



A Long Waiting Hope of Integrating Animal Interests into our Legal System: A Critical Analysis on Animal Welfare Laws of Sri Lanka with Special Reference to Domestic Animals

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ABSTRACT

We live in a society where human rights are highly valued. However, many stories in relation to animal welfare and animals' rights remain shocking and appalling without any concern. Sri Lanka is a country where there is a long tradition of kindness and respect for animals that has been extended across many horizons. But today, many heinous stories relating to animal abuse are heard very often. From a legal perspective, the concept of animal welfare has become a mere dream because of the current laws. Action in terms of law, policy, and public awareness is needed now more than ever. The current law relating to animal protection is inadequate, archaic, and does not address modern trends in animal welfare. The current law is the Prevention of Cruelty to Animals Ordinance No. 13 of 1907. Sri Lanka's animal lovers have waited for years with hope for the new Animal Welfare Act to become law, yet it has still not become law. Many published and hidden stories relating to animal cruelty and abuse take place day by day. The acts of cruelty belong to both intentional and negligent acts of humans. The lack of a proper legal regime to protect animals from cruelty has become one of the major root causes of the increase in animal cruelty. Relying on the qualitative method of research, the researcher intends to critically evaluate the prevailing law

relating to animal welfare in Sri Lanka. with hope for the new Animal Welfare Act to become law, yet it has still not become law. Many published and hidden stories relating to animal cruelty and abuse take place day by day. The acts of cruelty belong to both intentional and negligent acts of humans. The lack of a proper legal regime to protect animals from cruelty has become one of the major root causes of the increase in animal cruelty. Relying on the qualitative method of research, the researcher intends to critically evaluate the prevailing law relating to animal welfare in Sri Lanka.

1. INTRODUCTION

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

Sri Lanka’s animal-friendly environment emerged when Arhat Mahinda stopped King Devanampiyatissa from killing a deer while he was on a hunting expedition and preached the Buddha’s message of compassion for all living beings. Major religions around the country believe, to varying degrees, that animals should be treated with compassion and respect.¹ However, recent approaches to animal cruelty in Sri Lanka continue day by day. Though Sri Lanka had a rich history of an animal-friendly environment, today, due to the advancement of technology, busy lives of humans, poverty, and urbanization, cruelty to animals prevails as a key issue that has no end. Among all these reasons, the lack of strong legal coverage to protect domestic animals from cruelty and suffering prevails as the main factor in this issue. Hence, in this study, the researcher will focus on the necessity of having an enhanced legal regime for the safety and welfare of domestic animals in Sri Lanka.

Thus, in this research, only domestic animals

¹ See Generally, Senaka Weeraratne, Remaining Animal Rights in Sri Lanka (2016), <https://www.buddhistdoor.net/features/reinstating-animal-rights-in-sri-lanka/>, accessed 07/06/2023.

would be taken into consideration. Hence, there are various types of incidents that take place in Sri Lanka where domestic animals are subjected to cruelty. These cruelties can be mainly divided into two categories:

- Intentional cruelties and
- Negligence

These two types of cruelties include violent behaviours towards animals, poisoning, abandonment, mistreatment, keeping them starving, irregular breeding, unhygienic pet shops, and cruel transport methods. These are some of the common intentional cruelties that can be often seen in present-day society. While irresponsible pet ownership, leaving animals at risk from natural disasters, and ill-treatment are another set of commonly identified cruelties that occur due to negligence, these cruelties towards domestic animals show the dire need for proper legal provisions to severely punish the offenders who do cruelty to animals wilfully or negligently. Thus, adapting new legislation could work for the inclusion of global developments on animal welfare and animal safety concepts. It is noteworthy that internationally, countries have taken more steps to protect animals through their national laws, while some other countries have recognised animal protection through their constitutions. Yet Sri Lanka lags behind without an updated piece of legislation to protect domestic animals from cruelty. Therefore, the researcher would analyse current and actual scenarios that cause cruelty towards animals in Sri Lanka, and accordingly, suggestions and recommendations would be made in order to make Sri Lanka’s legal regime for animals much better.

In Sri Lanka, some prevalent acts and ordinances matter in deciding animal cruelty. Thus, Prevention of Cruelty to Animals Ordinance No. 13 of 1907 (hereinafter called PCAO) will be taken into observation since it is the main piece of legislation

that relates to domestic animal welfare in the country. Moreover, the Animal Welfare Bill of 2022 will be taken into consideration in this study as it regains the concept of animal welfare to a considerable extent. The lacunae identified in the PCAO will be critically analysed before making recommendations. In this context, this study would attempt to evaluate the adequacy of the prevailing legal framework of the PCAO to protect domestic animals from cruelty and enhance animal welfare. Attempts taken by foreign jurisdictions will be analysed; hence, those measures can be taken as lessons for Sri Lanka to establish a better legal regime for the safety and welfare of domestic animals in Sri Lanka.

The following objectives would be followed up to reach the final goal of the study:

- To identify existing laws relating to the protection, welfare, and safety of domestic animals in Sri Lanka.
- To investigate a practical scenario of animal violence in Sri Lanka
- To suggest possible recommendations to enhance animal cruelty and animal welfare in the Sri Lankan legal regime.

2. MATERIALS AND METHODS

To conduct this research, the researcher has employed a qualitative research methodology to accomplish the objectives of the research. Both primary and secondary data were collected through techniques employed in qualitative research. Thus, this research is desk-based and doctrinal in nature. Legal literature relating to animal welfare in Sri Lanka and abroad has been thoroughly examined. While analysing and critically evaluating primary data and secondary sources, the researcher will fulfil research objectives. The primary data used are mainly: the Prevention of Cruelty to Animals Ordinance No. 13 of 1907, the Animal Welfare Bill 2022, the Constitution of India

of 1950, the Prevention of Cruelty Act of 1960, and case law. As per secondary data, text books, research papers, journal articles, e-resources, newspaper articles, and statistical data relating to this study will be examined. The provisions of the above-mentioned ordinances will be thoroughly observed and critically analysed.

3. DISCUSSION

3.1. Definition of Domestic animals

The term “domestic animals” includes all those domestic or tame animals as by habit or training live in association with man. *Nye v Niblett [1918]*²

In India, domestic animal has been defined as, any animal which helps human beings in any form.³

As per, International Convention for the Protection of Animals, “domestic animals” refer to species which, within the context of the local culture, have traditionally been under the physical control, bred by and used by humans.⁴

It can be observed from the above definitions that domestic animals are under the control of humans as they live closer to them. Therefore, domestic animals are more exposed to human cruelty in many ways. Different types of cruelty incidents are reported daily, yet other incidents remain silent and unreported.

Dogs and cats are ill-treated by owners; the animals suffer from malnutrition. People tend to buy pedigree dogs as a social trend, but they can't afford the puppies as time passes. Dogs are subject to many diseases as a result. Animals keep caged for days due to various reasons; sometimes the animals keep chained forever in their lives.

Abandonment of pets is another crucial issue that can be noticed in society. Domestic animals are

² *Nye v Niblett [1918]* 1 KB 23

³ Chapter 1, Prevention of Cruelty to Animals act, 1960

⁴ Article 2, International Convention for the Protection of Animals, <https://www.animallaw.info/treaty/international-convention-protection-animals> accessed on 28/08/2023

abundant due to age, diseases, poverty, and many other reasons. This causes both mental and physical harm to the animals, whose suffering cannot be put into words. As a result of the abandonment of animals, most of the dogs become stray animals.

Thus, the stray animal community is another set of domestic animals that are subject to the severe cruelties of humans. Most of the time, stray dogs and cats are poisoned, set on fire, beaten until their limbs are damaged, and thrown boiled water. These practices are very common in society. Hence, deliberate gunshots, drowning, and burning are often reported as cruelty cases.

Irregular breeding of pet animals represents another pathetic scenario where pedigree dogs in Sri Lanka are subjected to the utmost cruelty by humans. Female dogs are forced to make litter after litter. They are being used for the purpose of business, and there is no freedom or socialisation at all. Animals are being used as puppy-producing machines. Moreover, pet shops create another place of cruelty to animals. Most of the time, animals are kept in small cages where they cannot easily move around. Thus, the places are unhygienic in nature. Puppies and kittens are taken away from their mothers at a very early stage so that those animals do not get proper food or milk. As a result, those animals are easily subjected to diseases and suffer.

Thus, animal rides are another sensitive issue that often happens in Sri Lanka. Animals are cruelly subjected to pain and suffering even without having enough water and food to survive. Ponies have been used for riding events in many tourist-attracted places in Sri Lanka. Those animals are not well fed with food or water during busy days full of rides. They are forced to walk with heavy-weight adults with no mercy. No rest time for these animals rather than earning money for the master.

Other areas of cruelty can be seen with captivated

and then domesticated birds. Though they are given wings to fly freely by nature, they are subjected to human control. Birds like pigeons, love birds, and parrots are commonly prisoned in cages for their entire lives.

The above incidents are just a little bit of animal suffering when focused on domestic animals in the country.

3.2. Prevention of Cruelty to Animals Ordinance No.13 of 1907

Prevention of Cruelty to Animal Ordinance is the main legislation in Sri Lanka where prevention of domestic animals from cruelty is focused. Therefore, legislative provisions in it and identified lacunas would have been elaborated by the researcher.

This Ordinance has been revised numerous times including in 1912, 1917, 1919, 1921, 1930 and 1945 as well. The most recent amendment was No 22. Of 1955.

Section 2 of the ordinance declares cruelty as an offence.⁵ Section 3 mentions the penalty. The penalty for a person who is found guilty of the offence of cruelty shall be a fine which may extend to one hundred rupees, or imprisonment of either description for a term which may extend to three months, or both.⁶

Section 4 describes the type of penalty for killing animals, while Section 5 describes the penalty for

⁵ S. 2 "Any person who shall, a. cruelly beat, ill-treat, and over-drive, or cause or procure to be cruelly beaten, ill-treated, over-driven, overridden, abused or torture any animal; because 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.

⁶ 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

using animals for unfit labor. Section 7 mentions the penalties for permitting diseased animals to die on any street. The penalty is none other than extending to one hundred rupees or, in default, to imprisonment of either description, which may extend to three months. Sections 9 and 10 empower government officials to destroy suffering animals directly. Section 11 states that the power to direct the application of fines Section 12 recognizes all offenses under the ordinance as cognizable offences. Section 13 empowers a peace officer to detain animals that are likely to have suffered due to an offense caused by an owner under the ordinance. Section 14 provides for the meaning of “animal” and “street”. The meaning of “animal” under the 1907 Ordinance does not include stray animals, wild animals, or livestock.

3.3. Defects in Prevalent Law

Firstly, the ordinance is 115 years old in content. The penalties for the wrongdoers are extremely outdated and inadequate, and the laws of the ordinance applied to the many forms of cruelty that existed throughout the colonial era. The ordinance did not address the horrifying living circumstances of cattle and zoo animals, the slaughter of pregnant animals, the use of animals in medical and cosmetic research, or the chaining and caging of animals for the entirety of their lives. Thus, the Ordinance’s interpretation of the term “animal” exclusively refers to “caught or domestic animals,” such as birds, reptiles, or fish kept in captivity. This description is insufficient unless the legislation is read broadly because it leaves out many other groups of animals that are now suffering because of cruelty. The Prevention of Cruelty to Animals Ordinance clearly lacks provisions to address the most pressing issues in Sri Lanka at the moment, including the use of elephants for rides and processions, breeding policy, animal experiments, animal performances, live animal transportation, and animals in pet stores. Utilizing police force to enforce the Prevention of Cruelty to Animals

Ordinance is wholly insufficient. Another flaw in the system is the little amount of time you have after the crime to file a police report. (i.e, three months). Moreover, another gap in the law is the lack of an appropriate body to oversee animal care. Hence, it is observed that the overall Prevention of Cruelty to Animals Ordinance has archaic law which does not address modern welfare issues for the betterment of legal regime of animals in Sri Lanka.

3.4. Animal Welfare Bill 2022

Animal welfare discussions were revived by the draft Animal Welfare Bill 2006. This bill was brought to Parliament by a private member, Ven. Rathana Thero. However, this bill was not taken into debate in Parliament. The issue was raised again in Parliament with some changes in 2015, but they were also not carried through. Then, in January 2022, the cabinet again approved the draft act with several changes. In July 2022, the draft is published in the gazette as a bill. In November 2022, the draft bill of 2022 gets listed in the order paper of the Parliament for debate. But in 2022, the proposed Animal Welfare Bill will not prevail as it is. Many considerable changes have been suggested for that. It is commendable that AWB 2022 covers a large range of cruelty acts compared to the PCAO.⁷ But, the bill does not address the negligent acts or omissions of humans as cruelties, and it has been completely ignored. Yet the negligence and omissions of humans mostly leave space for domestic animal cruelty. Hence, though Section 7 of the AWB of 2022 prohibits the use of physical restraints to prevent birds from flying.⁸ But the new law does not consider caging of birds as a prohibition. Many cases can be seen caging of birds domestically, and the new law allows continuing with that. Hence, the bill does not make provisions for the abandonment of diseased

⁷ S.3 (1) of the Animal Welfare Bill 2022

⁸ S.7, Animal Welfare Bill of 2022, S7 ‘A person shall not confine bird by means of- (a) a ring, chain, string, cord or wire attached to its leg; (b) a restraint around its neck or body; or pinioning.’

animals and letting them die. Thus, the bill has failed to identify the concept of “Duty of care” though it was included in 2006 bill.⁹ Moreover, the AWB of 2022 has removed concepts and aspects of animal welfare, including a wide range of cruelty provisions. Preventing domestic animals from cruelty does not mean that animal welfare is securely protected. Therefore, it can be observed that there are many loopholes in the AWB of 2022 when referring to the welfare matters of domestic animals.

4. CONCLUSION AND RECOMMENDATIONS

In conclusion, it is evident that Sri Lanka does not have a satisfactory legal regime for the protection and safety of domestic animals. Through the above observation, it was revealed that the lives of domestic animals have been purposely left in danger, allowing people to do harm to the animals. Therefore, Sri Lanka is in the urgent position of reforming the law to protect animals first and then ensure animal welfare. The following are some recommendations by the researcher to have an animal welfare law in the country:

1. To have a constitutional safeguard to protect animals.
2. To reform the existing laws relating to animal welfare.
3. Enhancing the role of the judiciary
4. Education on animal welfare

There are countries where animal welfare and their protection have been acknowledged by the supreme law of the country. Germany is one such example. The German constitution demands that the government uphold the dignity of all animals.¹⁰ Additionally, it has been noted that Slovenia, Switzerland, and Austria have passed laws requiring their constitutions to address animal welfare. Even in the Indian constitution,

the rights of animals have been valued through directive principles and the fundamental duties of the country.¹¹ The inclusion of animals in the constitution keeps the legal regime for animals in a better place. Therefore, the inclusion of protection and the promotion of animal welfare are encouraged in the country as an amendment to the constitution.

The second recommendation is to go for immediate reforms to the present laws relating to animal welfare. It was observed that the present law does not cover the safety and welfare of domestic animals that have close interconnections with humans. Even the Animal Welfare Bill 2022 has many unaddressed areas of animal welfare, as pointed out above in the discussion. Therefore, reforming the legislation on animal welfare is recommended for a better approach.

The judiciary can play a vital role in deciding animal welfare matters. The judiciary has the power to balance the conflicts of interests between humans and animals who live in one society. India can be taken as one such good example in this regard. The role of the Indian judiciary has expanded many new dimensions of animal welfare law and their safety too.

Educating the nation is another recommendation that could be beneficial over the generations. At present, the importance of animal welfare laws, recognising animal sentience, and accepting their rights have never been discussed within the education systems in the country. Therefore, it is recommended that the curricula of both schools and universities be revised to some extent to include animal welfare matters.

Finally, the researcher suggests these recommendations should be implemented as speedy measures in order to create a better legal regime for animals in Sri Lanka. It will open up many horizons to have an animal-friendly environment

⁹ S 2 of the Animal Welfare Bill 2006
¹⁰ Grundgesetz, article 20(a)

¹¹ Article 51(1)g of the Indian Constitution

in Sri Lanka, a country where humanity is highly valued.

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