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# Legal Classification of Animals in Animal-Instigated Attacks in India: An Analysis

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## ABSTRACT

*diabolic and ghastly uxoricide, committed stealthily, by inflicting induced Cobra bites causing fatal envenomation, with extreme wickedness, to disguise it as death due to accidental Cobra bite". The 'rarest of the rare' principle was applied in this case, stating that "the death was caused by injecting venom, a poison with a live animal". Through this case the Kerala High Court implicitly raises question relating to the use of animals as weapon and the liability with respect to it, or why is the animal not held liable for the death, these questions are to be answered with at most importance as this will not only act as a means for criminals to escape from their crime but also increase in cruelty against animals.*

*In India, animal cruelty has always been a prevailing issue and has taken a major surge in recent years resulting in various legislations and judicial pronouncements made to eradicate the same, in the name of animal welfare laws. These weaponization of animals will act as an incentive for the same. In India, animals are not only perceived as livestock but are also considered as reverend and embodiment of God. The Constitution of India and various other legislations provide for the welfare of the animals. Which places an obligation on the state to protect animals and provide them with decent habitat.*

*Through this paper the author tries to understand the legal frameworks present with respect to animal attack, compare the status of animals with firearms to understand why animals are considered weapons not criminals. Author will discuss the possible problems that may arise with this regard and find possible solutions to the same.*

## KEYWORDS

*Animals, Weapons, Cruelty, Offender, Animal parenthood.*

## INTRODUCTION

*“The greatness of a nation and its moral progress can be judged by the way its animals are treated.”*

- Mahatma Gandhi

India, the seventh largest country in the world, is one of the most exponential bio-diverse regions of the world containing four of the world's 36 biodiversity hotspots. It is home to animals ranging from the Royal Bengal Tigers to the Great Indian Rhinoceros, Asiatic Lions to the Indian Gharials, Great Indian Bustard to the Gangetic Dolphins and many more diverse species.<sup>1</sup> The Deccan Herald of January 25, 1999, reported about the discussion of a gathering that, *“Sacred monkeys and holy cows do not tell the whole story of nonhuman animals in India. Other species have symbolic religious value: snakes, as emblems of fertility; lions, associated with the Goddess Durga; even rats, as we shall see below.”*<sup>2</sup>

In India, animal cruelty has been a prevailing issue and has taken a major surge for which weaponizing them or instigating them to kill will act as a factor for the same.<sup>3</sup> The use of animals for destruction is not new, in the Book of Judges, which was written in the eleventh century BC, Samson attacks the Philistines by capturing three hundred foxes and igniting their tails and setting the loose to run through the field of Philistines. To take revenge for the act when Philistines got to Samson, he kills them using the jawbone of a donkey. In the above-mentioned story foxes were not directly used to harm others, at least not like the donkey's jawbone, another example for this can be the carrier pigeons who gathered information intelligence.<sup>4</sup> Another way of perceiving this incident is, the foxes cause the ultimate harm so, they can be in another perspective considered as offenders. The question of

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<sup>1</sup> Shashwat Suraj, Untangling the Indian Animal Rights and Welfare Laws, 1 INDIAN J. INTEGRATED RSCH. L. 1 (September-October 2021).

<sup>2</sup> Lance Nelson, *Cows, Elephants, Dogs, and Other Lesser Embodiments of Atman: Reflections on Hindu Attitudes Toward Nonhuman Animals*, in *A Communion of Subjects: Animals in Religion, Science, and Ethics* 179 (Paul Waldau & Kimberley Patton eds., 2006).

<sup>3</sup> Shashwat Suraj, Untangling the Indian Animal Rights and Welfare Laws, 1 INDIAN J. INTEGRATED RSCH. L. 1 (September-October 2021).

<sup>4</sup> Ian Smith & Justin Goodman, *Confronting the Military-Animal Industrial Complex*, in *Animals and War* 45 (Ryan Hediger ed., 2013).

whether an animal is a weapon, a felicitator of war or a criminal itself is as complicated as the definition of weaponry, these raises serious ethical and legal concern because of the exploitation and violation of animal rights for the act of aggression.

In Indian context the Prevention of Cruelty to Animals Act, 1960<sup>5</sup> and the Wildlife Protection Act, 1972<sup>6</sup> provides strong legal backing for the protection animals in India. But the question of if animals are deliberately made weapons, then how to treat them? Do we treat them as weapons? Or as offenders? If we do so, won't violate animals? If we don't, won't it act as an incentive to use animals as weapons than firearms and other conventional weapons?

## LITERATURE REVIEW

**Suraj v State of Kerala, 2021<sup>7</sup>:** This case deals with the use of snake as a murder weapon. The shows how Indian legal system considers animals as weapons and not as criminal. It leaves the question why?

**The Criminal Prosecution and Capital Punishment of Animals (1906)<sup>8</sup>:** This gives historical cases as examples, where animals were put on trial and even executed for crimes. It provides an analysis of medieval legal systems, where animals and humans were considered equally liable or their acts. Equal liability to both human and animals will require giving animals the status of legal person to make it justifiable, which will further lead to complexities. Won't giving them equal liability lead to misuse of it by humans?

**Weapons of War in 18th Century India (1968):** <sup>9</sup>This work details how various tools, including animals, were weaponized in 18th-century warfare in India. How firearms were introduced in India? It discusses the use of war elephants and trained animals in combat. It also talks about how the natural instincts of animals were used by humans to fight their enemies.

## RESEARCH QUESTION

- When animals are used to commit a crime, do we treat them as weapons or as offenders?

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<sup>5</sup> Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India).

<sup>6</sup> Wildlife Protection Act, 1972, No. 53, Acts of Parliament, 1972 (India).

<sup>7</sup> Suraj S. Kumar v. State of Kerala, (2021) 5 SCC 395.

<sup>8</sup> E.P. Evans, *The Criminal Prosecution and Capital Punishment of Animals* (1906).

<sup>9</sup> G.N. Pant, *Weapons of War in 18<sup>th</sup> Century India* (1968).

- If treated as offender, then why so?
- If treated as weapon, then why so?
- If animals are treated as offenders themselves, wouldn't it act as an incentive to use animals as weapons than firearms and other conventional weapons?

### **RESEARCH OBJECTIVE**

- To find how are animals treated if they commit a crime.
- To find the accountability of the person instigating animals to commit the crime.
- To find reforms that can be brought in animal protection laws.

### **METHODOLOGY**

Doctrinal research methodology is a research methodology in the law field where they analyse and collect information regarding the topic through existing case laws, statutes, rules, etc. This type of research aims to understand, explain, critique, analyse the existing laws. With the help of several journals, articles, case laws, the legal status of an animal if through its act harm is caused to individuals is tried to understand. Information has been collected from SCC online, Hein online, India kanoon, etc to analyse and understand the present framework and legal reforms that can be implemented.

### **LEGAL FRAMEWORKS IN INDIA WITH RESPECT TO PROTECTION OF ANIMAL RIGHTS**

#### ***Prevention Of Cruelty to Animals Act, 1960<sup>10</sup>***

The Prevention of Cruelty to Animals Act, 1960 was enacted to prevent the infliction of unnecessary harm and cruelty to animals. It is an animal specific legislation. It also makes provisions for prohibition and prevention of any person from engaging any animal to any kind of fighting or shooting competition. The Act makes it obligatory for the owner of an animal to provide sufficient food, shelter, and care to them. The most comprehensive section under this Act is Section 11 which defines cruelty towards animals and provides penalties for the same. Some acts of cruelty defined in this section, inter alia, are beating, kicking, or overloading an animal, wilfully administering injurious drugs or harmful substances, keeping the animal in a cage that is not proportional to the animal's dimensions, keeping an animal chained for an unreasonable period, mutilating, or killing an

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<sup>10</sup> Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India).

animal in a cruel manner and promoting or taking part in a shooting competition of animals.

### ***The Wildlife Protection Act, 1972***

The Wildlife Protection Act, 1972, was enacted with the objective to protect and preserve the wildlife animals and prevent the illegal trade and smuggling of wildlife animals. It also provides protection to the endangered species of the planet. It is important to note that this is not the sole Act enacted for the protection of wildlife. Under this Act, a wildlife advisory board is to be constituted in every State and Union territory, and this advisory board is under an obligation to declare areas as Sanctuaries, National Parks and Closed Areas and administer them, formulate policies for protection and conservation of wildlife and to harmonise the needs of tribal and forest dwellers with preservation of wildlife. Section 9 of the Act prohibits hunting of animals mentioned in schedule I, II, III and IV. However, this Section is subject to Sections 11 and 12 which allows hunting in some cases. The penalties therein under this Act are imprisonment which can extend to seven years and fine up to twenty-five thousand rupees.<sup>11</sup>

### ***Bharatiya Nyaya Sanhitha, 2023***

BNS strengthens the statutes regarding cruelty against animals through its provisions and higher penalties, Section 321 addresses causing unnecessary pain or suffering to animals, it also included acts such as neglect and abandonment. Section 322 of the BNS consolidates the provisions related to killing or maiming animals, ensuring more severe punishments for the same. Section 323 deals with specifically poisoning of animals and Section 324 prohibits organising or participating in animal fights.<sup>12</sup>

## **WHY WEAPON NOT OFFENDER?**

In India's legal system, animals are not recognized as offenders but may be considered as weapons when used by humans in the commission of a crime. Criminal liability necessitates actus rea and mens rea.

Actus rea is a conduct, in case of animals they do the conduct, this conduct raises the question of whether they should be treated as offenders. Mens rea which means a guilty mind. The highest level of mens rea is knowledge which may or may not be backed with the intention of a person under whose supervision the act may or may not be committed by the animal. The lowest level of

<sup>11</sup> Wildlife Protection Act, 1972, No. 53, Acts of Parliament, 1972 (India).

<sup>12</sup> Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

*mens rea* is when criminal negligence or recklessness which is also known as strict liability.<sup>13</sup> An owner of an animal is strictly liable for the acts done by his pet because he is considered responsible to prevent the dog from causing harm to others. Thus, animals lack *mens rea* and are not criminally liable.

In the Indian legal framework, criminal liability is confined to legal persons, including humans and legally recognized entities such as corporation. In the eyes of the law, animals are not legal persons. Animals are objects of legal rights, and the primary reason for this is that animals cannot be held liable for their actions.<sup>14</sup> The treating of animals as objects lays liability on their owner for their act. If an elephant escapes and causes a fatality, the owner could be charged with causing death by negligence under Section 106 of the BNS<sup>15</sup>.

The principle of agency can be used in case if animals are used as instruments in the commission of a crime. In *Suraj v State of Kerala*, the same principle was applied. In this case Suraj with an intention to kill Uttara, brought a Cobra inside their room and got himself trained with the handling of snake. He sedated Uttara, left the snake hungry for days and tied a chicken meat on Uttara's feet. In this case the clear usage of an animal for committing a heinous crime can be seen, for the same the snake was left hungry for days, which is a clear violation of the basic right of the animal. The principle of agency, if applied will give animals the same values as that of a firearm or poison which was used for murder.<sup>16</sup>

## LEGAL REFORMS

### ***Strengthening Animal Protection Laws***

The present laws regarding animal protection should be made holistic, considering the psychological and physical well-being, and the punishment should be made stricter. Even though animals are mere objects in the eyes of laws, they should be giving humane treatment. Laws should be considerate when making law related to animals because giving animals the status of a legal person will need more sophistication and misuse of this by

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<sup>13</sup> Gyandeep Chaudhary, *Artificial Intelligence: The Liability Paradox*, *ILI L. Rev.*, Summer Issue, 2020.

<sup>14</sup> Vikram Krishna C. S., *The Recognition of Animal Rights and Its Implication on Animal Protection Laws*, 4 *INDIAN J.L. & LEGAL RSCH.* 1 (2022).

<sup>15</sup> Bharatiya Nyaya Sanhita, 2023, § 106, No. 45, Acts of Parliament, 2023 (India).

<sup>16</sup> Samrat Datta & Shailendra Kumar, *Impact of Artificial Intelligence on Indian Criminal Justice System: An Insightful Analysis*, 12 *Turk. Online J. Qualitative Inquiry* 8425 (2021).

offenders. If animals are given legal status, then they will have to held liable for the acts they do even though they commit the act because of instigation by a person.

### ***Accountability for Animal Welfare***

Laws should be holding the person under whose passion the animal is fully responsible for all the crimes they commit. Stricter punishments should be imposed on people who instigate animals or misuse natural instincts of animals for their self-interest. Establishing clear lines of accountability is essential for effective animal protection. This includes defining the responsibilities of pet owners, animal handlers, and relevant authorities<sup>17</sup>

## **CONCLUSION**

The instrumentalization of animals in criminal activities, though not a new concept has been highlighted in *Suraj v State of Kerala*. This case if misinterpreted then the snake can be held liable and Suraj can escape from punishment. The paper analysis why animals are treated same as weapons not as criminals to prevent any future misinterpretations with this regard. This case also exposes critical gaps in India's legal framework regarding animal protection which a make way for exploitation of animal. While existing laws aim to prevent animal cruelty, the mere treatment of animals as weapons ignores their basic rights. A holistic approach should be taken while dealing with animal rights.

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