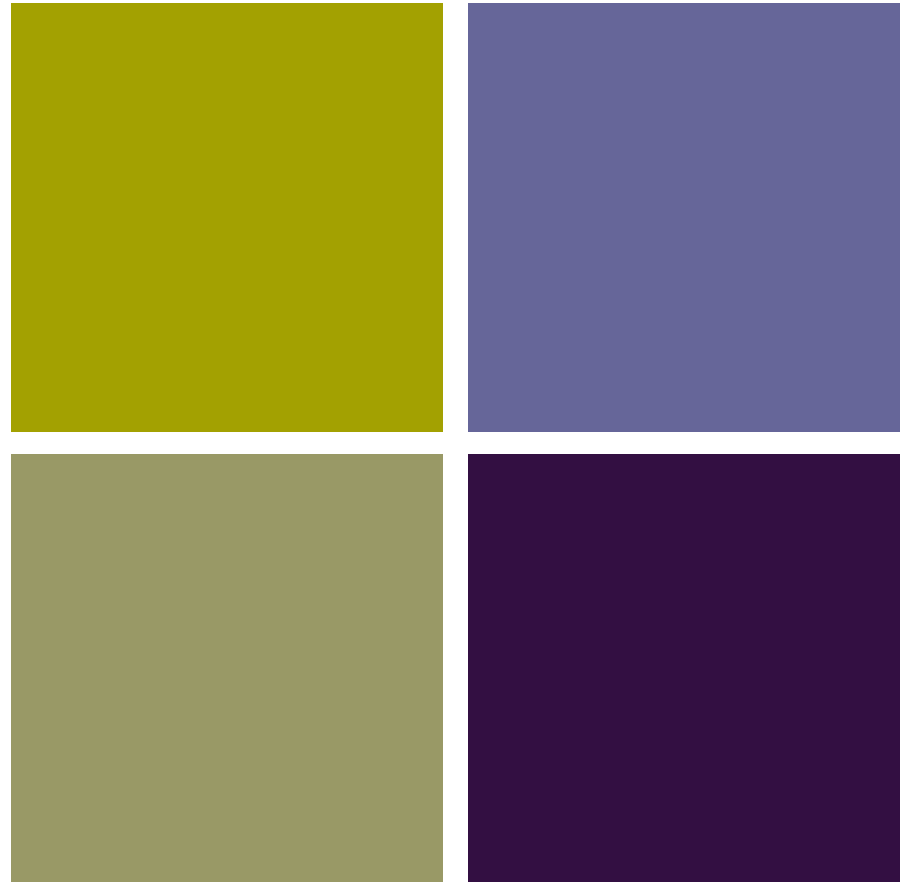




# Evolution of Animal Cruelty Law in India



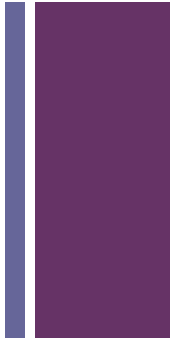
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# Early view of animals in the law

- The origins of the Prevention of Cruelty to Animals Act, 1960 can be traced to **Common Law**.
- Its useful to trace the history to understand how the law took its present shape.
- At Common Law, animals were **treated as property**
  - One had an **absolute right** to domestic animals
  - Only a **qualified right** to wild animals (often co-extensive with possession; required Crown permission)
- The understanding was that as lower beings, they existed for humankind to exercise **dominion** over – for the use and comfort of humans.





# Early view of animals in the law



- The question then came to be asked – **how far** does this proprietary right go
  - The **reality** of them being **living beings** could only be denied for so long
  - **Visibility** of cattle being put to work;
  - Animals being made to fight for entertainment;
  - Being trained to perform like ‘humans’
- The first articulations of concerns about the legal status of animals began to appear in Britain.
- Greater understanding came about regarding the ability of an animal to **experience pain and suffering**.



# Early view of animals in the law

- Jeremy Bentham in 1781 in his work 'An Introduction to the Principles of Morals and Legislation' stated:

**“The question is not, Can they reason?, nor Can they talk? But Can they suffer?”**





# Debate in the House of Peers

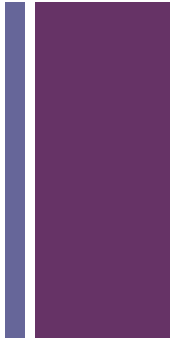


- In 1809 the issue of cruelty to animals came to be **debated** in a legislative body for the first time.
- Lord Erskine, who introduced the Bill for Prevention Malicious and Wanton Cruelty to Animals
- Stated that the defect in the law was that:
  - *Animals are considered as property only, they had **no rights** and **no protection***
  - *To destroy animals with malice or intention to harm the owner was a crime*
- Argued that the dominion over the 'lower world' ought to be a **'moral trust'**
- Called upon human beings to **exercise restraint** in their use of animals



# Debate in the House of Peers

- Greater concern for animals that were being slaughtered for food and those **bred for human use**; left wildlife outside the scope.
- Motivated by visible cruelty
  - overloading of animals – “**desire for gain**”;
  - Use of animals in fights for entertainment – “**human idleness**”
- Felt that Magistrates would be able to **exercise discretion** to differentiate between necessary and unnecessary actions.
- Many questions of practical relevance were raised in the debate as opposition
  - Who would be prosecuted – owner, servant or passenger?
- Faced **ridicule** publicly
- The bill was defeated in the House of Commons.





# Debate in the House of Peers



- "They (animals) are created, indeed, **for our use, but not for our abuse**. Their freedom and enjoyment, when they cease to be consistent with **our just dominions** and enjoyment, can be no part of their natures; but whilst they are consistent I say their rights, **subservient** as they are, ought to be as sacred as our own . . ." (Lord Erskine, 1809)



# Early legislation



- In 1822 an **animal cruelty law** came to be passed England's Parliament and prohibited as a **crime**:

*"wantonly and cruelly beat or ill-treat [any] horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep or other cattle"*

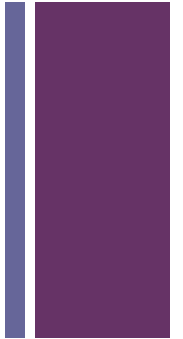
- British laws revised and enacted in 1835, 1849, 1850, 1854, 1876 and 1900.
- Some early laws had lists of **protected animals**
  - Commercially valuable protected; pets and wild animals excluded [Vermont, US, 1846]
- Initially protection was only to harm of **other animals**; silence as to cruelty to own animal





# Early legislation

- Then question as to **whose animal** it was started to disappear; was considered cruel to beat ones own animal [Maine, US, 1821]
- Penalties remained **low** – indicating a lack of seriousness
- Initially only **positive acts** of cruelty were prohibited – beating, maiming etc.;
- Subsequently **negative acts** such as neglect, failure to maintain etc. came to be covered [New York, 1886]
  - Introduction of licenses where dogs used to pull vehicles
  - Penalties for cruel transportation of animals.





# Emergence of a welfare regime

- A **human centric** regime emerged:

Cruelty is defined in the context of what is **necessary** and **useful** for humankind.





# Developments in India

# + Developments in India

## Indian Penal Code, 1860

- Contained certain offences relating to animals under 'offences relating property'
- Section 428 offence of mischief by killing or maiming animal of value Rs. 10 or upward
  - punishable by upto two years
- Section 429
  - offence against any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof,
  - or any other animal of value of Rs. 50
  - Punishment upto five years

# + Developments in India

- Also contained provisions in 'offences against health'

- Offence to be negligent with animal in one's possession such that it causes harm to others (Section 289)

- While the offences were not tied only to ownership; it was clear that there was a view of animals as property; some valued higher than others.

# + Developments in India

## **The Prevention of Cruelty to Animals Act, 1890**

- Animals covered were domestic or captured
- Punishment for cruelty in public place (Section 3)
  - Ill-treatment; beats or overdrives
  - Exposes to pain or suffering
  - Had to be unnecessary and cruel
  - No mention of private spaces
- Killing in an “unnecessary cruel manner” (Section 5)
- Causing a sick animal to work (Section 6)
  - Animals could be sent to treatment in infirmary by Magistrate pending production before it
- Permitting diseased animals to go at large (Section 7)

# + Developments in India

## **The Prevention of Cruelty to Animals Act, 1890**

**Section 3:** If any person in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or in any such place-

- (a) cruelly or unnecessarily beats, overdrives, overloads or otherwise ill treats any animals;
- (b) binds or carries any animal in such a manner or position so as to subject the animal to unnecessary pain or suffering; or
- (c) offers, exposes, or has in his possession for sale any live animal which is suffering pain by reason of mutilation, starvation or other ill-treatment, or any dead animal which he has reason to believe to have been killed in a unnecessary cruel manner;

he shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months or both.

# + Application of the law

- ***Misri Gope v. Abdul Latif***, (1912-13) 17 CWN 332:
  - Calcutta High Court considered question of depriving cows of water;
  - feeding only mango leaves in order to make a dye.
  - Question revolved around whether this could be **seen in the street**.



# + Application of the law

- *Emperor v. Ibrahim Meer Shikari, AIR 1917 Bom 1999:*
- Bombay High Court found that the act of stitching up the eyes of five cranes for railway travel was not covered under Section 3, 1890 Act
- the act happened **prior to travel** and not in the manner in which the travel took place.

# + Application of the law

- *Emperor v. Nasir Wazir*, 1919 Bom.L.R. Vol. XLIV 159: Bombay High Court held that there was **no provision which prevented the abandonment** of an animal; that it was starving subsequently was not the responsibility of the owner.
- Law was limited; being read narrowly; animals were not in focus.



# Developments Post Independence

- In 1954, MP Rukmini Devi Arundale introduced a private member bill in the Rajya Sabha – the Prevention of Cruelty to Animals Bill, 1953.
- Called for the adoption of a law which **suited the Indian context**;
  - issue of hunting;
  - scientific experimentation;
  - use of performing animals,
  - Animal sacrifice
- During her speech she stated:

“Do we believe in the fundamental principle that we must not get benefit for ourselves at all costs? **Are we going to get benefits at all costs?** Do we believe that the animals are out **slaves**? Do we believe that their **feelings do not matter**? That is the question that we have to answer for ourselves ”



# Developments Post Independence



- The speech by Rukmini Devi Arundale spurred the then Prime Minister Jawahar Lal Nehru to make a speech in the Rajya Sabha agreeing that the law needed reformation but proposed to set up a committee to examine it.
- As a result, the private member bill was withdrawn.
- A Joint Parliamentary Committee came to be set up comprising 45 members. Delivered a report which caused the Government to revise its Bill.
- The law eventually came to be passed as the Prevention of Cruelty to Animals Act, 1960.



# Prevention of Cruelty to Animals Act, 1960



**From the discussion in Parliament it is evident:**

- The law was **not perfect**; but an attempt to deal with a **complex and widespread problem** [Minister of Agriculture, S.K. Patil]
- It was an exercise in balancing rights and interests – **human needs v. cruelty**
  - Calls to impose vegetarianism rejected
- Emphasis on two parts of the law – **‘humanitarian’ and ‘criminal’**
  - ‘Concern was whether criminal law was only way to go about the issue
  - Many owners of animals are kind; presumption should not only be negative
  - Sought to create long term behavioral change



# Prevention of Cruelty to Animals Act, 1960



**From the discussion in Parliament it is evident:**

- Emphasis on positive aspects as well – central to the **creation of the AWBI**
  - To play a leading role in standard setting; education and positive change
  - Though advisory, the government was to go by its advice
- Section 3 also a positive duty on the human being.
- Calls for the act to be read as a **charter of rights** of an animal and a **charter of duties** for a human being
  - Understanding that may not be possible to prosecute all offences
- Many calls for **greater definition** of terms in the law.



# Prevention of Cruelty to Animals Act, 1960



- Broadly continues on the understanding that **animals are property**
  - Concepts of “necessity” and “unnecessary pain and suffering” reflected
  - Left to interpretation of Magistrate
- Animals broadly defined as all **living creatures** not human beings (Section 2(a))
- Provisions applicable to **domestic** animal (Section 2(d)) and **captive** animal (Section 2(c))
  - In line with Common Law distinction
- Owner defined to include person in possession with consent of owner (Section 2(f))



# Prevention of Cruelty to Animals Act, 1960



- Duty of person having care or charge of of any animal to take all reasonable steps to ensure well being of animal
  - This duty is not restricted to an 'owner'
- Section 11 offences of cruelty
  - Unnecessary pain and suffering (a, d)
  - Use of infirm animals for work (b)
  - Unreasonably administering poisonous substance (c)
  - Reasonable opportunity for movement (e, f, g)
  - Not providing sufficient food and water (h, i)
  - Killing in an unnecessary cruel manner (l)
  - Uses for entertainment (m, n o)





# Prevention of Cruelty to Animals Act, 1960



- Some Clauses of Section 11 **specifically apply to owner** (a, g, h); while remaining apply to any person (including owner)
- Owner deemed to commit any offence under Section 11 if they failed to exercise reasonable **“care and supervision”** (Section 11(2))
- Section 11 subject to acts **necessary for humans** (Section 11(3)) – food etc.



# Prevention of Cruelty to Animals Act, 1960



- Magistrate may order “destruction” of suffering animal involved in Section 11 offence (Section 13)
- In the case of **conviction** can be ordered by Magistrate
  - If owner does not consent, opinion of Vet in charge of area required (Section 13(1))
- In some cases, not necessary that offence must be completed – **reason to believe** (Section 13(2))
- Indicates that in fact the **concerns of the owner are not paramount** and in fact **the welfare of the animal can be given precedence by Magistrate**



# Prevention of Cruelty to Animals Act, 1960



## **Directions relating to treatment and care (Section 35)**

- State Govt. to set up infirmaries for treatment of care of animals with whom offences have been committed
- Magistrate may direct that the animal be infirmary pending production before it
- Once recovered an animal may be sent to a pinjrapole;
- May be 'destroyed' if incurable
- Costs to be paid by owner; may be sold to recover



# Prevention of Cruelty to Animals Act, 1960



## Power to deprive ownership (Section 29)

- If owner is found guilty of an offence, **upon conviction**, may make an order for **forfeiture** of the animal, separate from punishment (Section 29(1))
  - Previous conviction necessary or
  - that likelihood that violence will occur again (Section 29(2))
  
- May even direct that person **not have custody of any animal** for a fixed period or permanently (Section 29(3))
  - Previous conviction or likelihood of violence
  - must be prayed for in the complaint
  - Must be in relation to an animal which required a license



# Formulation of Rules – Advancement of Principles



- The Prevention of Cruelty to Draught and Pack Animals Rules, 1965: Provide for maximum load that can be put on a draught and pack animal; the number of hours it can be worked.
- The Transport of Animals Rules, 1978: Set out space and other travel related conditions for transportation of animals.
- The Animal Birth Control Rules, 2001: Establish a comprehensive mechanism for the treatment and birth control of dogs.
- These rules interpret the provisions of ‘necessary’ and ‘cruelty’ in the framework of the law.



# Decision in *AWBI v. A. Nagaraja*



By a judgment of a Division Bench, the Supreme Court on May 7, 2014 (2014) 7 SCC 547 held:

“Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “**life**” has been given an **expanded definition** and any disturbance from the basic environment which includes all forms of life, fall within the meaning of Article 21 of the Constitution.

So far as animals are concerned, in our view, “life” means something more than **mere survival** or **existence** or **instrumental value** for human beings, but to lead a life with some **intrinsic worth, honour and dignity.**”



# Decision in *AWBI v. A. Nagaraja*



- Sections 3 (duty of owner), 11 (cruelty) and 22 (performing animals) have to be read in the context of **purpose** of the Act – must be given **expansive interpretation**.
- Section 3 and 11 when read with Article 21 and Article 51A give **rights to animals** to life of dignity without cruelty
- The **five freedoms** to be read as part of constitution and statutory guarantees:
  - Freedom from hunger, thirst and malnutrition
  - Freedom from fear and distress
  - Freedom from physical and thermal discomfort
  - Freedom from pain, injury and disease
  - Freedom to express normal patterns of behaviour



## Decision in *AWBI v. A. Nagaraja*



- Animals are not merely for **instrumental value** for humans; spirit of humanism and scientific enquiry to be developed.
- Only acts “**necessary**” as provided under PCA Act permitted
  - Entertainment not necessary
- Statutory law **overrides** culture and tradition.





# Law Reform



- The process of law reform has been slow.
- Unfortunately, many of the conceptions that prevailed in early legislation continue to be in the law.
- The view that animals are property continues to underpin the Prevention of Cruelty to Animals Act, 1960.
- Many issues have been attempted to be resolved
  - Relationship of ownership and cruelty
  - Public – private
  - No restriction of animals protected
  - No differentiation on value of animal
  - Both positive acts of cruelty and negative acts covered



# Law Reform



- Why the law contains limitations on ownership; fails to fully resolve the fact that animals are living beings.
- There is a large role for Magistrates to play to protect animals from cruelty
  - “unnecessary pain and suffering”
  - “unreasonable administrators”
  - “unreasonable time”
- Guides to what these will mean are contained in the law itself (like Section 11(3)) ; as well as the Rules framed under the Act.
- Decision by the Supreme Court in *Nagaraja* also allows for expansive interpretation and consideration of five freedoms when interpreting the law.
- Penalties remain extremely low



# Conclusions



- Despite all the challenges The Prevention of Cruelty to Animals Act, 1960 has stood up to most challenges.
- There are crucial protections contained in the Act which are in essence limit the ownership rights over animals.
- The Act allows the consideration of animal welfare to override that of the owner.
- May ultimately result in ownership being forfeited.
- Magistrates have an important role in applying the protections to animals.