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EXPLORING LEGAL REMEDIES: URGENCY FOR A HOLISTIC FRAMEWORK TO PROTECT AND COMPENSATE VICTIMS OF DOG BITES IN INDIA

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I. ABSTRACT

In this paper, the author has analyzed the application of common law strict liability principle in India through case laws. After that, the author has discussed the various remedies available to the victims of dog bites. The author advocates for more victim friendly laws in case of dog bites, specifically in the case of stray dogs. In 2016, the supreme court had appointed a committee headed by Justice Sri Jagan to examine the compensation claims of victims of stray dog attacks in Kerala. The author proposes that a similar compensation scheme needs to be implemented in the whole country. The paper also examines the conflict between the fundamental rights of humans and the rights granted to animals under the Prevention of Cruelty to Animals Act 1960. A few provisions from the Animal Birth Control Rules 2023 recently notified by the Central government have been incorporated in the work.

II. KEYWORDS:

Stray dogs, Dog bites, Strict liability, ABC Rules 2023, Prevention of Cruelty to Animals Act 1960.

III. INTRODUCTION

The common law classifies animals into two categories: *ferae naturae* and *mansuetae naturae*. *Ferae naturae* refers to those animals which are innately dangerous such as elephants, lions, bears whereas *mansuetae naturae* refers to those animals which are harmless by nature and can be easily domesticated, for instance, dogs, cats, and horses.

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India, being a common law country, still follows the common law strict liability doctrine in cases of dog bites.² There are no codified laws such as the Animal Act of United Kingdom. In the case of *Vedapuratti v M. Koppan Nair*³, the Madras High Court relied on the English case of *Filburn v. People's Palace and Aquarium Co.*⁴ and held that the liability of an animal owner will depend on the class to which the animal belongs though it can be tamed or domesticated. Since an elephant belongs to “*ferae naturae*” it cannot be considered harmless although it may be domesticated in some areas. Hence, the owner was liable to pay damages.

In the case of dogs, the law of *scienter* is applied to impose strict liability on the owners. Since a dog belongs to *mansuetae naturae*, the owner is liable only in cases where the aggrieved person is able to prove two things: the dog was of an abnormally dangerous character and the owner had knowledge about the same.⁵ An application of this common law strict liability can be found in *Prakash Kumar Mukherjee v Harvby*⁶. In this case, the defendant's servants had taken the dogs to the ground where they bit the plaintiff. The court held the defendant liable as he was aware that the dogs could bite without provocation, and it was foreseeable on the part of his servant that such an incident could happen. The courts have also applied the principle of absolute liability in some dog bite cases, making the owner liable irrespective of care or knowledge.

In *scienter* action, the burden of proof is always on the plaintiff. It becomes difficult to determine whether a dog's vicious character was abnormal to its class as well as the owner's knowledge about the same. Thus, the strict liability in common law was favourable to the dog owners.⁷ A lot of countries have done away with the requirement of *scienter* and enacted more victim friendly dog bite legislations.

² Taposh Das, *Strict or Fault Liability for harm by dogs*, 1 SNLR 38, 44-45 (2021).

³ *Vedapuratti v. Koppan nair*, (1912) ILR 35 Madras HC 708.

⁴ *Filburn v. People's Palace and Aquarium Co.*, (1890) 25 QBD 258.

⁵ Lynn A. Epstein, *There Are Not Bad Dogs, Only Bad Owners: Replacing Strict Liability with a Negligence Standard in Dog Bite Cases*, 13 ANIMAL L. 129, 132-133 (2006).

⁶ *Prakash Kumar Mukherjee v Harvby*, (1909) SCC OnLine Cal 133 : (1908-09) 13 CWN 1123.

⁷ Lynn A. Epstein, *There are not bad dogs, only bad owners: replacing strict liability with a negligence standard in dog bite cases* 13 ANIMAL L. 129, 132 (2006).

IV. COMPENSATION TO VICTIMS OF DOG BITES

In the case of pet dog bites the most common remedy for an aggrieved person is to obtain redressal under Section 289 of the Indian Penal Code, 1860 (hereinafter as IPC). Section 289 of IPC is as follows:

“Negligent conduct with respect to animal. – Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”⁸

Although common law strict liability is independent of negligence, section 289 contemplates “negligent conduct” in order to penalize a person. Compensation is generally awarded to the victim under criminal proceedings related to section 289 IPC.⁹ There are also instances where people knowingly incite their dogs to attack other persons. In these cases, section 338 of IPC¹⁰ is attracted which reads as:

“Causing grievous hurt by act endangering life or personal safety of others. – Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.”

Recently, the Central Government has informed the parliament that there is no provision in Indian law for compensation to dog bite victims.¹¹ This statement is in regard to stray dog bites. In case of bites caused by stray dogs, various High courts have ruled that the state authorities will be liable to pay compensation and medical expenses to the victims.

⁸ Indian Penal Code, 1860, § 289, No. 45, Acts of Parliament, 1860 (India).

⁹ Code of Criminal Procedure, 1973, § 357, No. 2, Acts of Parliament, 1974 (India).

¹⁰ Indian Penal Code, 1860, § 338, No. 45, Acts of Parliament, 1860 (India).

¹¹ Kanu Sarada, *No provision in law to compensate dog-bite victims, says Centre*, INDIA TODAY (Aug. 2, 2022), <https://www.indiatoday.in/law/story/law-compensate-dog-bite-victims-centre-attacks-1983006-2022-08-02>.

The Karnataka High Court had awarded compensation against the state authorities to the victim's father in the case of *Shri Yusub v State of Karnataka*¹². In this case, the High Court examined the issue whether there is a statutory duty vested with the municipal authorities to safeguard the citizens from attack by street dogs. The court answered this issue in the affirmative while relying on the decision of Bombay High Court in *Maruti Shrishailya Hale and others vs. The Commissioner, Sangli Miraj Kupwad Corporation*¹³. The Bombay HC had highlighted the importance of Article 21 holding that "the right guaranteed by Article 21 of the Constitution of India is not merely a right to survive but extends to right to live a dignified and meaningful life and as such, there is a corresponding obligation on the State Government and its agencies to ensure that the said rights are not violated". The Court held that the State had failed to provide a safe environment to the citizens by not taking steps to curb the menace of stray dogs.

In a recent decision the Chhattisgarh High Court has ordered ₹6.5 lakhs as compensation to the father of a child who succumbed to injuries caused by a stray dog attack. Initially the petitioner filed an application to claim compensation from the government relief fund for the unnatural and untimely death of his daughter. The State authorities rejected the application on the ground that there was no provision of law for awarding compensation in stray dog bite cases. He subsequently filed a writ petition before the High Court praying for the grant of compensation. The Court observed that:

*"Untimely and unnatural death of a child cannot be valued or compensated in terms of money as it is a perennial grief to the parents and other family members and such a loss would surely lead to mental agony and trauma".*¹⁴

While granting relief, the Court further observed that:

"The agony and suffering of a victim of dog biting are only to be experienced or seen. In case at hand, the excruciating pain, suffering, mental agony and deprivation of faculties which would

¹² Shri Yusub v. State of Karnataka, WP No. 110352 of 2019.

¹³ Maruti Shrishailya Hale and others vs. The Commissioner, Sangli Miraj Kupwad Corporation, WP No. 4075 of 2015.

¹⁴ Vijay Das Manikpuri v. State of Chhattisgarh & Ors., 2023 LiveLaw (Chh) 23.

have immediately visited that girl child with her encounter with stray dog, can also easily be envisioned from the photographs annexed with writ petition."

In 2016, the Supreme Court had appointed a committee headed by Justice Sri Jagan in the case of *Animal Welfare Board of India v People for elimination of Stray Troubles*¹⁵ to examine the compensation claims of victims of stray dog attacks in Kerala. In order to avail compensation, a person has to submit his medical records along with the application. The compensation is awarded at 9% interest from the date of claim. A compensation scheme on the lines of Sri Jagan Committee can be implemented in the whole country. The compensation amount can be fixed according to the nature of injury caused or the gravity of the accident.

V. ARTICLE 21 VIS-A-VIS ANIMAL RIGHTS GRANTED UNDER PREVENTION OF CRUELTY TO ANIMALS ACT, 1960¹⁶ ('THE ACT')

It was observed that "the animals' well-being and welfare have been statutorily recognized under Section 3 and Section 11 of the Prevention of Cruelty to Animals Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Section 3 and Section 11 of the Act read with Article 51-A(g) and (h) of the Constitution of India."¹⁷ This is not to mean that the rights of animals can take precedence over fundamental rights of humans.

In the case of *People for elimination of stray troubles v State of Goa*¹⁸, the petitioners filed a public interest writ petition against the State of Goa and local bodies to fulfil their statutory duties of confinement and elimination of stray dogs/cattle. The petitioners further prayed for compensation to the victims of stray dog bites if the animal welfare

¹⁵ *Animal Welfare Board of India v People for elimination of Stray Troubles*, (2017) 1 SCC 396.

¹⁶ The Prevention of Cruelty to Animals Act, No. 59, Acts of Parliament, 1960 (India).

¹⁷ *Compassion Unlimited Plus Action v. State of Karnataka*, Criminal Petition No. 5344 of 2020.

¹⁸ *People for elimination of stray troubles v State of Goa*, 2003 (4) BomCR 588.

organizations interfere with the functioning of local bodies. The Court held that *“it is true that animals should not be subjected to unnecessary suffering or pain, but when the question arises between suffering of a man or whole lot of human population on one side, and the suffering of animals particularly stray dogs on the other side then obviously, weightage will have to be given for the suffering of human beings.”*

The dilemma between Article 21 of the Constitution and the rights given to animals under the 1960 Act came to fore in the case of the *Animal Welfare Board of India and another vs. the Ombudsman for Local self*¹⁹ where the Kerala HC concluded that the fundamental right granted under Article 21 shall take precedence over the Animal Birth Control Rules, 2001²⁰. The Court also said that human life is more important than that of dogs. The conflict between the problems caused by stray dogs and the rights of animals under the law was also acknowledged by the Delhi High Court in *New Friends Colony Residents’ Welfare Assn. v UOI*²¹.

The question whether Article 21 could be extended to animals as well was answered in the negative by the Supreme Court in *The Animal Welfare Board of India and Ors. v. Union of India and Anr*²². The Court held that the Constitution of India does not recognise fundamental rights for animals. It observed that:

“While the protection under Article 21 has been conferred on person as opposed to a citizen, which is the case in Article 19 of the Constitution, we do not think it will be prudent for us to venture into a judicial adventurism to bring bulls within the said protected mechanism. We have our doubt as to whether detaining a stray bull from the street against its wish could give rise to the constitutional writ of habeas corpus or not.”

The Court, however, expressed that the matter of extension of fundamental rights to animals could be considered by a legislative body.

¹⁹ *Animal Welfare Board of India and another vs. the Ombudsman for Local self*, (2006) 2 ILR Ker 233.

²⁰ The ABC Rules, 2001 have been superseded by the ABC Rules, 2023.

²¹ *New Friends Colony Residents’ Welfare Assn. v UOI*, (2007) 16 ILR DLH 389.

²² 2023 LiveLaw (SC) 447.

VI. CULLING OF DOGS UNDER ANIMAL BIRTH CONTROL RULES 2023

The Apex Court while recognizing the rights of animals against unnecessary pain and suffering also recognized the “doctrine of necessity” as given in section 11(3) of the Prevention of cruelty to Animals Act which permits killing of animals out of necessity.²³

In the case of *Master Jishnu v Bruhat Bangalore Mahanagar Palike*²⁴, the Karnataka HC also held that the 1960 Act as well as the rules made thereunder do not prohibit extermination of dogs as such. In case of a dog who has bitten or has a tendency to create nuisance, the Commissioner of Municipal Corporation will decide whether it will go ahead with the extermination of the dog. However, the killing of dog has to be in the prescribed manner in accordance with the 1960 Act and the rules made thereunder. The Court also issued various directions in order to curb the stray dog problem.

The Animal Birth Control Rules 2023 (hereinafter as ABC Rules) notified by the Central Government permit euthanasia of incurably ill and mortally wounded dogs by a qualified veterinarian in a humane manner.²⁵ Rule 15 of the ABC Rules reads as:

“Euthanasia of Street Dogs: - (1) Incurably ill and mortally wounded dogs as diagnosed by a team appointed by the Local Animal Birth Control Monitoring Committee shall be euthanized during specified hours in a humane manner by intravenous administration of sodium pentobarbital or any other approved humane manner, by a qualified veterinarian.

- (1) The team shall consist of the Jurisdictional Veterinary Officer, the Project In-Charge and a Representative of the Board or State Board.*
- (2) No dog shall be euthanized in the presence of another dog and the person responsible for euthanizing shall make sure that the animal is dead, before disposal.*
- (3) The records for euthanasia shall be maintained with the reasons for euthanasia under the signature of the team appointed as above.”*

²³ Animal Welfare Board of India v. Nagaraja, (2014) 7 SCC 547.

²⁴ Master Jishnu v Bruhat Bangalore Mahanagar Palike, (2013) ILR KAR 4015.

²⁵ Animal Birth Control Rules, 2023, Rule 15.

However, there is no provision for killing of dogs who have bitten or are of an aggressive nature.

VII. DIRECTIONS ISSUED BY COURTS TO CURB THE STRAY DOG MENACE

- The killing of dogs, if necessary, has to be done in the manner prescribed in the 1960 Act and ABC rules 2001 while avoiding unnecessary pain and suffering.²⁶
- The stray dogs can be captured for general purposes i.e. sterilization and immunization and they should be released in the same area. The capturing should be done in a humane manner.²⁷ The aforementioned directions were given in *Master Jishnu v. Bruhat Bangalore Mahanagar Palike*²⁸.
- In *Re: Bruno v. Union of India*, a dog named Bruno was thrashed to death by a group of men. The Kerala High Court took suo motu cognisance of the matter and constituted an advisory body under the 1960 Act to prepare an action plan to spread awareness among the citizens regarding the rights of animals and the corresponding duties of citizens.²⁹
- In *Vijay Shankarrao Talewar v. State of Maharashtra*, the Bombay High Court had directed the Nagpur authorities to impose a fine upto ₹200 on the people who feed dogs on roads and in public spaces. The court even remarked that the people who feed street dogs must adopt them or take them to shelter homes.³⁰ The author finds the observation absurd and impractical. This observation has rightly been stayed by the Supreme Court in an interim order passed in a Special Leave Petition filed against the aforesaid order.³¹ The court also ordered that no penalty will be

²⁶ *Master Jishnu v. Bruhat Bangalore Mahanagar Palike*, (2013) ILR KAR 4015.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *In Re: Bruno v. Union of India*, WP(C) No. 13204 of 2021.

³⁰ *Vijay Shankarrao Talewar v. State of Maharashtra*, Civil WP No. 562 of 2006.

³¹ *Swati Sudhirchandra Chatterjee & Ors. v. Vijay Shankarrao Talewar & Ors.*, SLP (Civil) Diary No. 35297 of 2022.

imposed in case of public feeding of street dogs as ordered by the Bombay High Court.

The new Animal Birth Control Rules 2023 in a way resolve this issue by allowing the feeding of street dogs in designated areas (feed spots) which shall be away from areas frequented by children and senior citizens.³² The responsibility to make necessary arrangements for the feeding of dogs has been conferred on the Residents' Welfare association or the local bodies.

VIII. CONCLUSION

The rising cases of dog bites poses a serious problem. Clearly, the steps taken by the Government authorities are not sufficient to tackle the stray dog menace. In case of pet dog bites, the victim can easily get compensation but in case of stray dog bites, there is no uniform and comprehensive law on compensation. In most cases, the State authorities refuse to grant relief saying that there is no provision for compensation to dog bite victims. Courts have time and again come to the rescue of such victims. There have been various recent High Court judgments which emphasized the duty of state authorities to create a safe atmosphere for the citizens and pay compensation to the dog bite victims if they fail to fulfil their obligation.

The Chhattisgarh High Court has held that when the death is caused by rabies infection of stray dog bites it would also come under the purview of "strict liability".³³ The Court remarked that:

"Applying the above proposition of law, we are of the opinion that when the death is caused by rabies infection of stray dog bites it would also come under the purview of "strict liability" or "no fault liability" and interpreting the order of the State which grants gratuitous compensation for death, cripple and injury caused in wild animal attacks can be applied to the incidents of a stray dogs when death is caused by the bite of stray dog."

³² Animal Birth Control Rules, 2023, Rule 20.

³³ State of Chhattisgarh v. Bhaiya Lal Gond, WA No. 409 of 2020.

If the State grants compensation for death or injury caused by wild animal attacks, the same principle can be applied to the case of death caused by stray dogs. Therefore, the State authorities cannot avoid their responsibility by citing loopholes in law.

Kerala already has a compensation scheme in place for the protection of dog bite victims. Likewise, the Punjab and Haryana High Court has also directed the governments of Punjab, Haryana, and Chandigarh to constitute a committee to determine the compensation claims of the victims of stray, pet and wild animals. The Court fixed the minimum amount of compensation as ₹10,000 per tooth mark. The application of strict liability doctrine was acknowledged by the Court fastening the liability on the State and its agencies to compensate the victims of such accidents.³⁴ This is a progressive judgment as pet animals have also been included under it and a minimum amount has been fixed by the Court as compensation for animal bites. The Court recognized that even if an injury has been caused by a pet animal on the public street or road, the State shall be primarily responsible for compensating the victim with a right to recover the amount from the concerned owner through imposition of penalty/fines. The author proposes that a uniform framework should be implemented at the national level to deal with the issue.

³⁴ Rajwinder Kaur and anr. v. State of Haryana and ors., 2023 LiveLaw (PH) 231.