

A BETTER APPROACH TO ANIMAL WELFARE LAW; A CRITICAL ANALYSIS OF THE LAW ON PREVENTION OF CRUELTY TO ANIMALS IN SRI LANKA

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Abstract - While human rights play an important role in a country's legal system, the rights pertaining to the welfare of animals should be awarded a special status in the environmental law regime of a country. Animals deserve an inherent right, recognized by the animal welfare legislation of a country, which would safeguard them against cruel and inhumane treatment. The Prevention of Cruelty to Animals Ordinance No. 13 of 1907 in Sri Lanka intends to serve this purpose by establishing the law to prevent cruelty to animals. However, in recent years several incidents which resulted in the victimization of elephants and stray dogs as a result of cruel and inhumane treatment were highlighted through the media. These scenarios pose a question as to the adequacy of the current animal welfare legislation in Sri Lanka to address the issue of cruel and inhuman treatment of animals in the country. Resorting to the qualitative methodology this research intends to review and critically analyse provisions contained in the aforementioned Ordinance in order to identify four main deficiencies among the provisions namely; the lack of, a sound definition for an "animal", stringent and updated penalties, the recognition of the concept of 'duty of care' and a proper authority to monitor animal welfare matters and to make recommendations to improve the existing legal regime of animal welfare to rectify the aforementioned deficiencies, as well as to highlight the importance of expediting the implementation of the Animal Welfare Bill as a better approach to animal welfare law in Sri Lanka.

Keywords - Animal cruelty, Elephants, Stray dogs, Animal welfare.

I. INTRODUCTION

"The greatness of a nation and its moral progress can be judged by the way its animals are treated. I hold that the more helpless a creature the more entitled it is to protection by man from the cruelty of humankind"

-Mahatma Gandhi-

During the last year many shocking incidents, with regard to animal cruelty that took place in Sri Lanka, grasped the attention of the public. These incidents gave rise to the discussion of animal rights and many protests claiming that animals should be free from torture and abuse took place due to the same reason. The hype that built up with the occurrence of many heart breaking incidents in which these innocent creatures were deprived of their rights, stipulated by the respective legal regime of Sri Lanka, somehow went down after time passed. The right to be free from cruelty should be identified as an animal right which is crucial in order to protect such animals and ensure the recognition of the welfare of animals in Sri Lanka.

"Sri Lanka has laws in place to prevent cruelty towards animals. Few people pay attention to this however, and animal cruelty continues."(Anver, 2011) It is evident, in reflecting on the recent incidents, that the law prevalent has failed to be implemented properly and effectively to govern the violations of animal rights or to protect the ill- treatment of animals in Sri Lanka, when compared with other jurisdictions over the world, although there have been several initiatives taken in the recent years to strengthen the existing legal regime in Sri Lanka for the protection of animals.

In discussing the above, this research shall be based on the issue of animal cruelty prevalent in Sri Lanka, specifically addressing the victimization of elephants and stray dogs due to cruel and inhumane treatment. This research intends to review, critically analyse the provisions contained in the Prevention of Cruelty to Animals Ordinance No 13 of 1907 to identify four main deficiencies in the Ordinance namely; the lack of, a sound definition for an "animal", stringent and updated penalties, the recognition of the concept of 'duty of care' and a proper authority to monitor animal welfare matters. It further aims to pin-point the legislation applicable to the above issue, its current implementation, evaluate whether the existing legislation is satisfactory

in addressing the issue at hand. In reviewing and critically analysing the provisions contained in the above Ordinance in order to discover the deficiencies in the law, this research ultimately aims to make recommendations to improve the existing legal system by adopting the animal welfare laws of India, Singapore and Malaysia to rectify the existing deficiencies in the Sri Lankan legal system for animal welfare. Further, the author intends to highlight the importance of expediting the enactment of the long over-due Animal Welfare Bill, identifying it as the key solution to overcome the aforementioned issues and “ensure effective and efficient laws on cruelty to animals in Sri Lanka.” (Jayasuriya, 2016)

II. METHODOLOGY

The research methodology resorted in order to carry out this research, is the qualitative methodology where the data gathered using primary and secondary sources will be reviewed and critically analysed in order to fulfil the research objectives. Primary sources are; mainly the Prevention of Cruelty to Animals Ordinance No.13 of 1907, and other statutes enacted with regard to protection of animal rights in Sri Lanka as well as legal provisions on animal welfare in India, Singapore and Malaysia. Secondary sources are the newspaper articles and other articles published online related to animal welfare legislation in Sri Lanka and the issue subjected to this research. The legal provisions contained in the aforementioned Ordinance shall be thoroughly observed and critically analysed to discover deficiencies, and legal provisions of animal welfare laws of the countries mentioned above shall be examined in order to suggest amendments to the Sri Lankan law by adopting such animal welfare laws of those countries. The author shall also review and take in to consideration the recommendations and comments made by different authors of published articles on this matter, to address the issue at hand.

III. DISCUSSION

A. Victimization of Elephants and Stray Dogs due to Cruel and Inhumane Treatment

During the past few years, many incidents took place, which later posed the question as to whether the animals in Sri Lanka are protected from being victims of cruel and inhumane treatment.

The elephants in Sri Lanka, who are considered as an exotic feature of the eco system in Sri Lanka, were placed

in a devastating position, being subjected to inhumane and cruel treatment. One such incident that took the attention of the public as well as international organizations is cruelty towards domesticated elephants in Sri Lanka. Elephants are kept in religious premises in order to be used for processions and cultural parades, chained in the zoo to woo the spectators and are used to provide elephant rides to tourists.(Mushtaq, 2016)

Many cases were reported (Mushtaq, 2016) and were highlighted through media where elephants are subjected to unnecessary burden and labour as well as where famous personalities such as politicians and well known priests have been condemned and arrested for possessing baby elephants illegally without a permit as well as involving in elephant trafficking which clearly violated the existing legal provisions that protect the elephants in Sri Lanka under the Fauna and Flora Protection Ordinance, where under Section 22A of this Ordinance it is stipulated that, “no person shall own, have in his custody or make use of an elephant unless it is registered and unless a license in respect of the elephant has been obtained in accordance with the provisions of this section”.

There were records of approximately 60 baby elephants who have been found to be stolen from jungles of Habarana, Udawale and are kept under the possession of many influential people such as politicians and priests over the past years. (Mushtaq, 2016)

Discussing about elephants fitted with metal frames being used to provide rides to tourists, “Deepani Jayantha, Veterinarian, Country Coordinator of Eemotion Foundation and a member of Animal Welfare Coalition commented on the crude nature in which these frames are fitted, and the pain and suffering that the elephants endure due to these practices; ‘Elephants that are used for elephant rides are fitted with a crude metal cage that resembles a bed frame which could weigh more than 50 kgs. And in order to keep the structure securely fitted, the cage is fitted using ropes tightly tied around the elephant’s spine’”(Wijenayake, 2016) and “In order to make elephants submit to elephant rides and other human interactions they are taken from their mothers when babies and forced through a horrific training process known as ‘the crush’. This involves physical restraints, inflicting severe pain and withholding food and water. By the time tourist come to ride an elephant, they may look at peace, but this is because their spirit has been broken. The bull hook used permanently reminds the animal of human dominance.” (Mushtaq, 2016) Metal cages that are

fitted onto the elephants used for rides are too heavy that elephant dorsum is not anatomically capable to hold such structure thus could damage the elephant's dorsum and the pelvic area. In controlling captive elephants, traditional restraining methods are used and in extreme situations they are hit in their head where cases have reported that has caused eye injuries (Wijenayake, 2016).

Another notable incident which grasped the attention of the public and animal activists is the extermination of stray cats and dogs within the premises of the University of Jayewardenepura and Moratuwa. It was reported that respective authorities of the University of Jayewardenepura and a private contracted company named "Ultrakill" were responsible in sedating and dumping stray dogs, while the Moratuwa University, in order to curb the stray dogs and cats in the university premises, carried out the same action by hiring a private contractor to chase away the strays. Unfortunately dogs were sedated using 'ketamine' and two dogs died of drug overdose. The strays that were removed from the premises were subsequently found dumped in a land. The issue that ought to be identified in this set of

circumstances is that, the authorities did not resort to the legally prescribed method of seizure and detention of stray dogs who are suspected to be diseased or known clearly to be diseased and whether to destroy or dispose of them, according to the provisions of Registration of Dogs Ordinance and Rabies Ordinance of Sri Lanka. Thus, as a consequence, the animals became victims of inhumane and cruel treatment subjected to unnecessary and superfluous injury.

It is clear that these two practical scenarios reflect the issue pertaining to inhumane and cruel treatment to animals in Sri Lanka.

B. Existing Legislation and its Applicability

Legislation in Sri Lanka that provide for the protection of animal rights in Sri Lanka can be listed down as follows.

- Prevention of Cruelty to Animals Ordinance No. 13 of 1907 as amended in 1912, 1917, 1919, 1921, 1927, 1930, 1945
- Registration of Dogs Ordinance No 25 of 1901 as amended by No 20 of 1915, 03 of 1920, 21 of 1921, 26 of 1938, 61 of 1939, 12 of 1945, 23 of 1946, 19 of 1947 and 60 of 1961.

- Animals Act No. 29 of 1958 as amended in 1968, 1988, 2009 and Regulations framed in Gazettes 1962, 1965, 2000, and 2009.
- Fauna and Flora Protection Ordinance No.2 of 1937 as amended in 1942, 1944, 1945, 1948, 1964, 1970, 1993 and 2009.

1) Prevention of Cruelty to Animals Ordinance No. 13 of 1907:

The foremost law that ought to be analysed; which is the main piece of legislation dealing with protection of animals from cruelty in Sri Lanka, is the "Cruelty to Animals Ordinance No.13 of 1907" which is more appropriately titled as the "Prevention of Cruelty to Animals Ordinance No. 13 of 1907" (Hereinafter referred to as "PCAO"). This Ordinance has undergone subsequent amendments in 1912, 1917, 1919, 1921, 1927, 1930, 1945 and the latest amendment being No. 22 of 1955. While other statutes collectively deal with animal rights, the PCAO is specifically enacted to deal with the issue of cruelty to animals. The key provisions of this Ordinance shall be analysed as follows.

The preamble to this Ordinance states that, "it is an Ordinance to make better provisions for prevention of cruelty to animals."

Section 2 of the Ordinance defines the "offence of cruelty" by stating that

"Any person who shall,

- a. cruelly beat, ill-treat, and over-drive, or cause or procure to be cruelly beaten, ill-treated, over-driven, over-ridden, abused or torture any animal;
- b. cause unnecessary pain or suffering to any animal by an act or omission,
- c. convey or carry or cause them in vehicles, basket, box, or cage or otherwise, any animal or position animals so as to subject them to unnecessary pain or suffering", will be committing the offence of cruelty.

The term "animal" ought to be interpreted according to the Interpretation section where it states that, "animal means any domestic or captured animal and includes any bird, fish or reptile in captivity", and the penalty for the offence of cruelty shall be a fine which may extend to one

hundred rupees or may extend to imprisonment of either description for a term which may extend to three months or with both.

Similarly under Section 3 “if an animal is found in any place suffering pain by reason of starvation, mutilation or other ill-treatment, the owner of such animal shall be guilty of an offence and shall be liable for a fine which may extend to one hundred rupees and in the case for a second or subsequent offence, with a fine which may extend to two hundred rupees or with imprisonment of either description for a term which may extend to three months or with both”

Consequently, the penalties for killing animals with unnecessary cruelty and using animals for unfit labour

- Rabies Ordinance No 7 of 1893- amendment No.23 of 1956. latest
- Butchers Ordinance No 9 of 1893 as amended in 1976, 1981, 2008 and Regulations framed under the Local Authorities (Standard by-laws)

Out of the above, this research paper will only discuss the following legislation that are directly applicable to the issue which is the subject of this research; victimization of elephants and stray dogs due to inhumane and cruel treatment.

- Prevention of Cruelty to Animals Ordinance No. 13 of 1907
- Fauna and Flora Protection Ordinance No.2 of 1937
- Registration of Dogs Ordinance No 25 of 1901
- Rabies Ordinance No 7 of 1893

under this Ordinance, are stated to be punished by a fine which may extend to one hundred rupees or may extend to imprisonment of either description for a term which may extend to three months or with both.

Under Section 7 of this Ordinance which imposes a penalty of “a fine which may extend to one hundred rupees or may extend to imprisonment of either description for a term which may extend to three months or with both, for any person without reasonable excuse permits any diseased or disabled animal of which he is the owner die in any street.” Offences under this Ordinance shall be considered as cognizable offences within the meaning of Code of Criminal Procedure Act as per Section 12, thus

manifesting the severity of the offences that are defined under this Ordinance.

2) Fauna and Flora Protection Ordinance No.2 of 1937:

Although the Fauna Flora Protection Ordinance Section 22 (as discussed earlier) enumerates the necessity for a valid registration and license to keep an elephant in custody, the Ordinance does not directly provide for laws against cruelty exercised over such elephants.

3) Registration of Dogs Ordinance No 25 of 1901 and Rabies Ordinance No 7 of 1893:

The Registration of Dogs Ordinance provides for the “proper authority” that ought to take the decision as regards to the ‘seizure and detention’ of dogs, and Rabies Ordinance lays down the proper law as to how the seized stray dogs who are suspected to be diseased or known clearly to be diseased ought to be detained and how the local authority is vested in the power to make the decision “whether to destroy or dispose the dogs in such manner that the local authority deem expedient.” (Avirippola, 2017) Although this Ordinance applies to the situation of victimized stray dogs discussed above, this too does not directly deal with laws against the cruelty that these dogs might face.

C. Adequacy of the Existing Legislation

It is clear that these two practical scenarios reflect the violations of the existing legal regime that specifically address the legal issue pertaining to victimization of domesticated elephants and stray dogs due to cruel and inhumane treatment. PCAO being the only existing legislation that lays down laws against animal cruelty, attention should be paid to identify if this piece of legislation is adequate in addressing the two major issues related to animal cruelty that took place and are still taking place in Sri Lanka.

The incidents highlighted above reflect immense cruelty caused to the animals which ought to be addressed specifically by the PCAO analysed above. Although the Ordinance manifests the acts amounting to an offence of cruelty to be severe, the law in relation to it is rarely implemented in order to bring justice to the ill-treated animals.

Captured stray dogs and domesticated elephants undergo immense cruelty due to ill-treatment and unnecessary suffering without anyone's knowledge, thus violating Section 2 and 3. As per statement given to the media, elephants are kept under physical restraints, inflicting severe pain and withholding food and water in order to submit them to tourist rides as well as in keeping them under control at temples, and zoos. This is a clear violation of Section 3 of the PCAO. Stray dogs in captivity are put through unnecessary suffering by being sedated and overdosed with 'ketamine' which is not the recommended method of disposing stray dogs as per law.

The PCAO came into force in 1907 and was last amended in 1955. Thus, many deficiencies can be distinguished in this Ordinance.

Firstly, the definition of "animal" interpreted in the Ordinance includes only 'captured or domestic animal' including birds, reptiles or fish in captivity. Unless the law is interpreted in a broad sense this definition does not suffice as it does not include many other categories of animals that are facing discomforts due to cruelty in the present context. This definition is evidently too narrow and limited to be applicable for the present issues pertaining to animal cruelty. The definition of "animal" under The Prevention of Cruelty to Animals Act, 1960 of India states that "an animal" means any living creature other than a human being." Such definition is wider in scope to bring justice to any animal undergoing unnecessary pain and suffering under the Indian law.

Secondly, the penalties that are imposed under the PCAO are outdated. They do not suffice as a penalty in the modern day nor does it suit to serve for the severity of the offence. Being liable to pay a minimum amount equivalent to hundred rupees or for an imprisonment extended unto three months will not penalize the perpetrators sufficiently. (Under provisions of PCAO analysed above). In Singapore, the new law on animal welfare has toughened the penalties against those convicted of animal cruelty by imposing 2-3 year jail terms, unlike in Sri Lanka.

Thirdly, the duty of care that the person in charge of an animal ought to be exercised to ensure the well-being of such animals, is not included in the PCAO. The proviso to section 3 stipulates that "it shall be a good defence to any such charge if the owner can prove to the satisfaction of the court that such condition of the animal was not due to act, omission, neglect or default on his part." This proviso reduces the stringency of Section 3, enabling the

perpetrators to show satisfactory excuse as to the condition of the animal who is being ill-treated and thus be free from liability proving that such condition was not due to their act, omission, neglect or default. If one tries to interpret this proviso it is doubtful as to how an animal, living with an owner, could put itself in a condition of starvation, mutilation or specially ill-treatment with no involvement of its owner's act, omission, neglect or default at all. The law should be able to completely vest the responsibility of taking care of the animals that are owned by a person and require to be held liable despite the presence of a direct causal link between the owner's act and the unfavourable condition that the animal is going through. Animals and Birds (Amendment) Act of Singapore provides for the practice of "positive duty of care" towards the animals by the owners and caretakers as according to the Codes of Animal Welfare unlike the Sri Lankan law.

Furthermore, the PCAO does not establish a specific authority that is vested with the power to look into Animal Welfare matters. It merely authorizes the Minister with power to appoint infirmaries to treat and care for animals that are the victims of offenses committed under the Ordinance, make rules for treatment of animals and other such related matters.

In addition to these main concerns the PCAO clearly lacks provisions to address issues relating to animals in pet shops, animal experimenting, animal performance, live transport of animals, and use of elephants for rides and processions, which are the most demanding concerns of the present day in Sri Lanka.

It is therefore clear from the above, there are many deficiencies in the current PCAO which renders Sri Lanka far behind from the rest of the world with regard to animal welfare legislation.

IV. RECOMMENDATIONS

In order to over-come the above deficiencies and improve the existing legal system to address animal cruelty issues emanating from the present day context, several notable initiatives have been taken by the legislature and animal activists of Sri Lanka.

One such major step is the drafting of the "Animal Welfare Bill" which was approved by the cabinet in 2016, although it is yet to be enacted as law in Sri Lanka. However, many novel provisions are introduced by this Bill to improve the existing animal welfare law in Sri Lanka. It consists

of fifteen parts that comprehensively lay down the law on animal welfare that overcomes the deficiencies in the current Ordinance in a satisfactory manner.

Section 80 provides definitions for 'animal', 'animal in captivity' which has widened the existing definition of 'animal' in the Ordinance to mean 'any living creature other than a human being'. Section 3 expressly recognizes the concept of 'duty of care'. Under Part VII, VIII and IX the Bill establishes "Offences Relating to Cruelty to Animals", "Prohibited Conduct" and "Penalty" respectively by comprehensively defining the different offences and prohibited conduct that are punishable under the Bill while Part XII provides for "Investigation and Prosecution" procedure for offences committed. Furthermore, perpetrators can be convicted under the jurisdiction of the Magistrate Court and also be made liable for more stringent penalties. Most importantly the Bill proposes for the establishment of a 'National Animal Welfare Authority' under Section 5.

It is also favourable to recommend to include laws that will monitor the extermination of stray dogs in order to put an end to the unnecessary suffering and pain that stray dogs are put through in order to make Sri Lanka Rabies free. "The solution is not destruction, but dog population control through CNVR (Catch, Neuter, Vaccinate and Release), the humane, sustainable method recommended by the World Health Organization (WHO) and the World Organization for Animal Health (OIE) which Sri Lanka is obliged to follow, being a member of both organizations." (Perera, 2017) There ought to be provisions against cruelty in order to punish perpetrators who do not utilize the CNVR method and resort to inhumane practices. The law should establish authorities or government funded organizations to improve living conditions of community dogs by establishing veterinary and feeding centres and fenced zones that they could roam around freely.

Countries such as India, Singapore, and Malaysia have established fine animal welfare legislation. Indian Constitution under Article 51A (g) stipulates that "It is the fundamental duty of every citizen of India to have compassion for all living creatures", giving express recognition to animal welfare. In the Sri Lankan Constitution there is no explicit recognition of animal rights or welfare. When looking at the current context it is more suitable if the supreme law of the country expressly provides for the animal rights and welfare. New Malaysian law (since 2013) on Animal Welfare specifically provides

for a "new licensing system for animal related businesses and new responsibilities for pet owners and license holders" which is also recommended under the Animal Welfare Bill in Sri Lanka.

V. CONCLUSION

In conclusion, it should be reiterated that it is time to enact the long-overdue Animal Welfare Bill in order to overcome the four main deficiencies in the Ordinance namely; the lack of, a sound definition for an "animal", stringent and updated penalties, the recognition of the concept of 'duty of care' and a proper authority to monitor animal welfare matters and "ensure effective and efficient laws on cruelty to animals in Sri Lanka." (Jayasuriya, 2016), in order to reflect 'the greatness of this nation and its moral progress.' The manner in which fine animal welfare law in India, Singapore and Malaysia have introduced novel animal welfare standards, Sri Lanka too should proceed to implement such novel standards as recommended above to improve the existing legal regime on animal welfare. As said by Attorney-at- Law Vositha Wijenayake, Convenor of Animal Welfare Coalition of Sri Lanka, "The current law dates back to 1907 and lacks in deterrent effect which prevents the protection of animals against cruelty. It is time we changed these laws and made sure that the long overdue Animal Welfare Bill is passed for efficient action against cruelty to animals."

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