



Man-Animal Conflict- Legal Protection To Specific Classes Of Animals

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Citation: Thaji. G .B (2022), Man-Animal Conflict- Legal Protection To Specific Classes Of Animals, *Educational Administration: Theory and Practice*, 28(2), 270 - 292
Doi: 10.53555/kuey.v28i02.9311

5.1. INTRODUCTION

Conflict between humans and animals frequently arises not because animals invade human territory but rather because of the opposite. Because man's thinking is anthropocentric, he frequently thinks differently. Remember that the struggle between man and endangered species is not just due to natural causes; rather, it is a result of man's failure to conserve and protect these species, as well as his destructive attitude for personal enjoyment and financial gain. Such conflicts are frequently attributed to a variety of factors, including the expansion of the human population, changes in land use, the loss of species' habitat, degradation and fragmentation, the rise in ecotourism, the expansion of cattle populations, and access to natural reserves. The local populace must be educated about conservation, communities must be resettled, livestock and domestic animal grazing in the forest must be reduced, and prey preservation for wild animals must be practiced. It must be ensured that there is natural water available and that tourists cause little to no disruption. The state must also take action to clear encroachments and, if required, annul the previously issued patta and start the acquisition process in order to conserve wildlife and its corridors. According to reports, man-animal conflicts are more common in areas outside the PAs. They are also more vulnerable to poaching and frequently provoke the wrath of farmers when they harm their crops. To preserve and safeguard endangered animals, such as wild buffalo and other species listed in Schedule 1 Part 1 of the Wildlife Protection Act, as well as those species that are in risk of going extinct; these issues must be handled scientifically.

From birth to death, the animals are exposed to various forms of cruelties and are exploited for many purposes like experiments, exhibitions, and food. Certain protections are incorporated in the statutes for the prevention of cruelties against them. The human utility of different classes of animals is diverse, and hence the relationship and treatment of a particular kind of animal may vary from another type. The adverse situation which may arise due to modified life conditions of human beings and environmental changes make the existence of many animals arduous. The existing life conditions introduced some direct conflict between man and animal, and it exceeded to direct attack and destruction. And, in most cases, the animals are the victims of human confrontation, and the scientific analysis of causes of brutal attacks led the way for adopting a specific solution to their miserable life. To resolve, proper analysis of causes of threat, the extent of protection, and mode of safeguarding their interest are critical. The PCA Act, which provides general safeguards to all non-human creatures, is not sufficient for tackling the attack on them. The law which extends specific guarantees is necessary, and scientific and technological knowledge can be used for including their needs. Of course, the law should include provisions for preventing cruelty and measures for creating a healthy relationship between man and animal. All beings have some interest in living without subjecting to cruelty. The contribution of animals in the growth of the agrarian economy is also a relevant factor in attracting protection. Therefore, the importance should be given for introducing a balance between the welfare of animals and that of human utility, and specific precautions are also needed for avoiding unhealthy human-animal conflict.

The most popular animal which is used by human as a pet is the dog and many a time they became the source of threat to human life. Dog bites and attacks of aggressive dogs are also factors emanating societal protest for the culling of stray dogs. Therefore an analysis of the law relating to protection is them is needed. The only one class of animal under human control which gets Constitutional protection from slaughter is cows, calves and other milch and draught cattle. Ironically, India is one of the largest exporters of beef, and the domestic consumption of beef is also high. The legislation of different states for the preservation of cows and prevention of slaughter of them led to legal conflict and were confronted under Arts. 19 (1)(g), and 21 of the Constitution. The elephants which are naturally wild in habitat are domesticated for many purposes like its use in religious ceremonies, processions, and also for carrying timber. They are subjected to various forms of cruelties during transport, parade for ceremonies, lack of food and nutrition, etc. Sometimes, it may cause some mischief to the livelihood of fringe communities' and people adopt cruel practices to kill them. Hence it is tough to balance the conflicting interests of preservation of elephants and the protection of people and their livelihood. Birds are

very delicate species having high value in the pet market. They face cruel treatment while capturing, transporting, housing, and using them for sale in pet markets. While considering the cruelties, they are facing, and their importance in economic growth makes them a separate class which needs special treatment in law. This paper analyzes how far the caring of these selected classes of animals is widened through legislation and examines its effectiveness in preventing human attacks and also to include other welfare measures.

5.2. PROVISION FOR SAFETY OF DOGS.

5. 2.1. Anti-Cruelty Laws- International Perspective

Through several international programs, national legislation, and animal welfare organizations, the protection of dogs from abuse is acknowledged on a global scale. Strict anti-cruelty legislation is in place in many nations to guarantee the humane treatment of dogs and stop their exploitation, abuse, and neglect. Dog abuse, neglect, and damage are prohibited by law in the majority of countries. Additionally, it is illegal, and violators may face fines, jail time, or prohibitions from owning pets. Dogs and other animals are acknowledged as sentient beings deserving of protection from maltreatment under the Universal Declaration on Animal Welfare (UDAW)¹. It pushes nations to enact stricter legislation pertaining to animal welfare. The Standards of the World Organization for Animal Health (WOAH) establishes international standards for the care of companion animals, including dogs.² It encourages immunization campaigns, humanitarian treatment, and moral population control. ³Strict anti-cruelty regulations for pets are established under the European Convention for the Protection of Pet Animals, which forbids cruel euthanasia, neglect, and abusive training. ⁴It forbids cosmetic surgery (such as ear cropping, tail docking, etc.) and mandates humane breeding methods.⁵

Since the European Union acknowledges that animals are sentient creatures, its member states are required to enact stringent anti-cruelty legislation.⁶ Some of the strongest regulations against dog abuse in the world are found in nations like Germany, Switzerland, and the Netherlands. The German Animal Welfare Act, 2010(Tierschutzgesetz) forbids repeatedly chaining dogs and putting them in unnatural situations, and it imposes harsh penalties for cruelty, neglect, and unethical breeding. ⁷Both stray dogs and pets are protected from cruelty and abuse by the Preventing Animal Cruelty and Torture Act, 2019 and the United States Animal Welfare Act, 1966.⁸ Extreme acts of cruelty, such as crushing, burning, or drowning dogs, are now considered

¹ Michael C Appleby and Lorna Sherwood, *Animal Welfare Matters to Animals, People and the Environment: the Case for a Universal Declaration on Animal Welfare* in WSPA (Lobby Brochure ed., 2007).UDAW is an agreement among people and nations to recognize that animals are sentient and can suffer, to respect their welfare needs and to end animal cruelty for good.

² WORLD ORGANISATION FOR ANIMAL HEALTH, Protecting animals, preserving our future, TERRESTRIAL ANIMAL HEALTH CODE,vol.1, cha.7.7, 410 (28th ed. 2019) . See *infra* note 24.

³ *Id* at 139.

⁴ Art. 3 & 4, The European Convention for the Protection of Pet Animals- Strasbourg,13. XI.1987- No. 125. It was include as part of European Treaty Series of Council of Europe.

“Article 3 – Basic principles for animal welfare

1. Nobody shall cause a pet animal unnecessary pain, suffering or distress.

2. Nobody shall abandon a pet animal.”

“Article 4 –

1. Keeping Any person who keeps a pet animal or who has agreed to look after it, shall be responsible for its health and welfare.

2.Any person who is keeping a pet animal or who is looking after it shall provide accommodation, care and attention which take account of the ethological needs of the animal in accordance with its species and breed, in particular:

a give it suitable and sufficient food and water;

b provide it with adequate opportunities for exercise;

c. take all reasonable measures to prevent its escape;

3.An animal shall not be kept as a pet animal if:

a the conditions of paragraph 2 above are not met or if,

b in spite of these conditions being met, the animal cannot adapt itself to captivity.”

⁵ *Id* at 5 &7.

“Article 5 – Breeding Any person who selects a pet animal for breeding shall be responsible for having regard to the anatomical, physiological and behavioural characteristics which are likely to put at risk the health and welfare of either the offspring or the female parent...

Article 7 – Training No pet animal shall be trained in a way that is detrimental to its health and welfare, especially by forcing it to exceed its natural capacities or strength or by employing artificial aids which cause injury or unnecessary pain, suffering or distress.”

⁶ *Id* at Preamble.

⁷ *Id* at Art.2, 2A& 10a

⁸ S. 13(1), The United States Animal Welfare Act, 1966.

“The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.

as federal offenses punishable up to seven years under the 2019 Act. ⁹The Animal Welfare Act of the United Kingdom prohibits harsh breeding practices and dog fighting, docking of tail, ¹⁰and it is illegal to neglect providing food, water, shelter, and medical care. ¹¹The maximum penalty for extreme cruelty is five years and an unlimited fine. Abandonment and dog fighting are also strictly prohibited.¹²

5.2.1. 1.Laws in India- In General

It's against the law to kick, beat, overwork, torture, hurt, starve, or otherwise mistreat dogs. Additionally, it's against the law to do anything that puts dogs through needless pain or suffering. ¹³Furthermore, it includes addressing mutilation, poisoning, and brutal abandonment. Dogs cannot be abandoned by their owners if they get old, ill, or hurt. Cruelty also includes failing to provide a pet with food, water, and medical attention.¹⁴Strict regulations apply to dog fights, cruel circuses, and other animal-based exploitative entertainment. Using dogs for entertainment requires special clearance under the Performing Animals (Registration) Rules, 2001. ¹⁵ Using dogs for warfare, illegal racing, or abusive performances is illegal. Transporting dogs in dangerous, cramped, or inhumane conditions is proscribed. ¹⁶The first conviction leads to a fine of Rs.10 -50, but subsequent conviction may leads to fine of Rs.25 to -100 or imprisonment up to three months.

Euthanasia is only allowed in cases of irreversible suffering and must be performed painlessly by a licensed veterinarian. ¹⁷ The killing or disfigurement of dogs of value Rs. 10 or more, is an offence under IPC and punishable for a period of 2 years. The killing, poisoning, maiming or rendering useless of a dog of value of Rs.

(2) The standards described in paragraph

(1) shall include minimum requirements—

(A) for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds necessary for humane handling, care, or treatment of animals; and

(B) for exercise of dogs, as determined by an attending veterinarian in accordance with general standards promulgated by the Secretary, and for a physical environment adequate to promote the psychological well-being of primates...”

⁹ S. 48(2) &3 (c), Preventing Animal Cruelty and Torture Act, 2019.

“...(c) Penalties.--Whoever violates this section shall be fined under this title, imprisoned for not more than 7 years, or both.”

¹⁰ *Id* at S. 6 (1)A person commits an offence if—

(a)he removes the whole or any part of a dog’s tail, otherwise than for the purpose of its medical treatment;

(b) he causes the whole or any part of a dog’s tail to be removed by another person, otherwise than for the purpose of its medical treatment.

(2)A person commits an offence if—

(a)he is responsible for a dog,

(b)another person removes the whole or any part of the dog’s tail, otherwise than for the purpose of its medical treatment, and

(c)he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.”

¹¹ *Id* at S. 9 (1)

“A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.

(2)For the purposes of this Act, an animal’s needs shall be taken to include—

(a)its need for a suitable environment,

(b)its need for a suitable diet,

(c)its need to be able to exhibit normal behaviour patterns,

(d)any need it has to be housed with, or apart from, other animals, and

(e) its need to be protected from pain, suffering, injury and disease.”

¹² *Id* at s.8 (1)

“A person commits an offence if he—

(a) causes an animal fight to take place, or attempts to do so;...”

¹³ Section 11, PCA Act

¹⁴ *Ibid*.

¹⁵ Rule 8, The Performing Animals Rules, 1973

¹⁶ *Id* at 3-5.

¹⁷ As per s. 35(3) of The Prevention of Cruelty to Animal Act, 1960, euthanasia is allowed for those animals which are severely ill and incurable. However, the Act prohibits the culling of healthy animals and only effective way to control or manage the stray dog population is through Animal Birth Control programme. Further, the Hon’ble Supreme Court of India in SLP 691 of 2009 vide its order dated 18.11.2015 has directed that no innovative method or subterfuge should be adopted by the local authority other than the methods prescribed under the Animal Birth Control (Dog) Rules,2001 notified by the Government of India.

50 and above is barred under S. 429 IPC and violators risk penalties for a maximum five-year jail sentence.¹⁸ What needed today is to make all efforts to amend the Act to introduce stricter penalties and higher fines. The proposed amendment suggests harsher punishments, by increasing fines from Rs.50 - 75,000 and up to 5 years in prison.¹⁹

5.2.2. Protection of Street Dogs

Dogs are living in close association with people in rural and urban areas of India. Most of the people are very fond of keeping different breeds of them as pets. Since there is no restriction for keeping or throwing dogs, it is easy for the pet owners to abandon them in the street. There is no proper mechanism for identifying the owners to enforce their responsibility in taking care of them. Some of the street dogs create problems for the people, and the people resort to mass killings of all those wandering in the street by using inhuman methods like poisoning, shooting, electrocution, etc. Overpopulation of street dogs and death due to rabies produced fear in the mind of people and hence many of them supported the inhuman killing of dogs. The statutory protections extended are:

5.2.2.1. Proper Vaccination to Control Rabies

The OIE introduced a code of animal welfare measures, and it assumed that zoonotic diseases have their own socio-economic, environmental, political, and religious impacts in every society.²⁰ Hence it has taken rabies control as a health issue of both man and animal. It recommended transferring information about the animal disease among states to prevent the spread or outbreak of infectious diseases. It also provides for vaccine banks to support people in emerging countries. India has adopted the policy of eradicating rabies by limiting the disease in dogs. The owners of pet animals are responsible for keeping the pets in a healthy condition. They are warned to provide regular vaccination, and the caregivers of street dogs are advised to give yearly vaccination.²¹

5.2.2.2. Destruction is permitted only through the Assistance of Veterinary Service

Accumulation of food waste, an increase in density of the human population,²² absence of human care, and restriction in the movement, and over breeding are factors that increase the dog population in the street.²³ Veterinarians exposed that the destruction of street dogs was not recognized as an exact solution for the increase in the population of street dogs. But the killing of dogs is permitted in exceptional cases, and OIE Terrestrial Animal Health Code suggested controlling the population of dogs with the assistance of veterinary services.²⁴ The killing of a dog is permitted in India only when it is incurably ill or mortally wounded. The destruction of dogs is allowed when a qualified veterinarian has diagnosed it as incurably ill or mortally wounded.²⁵ It is also mandatory to hand over the street dogs having some disease other than rabies to Animal Welfare Organisation for treatment and rehabilitation. It helps to ensure proper treatment and rehabilitation of dogs.

Taking expert's opinions before the destruction of dogs prevents unlawful killing, and moreover, giving the responsibility to the local authority for addressing the complaints of rabid dogs is very practical in preventing the killing of street dogs in the name of rabies. Through the prevention of premature killing of rabid dogs, the law intends to identify and respond to true rabid cases. It is better to adopt the policy of destruction of the rabid dogs as per rule 5(b) of ABC Rules to prevent suffering.

5.2.2.3. Human Procedure during Killing: The destruction of animals is restricted when it is done following the law, and the procedure prescribed. However, the killing of stray dogs by using an unnecessarily cruel manner is prevented under S.11(1)(l) of the PCA Act. The method of strychnine injections in the heart is

¹⁸ S. 428 Indian Penal Code:

"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, of any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment or either description for a term which may extend to five years, or with fine, or with both."

¹⁹ The Protection of Cruelty to Animals (Amendment) Bill, 2022 proposed a change in law.

²⁰ OIE Terrestrial Animal Health Standards Commission, annex -XVII, cha. 7.7- Stray Dog Population Control, preamble.

²¹ Guidelines– With Respect To Pet & Street Dogs, Other Care Givers And For Residents Welfare Associations And Apartment Owners Associations, Ministry of Environment, Forests, and Climate Change, Govt. of India, 2017.

²² Manabi Paul, Sreejani Sen Majumder & Anindita Bhadra, *Grandmotherly Care: A Case Study In Indian Free-Ranging Dogs*, 32 J. OF ETHOL 75-77 (2014).

²³ Wandeler AI1, Matter HC, Kappeler A, Budde A, *The ecology of dogs and canine rabies: a selective review*, 12 REV. SCI. TECH. OFF. INT. EPIZ. 53-55 (1993) (Oct. 27, 2019, 07:32 PM), <https://www.iiserkol.ac.in/~abhadra/files/Paul%20et%20al%202014%20J%20Ethol.pdf>.

²⁴ The OIE Terrestrial Animal Health Code, 20th ed. 2011, vol. I, art. 7.7.1.

²⁵ See *infra* note 34, at rule 9.

specified as banned and is an offence under the PCA Act.²⁶ But the local authorities use cruel procedures and practices in capturing street dogs, and the killers use the cheap and brutal method of killing. Veterinarians are bound to adopt humane procedure approved by the AWBI, to euthanize incurably ill and mortally wounded animals, under rule 9 of the ABC Rules. It is their responsibility to ensure that they are dead before disposal, and destruction is permitted only in lethal chambers.²⁷ The AWBI can direct the local authority to render the unwanted animals being insensible to pain or suffering during destruction.²⁸ But, instantaneous destruction, which is permitted under S. 9(f) of the PCA Act, makes it impossible to ensure a painless death. Under rule 5(b) of ABC Rules, the Monitoring Committee also has the power to authorize a veterinary doctor to use a painless method of killing of incurably ill, mortally wounded and rabid dogs.

The Andhra Pradesh High Court required the Municipal Corporation to release sufficient funds for acquiring techniques to provide the stray dogs a humane death.²⁹ This decision was made for enforcing the State's statutory obligation of preventing the use of any unnecessary, cruel method. The authority to approve methods is not specifically mentioned in the statute, but rule 9 of ABC Rules, 2001, gives that power to Animal Welfare Board of India. Moreover, the central Govt is authorized to make rules for providing methods of destruction of stray dogs. By giving the responsibility to approve humane methods of killing of dogs to AWBI and central govt, the statute offers recognition to noble death to them. Prevention of destruction in places other than the permitted area helps to prevent the unlawful killing of street dogs. But in actual practice, the authorities misused this power to destruct all street dogs by using inhuman methods because they are not ready to spend money on adopting painless methods.

5.2.2.4. The Dog Population Management instead of Destruction

People are frightened of an increase in the number of dogs in the streets. Many of them supported destruction to alleviate the problem. But the Dog Population Management Report recognized that population could be managed only through reproduction control and vaccination and not through killing.³⁰ India also adopted the policy of management of dog population through birth control and vaccination or sterilization. Hence special treatment in dog population control law is needed, and to evade the cruelties against dogs and man's interest of being protected from the attack of dogs in the street are balanced through the ABC Rules. Rule 3 of ABC Rules makes the immunization and sterilization of dogs mandatory. The responsibility of pet dogs is on owners, but in the case of street dogs, a participatory responsibility is imposed on animal welfare organizations, private individuals, and the local authority.

A Committee³¹ is constituted for planning and management of dog control programme. It has the power to issue instructions for sterilization, vaccination, treatment of dogs, solicit co-operation and funding, issue guidelines to pet dog owners and commercial breeders, make suggestions on the basis of the national and international development in the field of research on street dogs' control and management, development of vaccines and cost-effective methods of sterilization, vaccination, etc.³² The responsibility of the local authority is high, and the economic assistance for meeting the expenses of sterilization or immunization is on them.³³ The animal welfare organizations and private individuals can extend their support for immunization of street dogs.³⁴

5.2.2.5. Responsible Ownership

²⁶ The Prevention of Cruelty to Animals Act, 1960, S. 11(l), No. 59, Acts of Parliament, 1960 (India).

²⁷ Destruction of dogs is permitted in lethal chambers by using human methods or when it is permitted under the law. See *supra* note 26, at S. 11(3) (b) & (c).

²⁸ *Id* at S.9(f).

²⁹ J. Gopalan v Municipal Corporation of Hyderabad and Ors., A.I.R. 1996 A.P. 371.

³⁰ Dog Population Management Report (No. 6) was submitted after the expert meeting of Food and Agricultural Organisation, the World Society for the Protection of Animals (WSPA) and the Istituto Zooprofilattico Sperimentale dell'Abruzzo e del Molise "G. Caporale" held in Italy on March- 14-19, 2011. FAO Animal Production and Health, 6 Reports Dog Population Management, 8- 20 (Oct. 27, 08: 08 PM), <http://www.fao.org/3/a-i4081e.pdf>.

³¹ See *infra* note 34, at rule 5. The local authority has the responsibility to establish a committee consists of Commissioner/Chief of the local authority, representative of the Public Health Department, representative of the Animal Welfare Department, a veterinary doctor, representative of the district Society for Prevention of Cruelty to Animals (SPCA) and two representatives from the Animal Welfare Organizations.

³² *Ibid*.

³³ The local authority is duty bound to provide dog ponds including animal kennels or shelters, dog vans (with a driver and 2 trained dog catchers) etc. and fund allocation for periodic repair of shelter or pond is also on the local authority. They are duty bound to make arrangements for ambulance cum clinical van for acting as mobile centre for sterilisation and immunization.

³⁴ The Animal Birth Control (Dogs) Rules 2001(ABC Rules), rule 6, S.O. 1256 (E), Notification of Ministry of Culture (G.S.R.816(E)), 2001.

ABC Rules have also been adopted for preventing abandoning of dogs in each street. Therefore, legal appreciation has provided in Rules to responsible ownership, and it can be achieved through an accounting system, i.e., compulsory licensing of pet dogs.³⁵ The responsibility is on the local authority to make the registration of pet dogs mandatory, and many of them introduced the system of registration along with verification through metal tags.³⁶ The Supreme Court ³⁷ directed the Municipal Corporation to fix a tag containing the address of the owner to avoid abandonment.

The system is beneficial for giving parents to them and is also easy for enforcing the owner's responsibility. The conditions imposed for registration like vaccination certificate, penal provisions for failure in doing duty, etc. are very useful in making the pet dogs secure. The registration fees imposed can be utilised for providing housing to street dogs. This procedure supports the local authority to identify the owner, who abandoned ill or aged pet dogs. It will be a primary step for making a population register of all dogs in a locality. It will be a progressive step in controlling the population of street dogs for creating a healthy and calm atmosphere in our society.

5.2.2.6. Controlling Extra Breeding

Indeed, the extra production of dogs by breeders leads to abandoning, and it adds the menace of street dogs. Hence, the regulation of breeding is recognized as a tool for dog population control and included it in the birth control programme in India. State Animal Welfare Board is responsible for ensuring that the required facilities are provided in the establishments before registration.³⁸ A person who has been convicted of any offence under the PCA Act or the Wildlife (Protection) Act or any offence relating to animals under any other law is not eligible for registration.³⁹ The inclusion of restriction is admirable as it protects the animals from those who are having an unkind attitude towards animals.

The breeders are directed to keep a proper record of the number of dogs used for breeding, puppies born and died, the puppies sold, and the name and address of the buyer and other information relating to every dog.⁴⁰ All these measures are included to prevent over-breeding, careless handling, abandoning of animals, etc. Submission of a detailed report of the information about the total number of animals sold, traded, bartered, brokered, given away, boarded or exhibited, etc., provide an opportunity to check over breeding.⁴¹

5.2.2.7. The sale Permits after Ensuring Safety

The sale of puppies and dogs is not permitted without registration.⁴² Moreover, a breeder who registered with the Committee for the Control and Supervision of Experiments on Animals is permitted to buy dogs for experiments. The dogs shall not be sold to any pet shops having no license.⁴³ It is the breeder's responsibility to ensure that the buyer has sufficient prospects for breed-specific care such as chances of grooming, socializing, spatial and veterinary needs.⁴⁴ Seeking of the state of affairs of sold dogs once in a year is mandated to find whether they are safe in owner's hands.⁴⁵ Moreover, the owner is responsible for caring for dogs, and therefore he is not permitted to chain them persistently or to keep the dogs in close confinement. Negligence of duty of care is an offence of cruelty under S. 11 (1) of the PCA Act.⁴⁶

Of course, the licensing system and registration opened the way for checking the facilities to animals. These responsibilities are included to address illegal breeding and sale and to ensure their welfare in the hands of owners. The demand for foreign breeds is increasing, but the adaptability of them to the climate is an issue to be incorporated in the dog welfare programmes.

5.2.2.8. Solicitous method of capturing

³⁵ *Id* at rule 3.

³⁶ *Ibid.* Moreover, the cities like Delhi, Gurgaon, Bombay, Bangalore, Pune, Chennai etc. make the registration of pet dogs mandatory.

³⁷ *Milkmen Colony Vikas Samiti and Ors. v State of Rajasthan and Ors.*, 2007 (12) S.C.C. 583.

³⁸ It has also power to fix the maximum number of dogs permissible in the establishments and is decided on the basis of available space, man power and other facilities. The period of registration is limited only for a period of two years. and hence renewal provides an effective checking and supervision for warranting the facilities and safety measures. See *supra* note 34, at rule 4(9).

³⁹ *Id* at rule 4(7).

⁴⁰ *Id* at rule 21. The matters such as breed, sex, colour, marking, number of dogs including micro-chip number, name and address of persons from whom the dogs are acquired, date and place of mating, names of persons handling the mating, name and number of dogs born, including micro-chip number, cause of death and post mortem report etc. for a period of 8 years. See also *infra* note 42, at rule 9(2).

⁴¹ See *supra* note 34, at rule 12

⁴² The Prevention of Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017, rule 3, G.S.R.496(E), Notification of Ministry Of Environment, Forest And Climate Change, 2017.

⁴³ *Id* at rule 8(4).

⁴⁴ *Id* at rule 8(3).

⁴⁵ *Id* at rule 8(5).

⁴⁶ See *supra* note 26, at S.11(1) (g).

Dog Control Cell under the local authority is bound to capture dogs. A complaint of nuisance is allowed only for the implementation of the ABC programme target.⁴⁷ Additionally, the release of captured dogs in the locality from where they were taken is assured as it is essential for their survival and existence.⁴⁸ They are bound to adopt a humane method specified by the AWBI.

5.2.2.9. Judicial intervention in Implementation

In order to moderate the rage of the public, the state functionaries often destroy the street dogs by undermining the law. Nevertheless, the court reminded these authorities to act within the limit of power provided under the existing statutes and rules in our society. Even though local authorities, states, and AWB have a wide range of responsibilities in implementing ABC Rules, they are not providing full and active support for its implementation. Therefore, the court has resorted to the stand of forcing the Govt to approach with different programmes and plans to unravel the street dogs menace by hoarding the conflicting interests of all the stakeholders.

In *Mahisagar Mataji Samaj Seva Trust thro' President v State of Gujarat thro Secretary &*,⁴⁹ the court reminded the fundamental duty of every citizen to be compassionate to all living creatures, including stray animals. The High Court of Manipur⁵⁰ suggested that since street dogs have a right to live, people must refrain from attacking these dogs by stone-throwing or by beating, etc. Considering the non- implementation of ABC Rules, 2001, the court criticized the role of the state animal welfare machinery. It stated that vaccinating and sterilizing dogs is very urgent to ensure the health of the existing dogs and also to save people from the adverse effects of a dog bite. For the effective implementation of the Rule, they can seek the assistance of NGOs or other agencies. The High Court of Bombay⁵¹ directed the Government of India to frame an "Action Plan for Control of Stray Animal Menace" and directed to include measures to alleviate cruelties against dogs in this plan. On the other, the Kerala High Court gave directions to the local bodies for destruction of stray dogs with the supervision of a monitoring committee.⁵² The Animal Welfare Board of India shall also take steps for providing financial assistance for ensuring housing and medication of street dogs.⁵³

In *Animal Welfare Board of India v People for Elimination of Stray Troubles and Ors.*,⁵⁴ the Supreme Court of India directed the Chief Secretary of the State to file an affidavit signifying the action taken against the culprits who had killed the dogs as part of their mass campaign to wipe out all the dogs from the street of Kerala. The political leaders who are highly responsive to persuade the public in a righteous path are truly misleading them by resorting to illegal techniques. Moreover, they should lead the people by teaching different values of kindness and compassion, which in turn may result nonviolent and ordered society. It is admirable to observe that the court has taken the matter seriously and reminded the state's responsibility in addressing the cruel and inhuman treatment of all living beings. The court also made very effective measures for the proper implementation of the ABC Rules and PCA Act. It directed the state to sensitize the animal catchers and to include Animal Birth Control in smart city programme and instructed the AWBI to monitor this programme. AWBI is also bound to ensure the participation of all Govt. and non- Govt. members in all programme of animal welfare.

5.2.2.10. Fetters in implementation

⁴⁷ The details of the number of male and female dogs and puppies captured , date , time, name of the dog squad etc., the time, date and place of release of all these animals in the locality are to be recoded. The dog control cell is established by the local authority in consultation with monitoring committee. The cell has the duty to maintain a permanent record showing the name and address of the complainant , nature of complaint etc. See *supra* note 34, at rule 7(1) (a).

⁴⁸ The squad shall consist of driver, 2 or more trained employees of the local authority and one representative of animal welfare organization.

⁴⁹ MANU/GJ/0160/2012, para 26.

See also in *Mustak Hussain Mehndi Hussain Kadri v State of Gujarat and Ors.*, (2018) 4 G.L.R. 2739, MANU/GJ/1054/2018. *Sharda Sahkari Gruh Mandali Ltd. v Ahmedabad Municipal Corporation*, MANU/GJ/8255/2006.

⁵⁰ *Master Jishnu G. and Another v Bruhat Bangalore Mahanagara Palike*, rep., by its Commissioner and Others ,MANU/KA/2535/2012.

⁵¹ *People for Elimination of Stray Troubles (Pest) and Ors. v State of Goa and Ors.*, MANU/MH/0834/2005. See also *Kuljit Singh Bedi v State of Punjab and Others* , 2013 (1) R.C.R. 451.

⁵² *M.R.Ajayan v Ste of Kerala and Others*, 2015 (4) K.L.J. 657. See also *All India Animal Welfare Association and Ors. v Brihanmumbai Municipal Corporation and Ors.*, MANU/MH/0557/2007, Court on its Own Motion and Ors. v State of H.P. and Ors., MANU/HP/1458/2017.

⁵³ *M.R. Ajayan*, *Ibid*. The method of cynogassing the dogs or killed in group would be cruel since they see the brutal death of other or is painful.

⁵⁴ 2016 (8) S.C.J. 314. The SC directed the Animal Welfare Board of India to file a module concerning "Implementation Framework for street dog population, management, rabies eradication and reducing man-dog conflict" while dealing with the PIL for addressing the problems of stray dogs. During the evaluation of the module the court referred the massive killings of dogs in Kerala under the leadership of some the leaders.

Under Rule 10(4) of Animal Birth Control (Dogs) Rules, 2001, the local authority is bound to keep rabid dogs in isolation till its natural death, and it means that nobody has the right to kill rabid dogs. However, under rule 9(f), the monitoring Committee is empowered to authorize the veterinary doctor to decide "the need to put to sleep" critically ill or fatally injured or rabid dogs. It reveals that rabid dogs can be killed as per the direction of the committee. There are contradictions in the legal provisions, and the researcher suggested removing the inconsistencies in such a way as to allow the rabid dogs a human death.

Mutilating or killing of a stray dog is an offence of cruelty under S. 11(1) (l) of the PCA Act. But S. 11(3) (b) provides that the destruction of stray dogs in lethal chambers or in other prescribed manner is not an offence of cruelty. Moreover, S. 38(2) (ea) of the PCA Act authorised the central Govt. to make rules for methods of destruction of stray dogs. And, the Panchayat Raj or Municipality Act in different states included provisions for the destruction of dogs straying in the locality.⁵⁵ S. 11(3) (b) of the PCA Act authorizes the destruction of any animal when the law permits to do, and hence the local authorities invoke the provisions in the Panchayat Raj Act to kill stray dogs. Moreover, AWBI can give directions under S. 9(f) of the PCA Act, 1960 to the local authorities, to destroy unwanted animals if it is found necessary. The provisions in the Panchayat Raj Act, the PCA Act, and the Rules made under create confusion while deciding the destruction of street dogs. By misusing this legal lacuna, the local authorities kill healthy street dogs arbitrarily. The some courts interpreted these provisions in favor of local authorities for sanctioning the mass killing of stray dogs.

In *Rosario Menezes and Ors. v State of Goa and Ors.*, the Bombay High Court approved the municipal corporation's absolute power of decision making in the destruction of dogs. The dogs which are not suffering from illness or rabies or diseased or found without collars or marks were allowed to kill. The court acknowledged that they are the private property of the municipality. But, the owner is not permitted to kill his pet. Moreover, the property status of animals was changed to recognition of interests.⁵⁶ Unfortunately, the Kerala High Court in *Animal Welfare Board of India and another v Ombudsman for Local Self Government Institutions and others*⁵⁷ held that human life is more valuable than stray dogs. Therefore, the right to life guaranteed to humans gets precedence over Dog Rules. It permitted the killing of stray dogs by raising S.9(f) and 11(3)(b) of the PCA Act, which permits the destruction of stray dogs and hence ABC Rules framed under S.38(2) of the PCA Act could not override the parent Act. Ineffective implementation of dog population control by state and local authorities has been taken as a ground for direction to destroy all street dogs from the roads. And, in *M.R. Ajayan v State of Kerala and Ors.*,⁵⁸ the court reiterated that local authorities have absolute power to catch and destroy stray dogs, and AWBI and Monitoring Committee can authorize destruction of unwanted animals or stray dogs.

Compliance of Birth Control Programme requires funding and proper implementation, but this legal ambiguity helps them to solve the nuisance of stray dogs without breaking a sweat. The permission to kill "unwanted animals" can be given against a dog based on a complaint of nuisance. It is permitted even though they are vaccinated and sterilized. But the permission to kill street dogs based on the complaint of nuisance leads to killing all ownerless dogs in the street. It is difficult to identify the nuisance causing dogs in the street when we have no database of street dogs. But, the court favors dog destruction to protect the public from the nuisance of stray or street dogs. The people those who are not sensitized to be human towards the animal, misuse this power to mitigate public uproar.

In this context, it is suggested to remove S. 11(3) (c) of the PCA Act, Rule 9(f) of ABC Rules and provisions in state Panchayat Raj and Municipality Act permitting destruction of stray dogs. Moreover, rules must not be inconsistent with the parent Act, and change in legal principles should be introduced through an amendment in parent statute, not through the introduction of new rules. Moreover, the "stray dogs" used in the PCA Act and "street dogs" used in ABC Rules are not having the same meaning. It is suggested to use "street dogs" because dogs having owners may stray in the street. Hence an amendment is needed in the PCA Act for removing the lacunae in the legislation and is proposed and included in Chapter VII as suggestions.

5.3. CATTLE PRESERVATION AND COW SLAUGHTER PROHIBITION LAWS

Livestock plays a vital role in the life of rural mass because of the economic endorsement they give and is not restricted as a livelihood undertaking but an endeavor to the economic growth of the country.⁵⁹ The agricultural economy always depends on livestock management because both of them are associated with each other. Assistance may be in the form of service in farming operations and also by giving several by-products. Besides,

⁵⁵ S. 438 of Kerala Panchayat Raj Act, 1994 and item No. 27 of 1st Schedule of the Kerala Municipality Act, 1994.

⁵⁶ MANU/MH/1093/2003, para 31.

⁵⁷ MANU/KE/0068/2006. See also *Elimination of Stray Troubles* by its Convenor Dr. Rosario Menezes & Others v State of Goa by its Chief Secretary & Others ((2003) 4 Bom. CR (PB) 558.

⁵⁸ See *supra* note 53.

⁵⁹ India is the largest producer of milk in the world. i.e. Milk production is 165.4 million tonnes (2016-17) and 176.35 million tonnes 2017-19. Live stock accord 9% to house hold products and 8% of the labour force. Mini Review, *Contribution of dairy farming in employment and household nutrition in India*, 3 I. J. OF AVIAN & WILDLIFE BIOLOGY 78-79 (2018) (May.8, 2020, 11:25 PM), <http://medcraveonline.com/IJAWB/IJAWB-03-00059.pdf>.

they provide nutritious food, which plays a pivotal role in preserving the health and prosperity of the poor mass in rural areas.

5.3.1. Protection from Cruelties against Cows- General Provisions

The only one class of animals under the control and care of humans which gets protection from the Constitution is cows, and its progenies.⁶⁰ The Constitution of India directs the state to take all steps for preserving and improving the breeds of them. It stipulated the state to prohibit the slaughter from putting the animal husbandry and agriculture on scientific and modern lines. Of course, the most widely used livestock and is closely associated with the lives of rural mass is cattle. Hence statutory protection is extended to them from all forms of cruelties under S. 11 (1) of the PCA Act. ⁶¹The abandonment of cows and allowing them to die in the street are offences under the Prevention of Cruelty to Animals Act.⁶² Any operation or injunction of any substance which is harmful to the health of any cow or other milch animal only for meliorating lactation is punishable under the statute.⁶³ The police must save a cow or other milch animal on which the phooka or doom dev⁶⁴ or other operation is carried out and punishment is prescribed as two years and fine of Rs. 1000/.⁶⁵

If a person is in possession of skin of a goat, cow, or its progeny with any part of the skin of its head and is charged with the offence of killing, the presumption is that he killed the animal cruelly.⁶⁶ Generally, in offences against cruelty under the PCA Act, the benefit of the presumption of guilt is not applicable. But the presumption of the guilt is applicable to a person who is charged for the offence of killing a cow or its progeny.

5.3.2. Protection through Reasonable Classification

Even though almost all acts of humans, which result in pain and unnecessary suffering, are treated as cruelty in the PCA Act, the killing of them is not prohibited in the statute.⁶⁷ Cattle are selected from the livestock and gave protection from slaughter. The legislature makes a reasonable classification for including them in the protective umbrella and is remarkable to note that it has the support of the Constitution also. Protective discrimination is made in favor of cows because of its contribution to socio-economic development. Inclusion of prohibition on the transport of cattle and sale and possession of beef and beef products in cattle preservation laws subjects intense criticism because many others evaluate their utility as food. Therefore, it provides a legal conflict between human's right to choice of food and profession and that of animal rights. Therefore, what is needed is to convince these groups, not through their eye of the utility of animals but through the principle of welfare of them. But in fact, the religious belief in favor of cow and fundamental right to carry on the profession of butchery and associated political controversies created political altercations. Therefore, no space was allotted for discussion on the principle of human care and protection of animals, and in essence, it is overshadowed by the political debate between religious groups.

5.3.3. Special Protection to Cattle from Religious Slaughter

The killing of animals for food is permitted, but the use of cruel methods or espousal of the inhuman process is prohibited. But no such restriction is prescribed for the killing of animals for religion. Execution is permitted under S.28 of the PCA Act, however cruel the method allowed by the faith is.⁶⁸ But the High Court of Himachal

⁶⁰ IND CONST. art. 48.

"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."

⁶¹See *supra* note 26, at S. 11(a).

⁶² *Id* at S. 11(1) (j),(h),(j).

⁶³ A person who performs an operation called phooka or doom dev or other operation including injunction of any substance to cows and other milch animal as we as the person who is in the possession or who is the charge of animal allows to do the operation on these animal shall be punishable with imprisonment of two years or fine of Rs. 1000/ or with both. See *supra* note 26, at S. 12.

⁶⁴ *Id* at S. 2 (g).

"phooka" or "doom dev" includes any process of introducing air or any substance into the female organ of a milch animal with the object of drawing off from the animal any secretion of milk"

⁶⁵ *Id* at S. 32(2).

⁶⁶ *Id* at S. 30.

⁶⁷ See *supra* note 26, at S. 11.

⁶⁸In halal method of killing animals are not allowed to stun before killing. The Jewish method of slaughter called shechita also not permitted stunning before slaughter. But certain Muslim communities (dhabiha practitioners in New Zealand) accepted the use of anaesthesia before religious slaughter. moreover, cutting of throat without stunning the animals create pain till the death of animals. Sacrifice of animas during Durga Puja and exercise of cockfight for offering blood to Theyyam in Kerala are cruel practices against animals and birds. See *supra* note 26, at S.11 (1) (l) & S. 28.

Pradesh observed that S. 28 does not permit the sacrifice of animals in temples which is open to the public.⁶⁹ The court has taken such a stand by keeping in mind the adverse effect of watching such practices on the public., But, in effect, it prevents the sacrifice of animals. Moreover, the court interpreted S. 28 of the PCA Act in the light of Articles 21, 48, 48A, 51A(g), 51A(h), and 51A (i) of the Constitution.⁷⁰ Therefore, if the sacrifice of a cow is not an essential practice of religion, it will not hinder Art.25 of the Constitution.⁷¹

5.3.4. Ban on Slaughter

Many states, including all Union Territories, introduced cow protection laws by adopting the policy of preservation of cows and special protection from different misbehaviors of human beings. Safety measures included in some statutes give protection from all forms of cruelties against them. Security in some states is equivalent to that of protection to the human body. An analysis of protection in state laws is important in the finding of the legal protection of cows. Since there is no uniform law in India for the preservation of cows and prohibition of cow slaughter, which is a constitutionally protected directive, an analysis of laws of different states is made in this work. The laws in Union Territories are not analyzed except the National Territory of Delhi.

Ban on slaughter- An Analysis on State Laws

ANDRA PRADESH Andhra Pradesh Prohibition of Cow Slaughter and Animal Preservation Act, 1977 Andhra Pradesh Animals And Birds Sacrifices Prohibition Act, 1950	
Prohibitions	Animals protected
1.Intentional killing, slaughter, abetment and attempt of cow 2. Sacrifice of any animal or bird in any place of public religious worship or adoration or its precincts in a public street. 3.Officiating, performing, or participating in sacrifice in any place of public religious worship 4.Allowing any place for sacrifice of animals	cow includes heifer or calf (male or female), she buffaloes. (bull, bullock, buffaloes without the certificate from the competent authority or Govt). All animals including birds
ASSAM The Assam Cattle Preservation Act, 1950,	
Slaughter of cattle without a certificate from the veterinary officer or through Govt. order	Cattle means cow, bulls, bullock, buffaloes, calves of cows and buffaloes
BIHAR The Bihar Preservation And Improvement of Animals Act, 1955	
slaughter of cattle	cow, calf, bull, bullock or she-buffalo.
CHHATTISGARH Chhattisgarh Agricultural Cattle Preservation Act, 2004	
1. Slaughter of agricultural cattle 2. Possession of beef of agricultural cattle 3. Transport of agricultural cattle within and outside the State for slaughter	Cows of all ages, Calves of cows or she buffaloes, Bulls, Bullocks, Male and Female buffaloes
DELHI The Delhi Agricultural Cattle Preservation Act ,1994	

⁶⁹ The need of excluding animal sacrifice is inevitable because of the barbarous methods used and the also of the of watching this cruel act on the devotees and immense pain, strain, agony and suffering to the animals. Ramesh Sharma v State of Himachal Pradesh , MANU/HP/0934/2014. See also Sardar Syedna Taher Saifuddin Sahib v State of Bombay, A.I.R. 1962 S.C. 853.

⁷⁰Subhas Bhattacharjee v The State of Tripura and Ors. ,MANU/TR/0215/2019. The court held that sacrifice of animals in temple violates the constitutional morality and the provisions of the constitution and hence prohibits sacrifice of animals in temples in the state of Tripura.

⁷¹ Mohd. Hanif Quareshi and Ors. v The State of Bihar, A.I.R. 1958 S.C. 731.

Andhra Pradesh Animals And Birds Sacrifices Prohibition Act, 1950,	
1. Slaughter for slaughter of agricultural cattle 2. The transport of agricultural cattle 3. Sale , purchase , or otherwise dispose of the cattle for slaughter 4. Possession of flesh of agricultural cattle within or outside Delhi	Cows of all ages, calves of cows of all age, bulk, bullocks
GUJARAT The Gujarat Animal Preservation Act, 1954	
1. 1. Slaughter of animals without a certificate of fitness from competent authority or Govt. order 2. 2. Slaughter of animals without certificate from the competent authority 3. 3. Export of cows, from the State 4. 4. Sale, keeping, storing, transporting, beef or beef products 5.	1. cow, bulls, bullock, calf of them and other animals below 15 years of age 2. she-buffaloes, calves, heifers, buffalo calves buffalo-heifers, buffalo, bulls and bullock
HARYANA Haryana Gauvansh Sanrakshan And Gausamvardhan Act, 2015	
1. 1. Slaughter or offer for slaughter of cow in the State 2. 2. Transport for slaughter without permit 3. 3. Export of cow for slaughter 4. 4. Sale, Keeping. Transport, storing of beef or beef products	Bulls, Bullocks, calves, Oxen, Heifers, Disabled, diseased or barren cows
HIMACHAL PRADESH The Himachal Pradesh Prohibition of Cow Slaughter Act, 1979	
1.Slaughter or offer for slaughter 2. Export of cow for slaughter	cow, bull, bullock ok, ox, heifer or calf
JHARKHAND The Jharkhand Bovine Animal Prohibition of Slaughter Act, 2005	
1. 1. slaughter of and export of cows 2. Failure in bringing back the animals 3. Sale of these animals for slaughter 4. Possession of beef or beef products	Cow, calves (male or female), bull, bullock
KARNATAKA Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964	
1. Slaughter of cow and abetment 2. Transport and offer for transport or abetment of bull, bullock, buffalo--male or female, or calf of she-buffalo with the knowledge that they are slaughtered 3. Sale or purchase or dispose of cows or calves of she-buffaloes for slaughter 4. Transport of cows, bulls, bullocks and calves of cows for slaughter	cow or calf of she-buffalo (bull, bullock, buffalo--male or female, or calf of she-buffalo whether male or female without permission from the competent authority)
MADHYA PRADESH The Madhya Pradesh Agricultural Cattle Preservation Act, 1959	
1. 1. Slaughter or offer for slaughter of cow progeny 2. 2. Transport for slaughter without the permit 3. Possession of beef	cows, bull, bullock, buffalo--male or female, or calves whether male or female

MAHARASHTRA The Maharashtra Animal Preservation Act, 1976	
1. 1. Slaughter of cow 2. 2. Transport or export of cow animals for slaughter 3. 3. Slaughter of scheduled animals 4. 4. Sale, purchase or offer for sale of these animals for slaughter 5. Possession of flesh of these animals	Cow includes heifer or male or female calf of a cow, bulls and bullock Bovines, female buffaloes and buffalo calves without certificate from the authority
ODISHA The Orissa Prevention of Cow Slaughter Act, 1960	
1. Slaughter of cow	Cow includes heifer or calf (bulls or bullock without permission from the authority)
PUNJAB	
1. 1. Slaughter or sale of beef or beef products 2. Export of cow for slaughter without obtaining permit	cow, bull, bullock, ox, heifer or calf
RAJASTAN Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995.	
1. 1. Slaughter or offer to slaughter bovine animals unless usage or custom permits 2. 2. Export of bovine animal for the purpose of slaughter 3. 3. Causing bodily pain, disease or infirmity to any bovine animal 4. 4. Intentional causing of grievous hurt 5. 5. Possession, sale or transport of beef and beef products	cow, calf, heifer, bull or bullock
TAMIL NADU Tamil Nadu Animal Preservation Act, 1958	
1. 1. Slaughter of animal without a certificate from the competent authority 2. 2. Poisons, maims or renders useless any animal with intent to make them fit for slaughter	bull, bullock, cow, calf, he-buffalo or she-buffalo or buffalo calf
TELENGANA The Telangana Animals And Birds Sacrifices Prohibition Act, 1950 The Telangana Prohibition of Cow Slaughter and Animal Preservation Act, 1977	
1. 1. Intentional killing or slaughtering of cow, its abetment and attempt 2. 2. slaughtering of animals without the certificate 3. 3. Sacrifice of any animal or bird in any place of public religious worship 4. 4. Allowing any place for sacrifice of animals	(cow includes heifer or calf (male or female), she buffaloes (bull, bullock, buffaloes except she buffaloes with permission from the authority)
UTTARAKHAND The Uttarakhand Protection of Cow Progeny (Amendment) Act, 2015	
1. 1. Slaughter or offer for slaughter of a cow, or cow progeny 2. 2. Transport of cow progeny to any place outside the State for slaughter 3. 3. Sale or keeping in possession of beef or beef products	cow, bull, bullock, heifer or calf
UTTAR PRADESH	

The Uttar Pradesh Prevention of Cow Slaughter Act, 1955	
1.Slaughter and sale or transport of beef or beef products	(a cow, bull or bullock)
2.Transport of cow, bulls or bullock within the State	
3.Failure in bring back these animals if the permit is for limited period	

WEST BENGAL The West Bengal Slaughter Control Act ,1950	
1. 1. Slaughter of animals without certificate from veterinary officer unless usage or custom permits	cow, calves, bulls, bullock, buffaloes, (male, female, castrated) calf of buffaloes
2. 2. Slaughter of animals in a place where it is not permitted	

Table – V.1

5.3.4.1. Total prohibition

There are stringent laws in some states for the preservation and protection of cows, and this protection are extended to some bovine animals also. From 1961 itself, a total prohibition of slaughter of cow and calf of the cow was introduced in Gujarat and is not permitted even for religious purposes.⁷² But bulls and bullock above the age of 16 years are permitted to slaughter with a certificate from the competent authority. Slaughter of bulls, bullock, and any other animal above the age of 15 years was permitted to slaughter for religious purposes with a certificate from the authority.⁷³The Bombay Animal Preservation (Gujarat Amendment) Act, 1994, removed the age limit and introduced an absolute ban on slaughter. The protection from religious slaughter is extended to the calf of bulls and bullocks.⁷⁴ Prohibition for the transport of cows, the calf of them, bulls and bullocks for slaughter within the state was introduced in 2011.⁷⁵ Also, ban on the sale, keeping, storing, transporting, offer or expose to sell or buy beef or beef products was introduced.

In fact, the slaughter of cow, calf of a cow(male or female), bull or bullock is absolutely prohibited in Gujarat. In Haryana, the protection is extended to bulls, bullocks, calves, oxen, heifers, disabled, diseased, or barren cows. In Himachal Pradesh, Punjab, Rajasthan, Uttarakhand, and Delhi, cows, bull, bullock ok, ox, heifer, or calf is absolutely prohibited. In Chhattisgarh, the protection is extended to male and female buffaloes also. In Uttar Pradesh, the slaughter of a cow, bull or bullock is absolutely prohibited. In Mohd. Hanif Qureshi v State

⁷² The Bombay Animal Preservation (Gujarat Extension and Amendment) Act, 1961, S. 4 (1A),No. 16,Act of Gujarat Legislature, 1961.

4. “ In section 5 of the principal Act

(1) after subsection (1), the following sub section shall be inserted,

Namely:-

(1A) No certificate under Sub section(1)shall be granted in respect of cow”

.....

(3) in sub section (3) for the words “religious purposes” the words “religious purposes, if such an animal is not a cow” shall be substituted.

⁷³ The change was introduced by the Bombay Animal Preservation (Gujarat Amendment Act) Act, No. 23, Act of Gujarat Legislature, 1979.

“in S. 5 (1) for sub-section (1A) the following shall be substituted by namely:-

“(1A) No certificate under sub-section (f) shall be granted in respect of-

(a) a cow;

(b) the calf of a cow, whether male or female and if male, whether castrated or not;

(c) a bull below the age of sixteen years;

(d) a bullock below the age of sixteen years”;

(2) for sub-section (3), the following sub-section shall be substituted, namely:-

“(3) Nothing in this section shall apply to-

(a) the slaughter of any of the following animals for such bona fide religious purposes, as may be prescribed, namely:-

(i) any animal above the age of fifteen years other than a cow, bull or bullock;

(n) a bull above the age of fifteen years;

(Hi) a bullock above the age of fifteen years;

(i) the slaughter of any animal not being a cow or a calf of a cow, on such religious days as may be prescribed “

⁷⁴ The Gujarat Animal Preservation Act, 1954, S. 5(1), No. 72, Act of Gujarat Legislature, 1954.

⁷⁵ See The Gujarat Animal Preservation (Amendment) Act, 2011, S. 6A, No. 28, Act of Gujarat legislature, 2011.

of Bihar,⁷⁶ the total ban on slaughter of cows of all age and calves of cow, was held as valid, and prohibition is also upheld in favor of bulls, bullock, and she buffaloes so long as they are milch and draught. In Abdul Hakim Quraishi and Ors. v The State of Bihar,⁷⁷ the court was hesitant to bar slaughter of bulls, bullocks, and she-buffaloes above the age of 20 and 25 while challenging laws enacted by the states of Bihar, UP and MP. In Haji Usmanbhai Hassanbhai Qureshi and Ors. v State of Gujarat,⁷⁸ the Supreme Court held in favor of imposing a total ban on slaughter of cattle above the age of 16 years. In Hakim Quareshi the court acknowledged that bulls and bullocks are not useful after the age of 15. But in Usmanbhai Quareshi's case, the court held in favor of increasing the age limit for slaughter after considering the improvement in the scientific methods of cattle breeding and advancement in the health of cattle. In State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors.,⁷⁹ the Supreme Court (Seven Bench) upheld the total ban on slaughter of bulls and bullocks introduced by the states of Maharashtra and Gujarat by stating that they cannot become useless after a particular age.

5.3.4.2. Killing is permitted with certificate

An absolute prohibition of slaughter is generally extended to **cows and calves of cows of all ages, and she buffaloes** in the states of **Andhra, Bihar, and Karnataka**. But the killing of other bovines, like a bull, bullock, buffalo-male or female, or calf of she-buffalo whether male or female is allowed with permission from the competent authority. The non-utility certificate of the cattle is the criteria for permission to slaughter in Andhra Pradesh, but the slaughter of cows is not at all permitted even when they are uneconomic. But in **Bihar**, cow and calf are absolutely prevented from slaughter, but bull, bullock, or buffalo, which is over 25 years of age, is permitted with the certificate. In **Madhya Pradesh**, the slaughter of cows is absolutely prohibited, but the slaughter of bull, bullock, buffalo--male or female, or calf of she--buffalo whether male or female is permitted with a certificate from the competent authority. In **Maharashtra**, the slaughter of cow, including heifer or male or female calf of a cow, bulls, and bullock, is absolutely prohibited. But bovines, female buffaloes, and buffalo calves can be slaughtered with a certificate from the authority when their maintenance is uneconomical. In **Telangana**, the slaughter of cow(heifer or calf (male /female), and she buffaloes is absolutely prohibited, but that of bull, bullock, and he- buffalo is permitted with a certificate based on utility. Some states enacted cattle preservation and cow slaughter prohibition laws, and some states incorporated stringent provisions for total preservation and total prohibition of slaughter. Others permitted the slaughter of cows only after analyzing the utility, and hence age restriction is imposed for intentional killing. Kerala and other north-eastern states have no specific laws for conservation or prevention of slaughter of any of the animals.

The slaughter of cow, bulls, bullock, buffaloes, calves of cows, and buffaloes is permitted in some states if the certificate is granted from the competent authority based on age limit. In Assam and Odisha, the age limit for the slaughter of cow is 14 years, but in Gujarat, it is 15 years, and that in Karnataka is 12 years. Bovines, female buffaloes, and buffalo calves can be slaughtered with a certificate from the authority, but heifer or male or female calf of a cow, bulls and bullock is not permitted to kill in Maharashtra. In Jharkhand, the slaughter of a cow, calves (male or female) is prohibited but the slaughter of a bull, bullock, or she buffalo, which is over twenty- five years of age or permanently incapable of breeding or yielding milk is permitted for slaughter. But in West Bengal and Tamil Nadu, all animals are permitted to slaughter with a certificate if they are above 14 years or 10 years of age.

5.3.5. Special Protection against Hurting Cows

The state of Rajasthan has taken a different approach by stepping forward in differentiating the pain and suffering of animals into different degrees, which is almost similar to that of human beings. They classified the punishment in accord with the gravity of the cruel act of humans and differentiated them as hurt and grievous hurt. In other words, the Act identified certain actions as more ruthless, and hence committing these acts with intention or knowledge is an aggravated form of cruelty and imposed a severe punishment of seven years. The punishment for causing of hurt of bovine animals is more than that of voluntarily causing hurt to human beings.⁸⁰ But the punishment for the offence of voluntarily causing grievous hurt is almost equal or more than that of grievous hurt against animals. i.e., imprisonment of seven years is similar, but the limit of the fine is not specified in IPC, but it is specified as Rs. 7000/ in Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995.⁸¹ The definition of hurt and identification of the

⁷⁶(1959) S.C.R. 629

⁷⁷ 1961) 2 S.C.R. 610

⁷⁸ (1986) 3 S.C.C. 12.

⁷⁹ MANU/SC/2681/2005.

⁸⁰ It is limited to one year or fine of Rs. 1000/ to the offence of hurt against human body but it is three years and fine of Rs. 3000/ to offence against animals. Indian Penal Code, S. 323, No.45, 1860.

See *supra* note 18 at S. 323 IPC:

"Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both".

⁸¹ *Id* at S. 325 IPC. It says

injuries, which leads to grievous hurt of animals, is exactly similar to that of grievous hurt against human bodies.⁸² The maximum punishment imposed for the slaughter of a bovine animal is 10 years and fine of Rs. 10000/.⁸³

In fact, the statute equated the pain and suffering of animals with that of human beings. Moreover, based on the extent of the cruelty of human behavior, illegal acts are classified as slaughter, hurt, and grievous hurt. It is a new step to prevent the brutality against animals. But it is pertinent that the protection is limited only to bovine animals. i.e., cow, calf, heifer, bull or bullock, and this protection is commenced only from the age of three years.⁸⁴

5.3.6. Restriction for sale or transport

Sale and transport of cow progeny for slaughter are also offences under the state Acts of Delhi, Bihar, Gujarat, Haryana, Telangana, Chhatisgarh, Uttarakhand, HP, Karnataka, MP, Maharashtra, Punjab, and Rajasthan. Transport of cow progeny outside and inside the state for slaughter is prevented through severe punishments.

5.3.7. Imposing Stringent Punishments

The punishment for offences under different cow slaughter prohibition laws is generally restricted to 6 months and a fine of Rs. 1000/ in the states of Delhi, Andhra Pradesh, Assam, Bihar, Karnataka, Telangana, and West Bengal. But three months imprisonment and fine are prescribed in the State of Tamil Nadu. In Gujarat, the punishment for slaughter of cow is 7-14 years, and in Punjab, it is 10 years, and in Rajasthan, it is 1-10 years. In Haryana and Uttarakhand, imprisonment is extended from 3-10 years. In Chhatisgarh and UP, it is 7 years. In Himachal Pradesh and Maharashtra, the imprisonment is fixed as 5 years, but the fine is Rs. 25,000/ in HP. In Delhi, Gujarat, Haryana, Chhatisgarh, Uttarakhand, Uttar Pradesh, Himachal Pradesh, Madhya Pradesh, Maharashtra, Punjab and Rajasthan possession of beef is also strictly prohibited. The punishment is enhanced in these states and is almost similar to that of offences against the human body. The punishment for Cruelty to Animals Act is meager and is structured as 3 months and fine of Rs. 100/. But in an offence of committing cruelty against lactating animals, an imprisonment of two years and fine of Rs. 1000/ is imposed. Hence it is evident that punishment for offences against a cow and other bovine animals is greater, and the legislators are more vigilant for the preservation and protection of cow progeny in many states. Whatever may be the politics involved in these protection laws, these legislations are noticeable for their sensitive approach if viewed in the arena of animal welfare as a policy of the state.

There is no uniformity in the protection and preservation of cows among different state legislations. The age limit prescribed for permission to slaughter of cow is different in different states, if allowed. Hence there should be some uniformity in permitting slaughter of bovine animals based on scientific data and analysis. But if the state is ready to protect them during their incapacity and old age, it is appreciable in adopting the prohibition of cow and its progeny. In Indian culture, many people consider and treat animals as members of the family, and hence they have some emotional attachment also. By exploiting the emotional feeling of animals, it is easy for the state to ensure the welfare of them. But at the same time, it is very difficult for the owners to supplement care and protection to cattle at their old age because of their economic disparity. Unless and until the Govt. provides provision for guarding those which are incapable of yielding, it is difficult for the farmers to preserve. The stringent punishment for slaughter of cow, which is equal to murder, is introduced with the aim of strict compliance of slaughter prohibition. In other words, the lawmakers realized the difficulty in its implementation because people try to violate the provisions for meeting the needs of the choice of food and the right to carry on business. It is also important that permission for the slaughter of animals for the religious purpose should not be misused because the purpose of the law is not only for protecting individual interests but also for empowering civilization in each society. Even though no specific law for cow slaughter in Manipur, the Proclamation issued by Maharaja-Darbar Resolution, 1936 empowered the state to prosecute those who killed a cow.⁸⁵

“Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. see also s. 10 of Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995.”

⁸² *Id* at S.319 IPC. It says:

“Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.”

⁸³ Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995, S. 8, No. 23, Act of Rajasthan Legislative Assembly, 1995.

⁸⁴ *Id* at S. 2.

⁸⁵ The Proclamation says, “According to Hindu religion the killing of cow is a sinful act. It is also against Manipur Custom. I cannot allow such things to be committed in my State. So if anyone is seen killing a cow in the State he should be prosecuted.” Report of the National Commission on Cattle – ANNEX –II (8), Gist of state legislations on cow slaughter, DAHD, Archived from the original on Oct. 29, 2013. Bodhisattwa Majumder, *Ban on Cow Slaughter (A Constitutional Perspective)*, LTJ (2020) (May.9, 2019, 08:39 PM), <http://lawtimesjournal.in/ban-on-cow-slaughter/>.

5.4. CAPTIVE ELEPHANTS- GENTLE GIANTS

Elephants are symbolized as a sign of pride and courage, and above all, elephants are one class of wild animal which is permitted to keep under human control. People snatch the elephants from their natural habitat by using the cruel method of capturing. On one side, they are losing their family and natural livelihood, and on the other, they are subjected to brutal training for human needs. The natural instinct of the animal is changed due to the method used for changing the behavior in such a way as to adapt them to provide service to humans. However, the elephant became an indispensable part of festivals and processions and is used for promoting tourism. In the festival season, the captive elephants are exposed to various forms of cruelties. But no precautions are ensured for the safety of elephants. Moreover, the incidents of cruelty against them are increasing on the one hand, and the other people are killed due to the attack of them in festivals and processions. Hence there exist a conflict between man and animal. Therefore the existing law requires an analysis for proposing a solution.

A global agreement known as the Convention on International commerce in Endangered Species of Wild Fauna and Flora was created to make sure that the commerce in wild plants and animals does not endanger these species' ability to survive. By classifying species into three appendices according to their degree of protection, CITES controls the trade of species through a system of licenses and certificates.⁸⁶ Elephants are included under various appendices according to their dangers and population status. Appendix I, which forbids the international commercial trade in elephants and their parts, including ivory, lists African elephants (*Loxodonta africana*) in the majority of countries. With populations in Appendix II, certain southern African nations—Botswana, Namibia, South Africa, and Zimbabwe—permit limited trade under stringent guidelines. Due to their complete listing in Appendix I, Asian elephants (*Elephas maximus*) are prohibited from being traded internationally unless there are special conditions (such as scientific study or conservation initiatives).⁸⁷ In an effort to stop poaching, CITES has enforced an almost complete prohibition on the international ivory trade since 1989. In the early 2000s, certain restricted, one-time sales were allowed, but they were divisive and contributed to a rise in poaching. The export of live elephants, mostly for zoos and conservation initiatives, is subject to stringent rules. The export of African elephants captured in the wild to non-African countries was prohibited at the 2019 CITES conference, unless there were special circumstances. CITES encourages member nations to shut down domestic ivory market.

Elephant poaching for ivory is still a major problem, especially in Africa, even after the ban. Because of corruption, a lack of funding, or the demand for elephant products, many nations find it difficult to enforce CITES restrictions. Some countries support the sustainable ivory trade on the grounds that it helps local populations and conservation.

5.4.1. Restriction in holding Elephants

Elephants are categorized as wild animals, and capturing, trading, or possessing them without proper authorization is illegal. The possession of captive elephant is not restricted even though it is a national heritage animal which needs special protection under Schedule I of the Wild Life Protection Act, 1972. The ownership certificate from the Chief Wild Life Warden or authorized state officer is compulsory for possessing them. The renewal of a license and ensuring the capacity of the holder to maintain them are measures introduced for ensuring safe conditions such as proper housing, maintenance, and upkeep of elephants.⁸⁸ They shall be

⁸⁶ Appendices I, II and III.

⁸⁷ *Ibid.*

⁸⁸ The Wildlife Protection Act, 1972, S. 40 & 42, No. 53, Act of Parliament, 1972. The Amendment in 2002 of the Act added the need of considering financial ability of the owner.

“ s. 40 (1) Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I [****], or animal article, trophy or uncured trophy derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, ...

42. Certificate of ownership. -

The Chief Wild Life Warden may, for the purposes of section 40, issue a certificate of ownership in such form, as may be prescribed, to any person who, in his opinion, is in lawful possession of any wild animal or any animal article, trophy, uncured trophy and may, where possible, mark, in the prescribed manner, such animal article, trophy or uncured trophy for purposes of identification: Provided that before issuing the certificate of ownership in respect of any captive animal, the Chief Wild Life Warden shall ensure that the applicant has adequate facilities for housing, maintenance and upkeep of the animal”

s. 42(1) Any person having a certificate of ownership in respect of any captive animal, animal article, trophy or uncured trophy, meat or ivory imported into India or an article made from such ivory, and who is not desirous of keeping it in his control, custody or possession may, after giving notice of seven working days to the Chief Wild Life Warden, surrender the same to him and any such certificate of ownership shall stand cancelled from the date of such surrender.

(2) No compensation shall be payable to any person for surrender of any such animal, article, trophy, meat or ivory to the Chief Wild Life Warden under sub-section (1).

registered in the state forestry department and shall be micro-chipped for identification, and hence cruelties can be prevented through identification and accountability. The court addressed illegal elephant ownership in Kerala, where elephants were being used in temples and festivals without proper documentation. It directed strict verification of ownership certificates and better welfare measures for temple elephants.⁸⁹ The Kerala High Court ruled that elephants cannot be treated as private property and should be considered wild animals, even when in captivity. It upheld the ban on elephant trade under S. 43 of the Wildlife Protection Act, 1972.⁹⁰

By allowing private ownership, the state sanctions the illegal capturing and inhuman methods of obtaining. Moreover, it enables the kidnapping of animals under the state's control, since all wild animals are under the control and possession of the state.

5.4.2. Regulation of Sale

The elephant that has no ownership certificate is prohibited from transfer by way of sale.⁹¹ Having regard to the increase in cruelties against captive elephants, the High Court of Kerala imposed the condition of approval of Wild Life Warden for sale and all other forms of transfer of captive elephants. The person's capacity to maintain them is a decisive factor.⁹² The court in *Venkitachalam, V.R v. State of Kerala and Ors.*,⁹³ proposes that there is no absolute ban on sale or permission for transfer, but what is prohibited under the Wild Life Protection Act is the transfer for commercial purposes.⁹⁴

Elephants are not allowed to be sold for profit. Elephants cannot be sold like livestock or other domestic animals since they are protected species. Only inheritance or donation may transfer ownership, provided the Chief Wildlife Warden (CWW) of the state in question has given his or her prior consent. S.43 expressly prohibits the commercial sale of captive elephants.⁹⁵ A government-issued ownership certificate is required for any individual or organization keeping an elephant in captivity. A person must declare control, custody, or possession of any captive animal listed in Schedule I and seek for re-registration of ownership if an elephant is transferred.⁹⁶ However, no one is permitted to purchase, get, retain, sell, transfer, or transport any of the animals listed in Schedule I; live elephants are exempt from this limitation.

(3) Any such animal, article, trophy, meat or ivory surrendered under this section shall become the property of the State Government and the provisions of section 39 shall apply.]”

⁸⁹ *Sabu Mathew George v Union Of India And Ors.*, 2018 (3) SCC 229.

⁹⁰ *Nair, N.R. & Ors v Union of India*, AIR 2000 SC 3406.

⁹¹ See *supra* note 88 at S. 43.

⁹² *Nakeri Vasudevan Namboodiri and Ors. v Union of India (UOI) and Ors.*, MANU/ KE/o861/2007.

⁹³ MANU/KE/2167/2012.

⁹⁴ The ban on acquisition of Captive Animal provided in sub-sections (2A) and (2B) of section 40 does not apply to live Elephant by virtue of the proviso to sub-sections (2A) and (2B). Hence it is clear that restriction is applicable only to transfer of animals for commercial purpose.

⁹⁵ See *supra* note 88 at S. 43

“(1) No person having in his possession captive animal, animal article, trophy or uncured trophy in respect of which he has a certificate of ownership shall transfer by way of sale or offer for sale or by any other mode of consideration of commercial nature, such animal or article or trophy or uncured trophy.

(2) Where a person transfers or transports from the State in which he resides to another State or acquires by transfer from outside the State, any such animal, animal article, trophy or uncured trophy in respect of which he has a certificate of ownership, he shall, within thirty days of the transfer or transport, report the transfer or transport to the Chief Wild Life Warden or the authorised officer within whose jurisdiction the transfer or transport is effected.”

⁹⁶ *Id* at S.40.

5.4.3. Safety during Transportation

The transportation of elephants, whether for rehabilitation, medical treatment, or relocation, requires **strict adherence to safety protocols** to ensure their well-being and prevent injuries. In India, elephant transport is regulated under various wildlife protection and animal welfare laws to minimize stress and ensure humane handling. Permission of Chief Wild Life Warden or officer of state Govt is required for the transport of elephants, and if they are taken outside the state, the permission of the concerned authority in that state is necessary.⁹⁷ It should ensure that transportation is only allowed for **non-commercial** purposes such as conservation, medical treatment, or religious functions. Only healthy animals are permitted to transport, and they have the power to confiscate elephants having no transport certificate. Provisions for food and water should be offered before and during travel.⁹⁸ The PCA Act Prohibits overcrowding, injury, or neglect during transport and mandates licensed vehicles proper care, feeding, and hydration during the journey. ⁹⁹The elephants must be transported in specially designed **vehicles with strong, non-slip flooring** to prevent injuries. Moreover, sufficient space must be provided for the elephant to **stand comfortably** and avoid stress. If they are transported by train, special wagons must be used, ensuring **adequate ventilation and cushioning**. If transported by train, special wagons must be used, ensuring **adequate ventilation and cushioning**.¹⁰⁰

5.4.4. Other Welfare Measures

The violation of welfare measures provided and other conducts, which cause unnecessary pain and suffering and overstress and strain, are regulated through the punishment of offence of cruelty.¹⁰¹ Moreover, abandoning them, which causes pain due to starvation and thirst and other forms of cruelty recognized in the PCA Act is also punishable under the Act. The owner is responsible for ensuring routine medical check-up for both elephant and mahout, and preventive medicines and vaccines at regular intervals.¹⁰² Prior permission is needed for conducting any population control methods. Elephants in musth shall be adequately cared for and shall ensure proper veterinary care. The elephants should be tranquilized only if necessary under expert veterinary supervision. It is suggested to introduce proper restraints such as padded ropes or harnesses should be used instead of harsh chains to prevent injuries. It is the duty of the authorities to establish rest stops should be scheduled for long-distance transport to allow the elephant to rest, drink water, and be monitored for stress or discomfort. ¹⁰³Drugs and other intoxicants shall not be used without the permission of the veterinary officer. The owner is also bound to provide sufficient quantity of food and housing, and only approved trainers are allowed to train them. There are certain restrictions for using pregnant and lactating elephants in work, and workload is also limited for their welfare. The permission of the Wild Life Warden is mandatory to cut or shape the tusk. The court ordered the rehabilitation of elephants kept in poor conditions and emphasized the need for proper medical care, space, and humane treatment in captivity. ¹⁰⁴

“(1)Every person having at the commencement of this Act the control, custody or possession of any captive animal specified in Schedule I [****], or animal article, trophy or uncured trophy derived from such animal or salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, shall, within thirty days from the commencement of this Act, declare to the Chief Wild Life Warden or the authorised officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept.

(2)No person shall, after the commencement of this Act, acquire, receive, keep in his control, custody or possession, sell, offer for sale or otherwise transfer or transport any animal specified in Schedule I [****] or any uncured trophy or meat derived from such animal, or the salted or dried skins of such animal or the musk of a musk deer or the horn of a rhinoceros, except with the previous permission in writing of the Chief Wild Life Warden or the authorised officer.(2-A) No person other than a person having a certificate of ownership, shall, after the commencement of the Wild Life (Protection) Amendment Act, 2002 acquire, receive, keep in his control, custody or possession any captive animal, animal article, trophy or uncured trophy specified in Schedule I [****], except by way of inheritance.(2-B) Every person inheriting any captive animal, animal article, trophy or uncured trophy under sub-section (2-A) shall, within ninety days of such inheritance make a declaration to the Chief Wild Life Warden or the authorised officer and the provisions of sections 41 and 42 shall apply as if the declaration had been made under sub-section (1) of section 40:

Provided that nothing in sub-sections (2-A) and (2-B) shall apply to the live elephant.”

⁹⁷ *Id* at S.48-A.

⁹⁸The Kerala Captive Elephant (Management and Maintenance) Rules, 2003, rule 8, S.R.O. No. 220/2003, Forest and Wildlife Department, The state of Kerala. It was introduced in accordance with the guidelines issued by the Ministry of Environment and Forest.

⁹⁹ S. 19 of the Motor vehicles act, 1988 and Rule 4 of the Transport of Animals Rules, 1978.

¹⁰⁰ Guidelines for care and management of Captive Elephants issued by Mministry of Environmnet and Forest on 08/01/2008.

¹⁰¹ *Id* at rule 12.

¹⁰² *Id* at rule 5.

¹⁰³ *Ibid*.

¹⁰⁴ Elephant Relocation Case, <https://indiankanoon.org/doc/172529,539/>

The negligence on the part of Devaswom in imparting proper medical aid and food to an elephant was tabled before the High Court of Kerala.¹⁰⁵ It instructed the Board to appoint an adequate number of doctors to ensure that the elephant sent to the temples for festivals are not overburdened. In *S. Muralidharan v Principal Chief Conservator of Forests and Chief Wildlife Warden*,¹⁰⁶ the court of Madras prevented the authorities from removing three elephants that were residing together. The age requiring special care is considered and directed to keep all of them together in a safe place for ensuring proper health care facilities. The court also directed to keep them in their natural surroundings and environment and recognized their right to fellowship. In *T.N. Godavarman Thirumulpad v Union Of India & Ors* ¹⁰⁷ is a landmark case led to stricter implementation of the Wildlife Protection Act, and it highlighted the importance of protecting forest resources, including elephants. The Supreme Court emphasized protection of elephant habitats and prohibited deforestation that could threaten wildlife.

5.4.5. Restricting the Exhibition

The registration is necessary only when an elephant is trained for exhibition or exhibited without accepting money. The Kerala High court held that the elephants used in temple festivals and Gajamelas need not be registered under the Captive Elephants (Management and Maintenance) Rules. People were not admitted through tickets, or the organizers do not use them for any profit motive.¹⁰⁸ But the court urged the significance of implementation of provisions of the Performing Animals (Registration) Rules 2001 in favor of elephants since the number of cruelty cases registered against the elephant is very high. (160 cases till the date of the case)

The Supreme Court passed an order banning the use of elephants in circuses following reports of severe abuse and cruelty. It directed the AWBI to ensure that circuses using elephants follow ethical treatment standards. Again, the SC directed the Chief Wild Life Warden of each State must ascertain and identify elephants in captivity in that particular State and whether the owners of these elephants have an ownership certificate. If they do not have the ownership certificate, then after following the mandatory procedures required by law, the ownership certificate may be granted provisionally subject to the final decision. The court passed an order banning the use of elephants in circuses following reports of severe abuse and cruelty and directed the AWBI to ensure that circuses using elephants follow ethical treatment standards.¹⁰⁹

The use of elephants in festivals shall be with the approval of the Station House Officer or Range Officer. They should be provided with the details of the facilities provided, and the range officer shall ensure the safety measures provided. The organizers should provide facilities for the inspection of the elephant squad and to take a fitness certificate from veterinary doctors for their use in temples.¹¹⁰ Late on, the Temples and Devaswom, which use animals, are directed register with District level Committee.¹¹¹ The State and District Committee, Management of the Devaswom, the Management of the Temple, and the owners are accountable to see that no elephant is met with any kind of cruelty. Failure in duty shall lead to criminal prosecution and confiscation of the elephants.¹¹²

The Karnataka High Court,¹¹³ clearly stated that the use of animals either by Govt. or by private parties in festivals or for any other event should be made after ensuring all arrangements for preventing cruelty. It is the primary responsibility of the Govt. to provide training to mahouts and other caretakers and to appoint a sufficient number of veterinary doctors in order to ensure the safety of captive elephants. But, in actual practice, it is seen that the medical check-up and inspection of the squad are not exercised in a proper way. The insensitive approach of the officials and public outcry influence their decisions.

5.4.6. Protection of Elephants in Zoo

Because of their intricate social, physical, and psychological requirements, elephants in zoos need specialized care and protection. Strict regulatory frameworks that prohibit cruelty, guarantee decent living circumstances, and control their management oversee their care in India. Since elephants are listed as Schedule I the highest level of legal protection should be granted to them in zoo. Zoos must have government approval and follow strict guidelines for elephant care. The Central Zoo Authority (CZA), under the Ministry of Environment, Forest and

¹⁰⁵ *Sreekumar v Travancore Devaswom Board*, MANU/KE/0357/2004.

¹⁰⁶ MANU/TN/7010/2019.

¹⁰⁷ 2012 (3) SCC 277,

¹⁰⁸ *V.K. Venkitachalam v State of Kerala and Ors.*, IL.R. 2016 (1) Kerala 956, See also *The Society for Prevention of Cruelty to Animals (SPCA) v. State of Kerala and others*, <https://indiankanoon.org/doc/51216490/>.

¹⁰⁹ *Wildlife Rescue and Rehabilitation Centre v Union of India*, <https://indiankanoon.org/doc/189609818/>.

¹¹⁰ See *supra* note 98, at rule 8.

¹¹¹ Circular No. 27401/G2/07 RD dated 06/06/2007 of Revenue (G) Department, Govt. of Kerala.

¹¹² *Wildlife Rescue and Rehabilitation Centre and Ors. v Union of India (UOI) and Ors.*, MANU/TN/7010/2019.

¹¹³ *Suo Motu v The State of Karnataka Rep. by The Chief Secretary and Ors.*, MANU/KA/2097/2013. On the basis of news paper report of mysterious death of in four deaths in Nanjangud Taluk, Mysore District and nine death in seven days this court initiated a suo motu PLI to interfere in the matters of man – animal conflict.

Climate Change (Mo EFCC), regulates the management of elephants in zoos. Only CZA-recognized zoos can keep elephants, ensuring proper facilities and welfare measures. The poorly maintained zoos are prohibited from housing elephants and are required to transfer them to recognized rescue centres or national parks. Zoo is banned from keeping any animal chained or tethered unless doing so is essential for its own well-being.¹¹⁴ No animal that is gravely ill, damaged, or infirm may be displayed in a zoo. At least one a week, each zoo will be closed to the public. Every zoo must have a perimeter wall that is at least two meters high above the ground. Chain link fences of the proper size and design will remain in place at the current zoos in deer parks and safari areas. By planting trees, establishing green belts, and providing lawns and flower beds, among other things, zoo operators may maintain a clean and healthy environment.¹¹⁵ The built-up area of any zoo cannot be more than 25% of the zoo's overall area. The built-up area consists of pucca roads, animal houses, administrative buildings, shops, hospitals, restaurants, kiosks, and visitor rest sheds, among other things. The staff housing units of No-Zoo will be located on the zoo's main campus. If such a complex exists, it must be divided from the zoo's main campus by a boundary wall that is at least two meters high above the ground.

The feeding and retiring cubicles/cells in the enclosures containing the endangered mammalian species listed in Appendix I to these regulations must meet the minimum requirements specified in that appendix. Depending on the species' biological requirements, each cubicle or cell must have facilities for feeding, resting, drinking water, and exercising. Every cell, cage, or enclosure must have adequate lighting and ventilation for the comfort and welfare of the animals.¹¹⁶ Every zoo must have a suitable waste disposal system in place to handle the liquid and solid waste produced there. Every enclosure must have all leftover food, animal waste, and trash removed on a regular basis and disposed of in a way that maintains the zoo's overall cleanliness.¹¹⁷ Every day, the person responsible for the care of all the animals at the zoo will check on their health and condition. Any animal that is discovered to be ill, hurt, or overly anxious must be reported to the veterinary officer so that prompt medical attention can be given. The authorized veterinary officers will determine the appropriate intervals for administering preventive medications, such as vaccinations, and conducting routine examinations, including parasite tests.¹¹⁸

Every veterinary hospital must have equipment for handling and restraining unwell animals, such as a syringe projector and tranquilizing devices. A reference library on animal health and maintenance will also be available at the facility.¹¹⁹ All zoos must maintain their animals in healthy, sociable groups. Unless there is a valid reason or the animal has reached the end of its life and is no longer suitable for reproducing, no animal shall be maintained without a mate for more than a year. If a zoo is unable to find a mate for a single animal during this time, the animal will be moved in accordance with the Central Zoo Authority's instructions.¹²⁰

5.4.7. Checking the Loopholes in Legal Provisions

Even though the training is required for mahout,¹²¹ there is no sufficient number of trained persons. Moreover, there is no effective checking mechanism for certifying that trained persons are in charge of the elephant. Lack of training and no knowledge of handling elephants lead to oppression and violence on them. Young elephants are captured and kept in private ownership without any valid ownership certificate, and hence the Govt's aim of ensuring welfare mechanism through the chipping method became ineffective. They are used for loading, carrying vehicles, and parades without following the restrictions provided in the Rules. Keeping them is very expensive, and it may cause malnourishment and the absence of medical care. Displaying them in an unnatural way or against their natural instinct is a cruel act, and the promotion of elephant tourism by the Govt is also a factor promoting cruelties against animals. The creation of awareness and ethical considerations in the development of tourism are specific tools in introducing changes in the treatment of elephants.

Since it is a wild animal and included in Schedule I, hunting, unauthorized possession, and any act leading to the destruction of natural habitat are serious offences which may lead to imprisonment for a term of 3-7 years. Capturing, killing, poisoning, snaring and trapping coursing, driving, or baiting captive animals and injuring or destroying or taking any part of their body or its attempt is punishable under S. 51 of Wild Life Protection Act. The law permits persons, who trapped and injured the elephant, to keep it under control. The license may be cancelled on conviction. But all other cruel acts attract offences under the PCA Act.¹²² Therefore, we cannot ensure the enhanced punishment on them in all types of cruel acts. The Govt. should initiate precautions to avoid the nuisance of the animal by using some scientific technique to avoid man-animal friction.

¹¹⁴ The Recognition of Zoo Rules, 1992, Rule 10 (5)

"No zoo shall keep any animal chained or tethered unless doing so is essential for its own well-being."

¹¹⁵ *Id* at 10.

¹¹⁶ *Id* at 11.

¹¹⁷ *Id* at 21.

¹¹⁸ *Id* at 27&28.

¹¹⁹ *Id* at 31.

¹²⁰ *Id* at 37.

¹²¹ See *supra* note 98, at rule 3. Three years' experience is required.

¹²² See *supra* note 88.

It is remarkable to note the wordings of the Supreme Court that “elephants are gentleman and man should give way for them.”¹²³ It is suggested to add special provisions in WLP Act to prevent cruelties against animals during their way towards human-occupied land.

5.5. SPECIAL PROTECTION TO BIRDS

Because they disperse seeds, pollinate plants, and eliminate pests, birds are essential to preserving ecological equilibrium. However, threats to their survival include poaching, habitat damage, illegal trade, and climate change. Numerous legal frameworks and conservation initiatives have been put into place at the national and international levels to protect bird species.

Different kinds of birds and animals are seen in markets for sale and are subjected to various forms of cruelties during capturing, transport, and keeping. Indian pet trade market is not appropriately regulated even though the transaction costs millions. Hence pet breeders and pet shops are following practices that are cruel and inhuman. Unsafe breeding practices and lack of veterinary care and treatment lead to zoonotic diseases, and hence it is very urgent to address the public health issues of pet trade also. Since birds are included in the definition of pet animals under the Pet Shop Rules, 2010, the safety measures ensured can be claimed when they are sold or housed, kept or exhibited for sale in pet shops. The Rules addresses different forms of cruelties, and at the same time, it imposes some positive duties of providing welfare measures on the owner. The implementation strategy is doubtful because its inclusion is in the form of the delegated legislation, and what is needed is to give a lucid exposition of law. Moreover, it is possible to achieve the targeted safety regime by an effective execution strategy.¹²⁴ Since birds are included in the definition of an animal under the S.2(1) of the Wildlife Protection Act,

1972, the restrictions under the Act are applicable for keeping, transferring, possessing, and transporting them. The WLP Act places a number of bird species under Schedule I and II, which provides them with legal protection from trade, poaching, and hunting. Hunting of endangered bird species is expressly prohibited.¹²⁵ It is against the law to capture, sell, or keep protected birds as pets. CITES regulates the global trade of endangered bird species to prevent illegal trafficking. Birds like parrots, falcons, and owls are protected under different Appendices of CITES. The Prevention of Cruelty to Animals Act prohibits mistreatment, illegal captivity, and cruelty toward birds. It addresses concerns about pet bird trade and unethical breeding practices.¹²⁶ The Allahabad High Court addressed illegal poaching and trade of protected bird species, including parakeets and munias and directed authorities to strictly implement the Wildlife Protection Act, 1972, to prevent illegal bird trade.¹²⁷

5.5.1. Evasion of Cruelty in Cages

The court obstructed the illegal transport of birds from different forests of illicit trade because the authorities were resting on the PCA Act and its Rules. The High Court of Bombay¹²⁸ appointed a Committee consisting of all responsible officers of different departments to inspect and report the cruelties on birds and other animals. They were directed to make recommendations for the protection and rehabilitation of birds and amendments to remove loopholes in the law. The court is attentive in its effort of implementing the laws and is very compassionate to sentient beings. The Honourable Justice M.R. Shah acknowledged:

“....It is the fundamental right of the bird to live freely in the open sky. As stated above, it is the duty of every citizen to see that there is no unnecessary pain or suffering to any animal or bird.....When everybody is talking about fundamental rights of the citizen, such as, right to live freely, right to food, right to move freely etc. a day has come to think about the rights of the birds and animals, because of such act even the birds have vanished and their numbers are in decrease....”¹²⁹

Even though there are specific provisions in the animal welfare statutes for curtailing this monstrous act, the court took the assistance of Part III of the Constitution. Of course, it was worried about the decrease in the number of birds on earth and was extremely enthusiastic about conserving them through any remedy possible. The Supreme Court expanded wildlife protection measures by directing the government to declare eco-sensitive zones around national parks and bird sanctuaries. This ruling safeguarded critical bird habitats from encroachments, mining, and pollution.¹³⁰ The Supreme Court ruled that capturing, caging, and selling wild

¹²³ A. Rangarajan & Ors. v Union of India & Ors., MANU/SCOR/09930/2020.

¹²⁴ Rejection and cancellation of license of pet shops and imposition of fine for non-compliance of safety measures provided and confiscation of animals and removal of them for care and treatment are some of the controlling mechanism for the safety of animals in pet shops. See The Pet Shops Rules, rule 9(6), G.S.R.844(E), Notified by Ministry Of Environment, Forest And Climate Change, 2010.

¹²⁵ See *supra* note 88 at S. 9

¹²⁶ The Prevention Of Cruelty to Animals (Pet Shop) Rules, 2018, Rule 4, 6,7, G.S.R.884(E), Notified by Ministry of environment Forest and Climate Change, , n..S.R.1152(E), 2018.

¹²⁷ Mohd. Abdul Kadir v. State of Uttar Pradesh, (2001) AIR 2001 All. 2230

¹²⁸ Vinayog Parivar Trust and Ors. v Union of India and Ors., A.I.R. 1998 Bom. 71.

¹²⁹ Abdulkadar Mohamad Azam Sheikh v State of Gujarat and 2 Ors., MANU/GJ/0504/2011.

¹³⁰ Centre for Environmental Law WWF-India v Union of India, <https://indiankanoon.org/doc/27900105/>.

birds is illegal under the Wildlife Protection Act, 1972.¹³¹ The Bombay High Court was concerned about the destruction of wetlands and mangroves, which serve as breeding grounds for various bird species. The court ordered protection of wetlands and prevention of illegal construction in bird habitats.¹³²

The Delhi High Court banned the use of manjha (glass-coated kite strings), which cause severe injuries and deaths among birds. This ruling strengthened the prevention of cruelty to birds and urban wildlife protection.¹³³ The court held that keeping scheduled birds inside cages after cutting wings, tails, and attaching rings on legs. is an inhuman and barbarous act and can attract the provisions of the PCA Act. But it was confused to find a safe place for them. It also availed the opportunity to understand the cruelty against poultry and hens kept in battery cages¹³⁴ and directed the state to grant safe housing to all birds. It also laid down a comprehensive plan for the safety of poultry in the state of Uttarakhand. More importantly, the court directed the Central Govt. to frame the Prevention of Cruelty to Animals (Egg Laying Hens) Rules as well as the Prevention of Cruelty to Animals (Broiler Chicken) Rules, on the basis of the recommendations of Law Commission within six months. But it is confined within papers.

5.6. CONCLUSION

Apart from the general laws for preventing cruelties against animals, specific safeguards are provided to some animals after identifying them as victims of conflict of interests of man and animal. The discriminatory treatment in law is introduced after analyzing its utility and the increase in cruel practices against them. The close relationship with animals and associated sentiments accelerated the improvement in the protective regime.

The dogs are well-liked pets and are enjoying a lovable and compassionate treatment from humans. But on the other, there are issues of mass killing or infliction of injury to street dogs. The fear of rabies and attack are factors leading to cruel treatment. India has taken animal disease management as a human and animal health issues and recommended for prevention of disease through proper vaccination. Destruction of dogs only with the recommendation of the veterinary officer prevents illegal killing. They are bound to adopt the procedure approved by the AWBI or Central Govt. for ensuring human death. It is difficult to ensure painless death when AWBI permits the instantaneous death of unwanted animals.

The scientific way of controlling street dogs was recognized as a dog population control programme and included birth control, sterilization, and vaccination of street dogs. By realizing the fact of financial burden, the ABC Rules authorized the local authority to implement the programmes with the support of the public-private partnership. Moreover, it directs the authorities to provide safe methods of catching, adequate treatment, safe keeping of dogs during sterilization, sufficient care for rabid dogs, giving identification marks, compulsory registration of pet dogs, etc. Registration is mandatory for dog breeding, housing, and sale. Sale is allowed only after the satisfaction of the buyer's ability to take care, and there are certain restrictions for acquiring dogs for experiments also. The financial constraints and lack of support of the local authorities are the obstacles to the effective implementation of these programmes. The legislature intends to prevent abandoning animals through registration, and it is very important for enforcing owner's responsibility in ensuring the welfare of animals during the entirety of life.

The court criticized the role of state machinery in its effortless attitude in implementing the population control programme and directed to make a proper programme plans for execution. It also directed the AWBI to ensure financial assistance for the rehabilitation of stray dogs. Some courts have given priority in preserving the life of humans and held in favor of killing stray dogs under the PCA Act and Dog Rules. Some others held in favor of stray dog's right to live and recommended for ensuring safety of people through internationally accepted population control programme.

The permission of AWBI to recommend the killing of unwanted animals creates the problem of the mass killing of street dogs. The decision is based on the complaint of people and moreover, it is tough to find the dogs causing nuisance. Moreover, legislation empowering the local authority to destroy animals may be used by them for killing all street dogs. There are some contradictions in the ABC Rules about the euthanasia of rabid dogs. On the one hand, it suggests leaving them for natural death, and on the other,, it gives power to the monitoring committee to decide euthanasia of critically ill or fatally injured or rabid dogs. It necessitates an amendment to concerning provisions. It is also important to change the word "stray dogs" in PCA Act to street dogs as dogs under human control may be included in the definition of stray dogs.

The constitutional protection is extended to cows hence different state legislatures prohibit cow slaughter and transport of them for slaughter. Stringent punishments were imposed on those who slaughter cows and it's progeny. Some states impose absolute prohibition on the slaughter of cows, and the protection in some state is extended to bulls, bullock, and buffaloes also. The court approved the intention of the legislature to raise the age limit from time to time and accepted the ban on slaughter of bulls and bullocks. Some states have no

¹³¹ Gauri Maulekhi v Union of India, <https://indiankanoon.org/doc/123541970/>.

¹³² Bombay Environmental Action Group v. State of Maharashtra, 2005(6)BOMCR574.

¹³³ People for Ethical Treatment of Animals (PETA) India v Union of India, <https://indiankanoon.org/doc/104959701/>

¹³⁴ Gauri Maulekhi v Union Of India and Ors., MANU/SCOR/03951/2015.

specific legislation for preventing slaughter, and some others have adopted a moderate stand of allowing slaughter. The utility of these animals is the criteria for allowing slaughter in some states and hence imposed an age limit of 20-20 years for slaughter. The punishment imposed for commission of slaughter and related offences are not equal. Therefore, there are no common standard in cow preservation and cow slaughter prohibition laws.

The state allows private ownership of the wild elephants, and they are subjected to cruelties from the unskilled mahout and people, and moreover, the elephants in musth are treated in a brutal manner. Rules are issued by many states as per the guidelines issued by the Ministry of Environment and Forest, and certain precautions are introduced for using them in work and also for parading them. Sale of them is also restricted and directs the owners to provide food, water, housing, and veterinary care. Safety during transport and exhibition is also ensured in the guidelines. Birds captured for sale are protected through the Pet Shops Rules. It is the duty of the pet shop owner to provide food, water, veterinary care, and proper housing to them. Sale of them is regulated through the review of records of shop keeper and also through the rehabilitation of those which are not sold. Since elephants and birds are protected animals under WLP Act, restrictions are there in possessing, keeping and transferring them. But absence of awareness and dormant machinery are the real problems for improper implementation. But the judiciary can ensure proper implementation of legal safety of animals through progressive interpretation and active intervention.