

PREVENTION ON CRUELTY ON ANIMALS AND THEIR RIGHTS

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ABSTRACT

A brief disquisition on the legal status of animals. Animals though living organisms whether tamed or not are generally considered as property of Humans. Their lives are used for food, milk, experiments, performance and leisure. Also Humans often treat them cruelly by confining, starving, dehorning, castrating, drugging, beating, kicking, mutilating their body parts, overloading & overriding, nose roping, killing/ shooting for various purposes.

Here in this research paper we have reported on the Jurisprudential status of Animal, Constitutional directives on Animal, legislations which prevent animal cruelty, their pros and cons, steps taken by the government to prevent animal cruelty and significant judicial pronouncement on the subject.

Functions of Animal Welfare board and offenses relating to cruelty and their punishments on owners have also been inspected in brief & various solutions and suggestions are mentioned to mitigate the unending suffering to animals.

Circumstances when destruction of suffering animals are ordered by court with assent to the owner and necessary implications are also discovered.

The Paper examines experimentation on animals and a committee empowered to control and supervision of experiments on animals. Laws relating to performing animals and restriction on exhibition and training of performing animals. Enforceability of beef ban and its laws in different states has also been emphasized.

Major findings and significance of study are detailed changes made by different countries on the status of animals and recent developments in India with respect to the Jallikattu issue.

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INTRODUCTION

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

Animal, a living organism with a nervous system who has a sense organ and can respond to stimuli. Essentially an organism who can react through its senses. Animals are used as property and are often subjected as property in the west while some eastern mythology considers Humans and animals as the same nexus. Prior to independence, Section 428 & 429 of IPC used to deal with offenses related to cruelty on animals but with the objective of protecting the interest of the Owners of Animals. However significant changes have been made overtime.

CRUELTY ON ANIMALS

Cruelty on Animals happens very widely & include torturing, beating, employing an unfit animal, drugging, excessively loading, confining, failing in providing sufficient food, water & shelter, abandoning, organizing animal fights, practicing phooka or doom dev, mutilation of body parts of animals, sale of infected animals, dehorning & castrating.¹

Constitutional Direction of Animals in India

“The State shall endeavor to “– “to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;”²

“Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country”³

The Constitution of India does not recognize Animal Rights as an animal does not have the status of Person. It only provides for the fundamental duty of citizens to protect wildlife and directs the government to work for the same in its 42nd amendment.

Article 48 governs & mandates states to implement scientific procedure to be implemented in animal husbandry. Effective measures must be taken by the state for preserving and improving breeds, prohibition on cow & calves slaughter along with milch and draught cattle.

¹ Prevention of Cruelty to Animals Act, 1960, S 11.

² The Constitution of India, 1950 under the Part IV Fundamental duties at Article 51A(g).

³ The Constitution of India, 1950 under the Part III Article 48A.

The Supreme court had directed Union, State & local governments to take necessary steps in control of pollution of water.⁴

In T.N. Godavarman Thirumulpad v. Union of India⁵, plea of state was held untenable that it has no funds to save wild life buffalo from extinction. The State Government was directed to use Central Government scheme for saving wild buffaloes.

JURISPRUDENTIAL STATUS OF ANIMAL

Animal Jurisprudential status is important and a matter of great significance in providing just and fair treatment to animals. It simply means what is the status of an animal in the eyes of law. “A legal person has a real existence but its personality is fictitious”⁶

Status of Legal person can give an entity several rights and liabilities. Like Natural Persons a legal person is also eligible to sue and get sued. Jurisprudential Status of Animals differs from state to state. Some of the states have given animals fundamental rights, some have given statutory rights and some have given no rights.

The offenses committed by an animal are considered as offenses committed by its owner under Doctrine of Absolute Liability. There are significant questions regarding wild animals as they have no owners. Damages caused by them cannot be recovered from anyone as they have no owner. However Under Article 48 A, Constitution of India, the state is considered as the owner of wildlife and forest and can be liable for compensation.

If Animals are provided status of Legal Person then it is important to debrief who will be liable for wrongdoings of animals.

LEGAL STATUS OF ANIMAL IN INDIA

Legislations in India are more focused on preventing unnecessary cruelty than giving the Status of ‘Personhood’ to animals. Wildlife Protection Act, 1972 holds punishments for poaching, hunting

⁴ M.C. Mehta(II) v. Union of India AIR 2006 SCC 1158

⁵ AIR 2012 SC 1254

⁶ V.D.MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 337 (EASTERN BOOK COMPANY, 5th edn.2021)

of wild animals and also specifically mentions endangered species & also incorporates provisions of placing national parks and sanctuaries for conserving wildlife.

However it only aims to protect certain animals by which humans have vested interest and it is not applicable to all animals.

In *Somerset v. Stewart*⁷ was a judgment which changed the status of humans from ‘legal thing’ to ‘legal person’ and was instrumental to end the human slavery in England and described rights of enslaved people on England’s land and they cannot be sent to other countries for sale

The Prevention of Cruelty to Animals Act, 1960 preamble emphasis on preventing unnecessary pain on Animals. The Act has constituted Animal Welfare boards. Also envisioned provision regarding destruction of animal, Experimentation on animal & Performing Animals.

The Drugs and Cosmetics Act, 1945 in Rules 148 C & 135 B declare Animal Testing as illegal. In Kerala there is a law which prohibits sacrifice of animals and birds in temple premises, no person can perform animal sacrifice.⁸

Looking at the above legislations it is clear that Legally we focus on animal welfare and we do not give animals a status of ‘distinct person’ which we give to Corporates or idols.

The role of courts have also been very significant in determining the legal status of animals. Courts interpret the laws where the legislature is silent with the aid of the Constitution. The Supreme Court & several High Courts have recognized animals as legal persons and they have right against unnecessary pain imposed on them.

Rights given to animals are legal rights and not fundamental rights. However they have to be elevated to the status of Fundamental Rights, as done by several countries for the dignity of animals. Article 51A(g)(h)⁹ should be read with provision of Prevention of Cruelty to Animals (PCA) Act, and it shall be considered as magna carta of animal rights¹⁰

The word “life” in Article 21¹¹ has to be expanded meaning, and any disturbance which includes all forms of life, falls within the meaning of Article 21. In Court’s view life means more than mere existence and also includes intrinsic worth, honor and dignity.¹²

⁷ (1772) 98 ER 499

⁸ THE KERALA ANIMALS AND BIRDS SACRIFICES PROHIBITION ACT, 1968(Act No.20) of 1968

⁹ Constitution of India

¹⁰ Para 56, Animal Welfare Board of India v. A. Nagaraja & Ors., (2014) 7 SCC 547

¹¹ Constitution of India

¹² Para 62, Animal Welfare Board of India v. A. Nagaraja & Ors., (2014) 7 SCC 547

The Apex Court held that the PCA Act must be construed liberally in favor of the weak and infirm.¹³

FUNCTIONS OF ANIMAL WELFARE BOARD

Animal welfare Boards performs several functions like:

1. Advise the government for amendments under welfare legislations on animals.
2. Advise the government to make rules under the act when animals are particularly kept in captivity, transported or on performing animals. Example- To enhance safety of Dogs¹⁴, Fishes¹⁵ & livestock¹⁶ etc.
3. Steps for amelioration of animals like construction of shed, water-troughs and medical assistance.
4. Financial and other support to animal welfare organizations.
5. Cooperate and coordinate with Animal welfare Organizations.
6. Steps to Destroy unwanted animals by local authorities.
7. Advise the government on design & maintenance of slaughter houses so that unnecessary pain can be avoided to animals. Prevention on Cruelty to Animals(Slaughter House) Rules, 2000 expressly states that animals can only be slaughtered except in licensed slaughterhouses which bans sacrifice of animals in whole India. However for the purpose of Religion Slaughter is allowed.

These functions are performed as of legislative directions yet judiciary has also expanded the horizons of functions to be performed by Animal Welfare Boards.

¹³ Para 26, Animal Welfare Board of India v. A. Nagaraja & Ors., (2014) 7 SCC 547

¹⁴ Prevention on Cruelty to Animals (Dog Breeding and Marketing) Rules, 2017

¹⁵ Prevention on Cruelty to Animals (Aquarium and Fish Tank Animals Shop) Rules, 2017

¹⁶ Prevention on Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017

“The Supreme Court directed Government and animal welfare board to ensure 5 Freedom of animals which are recognized by World Health Organization of Animal Health (OIE), and India is also a member of :

1. freedom from hunger, thirst and malnutrition;
2. freedom from fear and distress;
3. freedom from physical and thermal discomfort;
4. freedom from pain, injury and disease; and
5. freedom to express normal patterns of behavior.”¹⁷

POWER TO MAKE LAWS IN INDIA

Item 14 of State List “[p]reserve, protect and improve stock and prevent animal diseases and enforce veterinary training and practice.”¹⁸ which means preservation and protection, medical assistance to animals is a state subject and the state has power to make laws on the same.

Under Concurrent list, Both Center and state are empowered to make laws on that subject matter. Regarding Animal welfare there are two matters in Concurrent list which bolsters Animal welfare

1. Item 17: “Prevention of cruelty to animals.”
2. Item 17B: “Protection of wild animals and birds.”

OFFENSES

The offenses against animals in India are considered as cognizable offense as per Criminal Procedure Code¹⁹ however the punishments are not very stringent and offender most often gets away without facing adverse consequences.

¹⁷ Chapter 7.1.2 of the guidelines of OIE

¹⁸ Schedule 7, Constitution of India

¹⁹ Prevention of Cruelty to Animals Act, 1960, S 31.

Offender who has harmed any animal or tree can be convicted for imprisonment for 3 years and fine up to Rs. 20000, or both. Offense done a second time after conviction can result in 7 years imprisonment.²⁰

REPORTING OF OFFENSES

Offenses in India can directly be reported via application or F.I.R or a statement with a photograph to the Police station of the incident. There are other options as well to file a complaint:

1. SPCA (Society for the Prevention of Cruelty to Animals).
2. Senior Government officials at the State or District Animal Welfare Board.

A person who needs help in filing a Complaint can ask help from PETA or other animal welfare organizations. Online Complaints can also be filed to such organizations like: The Pet Nest²¹, Society for Animal Safety, India²² etc.

LAWS ON DESTRUCTION OF ANIMALS

Animal welfare legislation in India describes the circumstances where destruction of animals are not an offense and can be done by authority of law. Dehorning of cattle, nose roping or castration in a manner prescribed shall not be deemed to be animal cruelty.²³

If the court considers that keeping an animal alive will amount to cruelty on that animal, then it can direct a person to destroy that animal in a manner prescribed which will be the least cruel method available for destruction. Expenses of this destruction will be recoverable from the owner of that animal. The Orders of Destruction cannot be made without evidence of veterinary in charge officer of that area.²⁴

²⁰ Wildlife Protection Act, 1972.

²¹ Report abuse at: <https://thepetnest.com/report-animal-abuse>

²² Report abuse at: <https://www.sasindia.org/report-a-case/>

²³ Prevention of Cruelty to Animals Act, 1960, S 11(3).

²⁴ Prevention of Cruelty to Animals Act, 1960, S 13(1).

Magistrate or S.P can direct immediate destruction of an animal if they believe by reason that offense has been committed against the animal by that owner and it is cruel to keep that animal alive.²⁵

If Owner refuses to consent for the destruction of the animal, any police officer above the rank of constable, after the veterinary officer certifies that the animal is severely injured & it would be cruel to keep that animal alive, the police, after obtaining orders of the magistrate, destroy or cause it to be destroyed.²⁶

No appeal shall lie against such order of magistrate.²⁷

LAWS ON EXPERIMENTATION ON ANIMALS

Experimentation is prohibited & unlawful except for discovery of knowledge which may help in saving lives, fighting diseases, mitigating pains whether of persons, animals, or plants. A committee is formed which supervises experimentation on animals, registers persons. The committee has a duty to consider that least suffering has been caused to suffering animals and all the rules and regulations are compiled by. Failing to comply with rules can result in prohibition on experimentation on animals.

LAWS ON PERFORMING ANIMAL

There is restriction on exhibition & training of performing animals in India. Person are restricted to train animals unless they are registered in a prescribed banner and Central Government , by notification in official gazette, specify an animal which shall not be trained as a performing animal. Courts also have power to prohibit training of such animals if it is satisfied that it will cause unnecessary pain to those animals. Although there are certain exceptions as well:

1. Training for bonafide police and military purpose or such animals exhibition for said purpose
2. Animals kept in zoo or where object is exhibition for educational or scientific purpose.

²⁵ Prevention of Cruelty to Animals Act, 1960, S 13(2).

²⁶ Prevention of Cruelty to Animals Act, 1960, S 13(3).

²⁷ Prevention of Cruelty to Animals Act, 1960, S 13(4).

INTERNATIONAL ENDEAVOURS IN PREVENTION ON CRUELTY ON ANIMALS

Humans have caused great harm to the environment and wildlife across the world and disturbed the ecological balance. However Humans have realized that they are interdependent on Flora and Fauna as it is an integral part of Nature. Efforts have been made by International Communities for Animal welfare which is motivated by Environmental Protection, Compassion & Natures need. Few of the such instruments are:

1. Declaration of the Protection of Birds Useful to Agriculture (1875)
2. Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900)
3. Convention for the Regulation of Whaling (1931)
4. The Whaling Convention (1946)
5. Stockholm Declaration
6. UNEP Biodiversity Convention (1992)

“every form of life is unique, warranting respect regardless of its worth to man.” The Charter uses the term “nature” in preference to “environment” with a view to shifting to non-anthropocentric human- independent terminology.”²⁸

In Switzerland slaughtering without anesthesia was banned in 1992, & it was the first country to recognize Constitutionally regarding dignity of the creature. Animals needed to maneuver with protection, acknowledging their wants in the appropriate way.²⁹ Animals are living beings and cannot be treated as objects. They are capable of sensing things. Humans must provide care to them.³⁰

²⁸ World Charter of Nature

²⁹ Art. 4 par. 1 TSchG

³⁰ Polish Animal Protection Act, Art. 1

Germany has provisioned in its Constitution that Animals have Protection Rights. State is obliged to respect the dignity of animals. Protection of animals from animal fight, training, to sell or buy ill animals is also provisioned to be prohibited in Animal Welfare Act (Germany)³¹. German law has been amended and animals governed by special statutes cannot be treated or regarded as property.³² The UK's Animal Welfare Act of 2006 offers animals a great deal of safety against cruelty.

Animals are not things; they are protected by special laws. They have separate status and are not considered as property of humans.³³ The Austrian Federal Animal Protection Act likewise acknowledges man's obligations to other living things, and thus the "Federal Act" is concerned with safeguarding the survival and welfare of animals.

The New York Supreme Court, Appellate division refused to give separate legal status to chimpanzees as they argued that rights and responsibilities go hand in hand & right cannot be conferred without assigning duty or responsibility.³⁴

Mobo v. Queensland³⁵ animals are treated as property as interdependence on foods, income, entertainment etc. Although New Zealand granted a national Park status to a Legal person. Argentina Court treated animal as legal person.³⁶

JUDICIAL ACTIVISM AND WAY AHEAD

The Uttarakhand High Court disposed the writ petition by mandatory directions which said that the entire animal kingdom including aquatic and avians are separate legal persons and all the citizens are loco parentis.³⁷

“The Court issued various directions to respondents including State of Uttarakhand including, inter alia, medical examination of animals; fixation of maximum weight to be carried by animals; issuing license to owners of horse carts/tongas; not more than six persons to ride the vehicle drawn by animals; fixation of time and temperature during which animals can be kept in harness; ban on

³¹ Federal Law Gazette I, p. 1094, Article 3

³² German Civil Code, S90a

³³ Austria Civil Code, Art. 285a

³⁴ Steven Wise, Why the First Department's Decision In Our Chimpanzee Rights Cases is Wildly Wrong, NON HUMAN RIGHTS BLOG (June 22, 2017), <https://www.nonhumanrights.org/blog/first-department-wildly-wrong/>.

³⁵ (1992)175 CLR I.

³⁶ Presented by A.F.A.D.A. about the Chimpanzee “Cecilia” - Non-Human Individual, Expte. Nro. P-72.254/15

³⁷ Narayan Dutt Bhatt v. Union of India and Ors. SCC Online UTT 645

the use of spike stick or bit; putting of fluorescent reflectors on carts and animals for identification at night; providing shelters to animals; appointment of veterinary doctors, etc.”³⁸

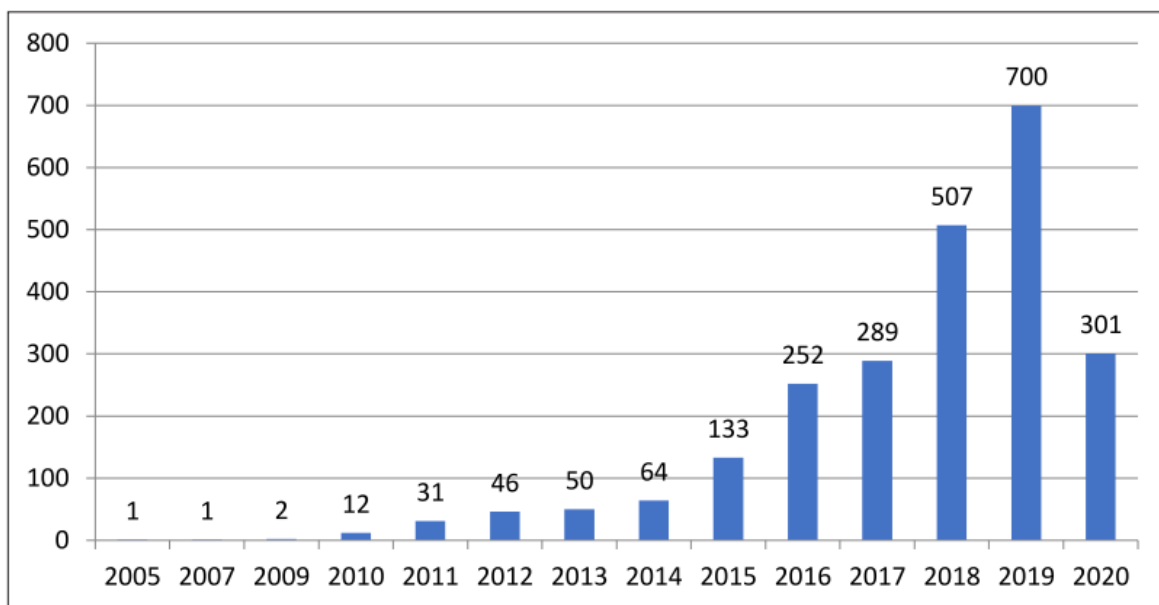
The Supreme court introduced ‘species best interest’ which meant that interpretation of welfare statutes are to be interpreted in a way which suits species best interest.³⁹ The Supreme court also held that we should go for an ecocentric approach rather than anthropocentric as we must endeavor to protect all animal species and not just species which have monetary value.⁴⁰

The Supreme Court found the practice of Gadhimai festival which is celebrated in Nepal & cruelly causing deaths of Chicken and bullocks as an act of cruelty and declared a ban on exports of animals without license.⁴¹

Several SLP’s have been filed to restrict the power of Municipal corporations to destroy stray dogs and other animals. Animal welfare organizations contend that spaying is an effective process to control rising population than destruction of such animals.

A petition is filed against Chicken cages which are very small, unhealthy & prone to cause disease. Caging chicken in such cages is cruel & shall be phased out. The matter is still pending.

CRIME AGAINST ANIMAL REPORT 2021



³⁸ Narayan Dutt Bhatt v. Union of India and Ors. SCC Online UTT 645

³⁹ Animal Welfare Board of India v. A. Nagaraj, (2014) 7 SCC 547

⁴⁰ T.N. Godavarman Thirumulpad v. Union of India (2012) 3 SCC 277

⁴¹ Gauri Maulekhi v. Union of India W.P.(C).No.881/2014

Graph: Number of cases reported during the period 2005 to 2020

Looking at the graph, it is evident that people are getting more aware of animal rights and it's law and reporting incidents of it.

JALLIKATTU CASE

A case of religion & culture v. perpetuate animal cruelty. Jallikattu is a religious and cultural festival enjoyed by the people of Tamil Nadu, and its influence transcends caste and creed lines.

The State administration stated, "A tradition that is centuries old and significant of a community's identity may be controlled and altered as the human race progresses rather than being fully extinguished." A prohibition on this practice, it was stated, would be seen as being "hostile to culture and against the sensibilities of the community."

The state defended the custom, claiming that jallikattu was "a means for maintaining this valuable indigenous breed of animals" & could not go against morality.

The applicants' main line of defense was that there existed an unbreakable link between human and animal existence. The Constitution had acknowledged that liberty was "inherent in every living thing, whether it be in whatever form of existence." The TN law was introduced to get over the SC's ban on jallikattu.

Bulls and people have both been killed and injured in jallikattu battles that have occurred in many regions. In contrast to TN's claims, the applicants said that some tamers attacked bulls. The animals were treated with "severe brutality," in their opinion.

In 2014 Supreme Court banned Jallikattu. The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act of 2017 and Prevention of Cruelty to Animals (Conduct of Jallikattu) Rules of 2017 have reinstated Jallikattu & the matter is again pending in the Constitution bench of the Supreme Court.

Current Position: Except in TN & Karnataka, bull Racing is banned in all other state due to 2014 judgment⁴²

BRIEF DISQUISITION ON BEEF BAN

⁴² Animal Welfare Board of India v. A. Nagraj, (2014) 7 SCC 547

In 2005, The Principle of stare decisis was applied and held that though cow dung and cow urine does not have a very significant value, still it upheld the cow slaughter ban laws as there were no advancement of technology or other logical reason to reverse the earlier decision. Also cow slaughter ban was restrictive and does not infringe the fundamental right of freedom of trade and commerce. Cow slaughter ban is part of Directive Principle in state policy and if it infringes some fundamental right, attempts must be made to harmonize in larger public interest.⁴³

SOLUTIONS AND SUGGESTIONS TO PREVENT ANIMAL CRUELTY

Animals being living beings and capable & receptive of sensation deserves the right on the ground of compassion, morality and maintaining balance in the environment. They are not a property and must not be treated as a property. All the appropriate measures must be taken to ensure Right to life of animals which shall include dignity and respect. The Solution and suggestion to the problem of cruelty inflicted on animals is:

1. Animals must be given Right to Life & Right to freedom and shall not be confined unless the procedure established by law.
2. Animals must be protected by state, citizens and laws must be more stringent and effective and efficacious measures are required from Animal welfare board and organizations to protect the animals.
3. The penalties, fine and imprisonment under contemporary law is very less and conviction rate is negligible which is a matter of great concern and such provision shall be amended by appropriate government as soon as possible and fair and just punishment be imposed on the wrongdoers.
4. The Complaint reporting system must be more advanced and animal veterinary assistance shall be available to much more places that are conventional times.
5. That Childrens must be educated & teachings must be inculcated to be compassionate for the animals and religious text must be referred to elucidate animals' right to life.

⁴³ State Of Gujarat vs Mirzapur Moti Kureshi Kassab, on 26 October, 2005

6. That several other rules must also be stringently enforced so as to protect the rights of Animals.
7. Ecocentric approach must be followed rather than anthropocentric approach.
8. Animals must be considered as an inalienable part of environment and humans must consider to live along with them with respect and dignity.

CONCLUSION

Humans are protected all over the world because of Human Rights. Citizens are protected by Fundamental rights. However there is no such right available to the animals which are also living being, an important part of ecology and most vulnerable to resist the cruelty inflicted by humans. Only after animals have been granted some status of legal person, they may have some right. The legislations in most of the states are only welfare legislations and are not enacted with an intention to provide any rights on animals. Although the Judiciary with time and again applied the approach of expanding the horizons of welfare legislature, However it has no significant outcome in combating, mitigating the cruelty of animals.

Enforceability of existing welfare law is also a matter of grave concern because they are hardly imposed, offender hardly gets punished and punishments are not even stringent and reformative. Animal Right Jurisprudence has no significant developments since ages and animals are still treated as a property, having monetary values and not regarded with due care and compassion. Few rules are enacted by the legislature yet it has not had a huge impact in curbing cruelty and perpetual sufferings suffered by animals. 42nd amendment of Constitution gave Constitutional backing to animal welfare laws, yet it is not very efficacious in curbing worldwide problem.

However, there is a ray of hope after seeing amendments and new legislations introduced by several countries which at least expound about animals and their legal status, their rights & life.

