not the centrepiece of the religion itself, something which does not meddle with the character of such religion. It has to be understood that such an ambit excludes practices to which the primary sources of religion provide a benevolent alternative. The ambit also excludes the unreasonably gruesome practices allowed by the secondary sources of such religions, which are scientifically disproved or apparently absurd. The religious practice of animal sacrifice might have held great importance in the olden days but in a progressive society, such remnants of regression cannot be allowed to hold the society back and chain it to the same anchors that pulled the societies of the past into waters of chaos, and drowned them. It has to be understood that the removal of animal cruelty, even if it forms part of any religious practice, will not disturb the character of such religion, but it will save the conscience of the society. Hence, there seems to be no reason for continuation of such practices except for the stubbornness of the propagators of such religions as well as the obliviousness of the Lawmakers who fail to abolish them.

The court relied on the dicta in N. Adithayan v. Travancore Devaswom Board wherein the Apex court very fairly observed that "…custom or usage, even if proved to have existed in pre-Constitutional period, cannot be accepted as a source of law, if such custom violates human rights, human dignity, concept of social equality and the specific mandate of the Constitution and law made by the parliament. The vision of the founding fathers of the Constitution was to liberate society from blind adherence to traditional superstitious beliefs sans reason or rational basis. The animal sacrifice cannot be treated as fundamental to follow a religious belief and practice…"[32] The court further went on to emphasise that barbaric killing of animals on the ground of superstitions cannot be equated with the practice of consuming non-vegetarian food items, as the former is not based on scientific analysis and thereafter deemed necessary for survival of the society, thereby forming a necessity exempting such practices from the ambit of the PCA Act, like the latter. The doctrine of 'parens patriae' was also invoked by the Court in order to call out the state for not having protected the animals from their misery, even though the Constitution charged them with a responsibility towards the same. Therefore, a complete ban was imposed on the religious sacrificial practices involving animals in the state of Himachal Pradesh by the Hon'ble Court. This judgment was a giant step in the right direction towards the protection of animals as it took, one of the very few, proactive steps

[30] India Const., art. 25 & 26.

[31] "(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;" Id., art. 51-A; "Organisation of agriculture and animal husbandry The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle." Id., art. 48; "Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Id., art. 48-A.

[32] N. Adithayan v. Travancore Devaswom Board, (2002) 8 SCC 106.

towards protection of animals against unreasonable practices and put their misery at par with that of humans. However, a concern which is inherently raised by this dictum is that of the jurisdiction that it affects, which is limited in nature to only the state of Himachal Pradesh and not the whole country.

The bigger picture, therefore, still seems to have remained in its brutish and unreasonable form in the rest of the country where animal sacrifice is still rampant but not punishable. There is also a glaring lack of awareness with regards to animal protection laws by and large, as well as a lack of sensitisation towards animal suffering. More than such unawareness, however, the lack of judicial willingness to accept such crimes as 'crimes' also contributes significantly to the size and gravity of the problem. As has been fairly put by the Himachal Pradesh High Court, "Sacrifice causes immense pain and suffering to the innocent animals. The innocent animals cannot be permitted to be sacrificed to appease the god/deity in a barbaric manner. Compassion is the basic tenet in all religions. The practice of animal sacrifice is a social evil and is required to be curbed."[33] This view taken by the Hon'ble Himachal Pradesh High Court seems to somewhat resemble the stand of the Hon'ble Apex Court in the Jalikattu Judgment, however, a stark contrast presents recognisable when we realise that the former is the grain while the latter (in respect of this provision) is the chaff. The Hon'ble Apex Court completely failed to even comment upon the unreasonableness of the provision even while it had ample opportunity to do the same, in light of the fact that the whole matter in issue was centred around an unreasonable tradition, purported to have had the seal of religion. The Apex Court, it seems, actively refrained from commenting critically upon this provision and in so doing, limited severely the scope of its adjudication. Even, though the state of Himachal Pradesh has gone ahead and to a great degree prohibited sacrificing animals under religious pretence, it seems, there is still a long way to go before the Apex Court sides with this dictum.

Perhaps much like any other reform in the country, this too shall take a considerable amount of time as what it needs is 'reason' and "level headedness", things which are often least prioritised by people at large when their religious sentiments are questioned.

III. Conclusion

In the light of the aforesaid assertions presented by both the legislature as well as the judiciary, one cannot seem to feel anything but helpless, as both the organs purport to support the animal rights movement merely by words but not by actions. Those words are also not the ones that matter, and the ones which do matter, in the legislation as well as the judicial pronouncements, the organs again fail to show a scintilla of support. They present contradictory statements which only goes on to show the perversity that creeps in when framing and upholding laws for creatures that are helpless to present their own claims. The premiere legislation itself, i.e. The Prevention of Cruelty to Animals Act, 1960 fails to provide adequate safeguards to protect the interests of animals and brings to light the unwillingness of the Lawmakers to actually protect and make enforceable, such rights. The inclusion of provisions like Section 11 and 12 of the Act do seem to be beneficial for the animal victims, but the effectiveness of such provisions falls apart on account of the punishments they prescribe which grossly fail to deter the wrongdoers. Section 13 then goes on to undermine the gravity of the act of cruelty itself, purportedly

[33] Ramesh Sharma v. State of Himachal Pradesh, CWP 9257/2011 (Himachal Pradesh HC).

made punishable by the Act. Furthermore, Section 17 brings to light the actual perversity of the legislation as it merely "recommends" against the conducting of experiments on animals without necessity and does not out rightly prohibit it. Section 24 thereafter provides exclusive powers to certain authorities to even report certain cases of animal cruelty, authorities which the judiciary itself recognises to be amongst, more often than not, the exploiters and not the protectors. Even after all these misgivings, one might expect some degree of reasonable regulation in the society apropos animal rights, but the legislation falls apart in toto due to the existence of Section 28, which places religious mandate at a pedestal higher than that of law, thereby excluding animal sacrifice under the garb of religious necessity from the ambit of the legislation itself. The legislation is therefore, contradictory to its own purported objective and exists merely as a mirage, a rosy illusion with no real substance.

The legislation apropos the prevention of cruelty to animals has also, not evolved with the times in the country, thus, bringing hardships to both, the mute helpless victims as well as those who fight for them. With the judicial pronouncements being just as deficient as the statute, there seems to be little to no scope for development. Further, given the promulgations, the judicial interpretation has been more often than not impacted by religious sentiment, traditions, beliefs which have adversely affected the interpretation of such provisions. At other times, it is overdriven in awe of the defaulters' personality or celebrity status coerced by media trials. All such discretionary perspectives are avoidable through well drafted, contemporary amendments in the legislations with well laid down provisions and associated penal actions for ensuring enough deterrence, thereby leaving less room for discretion. However, the society at large, particularly in rural India, has traditionally only been conscious of any act of violence or cruelty towards animals due to the practiced religions in India teaching non-violence and their general compassionate outlook. In urban India, while growing education has brought about considerable compassion for animals, there is a large section for whom there is some deterrence by way of watchful eyes of active organisations and bodies, looking to preserve animal rights and prosecuting the major defaulters. Added to it is the possible scourge of the social media for acts of negligence and violence, which keeps some check on the society. However, a similar level of commitment is required from both the judiciary and legislature first, and then the media and the aware citizens, which can only be achieved by strengthening, through amendments, the existing provisions. The legislation needs to add more teeth to its provisions to keep in tandem with growing compassion and awareness in the modern society. All living creatures have inherent dignity and a right to live peacefully and the right to protect their well-being which encompasses protection from beating, kicking, torture, etc. Human life, as we often iterate, is more than mere animal existence. This statement itself shows our bias against the lives of animals at large. We seem to forget that the animals also have a sense on intrinsic worth and value. The PCA Act 1960 was aimed to ensure that the same is preserved, however, the legislation falls on its own face owing to the provisions that are defeated by their own substantiveness, or rather lack thereof. Penalties for violation of provisions of the PCA Act are virtually non-existent due to the diminutive punishments provided and this, by itself, defeats the purpose of law. It does not regulate anything, it does not protect anything, it does not enforce anything. It is nothing more than a namesake protection, provided to fend off the animal rights activists by merely rubbing in their faces the existence of such laws, regardless of its actual substantiveness. Even though the Court in A. Nagaraja directed the law to be made better, more substantive and more stringent, no changes have yet been made in six years from the declaration of the

judgment. Bills exists, so do recommendations, what does not exist is the will to change for the better of those who make our lives better, without saying anything and just enduring what we throw at them. They might not speak out loud, but the time is nigh that we pay attention, and really listen this time.