



RESEARCH ARTICLE

Animal cruelty legislation in India: A green criminological exploration

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Abstract

We see laws being constantly updated responding to the onslaught of changing times and circumstances and value settings of society. However, such dynamism in the legal spectrum appears to be lopsided once laws on animal cruelty are glanced over. Laws on animal cruelty seem to be following a pattern that is not so dynamic and abreast of the evolving moral compass of society. It is critically observed in the course of this research that much like the legislation preventing animal cruelty, cruelty against animals, ironically, exhibits an upward graph. In pursuit of resolving this irony, especially in the context of India, the aim of this paper is to explore the concept of 'animal cruelty' within the Indian animal protection legislation to identify substantive and conceptual gaps while situating the statutes within the theoretical perspective of green criminology. The paper explores and critiques the concept of 'animal cruelty' within the Bharatiya Nyaya Sanhita and the Prevention of Cruelty to Animals Act of 1960. The research exercise reveals that the laws display a strong hue of anthropocentric instrumentalism denigrating animals as commodities in service to humans. The statutes under study allow for a wide array of abuse towards animals, permitting those harms as necessary suffering. The grandest of the lacunae is the absence of provisions for protecting animals from sexual and psychological violence. This green criminological exposé is supplemented, in conclusion, by valuable insights and remedies sourced from the green criminological theory itself in the form of a radical deconstruction and rethinking of how animals are treated in legal practice and ways to expand our notion to a non-specialist understanding of crimes, victims and justice.

Keywords: Green criminology, Bharatiya Nyaya Sanhita, Prevention of Cruelty to Animals Act of 1960, Speciesism, Species Justice.

Introduction

"As society evolves, so too do the values and views of its citizens. While changing social values have allowed lawmakers to pass new laws and amend existing ones, our laws on animal cruelty have changed very little (Gacek, 2019)

This introductory statement draws attention to a paradox in our legal structures. We see laws being constantly updated, responding to the onslaught of changing times,

circumstances and value orientation of society. However, such dynamism in the legal spectrum appears to be lopsided once laws on animal cruelty are glanced over. Laws on animal cruelty seem to be following a pattern that is not so dynamic and abreast of the evolving moral compass of society. While human attitudes towards animals as sentient beings have broadened, law has, somehow, not been able to keep pace. There has been a perceived lack of attention among legal and criminological scholars toward redefining and recalibrating concepts related to animal cruelty and harm. Legal structures, definitions, language and wordings all come together to reflect the normative climate in society. It is akin to a two-way relationship wherein social values influence legislation and legislative efforts are intended to influence societal norms. How legislation is structured, its idea of vice and crime, and justice perspectives can have a transformative bearing on how human-animal relationships and interactivity are shaped and regulated.

With this contention in the backdrop, the aim of this paper is to explore the concept of 'animal cruelty' within the Indian animal protection legislation in order to identify substantive and conceptual gaps while situating the statutes within the theoretical perspective of green criminology.

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The research begins with identifying a paradox: a situation of burgeoning legislative efforts across the world for the welfare of animals with a simultaneous bombardment of animal cruelty cases across various sectors of human, economic and societal life. Empirical facts in support of the paradox are presented. Navigating this paradox, it is argued, requires a recalibration of the laws through a new criminological perspective, which is non-species in nature and expands notions of crimes, victims and justice beyond anthropocentric and instrumentalist confines. The perspective of green criminology is briefly introduced, followed by an engagement of specific Indian animal cruelty-related statutes with this theory to expose systemic injustices against non-human animals strongly engineered in the enactments. In conclusion, a brief discussion and novel insights on how this theory has the potential to transform the laws related to animal welfare and cruelty in India and in general are presented.

Methodology

This research employs a doctrinal approach coupled with secondary sources to examine the paradoxical situation surrounding animal welfare legislation and the prevalence of animal cruelty cases.

The primary methodological approach utilized in this study is doctrinal research, focusing on analyzing existing legal frameworks, statutes, and case law related to animal welfare and cruelty in India. This involves a comprehensive review and interpretation of relevant legislation, including but not limited to The Prevention of Cruelty to Animals Act, 1960, and other associated laws and regulations. Through doctrinal research, the study aims to identify the scope, limitations, and gaps within the legal framework concerning animal protection.

In addition to doctrinal research, secondary sources such as scholarly articles, books, reports, and legal commentaries are utilized to provide context, theoretical framework, and empirical evidence supporting the argument presented in the paper. Secondary sources are employed to explore the theoretical underpinnings of green criminology and its applicability to the field of animal welfare law. Moreover, secondary sources offer insights into the global trends in animal welfare legislation, comparative analyses of legal systems, and critical perspectives on anthropocentric legal paradigms.

Data collection involves gathering relevant legal texts, academic literature, and empirical studies related to animal welfare and cruelty. The collected data is systematically analyzed to identify patterns, inconsistencies, and areas requiring further investigation. Through comparative analysis and synthesis of information from various sources, the study aims to construct a comprehensive understanding of the existing legal landscape and its implications for animal protection.

Results and Discussion

The Paradox of Greater Legislation and Even Greater Abuse

The theologian Andrew Linzey states that the way we treat non-human animals in modern societies belongs to one of the most important moral questions faced by humanity in our time (as cited in Sollund, 2011).

In the last couple of centuries, there has been steady progress in the creation of newer legislation to deal with human-animal relationships. Such legislations, while partly informed of content meant to raise animal welfare standards, more often than not, the more efficient regulation of human utilization of animals remains their mainstay. Regardless of the plethora of animal welfare standards prescribed, the undertones of policies always reflect a form of anthropocentric instrumentalism wherein animals are sometimes viewed as gifts from divinity or, more commonly, resources for human survival and consumption. Commodified to the hilt either for profits or for leisure or recreation, animals, today in the wider legislative framework, across rarely entitled to rights or the status of legal victimhood (Maher *et al.*, 2017).

This trend towards increasing legislation centering on compassion for animals is simultaneously accompanied by more intensive rearing practices and commercial farming that has opened the door for diversified versions of cruelty against animals. "The fate of industrially farmed animals is one of the most pressing ethical questions of our time. Tens of billions of sentient beings, each with complex sensations and emotions, live and die on a production line" (Guardian News and Media, 2015).

"There is much diversity in national legislation on animal welfare. Increasingly, more nations and sub-national jurisdictions are passing laws or adopting provisions that explicitly set out animal welfare principles" (Vapnek *et al.*, 2011). The animal-centric laws are usually sculpted as independent legislation, at other times, they form a subset of a larger legislation governing animal health or veterinary matters. However, the most prevailing form is the "anti-cruelty or cruelty prevention" legislation. While some countries dwell on precluding specific animals from use and abuse in entertainment or for research purposes, others mainly dwell on regulating the use of and the degree of harm to animals, especially pertaining to farm trade and commercial practices.

Beyond the statutory framework, some countries have incorporated constitutional principles having a bearing on animal welfare right into their constitutions, overtly or through an indirect or expanded interpretative reference. India perhaps, is the first nation to address this issue directly through the inclusion of Article 51 A(g), which requires every citizen to have "compassion for living creatures" as

a part of their Fundamental Duties as enshrined in the Indian Constitution. (Government of India, 1976). In the year 2002, the protection of animals was incorporated as a basic goal of the German state as a part of its Constitution (Haupt, 2008). Constitutionally, many other nations do have provisions addressing animal concerns but usually, they are subsumed within the more generalist environment protection provisions. Examples include the Brazilian Constitution (1988), which imposes upon the government to protect the flora and fauna in activities that make them prone to abuse. Similarly, the Serbian Constitution (2006) prescribes the protection and improvement of flora and fauna as a part of governmental duty.

Legislation intended towards the prevention of cruelty to animals was first introduced in the English Parliament in 1822, and a host of similar laws arose across numerous nations in the subsequent century, particularly in erstwhile English colonies. Nevertheless, a large number of these laws have exceptions that keep out animals engaged in economic and commercial activities or almost wholly exclude farm animals from any kind of legal protection. Certain laws, like the Zambian Prevention of Cruelty to Animals Act (1921, last revised in 1994, regards the slaughtering of an animal in the presence of another animal as constituting an offense and within the purview of the definition of cruelty. However, it falls short of protecting the farm animals. On the contrary, the Malaysia Animals Act (1953, last revised in 2006) avails a broader coverage of legal protection for farm animals. The statute proscribes any act that causes unnecessary pain or suffering to farm animals in their handling and transportation, for instance, without the provision of food and water. With regards to the slaughtering of animals, the law specifically criminalises the destruction or preparation for the destruction of any non-human animal for consumption by humnon-humant involves causing the animals unnecessary suffering. India's Prevention of Cruelty to Animals Act (1960) attracts special attention for its mandate to establish the Animal Welfare Board of India with the primary task of promoting of animal welfare and protection from cruelty (Vapnek *et al.*, 2011).

As the preceding description would indicate legislations surrounding animal welfare are ample in quantity. Much like the legislation preventing animal cruelty, cruelty against animals, ironically, exhibits an upward graph.

Globally, at least one animal is abused every 60 seconds (Sleight, 2024). Harm appears to be evident at almost every single stage of animal trade or animal breeding. Large-scale commercial breeding centers that are commonly known as puppy mills stand out for contributing pronouncedly to the animal cruelty statistics. The Royal Society for the Prevention of Cruelty to Animals (RSPCA) estimates that around 100,000 puppies are born in puppy farms each year in the UK. The villainous hallmark of these establishments is that they

inevitably prioritize profit over animal safety, which leads to long-term health and behavioral problems in the animals, and much evidently through abuse and filthy conditions of existence (Yeates *et al.*, 2017).

Research from Australia points out that there were over 4,000 reported instances of cruelty against animals within a period of one year. Nevertheless, only around 15% of these total incidents resulted in cases and charges being brought against the offenders. In Australia, around 55,000 to 60,000 reports of animal mistreatment are made each year to the RSPCA. (RSPCA, 2017–2018). In 2021, the Federation of Indian Animal Protection Organisations (FIAPO) brought out a report stating a total of 4,93,910 animals across various species were victims of a host of crimes, including sexual violence (PTI, 2023). Factory-farmed animals go through a new level of cruelty as humans crop billions and routinely produce factory farm animals like machine commodities without any regard to their welfare. It is indeed a sorry, rather dehumanizing state of affairs for animals like broiler chickens and pigs who belong to the 98 to 99.9 percentile of commercial farming. Reproduction, therefore, which is a normal biological function of living creatures, is coerced in these animals to be run as motor day in and day out. Such dehumanization is compounded by the usage of infamous painful farm practices like debeaking, tail-docking, hot-iron branding, etc. (Animal Welfare Institute).

Quite evidently, then, we face a paradox: A scenario of compassion and cruelty juxtaposed together. If, in fact, we have bountiful legislation for the prevention of animal cruelty, then it is irksome as to why the rate of animal cruelty is on the rise.

What Lies Underneath This Paradox?

To understand this contradiction, it is vital to explore the philosophical underpinnings of our legal relationship with other members of the animal kingdom in a historical context. Human-animal interactivity and relationship invites a moral question rooted in the intellectual history of modern natural and human sciences. It is imperative to understand the trajectory of how these moral standards governing human-animal relationships translated to a legal corpus of knowledge.

There are two main lines of thinking when it comes to comparing animals and humans: We could either emphasize on the similarities or differences. Perceptions on human-animal relationships largely hinge upon which line of thinking we adopt. Humans in the course of their intellectual development, made a choice on emphasizing the differences. In natural law theory, linguistic abilities and the faculty of rationality became the determining factors of human-animal differentiation. Resultantly, such a choice had the effect of excluding animals from moral consideration. (Freeman, 2001) (Blosch, 2012). This separatist

tendency can be traced back to Aristotle and his theory of the soul. Succinctly put, Aristotle, in this theory, created a hierarchy among living organisms on the basis of the form or soul they represented. He distinguished three aspects of human life viz., 'vegetative', 'sensitive', and 'rational'. He purported that plants represent a vegetative soul/form, animals present both 'vegetative' and 'sensitive' aspects, while humans present all three, the most important being the cognitive ability of rationality. In the Aristotelian schema, humans did share similarities with plants and animals but assumed a position at the helm of the hierarchy owing to the possession of a rational soul. This hierarchical structure represents Aristotle's belief in a natural order informed of inherent human superiority. This is reaffirmed in Genesis, which chronicles a divine hierarchy wherein humans serve God, God being superior and in that hierarchy, animals are ordained to serve humans. Aquinas further concretized such a stance by asserting the purpose of the existence of animals was to be in service to humans (Aquinas, 1990) (Blosch, 2012). Even the Cartesian philosophy provided a fillip to this hierarchy through Descartes' defense of scientific experimentation and vivisection on animals in the 17th century, wherein he equated animals with machines thoroughly incapable of understanding or even articulating pain. Animal reactions to painful acts on their body were, in his understanding, an automatic response to stimuli. As such, the treatment of animals did not tantamount to much sensible concern. Such perspectives were thoroughly employed to conduct cruel experiments like the dissection of animals without the use of anesthesia, etc. (Descartes, 1637/1998).

Natural law theory, in the course of its development, unapologetically came to justify the use and abuse of animals in pursuit of human development material and scientific needs. Extreme cruelty, albeit, was to be avoided not for the sake of concern for animals but for it would have nasty effects on human psychology. Locke and Kant described these effects as a hardened and immoral character and a predisposition toward violence against fellow humans and society. It logically followed that in law, animals were denigrated to avail only secondary consideration in law in the form of offenses of mischief or property (Blosch, 2012). The scenario slightly improved, however, with the advent of Bentham's Utilitarianism, which made 'pain' and 'pleasure' the sovereign masters that would regulate the efficacious of policy. This prompted a shift towards consideration of 'sentience' or 'ability to feel pain' as the defining factor from the natural law insistence on 'language' and 'rationality'. The change in the status quo was visible in the first part of the 19th century, evident in the rise of humanitarian movements and the introduction of reform bills in the British Parliament to ban bull-baiting, with the primary concern of ending the suffering of animals involved in bull-baiting. Although they

were not passed, they are still considered historic in the context of legal contrivances towards animal protection. It was Martin's Actin, the purview of the British legal system, that established the criminality of animal cruelty. However, this operated within the confines of the property status of animals wherein owners were to be held liable for the cruel treatment of animals under their care. The object, however, was not debarring the use of animals. The target was on gratuitous cruelty (Blosch, 2012).

Discerning the historical legal trajectory on the human-animal relationship, it can be reasonably concluded that the stance of law as it developed categorically banked on the perception of animals as "property", humans being the "owners" of such property and secondly, the warrant of "gratuitous" or "necessary" cruelty to animals. The legislative and judicial milestones quoted so far progressively became the rudimentary basis for the many erstwhile British colonies as they gained independence, translating a similar commodified imagery of animals in the common law traditions and criminal codes of India, Canada, The USA etc., (Singh *et al.*, 2019) (Encyclopædia Britannica, 2023) (Blosch, 2012). Such perceptions, over time, logically got transplanted onto criminological discourses based on the preceding legal traditions, shaping how we understand abuse of animals, the object of victimization in a crime and how cruelty against animals in itself is conceived and the criminal justice responses it emanates.

A Path to Resolution: Navigating the Paradox

We hereby come to understand that the state of paradox juxtaposing rising compassion (in the form of welfare legislations and outlook) and cruelty that has been evident is due to the way or the design in which abuse or cruelty or for that matter, the legal standing of animals have been sculpted and finalized in the enactments meant for animal protection. In contrast, some harms or abuse against animals are proscribed while, others are merely regulated but permitted nonetheless. The pertinent question, therefore, is, if we seek to make some headway in the quest towards resolving this paradox, we peremptorily need to put on a non-species lens in comprehending and assessing harms/abuse against animals no matter whether they are proscribed or permitted; intentional or unintentional.

Herein, we make a theoretical turn toward the discourse of green criminology, a novel perspective within critical criminology, a discourse that has the potential to bring in a new dawn in mitigating animal cruelty in the most authentic sense of the term within the legal, criminological theory as well as praxis.

The green criminological theory tries to recalibrate the understanding of crime, justice, victimization and inequality within criminology to expand the meaning and scope of the discipline. It does so mainly by deconstructing and challenging traditional and conventional perceptions of

crimes and notions of victimhood (Hall, 2020) (Maher *et al.*, 2020). This is in emotive and semantic consonance to Peter Singer's espousal for animal rights: [A liberation movement demands] an expansion of our moral horizons. Practices that were previously regarded as natural and inevitable come to be seen as a result of an unjustifiable prejudice ... If we wish to avoid being numbered among the oppressors, we must be prepared to rethink all our attitudes toward other groups, including the most fundamental of them (as cited in Maher *et al.*, 2020). The critically oriented green criminological discourse springboards from the recognition and increased awareness from within as well as outside criminology of how traditional justice responses to non-traditional victims of crimes have been grossly inadequate, admitting that it is pertinent to move beyond strict legalist definitions of crimes and victims. Adopting a socio-legal approach to the identification of crimes, green criminologists broaden their investigative ambit by exposing and concentrating on 'harms' that might not be legislatively proscribed in addition to routine violation of environmental protection or animal welfare statutes, which traditionally are the only acts legitimately accounted for as 'crimes' (Brisman *et al.*, 2018). Such an approach permissively includes ordinary, business-as-usual activities that are harmful to animals, deservedly bringing them under criminological scrutiny. They might be activities as simple as regular meat-eating habits in lieu of vegetarian diets (Agnew, 2013); and even legal trade in animals and animal products (Sollund, 2013). This theoretical strand, therefore is based on a conscientious realisation that current legalist frameworks or even academic theories have failed to accord any sense of victimhood to a wide range of non-human animals. "Green criminology, therefore, embraces an inclusive victimology, accepting the same standards for acknowledging victimization, whether human or non-human animal" (Sollund, 2017).

Beirne explains that the master status of animals in the discipline of criminology and other related disciplines of law, philosophy and most other discourses has largely and predominantly been that of "property". He attributes this status to the inherent anthropocentrism, speciesism, denial, self-interest and simple ignorance infesting traditional human and social sciences discourses (as cited in Sollund, 2017). Entrenched in critical criminology, the discourse of green criminology tries to divulge the forces and power equations that go into the making of the dominant socio-political metanarratives and ideologies and the concomitant harms on the 'powerless' and the 'voiceless'. It tries to reveal the contradictions and gaps in law and criminology, asking pungent questions regarding the inclusion of some harmful acts as crimes while excluding others that produce equally harmful effects on animals or how legislations support and facilitates animal abuse. The root of such inconsistencies in traditional anthropocentric disciplines finds expression and reasons in the argument of nurse (2015), who explains

how the construction of a certain harm as a crime requires pinpointing an entity as a legitimized victim. However, since animals across most legal systems have no legal personhood, therefore, no legal rights equivalent to humans could be violated. As such, victim status, in a legal sense, is a logical linguistic fallacy in the traditional academic theories on the topic.

Within the green criminological frame of reference, justice against crimes and harms that need to be dispensed should be non-speciesist in nature. Among other justice perspectives, theorists stress what is labeled as 'species justice'. Species justice refers to the idea that non-human animals have rights based on non-human utilitarian values (maximizing pleasure, minimizing pain), inherent value (right to respectful treatment), and an ethic of responsible caring (by humans). The concern here is with speciesism—"the practice of discriminating against non-human animals because they are person-human be inferior to the human species in much the same way that sexism and racism involve prejudice and discrimination against women and people of a different color" (White, 2013)(Brisman *et al.*, 2018)(Lie *et al.*, 2018).

The analysis and prescriptive expansion of victimology within green criminology supplemented by a holistic perspective of justice engineered to be non-speciesist in nature might be just the right path forward to resolving the paradox that we started with. Species justice, as conceived by green criminologists, focuses on the rights and welfare of non-human animals underpinned by an essentially bio-centric perspective. It strives to shun the instrumentalist view of animals where they are commodified to be viewed as mere sources of food, entertainment or leisure. The focus is on elevating their moral status and appreciating their intrinsic value and agency rather than relegating them to an inferior status or attributing them to subordinate categories of existence in the social and legal realms. Within this perspective, there has been the coinage of the term "theriocide" to explicate semantically the wide array of human activities that beckons torture and death for non-humans (Beirne *et al.*, 2018). Species justice advocates the recognition of harmed non-human animals as legitimate victims non-human the rectification of inherent systemic injustices, calling for a paradigmatic shift in human-animal interactivity and consociation dynamics in the present socio-legal order.

More on this novel critical criminological tradition shall unravel as we critically delve into the Indian statutes on animal abuse through a green criminological lens.

A Green Criminological Critique on the Indian Legal Framework on Animal Cruelty

In our attempt to engage the Indian legal framework on animal cruelty with the theory of green criminology, two specific instruments have been taken up viz. The

Bharatiya Nyaya Sanhita, 2023 (erstwhile the Indian Penal Code) and the Prevention of Cruelty to Animals Act, 1960. These statutes have been re-examined through a green criminological lens with an attempt to expose the narrow understandings of crimes (exclusion of harms), species structures, anthropocentric undertones, systemic injustices against non-human animals and make a general calibration of the statutes' perception on crimes, justice and general concern for non-human animals. We embark on a journey of a green criminological deconstruction of the conventional and orthodox meanings of crimes and the status of non-human animals in law in the Indian context.

The word animal appears fourteen times in the Bharatiya Nyaya Sanhita, 2023, running 102 pages in paper. The definition of the term animal as specified in sub-section (2) of section 2, encompasses any living entity, excluding humans. (Ministry of Law and Justice (Legislative Department), 2023). Prima facie, this definition is surprisingly comprehensive in its scope, embracing a wide array of creatures ranging from the smallest to the largest, potentially covering all living creatures. However, such breadth and vastness while defining the prime subject of the statute indicate a sense of lack of specificity and vagueness that could lead to challenges in applying and interpreting the same. This is particularly true in cases that would involve the killing of insects or other small organisms. The erstwhile Indian Penal Code (IPC, 1860) clarified and measured up harms against animals on the basis of market value, making it legally convenient to determine the proportionality of punishment vis-à-vis severity of the offence. What is more, the broad definition of "animal" fails to answer the question of intent of the Sanhita's provisions. Is it the intent of the Sanhita to protect all living non-human creatures from harm or is it chiefly attentive to the welfare and rights of larger, more traditionally recognized animals?

From a green criminological standpoint, using terms like 'humans' and 'animals' to distinguish between different beings can lead to a misunderstanding that humans are not animals. Efforts to address this issue by using terms like 'non-human animals' or 'animals other than non-humans' still rely on humans as a reference point. Avoiding or reorienting this species construction in legal language is Herculean task (Beirne *et al.*, 2018). Moreover, as argued before, a lack of specificity is not well tolerated when it comes to law in praxis. However, the object of protection in the said statute is very ill-defined. As Beirne (2018) says, "a minefield of issues lurks here." The minefield Beirne refers to is the intricacy of defining animalia and all that comes under it in a statute determined to protect them. A blanket usage of the term animals only goes on to show the paltry amount of thoughtfulness that was put into inserting animals as legal object of crime and justice. There is general agreement on inclusion of all mammals under legal welfarism, but this

excludes invertebrates and bivalves. This stresses on the necessity of the use of a phylogenetic scale or Lamarckian taxonomy to determine which species should be included in assessing lethality or victimology.

In the sub-section (1) of Section 118, the Bharatiya Nyaya Sanhita deals with the offense of causing hurt using various means, including an animal. In the context of the Sanhita, the usage of 'animal' is essentially anthropocentric and relies on the animal's instrumental value rather than intrinsic value, viewing them as tools for furthering human needs and interests. The focus is on the act of causing hurt and the means used to do so. The chief concern is the harm caused to the human victim and the means used to inflict that harm. Defined as a means, the statute, as written, does not specifically consider the animal a victim. If an animal dies in the process of causing hurt to a human, the law would likely consider the human victim as the primary victim, and the death of the animal would not necessarily be a separate offense under this section. In Section 128 and Section 139 sub-section (4) of the Sanhita, the term "animal" is used in a similar spirit and manner, focusing on the act of causing force or assault and the means used to do so. Even the usage or mutilation of an animal to be used as an object of pity to extort alms is an offence albeit an offence not because a living creature was harmed but because it assisted an act of beggary through deception. In case of the use of an animal as a means of criminal assault. Herein, the object of victimization is categorically another human. The consideration of the animal is not as a victim to criminal assault regardless of any harm done to the animal in the process of the criminal assault. Section 291 comes with species intonation in a direct manner in the sense that "animal" is placed in the context of safeguarding civilians and promoting human convenience, wherein it places the burden on the owner of an animal to take measures to avert any probable danger or menace to human life or critical hurt from the animal. However, the wording of the law is such that it could be interpreted as requiring only the bare minimum to avoid endangering human life rather than ensuring the overall welfare of the animal. For example, an owner might argue that they have met their legal obligation by simply tying up their dog to prevent it from attacking people. This could be seen as a minimal effort to avoid a public nuisance rather than a genuine concern for the well-being of the animal. This interpretation of the law could potentially lead to a situation where owners are not motivated to provide proper care and attention to their animals as long as they can avoid any legal consequences for endangering human life. This could result in animals being neglected or mistreated. Nowhere in the Sanhita, is negligent conduct with the animals under owners is an offense in itself just for the sake of the well-being of an animal. It is problematic solely when it creates human inconvenience. Section 291's language

may inadvertently provide a loophole for animal cruelty, allowing it to be defended as a means of safeguarding human well-being.

The Sanhita does categorically impute animals as property to be possessed by humans. This is evident in Explanation 4 of Section 303, which states that a person who causes an animal to move is said to move that animal and everything moved by that animal as a result of the motion. Under the law, animals are categorized as possessions, akin to objects. They are regarded as entities that can be acquired and controlled by humans like any other material item. Chapter XVII of the Indian Penal Code (IPC) is dedicated to offenses against property, and within this chapter, Section 325 and Section 326 address the offense of mischief. These sections are unique in the IPC as they acknowledge the victimhood status of animals and prescribe penalties for acts of cruelty against them. What is blatant is the overall instrumentalist view of animals. The Sanhita reiterates and confirms the property status of the animals to a significant degree, therefore automatically coercing them into numerous instances wherein they could be harmed and even killed and still would not be considered victim in a legal sense. It is in this context that the green criminological theory warrants an expansion of the scope of victims and the sense of criminality against non-humans.

Sexual crimes against animals are blatantly de-recognised in the Bharatiya Nyaya Sanhita, 2023, which has replaced the earlier Indian Penal Code. Therefore, India now has a criminal code without any reference to bestiality attributed as a crime. Animal rights groups in India raised their concerns over the Bhartiya Nyaya Sanhita, 2023. The new criminal code of India removes Section 377 of the erstwhile Indian Penal Code (IPC), which criminalizes bestiality. However, it does not include any new laws to deal with such crimes. This creates a legal loophole that could be exploited by people with criminal intent to get away with unnatural offenses like bestiality. The lack of specific laws against animal rape and sexual assault is a grand omission (Singh, 2023).

“The radical disparity in how crimes against animals are viewed underlies an absence of a sentience-based understanding of animal suffering and also entrenches a deep speciesist hierarchy between the human and the non-human victims of crime” (Federation of Indian Animal Protection Organisations [FIAPO], 2021).

The Indian Prevention of Cruelty to Animals Act of 1960 does not provide an exact definition of cruelty but rather outlines specific actions or omissions considered animal cruelty. The act aims to protect animals from unnecessary pain and suffering and improve existing laws on animal cruelty prevention. To qualify as cruelty, the animal's pain, suffering, or injury must be both intentional (“wilful”) and avoidable (“unnecessary”). The term “unnecessary” warrants that individuals must act responsibly and avoid causing

harm to animals when carrying out legitimate activities. Working within a socio-legal approach, green criminology for non-human animals would summarily reject any notion of animal protection that legally inscribes abuse as something that is necessary. Species Justice as popularised by this theory, finds itself being violated at the very first glance of this anti-cruelty statute. The law and offshoots of orthodox criminology pertaining to non-human animal life, necessitate a ‘balancing act’ between human and animal needs and interests to arrive at a systematic estimate of what is connoted by humane” treatment and “unnecessary” suffering. Yet, the agenda of legal welfarism under which we currently operate is replete with normative biases that stultify this balancing act against animal interests and in favor of humans. The upshot is undue precedence to even to the most trivial human interest in shameless supersession to fundamental animal needs (Francione, 1995). Therefore, this act, through a cursory glance of the opening act, finalizes that only gratuitous acts of cruelty are unwelcome. It is reasonable therefore to affix this comment: “A legal system that relies primarily on laws requiring “humane” treatment or prohibiting “unnecessary” suffering simply cannot protect beings that are, as a matter of law, regarded as the personal property of their owners” (Francione, 1995).

In the green criminological scheme of things, cruelty against animals needs to be defined as any act or, commission or omission that is injurious to them. This is in stark contrast to how cruelty against animals is conceived in India legally wherein it is provided that animal use/abuse is “necessary” to the degree that the use/abuse is morally permitted and generally accepted in the societal milieu. This particular anti-cruelty statute enlists a number of acts of omission or commission that it would treat as an offence. It bans things like inflicting needless pain or distress to an animal, employing an animal that is not fit for work, administering harmful drugs or compounds, moving animals in conditions that induce suffering, housing animals in poor environments, chaining or fastening animals for excessive time frames, neglecting to deliver necessary care, deserting animals, allowing animals with diseases to wander or perish in public places, trading or holding animals in unhealthy states, inhumanely disfiguring or slaughtering animals, utilising animals in brutal entertainment acts, arranging or partaking in animal combat or teasing, and joining in shooting competitions where animals are let loose for targeting (Prevention of Cruelty to Animals Act, 1960, § 11). As a logical corollary of the “necessary/unnecessary” suffering divide, a host of activities that produce death, torture and abuse of animals are not only excluded from the scope of being an offence under this act but are in fact, legitimised through this act. Putting on a green criminological lens however, would require us to consider as criminal all kinds of abuse whether or not they are

proscribed by law. In this context, a green criminological understanding of this anti-cruelty statute exposes the inconsistency of how a legislation framed to protect animals has explicit motive inscribed to abuse animals in the name of balancing human-animal interest wherein the human interest always supersedes. Notwithstanding the fact that these acts tantamount to animal abuse and death, they are permitted under this act. Included in this law are procedures such as cattle dehorning, castration, the marking of animals with brands, and tethering them by the snout, provided these tasks are performed correctly. The legislation also greenlights the elimination of stray dogs using approved ways that can be either lethal chambers or other specified methods. Moreover, animals can be exterminated or disposed of under authority granted by any existing law. Chapter IV of the Act is particularly about animal testing, authorizing it under certain pre established conditions. Therefore: "Animals in India are only protected from cruelty to reduce their suffering from the scale of necessary to unnecessary – never to eliminate it, making cruelty a necessary evil" (FIAPO, 2021).

Chapter IV of this anti-cruelty statute renders lawful the experimentation on animals. The Prevention of Cruelty to Animals Act, 1960, in Section 14, specifies the terms and conditions governing animal experimentation. The act emphasizes that such tests can be conducted, provided they lead to physiological understanding progression or prove beneficial in life, extension or conservation, aiding in pain reduction, or battling illnesses affecting humans, animals, or vegetation. That being said, the act insists that the execution of these experiments needs to incorporate adequate care and compassion, and to the maximum extent feasible, animals should not endure pain during these procedures. Should an animal suffer injuries to the degree where recovery would inflict significant pain, euthanasia should be carried out, all the while the animal being anesthetized. Additionally, the act requires avoiding experiments on animals when substitute instruction approaches, such as books, models, or films, can accomplish similar educational objectives. It also urges the utilisation of smaller laboratory animals in lieu of larger animals. Lastly, the act discourages, as far as possible, execution of experiments merely for acquisition of manual skill.

A relook through a green criminological standpoint reveal inconsistencies bearing a speciesist intonation as well as newer patterns of intra-species hierarchy or intra-speciesism. Initially, the act fails to clearly outline the meaning of "due care and humanity," creating ambiguity and potential gaps in enforcing it. Secondly, the act accepts animal testing with the goal of gaining insights that might not directly aid the animals, which sparks ethical debates regarding the application of animals as mere tools. Thirdly, the act's stress on limiting the use of larger animals where

possible could unintentionally stimulate the excessive usage of smaller laboratory animals, possibly treating these animals negatively. Lastly, the Act's clause for euthanizing animals injured during the experiment ignites discussions about the moral righteousness of terminating an animal's life to avoid extra suffering, especially if the experiment was the cause of the injury itself.

The wording "as far as possible" within the Prevention of Cruelty to Animals Act of 1960, concerning the deterrence of experiments aimed at manual skill acquisition, lacks precise definition. It does not exactly delineate the extent or level this should be curtailed. This vagueness paves the way for subjective evaluation, potentially leading to uneven application and enforcement of the law. The decision as to whether an experiment is executed purely for manual skill acquisition hinges on the aims and driving factors of the executing researcher or institution. Evaluating this objectively can pose challenges as, given the same experiment, disparate individuals or establishments may form differing views. Also, there could be situations where the attainment of manual skills is a valid and essential facet of an experiment, such as when training medical specialists or students.

In The Prevention of Cruelty to Animals Act, 1960, a clear demarcation exists between big creatures and small lab creatures such as guinea-pigs, rabbits, frogs, and rats. It hints at preferring tests on tinier animals when similar conclusive results can be extracted. Although not typically utilized, the phrase "intra-speciesism" might be seen as biased or varying conduct within the confines of a singular species. Regarding the act, this corresponds to the varying treatment towards creatures relying on their dimensions or species, where larger creatures are more heavily regulated and safeguarded than their tinier counterparts.

The exemption provided in Section 28 of the PCA Act, which permits killing of animals for religious purposes and as per ritualistic requirements of religion yet again points towards a broader issue in green criminology. This blatantly resonates a cultural and religious bias that places human traditions and practices as being superior to the rights and welfare of animals.

Section 9(f) of the Prevention of Cruelty to Animals Act, 1960, authorizes the Animal Welfare Board of India to take requisite measures to eliminate unwanted animals whilst taking care that they are insensible to pain while being destroyed. This classification of animals into "wanted" or "unwanted" labels tantamount to creating a form of intra-species discrimination. Who an unwanted animal is to be freely interpreted at the discretion of the Board. This could easily slip into the mire of arbitrary human judgments with no significant attention to animal well-being.

As already mentioned before, one grand omission in the legal welfarism for animals in India is the absence of

any provisions for protecting animals from sexual and psychological violence. From the theoretical standpoint of green criminology, provisions that focus on physical abuse and cruelty should organically embrace the harms induced through acts like animal rape and sexual assault regardless of whether it has been perpetuated by someone with criminal intent or commercially motivated or considered essential for the animal husbandry sector. The focus should inevitably in the green criminological scheme of things, should be on the harm caused to the animal, encompass as crime all forms of sexual exploitation, wherein the reproductive abilities are exploited to the animal's detriment (Maher *et al.*, 2023).

An attempt towards imbibing an inclusive victimology under the theoretical radar of green criminology, requires us to scan the statutes under study through a speciesist language scanner. Speciesist language in law is widely discernible in the statutes. The use of the pronoun "it" to refer to animals in legal texts like the Bharatiya Nyaya Sanhita and the Prevention of Cruelty to Animals Act reflects a deep-seated speciesist attitude that treats animals as mere objects or property rather than sentient beings deserving of rights and dignity. By using "it" instead of "he" or "she," these laws reinforce the idea that animals are not individuals with their own needs, desires, and experiences, but rather objects to be used and disposed of at will. This language not only perpetuates the objectification of animals but also invisibilizes their sentience and the rights that flow from it. By failing to recognize animals as sentient beings with the capacity to feel pain, suffering, and pleasure, these laws deny them the protections and considerations that they deserve as living creatures. This contributes to a culture of exploitation and abuse, where animals are treated as commodities rather than living beings with inherent value. Piers Berne in his ground breaking work *Theriodicide: Murdering animals*, attributes such ever-growing abuse with no sight of amelioration due the speciesist language in law and in the gamut of society and culture, politics that leads to a certain invisibilisation of torture of non-human animals.

"Animals other than humans, however, are not typically regarded as beings or persons who can be murdered. Animals' master status in law is that of property. An animal is not a she or a he. Animals are things. They are its. They altogether lack agency. Animal narratives are it narratives" (Beirne *et al.*, 2018).

At the root of such commodification, according to Sollund, is the sociological process of "Othering" which entails creating social, though not necessarily physical, distance between oneself and another, one different from oneself, resulting in a lack of concern for those unlike oneself; it is a categorizing of beings, for example through anthropocentrism, androcentrism, racism and speciesism (Sollund, 2017). Animals too are profiled as 'others'. The intellectual history and progress of humankind traversed through a journey as discussed in the first section

created this distancing and it has been sustaining. This deeply ingrained notion of the animals being the 'other' subverts any attempts to acknowledge their intrinsic value as sentient beings. Following from such commodification, is the devaluation of animals in the statutes meant to protect them. This is evident in the form of paltry criminal liabilities, fines, sentencing and nature of cognisability of offences. This inadvertently sends a clear message to the society that even when the conduct is criminal, it is not that deviant and not worthy of significant attention (Francione, 1995). For example, in the event of a first offense, monetary fine is a meagre ten rupees, which is a grossly minimal even in the period of 1960s when the statute was enacted. In a similar spirit, the maximum fine of Rs. 200 for breaching orders by the Committee under section 19 appears deficient to dissuade defiance. For offenses involving severe harm, a jail term of three months is deemed insulting to the dignity of an animal. It is pertinent to note that only a few sections of the act are deemed cognizable offenses (§§11(1) (l),(n), and (o) and §12, According to §2(c)) In the legal ambience, cognizable offenses are largely measured as more grave and necessitate instant attention from law enforcement agencies. An analysis of the act reveals that offences mentioned are largely non-cognisable saving a few thus creating more procedural barriers to safeguarding animals from cruelty.

Green Criminological Remedies

The collaboration of green criminology and legal systems, not only in India but globally, could significantly advance the cause of animal welfare. Both criminology and law issues often revolve around various forms of harm. The teaming up of green criminology and legal experts have proven powerful in addressing harm, thereby enhancing animal welfare. This alliance has the ability to rethink how animals are treated in legal practices, combat anthropocentric perspectives dominant in criminal justice, and strengthen legislation against animal mistreatment. Employing a socio-legal lens, this cross-disciplinary alliance could expand our understanding of harm, extending it to acts not legally recognized as crimes but harmful to animals and our environment nevertheless. Through this lens, the partnership can also confront human-centric tendencies within legal circles and encourage progressive revisions in law against animal cruelty. Such interdisciplinarity in theory and praxis could greatly benefit from expanding onto newer sectors of post human or beyond human legalities. Green criminology and law possess the armour to advance the cause of animal rights and species justice. Advocacy for animal rights is gaining significant traction and there has been a greater acknowledgement of the sentience and associated emotional complexities that animals are capable of experiencing. Modern society is moving towards a more species friendly moral compass. As a result, progressive

legal reform based on green criminology and law principles should advocate for an animal-care duty. This shift would represent a significant socio-legal and normative shift in how animals are recognised, departing from traditional teleological perspectives (Gacek *et al.*, 2023).

Conclusion

The study reveals some conclusive findings on the nature of primary animal cruelty statutes operating in India. The green criminological critique of the Bharatiya Nyaya Sanhita and the Indian Prevention of Cruelty to Animals Act of 1960 exposes the substantive gaps that subverts the very motive of the statute: Protection of animals against cruelty and harms. The language and the definition accorded to the animals are laden with speciesist constructions denigrating animals to the status of commodities. The usage of 'animal' is essentially anthropocentric and relies on the animal's instrumental value rather than intrinsic value viewing them as tools for furthering human needs and interests. The statutes emanate an overall instrumentalist view of animals reiterating the property status of the animals to a significant degree, therefore, automatically coercing them into numerous instances wherein they could be harmed and even killed and still would not be considered a victim in a legal sense. A horrifying revelation is the range of harms legally permitted on animals as a part of "necessary" suffering. A host of activities that produce death, torture and abuse of animals are not only excluded from the scope of being an offence under the enactments but are in fact, legitimised through them. The gravest omission, perhaps, in the legal welfarism for animals in India is the absence of any provisions for protecting animals from sexual and psychological violence. This green criminological exposé is supplemented, albeit briefly, by valuable insights and remedies sourced from the green criminologically theory itself in the form of a radical deconstruction and rethinking on how animals are treated in legal practices and the employment of a socio-legal lens to expand our understanding of harm, extending it to acts not legally recognized as crimes but harmful to animals and our environment nevertheless.

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