



**REALISING ANIMAL RIGHTS
JURISPRUDENCE: PROTECTION TO
ANIMALS AGAINST
EXPERIMENTATION UNDER INDIAN
LAWS**

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Introduction:

To understand the nature of any right one focuses on whether its implementation will provide better results, i.e., to say lessen the sufferings or pain. In context of human and animals the nature of feeling pain or hurt is same but can this form the basis to provide same rights is the question.¹ When laws are formed or cases are decided with respect to animals, humans don't consider the fact that what suffrage animals face but they decide on the predicament that whether it is enough to suffice human needs and thus such acts can be made permissible. To understand this, in India there is a ban on experimenting on animals in the cosmetic industry but for the scientific research or pharmaceutical industry i.e., for medicines it is allowed². Thus, still human interests are kept at supremacy when dealing with animals³ therefore, this is to be understood by the jurisprudence of animal rights.

In India we have various animal laws that deal with subject of animal experimentation and a separate statutory body that regulates animal testing. The Prevention to cruelty Act,

1960 has a specified provision for cruelty done to animals and experimentation on animals, laying punishment for the same. Also, Wildlife protection Act deals with protection of such vulnerable animals and avoidance of unnecessary killings. These rights of animal have also been protected by Constitution of India in many judgements. Like providing Article 21 i.e., right to life and dignity to animals. Giving of personhood was another landmark decision given by way of judicial activism. By imposing fundamental duties to achieve the objective of DPSP's. The CPCSEA was specially formed by ministry of environment (animal welfare) to lay down adequate guidelines, keeping the present scenario of animal treatment as well as animal right jurisprudence in mind.

Research Question:

- **Are Animal Welfare Rights to be kept at par with Human Rights or does, Human Wants exceed such right of animal for the experimentation purposes?**
- **Why Animal experimentation can't be banned totally?**

Jurisprudence: Animal Rights & Human Interests!

Bentham's Utilitarian theory⁴ talks about greatest happiness of greatest number of people. While discussing morals and legislations in 1781 he raised the question that –

¹ Tom Regan, *The Radical Case for Animal Rights in Environmental Ethics* (L. Pojman eds., 1994) 234

² The Prevention of Cruelty to Animals Act 1960 s 14

³ David R. Schmahmann & Lori J. Polacheck, *The Case Against Animal Rights* (B. C. ENVTL. AFF. L. REV. 1995) 747, 755

⁴ V.D. Mahajan, *Jurisprudence & Legal theory* (fifth edition EBC publication 2017) 445



Can they reason? Can they talk? But can they suffer? – UDAW⁵ has also mentioned it in its declaration and uplift animal rights and dignity.

When we deal with animal rights and human rights, it is to be considered that providing equal rights in a horizontal manner will only increase into more human-animal conflicts based on legality. So, the question again arises which approach should be taken i.e., providing animal rights directly or making humans bound to a duty of providing rights. And thus, such animal welfare can restrict human welfare⁶.

To understand the reasonableness and effectiveness of any right Jurist Iredell Jenkins proposed a test focused on gaining in a positive manner from implementation of any right. For this purpose, he raised three questions – whether if the right should propose to keep intact human value in a legitimate manner, whether the right proposed will end the suffrage i.e. be effective and will such a right do more good or harm.⁷ In regards to animal we know the need of animal welfare is there and will be, but when we deliberate on the question of whether it is intact to human values then it should be realised that one cannot keep human values on a pedestal as we don't live in an anthropocentric ecosystem. To answer the second query, we can say that animals cannot ask for their rights or point out at any violative practices, thus it puts a duty on humans to ensure animal protection. Coming

to the third point and considering the degradation of animals in various activities, such rights will achieve animal welfare.⁸

Thus, it clearly makes it a duty of human to ensure the implementation of rights for animals. Further dealing with the jurisprudential aspect of animals being treated as person or having such rights and duties. We can refer to following jurists,

Salmond⁹ stated that a person has rights and duties, whether capable or not they have these rights. Thus, these persons possess juridical significance. They are also entitled to legal recognition. He states that we have duty towards animals and their protection in furtherance of the duty we have towards society. Thus, public rights vest in community. As there are many instances that arise the question of animals having legal rights,

- Cruelty against animals is an offence
- A trust to look after them is valid and enforceable.

Similar applies for experimentations conducted on animals.

Now, when we read Austin's interpretation of rights, there was a problem in his idea that any legal principle should be common to many legal systems¹⁰. This can curb the enhancement of any laws or new laws. And with the wake in animal laws against experimentation this approach would deter it.

⁵ Universal Declaration on Animal Welfare 2000

⁶ P.J. Fitzgerald, *Salmond on Jurisprudence* (12th edn., Sweet & Maxwell 2004) 63

⁷ Iredell Jenkins, 'The Concept of Rights and the Competence of Courts' (1973) AM. J. JURIS. 1,7

⁸ Jessamine Therese Mathew and Ira Chadha-Sridhar, 'Granting Animals Rights under the Constitution: A

Misplaced Approach: An Analysis in Light of Animal Welfare Board of India v. A. Nagarajan' (2014) 7 NUJS L Rev 349

⁹ Supra 4 36

¹⁰ Ibid 2



Salmond has also commented that his theory lacks the ethical aspect.¹¹ As was our dilemma of keeping human interest a priority or promoting animal welfare.

In 1952 Piggott presented an International Animals charter and is considered one of the very important documents forming basis for animal welfare and still is in existence and in implementation. One of the points was dealing with cruelty done to animals in form of using in experiments of any type or vivisection done on them should be curbed¹². It is the notion of ethics that makes people work for animal interests.¹³

In this attempt to realise animal rights another kind of view is presented by American philosopher Martha C. Nussbaum she has argued that killing of any animal can only be justified on the basis of reasonableness¹⁴. She had recognized animals on their capabilities and argues that usage of animal should not be seen as fulfilling human wants but rather utilization of animal capabilities.

On reading Bentham's utilitarian theory, Nussbaum's theory based on capabilities and also adding the Aristotle approach of humans dominating animals. Thomas Aquinas, who believed that animals could and did experience pain, promoted better treatment of animals by discouraging unnecessary cruelty. It can be understood that every animal shall have a dignified existence as also stated in the Indian Constitution and this shall safeguard

what Hindu scriptures suggest that if an animal is to be killed for any reasonable act it shall be done with minimum pain. And this is what makes it a duty for human to protect animal rights.¹⁵ Thus, these rights are important so that people don't consider animals also as mere substance of abuse or treat them as their own property in any manner.

Indian Constitution and Animal Experimentation:

Realisation of duties is also incorporated within our Indian Constitution but they are in form of DPSP's and fundamental duties like Article 48 and Article 51(a)(g).

DPSP (Part-4) Article 48-A¹⁶,

Under this it is the responsibility of the state under the community welfare charter to maintain, protect and safeguard environment and animals form a part of it.

Fundamental duty Article 51¹⁷,

Under article 51A(g) it is stated that every person has the duty to protect all such resources available from nature and also the wildlife. And that there should be compassion for living creatures.

Right to live with dignity,

Article 21 talks about right to live with dignity which was stated in regards to the jurisprudence we talked about and the dignified living of animals in N.R. Nair v. Union of India also the fundamental rights were extended to incorporate animals in their ambit too¹⁸.

¹¹ Ibid 34

¹² Anonymous, 'Compromise and the Universal Declaration on animal welfare', *Animal People US bi-monthly Newspaper* (US, July-August 2005) 3

¹³ Peter Singer, *Practical Ethics* (2nd edn., Cambridge University Press 1979)

¹⁴ Martha C. Nusbaum, *Frontiers of Justice. Disability. Nationality. Species Membership* (1st edn., Harvard University Press 2006)

¹⁵ Supra 8

¹⁶ The Constitution of India 1950, Art 48

¹⁷ The Constitution of India 1950, Art 51(a)(g)

¹⁸ N.R. Nair v. Union of India [2000] AIR [2000] Ker 340



Following this in Animal welfare board India v. Nagarajan and ors.¹⁹ in 2014 the supreme court gave constitutional recognition to animals to also fall within the ambit of right to life and liberty under this article. So that their rights can be safeguarded and not just me treated as mere objects of public use.

Following the judgment by Uttarakhand High Court to give legal entity to rivers in the case of Mohd. Salim v. State of Uttarakhand.²⁰ In the judgement given by Uttarakhand High Court in Narayan Dutt Bhatt v. UOI²¹, animal kingdom was given a legal entity by Uttarakhand & Punjab High Court by doctrine of 'Parens Patriae' i.e., someone has to file case on behalf of them as guardian.

Now that we are aware of how animal rights are placed in society, the experimentation that is conducted on animals for various scientific purposes or research and development they are to be critically assessed and checked whether the dignity, right to life and animal equality is kept intact or not. Merely recognising animal rights and not providing those should be considered in direct violation of fundamental rights as assured under A. Nagarajan case (Jallikattu case). Humans should comply with their duty as Nussbaum states that reasonability must be asserted and regulations implemented²².

Animal Testing and the Law:

Animal testing are mainly done for medical research and experiments. And because of

these medical needs such animal experimentation is allowed. But the need arose to regulate these when PETA²³ found about the Indian leather and meat market in 1999 and the cruel manner in which animals were treated was unfolded. Taking steps to regulate experimentation was first made in cosmetic sector i.e., ban was put on testing cosmetic products on animals under Drugs and Cosmetic Acts, 1940²⁴. This was made as many animals were killed in this process and to ensure safety.

Another major instance was recently for testing of covid-19 vaccines in India on animals, in this the PETA sent a letter to the health ministry in India mentioning the consequences of using monkeys in such experimentation. As it can instead cause zoonotic diseases (diseases that spread from animals to humans) and also its mutation is different. It also stated that many scientists are using various other modes to carry out research and that should be adopted in India as well like, human-organoids etc. this was also mainly to protect interest of animals as well as humans.²⁵ (here we can again apply reasonability approach as put forth by Nussbaum and correlate it with harmonizing human interest and animal protection).

¹⁹ Animal welfare board India v. Nagarajan and Ors. [2014] 7 SCC 547

²⁰ Mohd. Salim v. State of Uttarakhand [2017] [2] RCR CIVIL 636

²¹ Narayan Dutt Bhatt vs. Union of India [2018] SCC Utt 645

²² Latika Vasbist, 'Martha Nussbaum's Capabilities Approach: Perils and Promises' (2010) Vol.52 No.2

230-266 <<http://hdl.handle.net/10739/843>> accessed on 27th April 2021

²³ People for the Ethical Treatment of Animals 1980

²⁴ Drugs and Cosmetic Acts 1940

²⁵ PETA, 'PETA India Requests Halt on Plan to Use Wild Monkeys in Experiments' (*PETA India*, 10th September 2020) <PETA India Requests Halt on Plan to Use Wild Monkeys in Experiments - Blog - PETA India> accessed on 1st May 2021



In 1960 the prevention of cruelty to animals' act (PCA)²⁶ was passed in the parliament with the aim to protect animals from cruelty. Like, Section 11 of this act deals with animals to be not kept in chained manner for long time and depriving them of basic needs i.e., water, shelter and food and doing so is made punishable with imprisonment up to three months.

Also, section 9 of Wildlife Protection Act 1972²⁷ deals with punishment for poisoning or baiting or trapping animals with imprisonment of up to seven years. These provisions state punishment for any such unethical experimentation going on in the country.

When we read Stephen Wise's understanding of animal rights, he was one of the first to inculcate animal ethics in legal studies. For this he even promoted the non-human rights project²⁸ and talked in the same reference to what Nussbaum has dealt with.

In India the Indian National Sciences Academy (INSA) was the first to form an ethical committee to lay down guidelines for animal welfare. In a report published by them in 2019 they have pointed out on the significance of morality and ethics. And it is the duty of humans to ensure peace by this manner. They have focused on ethical conduct and its incorporation to provide rights like done by way of CPCSEA in India to curb illicit and illegal experiments done on

animals and put forward punitive actions for the same.²⁹ After the ban on animal experimentation done in cosmetic industry (a ban on such ingredients incurred from animals was also put in such products) and the inhumane treatment done to animals by considering them as property this statutory body was formed under the PCA Act in 1960 called Committee for the Purpose of Control and Supervision of Experiments in India (CPCSEA).³⁰

This committee was a first of its own kind even USA inculcated it in 1966. But in 1977 its working was stopped due to internal conflicts and almost after thirteen years it was reconstituted and became effective again by 1991. The most recent committee was constituted in 2012.³¹

Thus, all permission in regard to animal experimentation is to be taken by CPCSEA. Under it rule 13 mentions about rules according to which Institutional Animal Ethics Committee (IAEC) was formed comprising of members from CPCSEA committee too in 1998.

3 R's that form the fundamental of CPCSEA:

These were proposed by William Russell and Rex Burch and now these principles are used as basis to form ethical rules and regulations for animals used in laboratories and for experimental purpose. These are

²⁶ Prevention to cruelty Act 1960, s 11

²⁷ Wildlife Protection Act 1972, s 9

²⁸ Steven M. Wise, 'Nonhuman Rights Project' (*Nrp*, 2021) <Steven M. Wise | Nonhuman Rights Project> accessed on 2nd May 2021

²⁹ Kambadur Murali Dhar, Amit Ghosh and Ashok Kumar Singhvi, *Ethics in Science Education, research and governance* (1st edn. INSA New Delhi 2019) 6

³⁰ CPCSEA 1996

³¹ 'The Committee for the Purpose of Control and Supervision of Experiments on Animals' (*cpcsea.nic*, 25th March 2021) <Home: Committee for the Purpose of Control and Supervision of Experiments on Animals (*cpcsea.nic.in*)> accessed on 1st May 2021



replacement, reduction and the refinement. They focus on,

- Avoiding experiments in such cases where the observation of the same can impart us with information.
- The objective of such experimentation should be definite. With expert's recommendation that results will be attained.
- Such experiments should not be repeated unnecessary.
- When such experiments are done minimum suffering must be ensured.
- Must be done under observation to verify each step and on this basis the need to repeat the test can be analysed.³²
- They also ensure that such institutions ensure separation of different species and provide conditions for their stable survival.
- All decisions in regard to transportation of animals (that are to be used in experiments) are also taken by this committee.
- Proper experimental areas (includes maintenance of temperature and all physical facilities) are ensured and they are different from where such animals are housed.
- Basic needs of food, water, shelter also including proper sanitation and caging system is to be ensured.
- Also, the substance for which such experiment or testing is required is administered by this committee.
- Also, while experimenting it is mandated to provide proper anaesthesia.
- In cases of euthanasia for animals, proper reasoning based on ethics should be provided (exceptional cases).³³

CPCSEA and its functions and guidelines:

The committee of CPCSEA is composed of animal activists, regulatory body members also members from scientific communities. This committee works under ministry of environment and forest (animal welfare) and within it consists of IAEC (Institutional animal ethics committee) and IBSC (Institutional biosafety ethical committee). The main goal of committee and its nominees are to,

- Regulate experimenting and breeding laboratories or institutions or places.
- This committee approves such experiments to be conducted on animals.
- Animal House facilities are looked into by this committee.
- Even promoting veterinarians in country and improving veterinary care.

Under the 2018 CPCSEA compendium³⁴ section 17³⁵ provides powers to members to make rules and regulations for animal experimentation. Further section 18³⁶ gives power to conduct inspections in such establishments. And if there is any violation seen by the member in such areas then under section 19³⁷, they can prohibit on conducting such experiments. For these even penalties are stated in section 20³⁸. But the fine amount is of just rupees 200 and thus this provides a weak remedy.

³²Hubrecht and R.C. Carter, 'The 3Rs and Humane Experimental Technique: Implementing Change' (*mdpi*, 2019) <<https://doi.org/10.3390/ani9100754>> accessed on 3rd May 2021

³³ Ministry of Environment & Forest, *Roles and Responsibilities of Nominees of CPCSEA* (cpcsea.nic 2015) 1

³⁴ Ministry of Environment & Forest & Climate Change, *Compendium of CPCSEA* (cpcsea.nic.in, 2018) 5,6

³⁵ The Prevention of Cruelty to Animals act 1960 s17

³⁶ Ibid s 18

³⁷ Ibid s 19

³⁸ Ibid s 20



With the notification in 2006 by Ministry of Environment³⁹ some changes were made like the definition of experiment under Breeding and Experiment on animals Rules 1998⁴⁰, was expanded, that experimentation includes the animals used for educational purposes of all kinds, for production of reagents and antigens, for all medical purpose for finding cure or better solution in health and for life or for combating diseases (like the situation was seen in covid-19 crisis for finding vaccine). Also, under rule 12 contract experimenting of animal is talked about and that its conduct should be in accordance with PCA Act, 1960. In 2007 the government of India (ministry of environment) had also issued guidelines for scientific experimentation on animals.⁴¹

With time and need this committee lays down guidelines to regulate experimentation. The most recent guideline was given in regard to poultry and birds (new and revised) 2020⁴² and also for fishes used in experiments in 2021.⁴³ For them also the IAEC is needed to be obtained before.

Need of Regulations in Education and Medical field in India:

A major stepping stone to curb experimentation was taken by Maneka Gandhi in 1998 and thus the rules were formed i.e., breeding and experiments of animal's (Control and Supervision Rules). After these many animal facilities were

looked on and wherever there was violation seen they were closed down. The regulations were put on many medical colleges that demonstrated the live dissections and research work on animals.⁴⁴

This again raises the question of giving education priority or animal right against such derogatory killing. Similar was the concern of pharmaceutical industries and the experimentation conducted in there.

In a symposium that was held in AIIMS and in a panel discussion conducted in BHU it was argued that such a need for educational purpose is absolute necessity. Another important thing was noted here that experimentation for research and development of science is in with benevolent intention whereas experiments where animals are abused and subjected to cruelty will fall under the purview of animal rights violation.⁴⁵

This can again be interpreted in the words of Jurist Iredell that humans have a duty-based approach towards animals and Nussbaum has also justified such killings that serve a greater purpose.

But still as regulations are imposed even in pharmaceutical sector, the PCI (Pharmacy council of India) made changes in their Education regulations rules of 1991 in 2008

³⁹Ministry of Environment and Forest, (Notification New Delhi, 23rd October, 2006) <2006.pdf (cpcsea.nic.in)> accessed on 2nd May 2021

⁴⁰ Breeding and Experiment on Animals Rules 1998

⁴¹Ministry of Environment & Forests (Animal Welfare Division) Government of India, *Guidelines on the Regulations of Scientific Experiments on Animals* (cpcsea.nic SOP, June 2007) p 9-21

⁴² Ministry of Environment and Forest, *Guidelines for Poultry and Birds Facility* (cpcsea.nic, 2020) 2

⁴³ Ministry of Environment and Forest, *Guidelines for experiments on Fishes* (cpcsea.nic, 2021) 1

⁴⁴ Mohan Kumar V., 'Some lessons on animal experiments based on Indian experience' *FAOPS News Letter* (1999) 3

⁴⁵Murthy K.R., 'Animal Experimentation and Research in India' (*jpgmOnline*, 2000) <<https://www.jpgmonline.com/text.asp?2000/46/4/251/265>> accessed on 4th May 2021



where they explicitly mentioned that animal experimentation requirements should be fulfilled by use of computer modules. Similar such guidelines to promote studies by help of technological advancement was promoted by the Ministry of Environment as well in 2012. And even the MCI has also eventually shifted to using non-animal research and learning methods, which they incorporated in their regulations in 2014. These colleges included AIIMS, BHU, IMS etc. and eventually all these practices were stopped and dissection was banned by 2014 even in post-graduation degrees.⁴⁶

With the animal experimentation being outlawed in the cosmetic industry by the Bureau of Indian Standards in 2013 it shifted the approach for using computer models and artificial ways. Further, the ban was applied to the soap and detergent markets in 2016. In *Narayan Dutt Bhatt vs. Union of India 2018*⁴⁷, the Uttarakhand High Court it was stated that animals are legitimate bodies and have broadened the rights of a living being even to the animal world.

They mainly focused on using computer teaching methods or mannequins, or in-vitro methods or artificial computer-based models. Thus, animal welfare in experimentation can be achieved by putting self-regulations. Proper training of animal keepers and even teaching about protecting and proper experimentation procedures should be done.⁴⁸ Trying to inculcate as much as non-animal methods in experimentation should be

focused on. And with technological advancement the modernization of facilities and institutions that deal with animal research or animal keeping should be introduced.

Thus, CPCSEA guidelines are provided for such experimentation to be carried out. In a country like India that is still in its developing stage the need to enhance medical research and identify diseases it is still necessary. And with three R's that are mentioned above the committee should focus on rehabilitation as well of such animals that are used in laboratories and institutions. In 2020 the guidelines for post-experimentation, recuse and rehabilitation of large animals was given by CPCSEA⁴⁹. These included all animals that are specially bred for experiments, retained for use in medical and educational research centres and all other animals that are subjected to experimentation.

On this Thomas Aquinas has also commented that cruelty to animals is wrong and a sadistic approach, but using them in any method that has regulations that does not create cruel or abusive environment can be accepted.⁵⁰

Conclusion:

Though animal experimentation is banned in India for cosmetic products. But India still imports from China and such countries where experimentation on animal is allowed. Such experiments are not even regulated. The products that India import's sells it in the country in a way promoting such market.

⁴⁶ PETA, 'Pharmacy Council of India Bans Animal Experimentation' (*PETA India*, 5th September 2014) <Pharmacy Council of India Bans Animal Experimentation (petaindia.com)> accessed on 3rd May 2021

⁴⁷ *Narayan Dutt Bhatt vs. Union of India* [2018] SCC Utt 645

⁴⁸ *Supra* 29

⁴⁹ Ministry of Environment and Forest, *Guidelines on reuse and rehabilitation of Large Animals Post Experimentation* (cpcsea.nic, 2020) 1

⁵⁰ Judith Barad, *Aquinas Inconsistency on the Nature and the Treatment of Animals* (Between the Species Indiana State University Vol. 4 1988) 107,108



There are regulations put on schools, universities, research labs etc. on how to conduct animal experimentation but the administration of the same is still defeated because of unethical practices. Some suggestions for better administration are,

- We can develop and mark such animals by registering them with CPCSEA and where they should be accounted for in regular time-intervals.
- Even there should be regular inspections of animal shelters, animal homes, farms, permitted as well as non-permitted research laboratories and also permitted carriers for such animal transportation should be inspected.
- Also, we should try to encourage more trained Veterinarians and facilitate them in such research places to ensure good health of animals used for these experimentation purposes.
- In places wherever possible such experimental observations should be replaced with models, 3D models, technological gadgets, dummies and virtual learning should be incorporated.
- Incorporating the One health system whereby both animals and humans are dealt with in order to decrease and eliminate transmission of diseases or as we call it zoonotic diseases.

India being a developing country needs to focus on making itself self-reliant in health sector. This being a major reason why strong rules or experimentation cannot be banned totally. Thus, we need to create medicines but for that testing is required. So least we can do is incorporate animal rights and follow guidelines stated by CPCSEA.

Also, India has many Multi-National Companies set-up here. Many of these use

animal experimentations to test their products in their own country and then sell it here. So, to show on products whether they were tested on animals or not becomes important for the people even under right to information.

We should ensure this duty on humans to act humanely towards these non-human animals. As we just cannot be derived from our selfish motives.

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4.	Bare Act, The Constitution of India (Universal's 2017)
