

ANIMAL CONSTITUTIONALISM: EXTENDING THE HORIZON OF ANIMALS RIGHTS IN THE LEATHER INDUSTRY IN INDIA

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Abstract

Every year, more than two billion animals are subjected to overcrowded prison-like conditions and subsequently brutally mutilated and slaughtered for the leather and fleece industries. According to the United Nations Food and Agriculture Organization (FAO), China produced 9,552,159.99 metric tonnes, the United States produced 7,665,957.22 metric tons, and India produced 5,615,330 metric tons of raw hides and skins of cattle from 2015 to 2021. The Prevention of Cruelty to Animals Act, 1960, was *prima facie* an ineffective legislation and derisory for animal welfare. The Prevention of Cruelty to Animals Act (Amendment) Bill, 2022, was proposed to ameliorate the existing legal frame work and address legislative gaps, recognising that animals need a higher degree of protection due to their inability to protect themselves. However, even the proposed draft does not prohibit the leather and fleece industries from using animal skins and hides. This article sheds light on how profit-driven industries use animals as a “commodity” for accumulation of wealth. The continuation of leather industry negates the spirit animal constitutionalism enshrined in the Constitution of India, which advocates the premise that animals are ends in themselves and not the means for human ends. The article concludes that animals are not instruments for achieving human interests.

Keywords: Animal Rights, Leather Industry, Cruelty, Animal Constitutionalism and Animal Welfare.

- I Introduction**
- II Leather Industries: Killing for Vanity?**
- III Prevention of Cruelty to Animals Act, 1960**
- IV Prevention of Cruelty to Animals Act (Amendment) Bill, 2022**
- V Kantian notion of Rationality**
- VI Animal Constitutionalism: The Constitutional Rights of the Animals**
- VII Concluding Remarks**

I Introduction

SINCE THE beginning of time, there have been deliberations and discourses about safeguarding and protecting human rights. When humans are marginalised, oppressed and face enormous waves of injustice, they demonstrate the fortitude to voice their rights. Unfortunately, the same doesn't apply to animals due to their inability to protest the violence and misery they endure. Humans have slaughtered and tortured voiceless animals under the

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guise of hunting sports, animal sports, experimentation, and occasionally even for “fun”. Animal cruelty is prevalent in many industries; however, this article emphasises animal cruelty specifically in the niche area of leather industry due to the lack of sufficient literature.

Part II illuminates how leather businesses slaughter animals for the production of status symbols merchandises like wallets, bags, and handbags. The number of animals killed for clothing and aesthetic purposes has steadily increased over time. Part III describes in detail how the current animal cruelty law is an archaic statute with meagre fines and imprisonment penalties. Part IV analyses the new bill (Prevention of Cruelty to Animals Act (Amendment) Bill, 2022)¹ and proposed amendments to address the inadequacies in the current legislation (Prevention of Cruelty to Animals Act, 1960).² Furthermore, Immanuel Kant's thought and conception that animals are the means for humans and may be utilised for human ends, which is what most individuals think of when they think of animals, is discussed in Part V. The notion of animal constitutionalism and its relevance for the well-being and protection of animals are elaborated in Part VI.

II Leather Industries: Killing for Vanity?

Over two billion animals are exploited yearly in the fleece and leather industries exclusively, with most of them subjected to inhumane and confined prison-like conditions where they are horrifically dismembered and butchered.³ In *State of Bihar v. Murad Ali Khan*, it was held that “the largest single factor in the depletion of the wealth of animal life in nature has been the civilized man”.⁴ Manilal Valliyate, Director of Veterinary Affairs (PETA) said that “the wild animals you see in your backyard aren’t trespassing, it was their home first, before humans encroached. Humans increasingly move into animals’ habitats and take away their food and other sources”.⁵ Humans have entered the lands of animals and hunted them down. Ironically, animals are labelled as predators because they must continually hunt in order to survive, but in reality, humans are the true predators relentlessly slaughtering animals for their skin and exotic leather.

The Excruciating Case of ‘Alligator’ Bags

¹ The Prevention of Cruelty to Animals Act (Amendment) Bill, 2022.

² The Prevention of Cruelty to Animals Act, 1960 (Act 59 of 1960).

³ Four Paws, “Animal Welfare in Fashion: The New Normal” 6 (2020).

⁴ *State of Bihar v. Murad Ali Khan, Farukh Salauddin & Vikram Singh*, AIR 1989 SC 1, para 4.

⁵ Chetan Chauhan, “Centre to Permit Killing of Animals in ‘Conflict’ Zones”, *The Hindustan Times* (June 9, 2015), available at: <https://www.hindustantimes.com/india/centre-to-allow-hunting-of-wild-animals-in-man-animal-conflict-zones/story-olgbUeh1WFPo1rV9NvS9AL.html>. (last visited on November 7, 2023).

Hermès, a fashion label, intends to create one of Australia's largest crocodile farms by housing up to 50,000 crocodiles for use in "luxury items" such as bags and footwear.⁶ Hermès in its Universal Registration Document has explicitly mentioned that the "most leathers used by Hermès (cattle, sheep, goat) are by-products from livestock for food, to which the *House is giving a second life*. The most beautiful hides come from ethically raised animals".⁷ A People for the Ethical Treatment of Animals (*hereinafter referred* as PETA) investigator documented and exposed⁸ that almost two to three crocodiles belly skin are required for one Hermès bag.⁹ In the drive for a "luxurious lifestyle", workers in the Zimbabwe alligator farms violently sliced into the throats of several crocodiles and endeavoured to disrupt their heads with "metal bars". Even moments after workers attempted to slaughter them, several alligators were still awake, thrashing and fighting.¹⁰ Just like Hermès, there are countless luxury brands that in the vanity kill innocent animals.

Since when did bags become more important than lives?

Clothing manufactured from rare, valuable, and precious resources such as skins or hides of animals has traditionally represented a symbol of wealth, desired by individuals who want to signify their status in a wealthy and powerful society.¹¹ Vance Packard calls these people "status seekers". He says "status seekers [...] are people who are continually straining to surround themselves with visible evidence of the superior rank they are claiming".¹² It is important to recognise that status symbols (fur coats, designer bags, leather watches, and leather shoes) are socially constructed objects whose representations may evolve in accordance with societal and cultural dynamics.¹³ Many consumers buy such high-end expensive leather products to maintain their worth in the society.

⁶ Graham Readfearn, "Australian Farm to Hold 50,000 Crocodiles for Luxury Hermès /Goods Questioned by Animal Welfare Groups", *The Guardian*(November 14, 2020), *available at*: <https://www.theguardian.com/environment/2020/nov/15/australian-farm-to-hold-50000-crocodiles-for-luxury-hermes-goods-questioned-by-animal-welfare-groups>. (last visited on November 7, 2023).

⁷ Hermes, "Universal Registration Document" 75 (2019).

⁸ Melissa Thompson, "Hermes Birkin Croc Horror: Is This the True Cost of The Celebrities' Must-Have £25,000 Handbag?", *The Mirror* (June 24, 2015), *available at*: <https://www.mirror.co.uk/news/world-news/hermes-birkin-croc-horror-true-5943831>. (last visited on November 7, 2023).

⁹ PETA, *Exposed: Crocodiles and Alligators Factory-Farmed for Hermès 'Luxury' Goods*, Peta, *available at*: <https://investigations.peta.org/crocodile-alligator-slaughter-hermes/>. [Video]

¹⁰ *Ibid.*

¹¹ Daeun Chloe Shin & Byoung Ho Ellie Jin, "Do Fur Coats Symbolize Status or Stigma? Examining the Effect of Perceived Stigma on Female Consumers' Purchase Intentions Toward Fur Coats", 8 *Fashion Textile* 1 (2021).

¹² Vance Packard, *The Status Seekers: An Exploration of Class Behaviour In America* 5 (Longmans, 1960).

¹³ *Supra* note 10 at 11.

In India, the *Directorate General of Foreign Trade (DGFT)* issued a notification on January 3, 2017 banning the import of reptile skin, mink fur, fox fur etc.¹⁴ Under the past policies, imports were subject to The Wildlife (Protection) Act, 1972¹⁵ and The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)¹⁶. However, in the year 2021, the policy was revised again. The Directorate General of Foreign Trade lifted the ban placed on the import of animal fur and reverting it to the previous regulations being; Wildlife Act, 1972 and CITES, via notification dated January 7, 2021.¹⁷ This will open gates for “animal-made” products to be manufactured in India. The following two tables throws light on the production centres in India and various luxurious brands that source leather from India.

The major production centres of leather in India are listed below (Table 1):

The prominent production center in India for leather and leather products	
Haryana	Gurgaon, Panchkula, Ambala, Karnal and Faridabad
Jammu & Kashmir	Srinagar
Karnataka	Bangalore
Kerala	Calicut and Ernakulam/ Cochin.
Madhya Pradesh	Dewas
Maharashtra	Mumbai
Punjab	Jalandhar
Rajasthan	Jaipur
Tamil Nadu	Dindigul, Erode, Ambur, Pernambut, Ranipet, Trichy, Vaniyambadi, Chennai and Vellore
Telengana	Hyderabad
Uttar Pradesh	Agra, Kanpur, Noida, Saharanpur
West Bengal	Kolkata

Table 1: The Council for Leather Exports (CLE)¹⁸

The following list of product-specific brands that are sourced from India includes many well-known and opulent brands from around the world (Table 2):

¹⁴ Directorate General of Foreign Trade, Notification No. 33/2015-2020, January 3, 2017.

¹⁵ The Wild Life (Protection) Act, 1972 (Act 53of 1972).

¹⁶ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1975.

¹⁷ Directorate General of Foreign Trade, Notification No. 55/2015-2020, January 7, 2021.

¹⁸ The Council for Leather Exports (CLE), “Indian Leather Industry – Overview, Export Performance &Prospects,*The Council for Leather Exports (CLE)*(2021),available at:<https://leatherindia.org/indian-leather-industry/>.

Product-wise Brands sourced from India	
Footwear	Armani, Bally, Buggatti, Clarks, Coach, Colehann, Calvin Klein, Christian Dier, Camper, Diesel, Espirit, French Connection, DKNY, Guess, Hush Puppies, Marks & Spencer, Mercedes, H & M, Nike, Ted Baker, Lacoste, Reebok, Stacy Adams, Timberland, Tommy Hilfiger, Versace, Yves St. Laurent, Zara, etc.
Leather Garments	Ann Taylor, Armani, Colehaan, Andre, DKNY, Guess Pierre Cardin, Marco Polo, Mango, Nautica, Kenneth Cole, Tommy Hilfiger, Versace, etc.
Leather Goods / Accessories	American Eagle Outfitters, British Home Stores, Coach, , Etienne Aigner, Harrods, Guess, GAP, Marks & Spencer, H & M, Next, Prada, Levis, Tommy Hilfiger, Walmart, Yves St, Laurent, etc.

Table 2: The Council for Leather Exports (CLE)¹⁹

Fur Jackets that ‘bleed’

In 2014, over ninety-five million mink and foxes were slaughtered for their fur. The majority of fur marketed internationally comes from farms, with Europe and China producing the most.²⁰ Many designer brands, including, *Coach, Chanel, Gucci, Armani, Versace, and Prada*, have declared and gone “fur-free” in past years.²¹ However, there are numerous well-known brands and labels like Saint Laurent, Louis Vuitton, Dior, etc. that continue to use fur to make their products.²²

In the year 1947, an approximated 40,000 tigers existed in India.²³ In 1972, tiger census indicated just 1,827 tigers and in the year 2018-19, there were 2,967 tigers recorded.²⁴ Debbie Banks and Julian Newman mentioned in their report that “in a single consignment officers recovered the skins of 31 tigers, 581 leopards and 778 otters. The skins came from

¹⁹ The Council for Leather Exports (CLE), “Indian Leather Industry – Overview, Export Performance & Prospects”, *The Council For Leather Exports*(CLE) (2015), available at:<https://leatherindia.org/leather-industry-striding-confidence/>(last visited on November 20, 2023).

²⁰ Heather Pickett and Prof. Stephen Harris, “The Case Against Fur Factory Farming: A Scientific Review of Animal Welfare Standards and 'WelFur'”, *Respect for Animals: Nottingham*, 5 (2015).

²¹ Hannah Marriott, “Fur is Out of Favour but Stays in Fashion Through Stealth and Wealth”, *The Guardian*, (November 6, 2020), available at:<https://www.theguardian.com/environment/2020/nov/06/fur-is-out-of-favour-but-stays-in-fashion-through-stealth-and-wealth-mink> (last visited on November 20, 2023).

²² Olivia Petter, “Every Fashion Brand that has Banned Fur: From Chanel to Burberry”, *Independent*,(February 15, 2019), available at:<https://www.independent.co.uk/life-style/fashion/fashion-brands-fur-ban-list-chanel-burberry-animal-cruelty-peta-victoria-beckham-a8780436.html> (last visited on November 21, 2023).

²³Nanditha Krishna, “A brief history of the tiger in India”, *The New Indian Express*, (July 18, 2020 04:00 AM), available at:<https://www.newindianexpress.com/opinions/2020/jul/18/a-brief-history-of-the-tiger-in-india-2171281.html> (last visited on November 21, 2023).

²⁴*Ibid.*

India and were on route to Lhasa, capital of Tibet, a major hub for the trade”.²⁵ Animals have been reduced to mere commodities that are shipped to other nations for commercial purposes in order to increase commerce, economic growth, and development of a nation. In *M/s. Ivory Traders and Manufacturers Association v. Union of India*, it was held that “wildlife is in no position to bear the burden of capturing of wild animals for commercial purposes”.²⁶ The worldwide economy has a pivotal niche for the leather industry and it has worldwide turnover which is shared by producers from the Brazil, India, European Union, China, and many other countries.²⁷ The production quantities of raw hides and skins of buffaloes in India has increased over the years. The data from 2015-2021 is reflected in the Figure 1 below prepared by The Food and Agriculture Organization (FAO) of the United Nations.²⁸

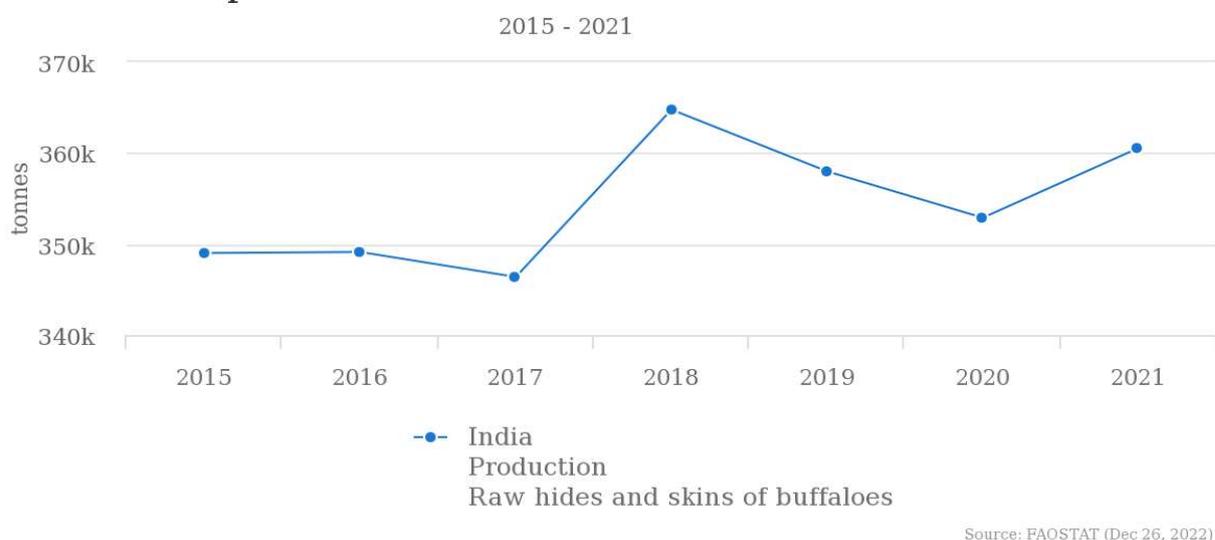


Figure 1: The production quantities of raw hides and skins of buffaloes in India (Data from FAO, 2022)²⁹

On the basis of top 10 producers of raw hides and skins of cattle (Figure 2), India is not far behind. China has topped the list. As per the data, China has produced 9552159.99 tonnes, USA has produced 7665957.22 tonnes and India has produced 5615330 tonnes.³⁰

²⁵ Debbie Banks and Julian Newman, “The Tiger Skin Trail”, *Environmental Investigation Agency*1 (2004).

²⁶ AIR 1997 DEL 267, para 12.

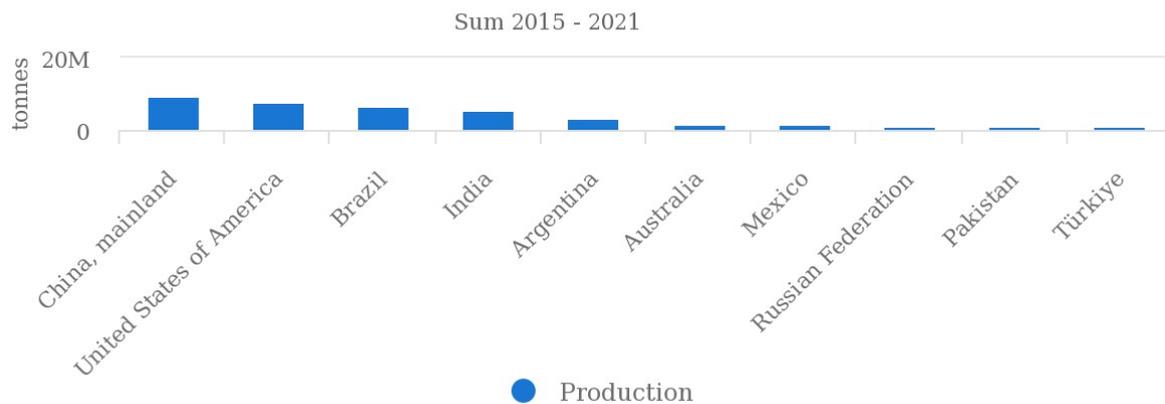
²⁷ Xiaowei Chen, Linqi Xu, Zhou Ren, *et. al.*, “Sustainable Supply Chain Management in the Leather Industry: A Systematic Literature Review”, *25 International Journal of Logistics Research and Applications* 2 (2022).

²⁸ Food and Agriculture Organization of the United Nations, *Crops and livestock products*, Food and Agriculture Organization of the United Nations(2022), available at: <https://www.fao.org/faostat/en/#data/QCL/visualize>

²⁹ *Ibid.*

³⁰ Food and Agriculture Organization of the United Nations, “Crops and Livestock Products”, *Food and Agriculture Organization of the United Nations*(2022), available at: <https://www.fao.org/faostat/en/#data/QCL/visualize>. (last visited on?)

Production of Raw hides and skins of cattle: top 10 producers



Source: FAOSTAT (Dec 26, 2022)

Figure 2: Top 10 producers of raw hides and skins of cattle (Data from FAO, 2022)³¹

III Prevention of Cruelty to Animals Act, 1960

Over the past decade, there have been manifold attempts made to improve the quality of existing legislation, which inadequately dealt with the needs of animal cruelty. The law *prima facie* appears extremely insulting, insensitive and reflects mockery of animal rights. The Prevention of Cruelty to Animals Act, 1960, (*hereinafter referred as PCA, 1960*) was amended in 1982 to include more acts that qualify as cruelty to animals, although there were no appreciable changes made to the rigorousness of the penalties.³² A new bill titled “Animal Welfare Act, 2011” was initiated in the Parliament in 2011 by the Animal Welfare Board of India to substitute the current PCA, 1960. It aimed to instil an animal welfare-oriented approach, enhance the punishment for abuse of animals and broaden the interpretation of animal abuse.³³ However, it was never enacted as legislation. .

The pattern of failed attempts to improvise the current legal framework, which insufficiently and ineffectively addresses the demands of animal protection and welfare, can be observed and inferred. The Centre’s most current proposal, on which the public was invited to comment in 2022, may be seen as representing the voice of the voiceless called the

³¹ *Ibid.*

³² The Prevention of Cruelty to Animals (Amendment) Act, 1982.(Act26of 1982).

³³ Draft of Animal Welfare Act, 2011.

“Prevention of Cruelty to Animals Act (Amendment) Bill, 2022” (*hereinafter referred as PCAA, 2022*).

The existing legislation, PCA, 1960 defines animals as “any living creature other than a human being”.³⁴ It further defines cruelty against animals under Section 11.³⁵ The punishment for animal cruelty is merely ‘ten rupees’ raising a critical question: when did the life of an animal become so trivial, paltry and meagre? The payment of ten to hundred rupees for animal cruelty plainly demonstrates how animal existence is rendered insignificant. Such trifling punishment demonstrates and further adds to the notion that these laws are bizarre and “merciful” for offenders. Such legal measures will neither dissuade nor reform the criminal, but instead will highlight, in loud strokes, how animal lives are insignificant.

Multinational cosmetic businesses such as Tide, Nivea, Vaseline,³⁶ Estée Lauder, Victoria’s Secret, Maybelline, and Bobbi Brown continue to test their cosmetics on animals such as rats, pigs, rabbits, etc. in laboratories.³⁷ The section 14 of the PCA, 1960 states

³⁴ The Prevention of Cruelty to Animals Act, 1960, (Act 59 of 1960), s. 2(a).

³⁵ *Id.*, s. 11. The section explicitly states that “[i]f any person— (a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or (b) employs in any work or labour or for any purpose any animal which, by reason of its age or any disease, infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed; (c) wilfully and unreasonably administers any injurious drug or injurious substance to any animal or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any animal; or (d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or (e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or (f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or (g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or (h) being the owner of any animal fails to provide such animal with sufficient food, drink or shelter; or (i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or (j) wilfully permits any animal, of which he is the owner, to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or (k) offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or (l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or (m) solely with a view to providing entertainment— (i) confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal; or (ii) incites any animal to fight or bait any other animal; or (n) organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or (o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting; he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.”

³⁶ Navya Jain and Muskan Jain, “Animal Cruelty and Rights: Review and Recommendations”, 1 *International Journal of Policy Sciences and Law* 751 (2020).

Nothing contained in this Act shall render unlawful the performance of experiments (including experiments involving operations) on animals for the purpose of advancement by new discovery of physiological knowledge or of knowledge which will be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants.³⁸

The researcher argues that subjecting animals to excruciatingly disturbing operations to develop new merchandises and components that will make us appear more appealing is unethical and unjustifiable. Similarly, subjecting the harmless animals for production of luxury commodities is unethical and unjustifiable. Apart from the above-mentioned provisions, the various provisions that deal with “animal protection” in the Indian Penal Code, 1860 which has been replaced by the Bharatiya Nyaya Sanhita, 2023. The increased punishment in Bharatiya Nyaya Sanhita reflects legal deterrence and strengthens animal protection.

Indian Penal Code, 1860	Bharatiya Nyaya Sanhita, 2023	Change in provision
Section 377 (Unnatural Offences) ³⁹	Omitted	Omitted the provision.
Section 428 (mischief by killing or maiming animal of the value of ten rupees) ⁴⁰	Section 325 (mischief by killing or maiming animal) ⁴¹	The punishment has increased from imprisonment upto two years to upto five years. The definition and scope of animals has been expanded and monetary values attached have been removed.
Section 429 (mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees) ⁴²		

Table 3: Author’s Construct

³⁷*Id.* at 750.

³⁸*Supra* note 35, s. 14.

³⁹ The Indian Penal Code, 1860, (Act 45 of 1860), s. 377. The section explicitly states that “[w]hoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

⁴⁰*Id.*, s. 428. The section explicitly states that “[w]hoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of the ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

⁴¹ Bharatiya Nyaya Sanhita, 2023, (Act 45 of 2023), s. 325. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

⁴²*Supra* note 40, s. 429. The section explicitly states that “[w]hoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.”

IV Prevention of Cruelty to Animals Act (Amendment) Bill, 2022

The current legislation against animal cruelty is incredibly lax and entirely indifferent to the welfare of the animals. The most recent bill proposed for the law is substantially stricter, and such strict laws are required to reduce animal abuse and brutality. The legislators made a commendable effort in making the legislation strict, sufficient, and strict in terms of penalty. However, this article will analyse and evaluate the deficiencies and shortcomings in the proposed bill in this part of the article. One of the short coming of the PCA, 1960 was meagre penalties which has been addressed by the PCAA, 2022 adequately.

A total number of sixty-one amendments have been made in the PCAA, 2022.⁴³ The term “*bestiality*” has been added as a new offence in the bill which is inserted as a sub section (j) of section 2.⁴⁴ It refers to any sexual action or contact between a human and an animal.⁴⁵ However, the Indian Penal Code already punishes this under unnatural offences under the section 377. Despite the fact that Section 377 was declared unconstitutional by the Supreme Court, it only extended to the part of the law that criminalised consenting adult intercourse and was not extended to the part that prohibited sexual intercourse with animals.⁴⁶ This leads to duplication of provisions and leads to conflicting laws. However, Indian Penal Code, 1860 has been replaced by the Bharatiya Nyaya Sanhita, 2023. The new act doesn’t have the any such provision for protection of animals from such acts.

The term “gruesome cruelty” has also been added under section 2(k).⁴⁷ The term has been elaborately defined; however, the act does not address gruesome cruelty done intentionally and with knowledge. The concept of *mens rea* is crucial in punishing someone accused of a crime. Giving harsher penalties for intentional crimes and less severe penalties for unintentional acts, such as a car accident on the highway, may help innocent people.⁴⁸ Animal cruelty committed by humans in self-defence to protect themselves or others has not been addressed.

⁴³ Draft Prevention of Cruelty to Animal (Amendment) Bill, 2022.

⁴⁴*Id.*, s. 2(j)

⁴⁵*Ibid.*

⁴⁶*Navtej Singh Johar v. Union of India* AIR 2018 SC 4321, para 253.

⁴⁷*Id.*, s. 2(k).

⁴⁸ G. Sampath, “Decoding the Prevention of Cruelty to Animal (Amendment) Bill, 2022”, *The Hindu*, (December 12, 2022), available at: <https://www.thehindu.com/podcast/decoding-the-prevention-of-cruelty-to-animals-act-amendment-bill-2022-in-focus-podcast/article66254495.ece> (last visited on November 29, 2023).

The concept of community animals has been introduced in the Bill under section 2 sub-section (o).⁴⁹The PCAA, 2022 has added five freedoms for the protection of animals from inhumane conditions and a dignified life.⁵⁰ It is the obligation and duty of the person in charge of the animal to ascertain that these freedoms are upheld. First and foremost, the animals should not experience starvation, thirst, or malnutrition. Second, they must feel at ease in their surroundings. Thirdly, they must be free from injuries, diseases, and any pain. Fourthly, the animals should not be living in distress and fear. Fifthly, the freedom to express a normal behaviour for the species must be allowed. The World Organisation for Animal Health developed the concept of five freedoms for animal welfare in 1965.⁵¹The researcher strongly argues that the concept of five freedoms should be substituted with five rights of animals. ‘*Ubi Jus Ibi Remedium*’ literally means whenever there is a legal right, there is a legal remedy.⁵² The researcher argues that proposing only humans exclusively deserve rights and not animals would deprive animals from their rights and remedies, both. Furthermore, the bill fails to emphasise on the consequences that will follow on violation of the animal’s five freedoms.

However, the PCA, 1960 and PCAA, 2022 both permit the killing of animals in slaughterhouses as long as they are licenced, meaning that ultimately the slaughtered animals of slaughterhouses can be transported to a processor of hides for additional processing and sent to a tannery for the manufacturing of leather.⁵³ In 2020–21, exports of leather from India, totalled to USD 3.3 billion.⁵⁴ According to Sanjay Leekha, Chairman of the Leather Exports Council, India's exports of leather are anticipated to surpass USD 6 billion (about Rs 44,800

⁴⁹*Supra* note 44, s. 2(o).

⁵⁰ World Health Organization of Animal Health (OIE) has recognised five freedoms for animals internationally that are: i) freedom from hunger, thirst and malnutrition; ii) freedom from fear and distress; iii) freedom from physical and thermal discomfort; iv) freedom from pain, injury and disease; and v) freedom to express normal patterns of behaviour. See, World Health Organization of Animal Health “Animal Welfare”, *World Health Organization of Animal Health, available at: <https://www.woah.org/en/what-we-do/animal-health-and-welfare/animal-welfare/>*. (last visited on November 29, 2023). The proposed bill has adopted these in the bill to make it more effective.

⁵¹ World Health Organization of Animal Health, “Animal Welfare”, *World Health Organization Of Animal Health, available at: <https://www.woah.org/en/what-we-do/animal-health-and-welfare/animal-welfare/>*. (last visited on November 29, 2023).

⁵² Tracy A. Thomas, “Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy”, 41 *San Diego Law Review* 1638 (2004).

⁵³ Maitri Thakura and Guro Møen Tveit, *et. al.*, “A Framework for Traceability of Hides for Improved Supply Chain Coordination”, 174 *Computers and Electronics in Agriculture* 2 (2020).

⁵⁴ “Leather, footwear exports to cross USD 6 bn in 2022-23: Council for Leather Exports”, *The Economic Times*, (February 20, 2022), *available at <https://economictimes.indiatimes.com/news/economy/foreign-trade/leather-footwear-exports-to-cross-usd-6-bn-in-2022-23-council-for-leather-exports/articleshow/89700620.cms>*. (last visited on November 26, 2023).

crore) in 2022–2023 as a result of rising demand and the opening of new markets in Africa, Latin America, etc.⁵⁵

V Kantian Notion of Rationality

Immanuel Kant (*hereinafter referred as Kant*) himself says unequivocally that animals are “mere means” and “instruments” that can be exploited for human goals.⁵⁶ Kant argues that humans are “moral and rational actors” since they have an innate significance called “dignity.” As rational agents, humans have the potential to make judgments for themselves. People do not require anyone else to make a choice for them.⁵⁷ Animals feed and procreate based on their preferences and tendencies. On the other hand, plants lack a nervous system, so their reactions to physical stimulus and touch are weak. Animals and plants, on the other hand, are incapable of responding rationally.⁵⁸ Some creatures, such as bonobos and chimpanzees, have evolved close enough to rational agents, such as humans. As a result, they are frequently claimed to be excluded from scientific studies. Christine M. Korsgaard argues that Kant is only proposing a metaphysical assertion about a certain type of intrinsic worth. Having a certain sense of reasoning or autonomy is a characteristic that imposes a form of intrinsic worth or dignity on those who possess it. Animals lack this intrinsic worth, respect, and value because they lack this characteristic.⁵⁹ Autonomy stems from a Greek term that means “independent” and signifies “self-governing and having its own laws”.⁶⁰

Autonomous agents are rational and have the ability to set principles or laws for themselves. On a bare reading of Kantian ethics on duties towards animals, it is apparent that the animals are not like humans because they lack rationality and are not autonomous. It

⁵⁵ *Ibid.*

⁵⁶ “Every rational being, exists as an end in himself and not merely as a means to be arbitrarily used by this or that will...Beings whose existence depends not on our will but on nature have, nevertheless, if they are not rational beings, only a relative value as means and are therefore called things. On the other hand, rational beings are called persons inasmuch as their nature already marks them out as ends in themselves.” See, IMMANUEL KANT, FOUNDATIONS OF METAPHYSICS OF MORALS, 45 (Prentice Hall Inc., 2nd ed. 1997) p. 45. See also, Christine M. Korsgaard, “A Kantian Case for Animal Rights” in *The Ethics of Killing Animals* 154 (Oxford University Press, 2015).

⁵⁷ StencyMariya Mark, “Commercial Surrogacy with Special Reference to Capabilities Approach”, 3 *GLS Law Journal* 76 (2021).

⁵⁸ Milene Consenso Tonetto, “Kant’s Concept of Indirect Duties and Environmental Ethics”, 16 *Special Issue on Kant’s Metaphysics of Morals as Guidance in A Morally and Legally Complex World* 520 (2017).

⁵⁹ Christine M. Korsgaard, “A Kantian Case for Animal Rights” in *The Ethics of Killing Animals* 157 (Oxford University Press, 2015).

⁶⁰ John Collier, “What is autonomy?”, *Research gate*, (2002), available at: https://www.researchgate.net/publication/28763485_What_is_Autonomy. (last visited on November 29, 2023).

means they cannot set principles or laws for themselves. Humans have the ability to reflect upon their decisions, but animals do not possess the same ability. Therefore, humans do not have to respect them and can treat them as mere means. They can use them for labour or for meat. However, he is concerned for animals in an “indirect way” rather than a direct way. Kant was against “violent and brutal treatment” of animals, such as their being painstakingly slaughtered, overworked beyond their capabilities, and subjected to agonising experimentation.⁶¹

If the objective of viewing animals as “right-holders” is to offer constitutional immunity to animals and avoid victimisation at the whims of humans, then a legislative tool to govern social actions towards animals would accomplish the objective of protecting them.⁶² In reality, constitutional security for animals within a legislative provision, as opposed to a right-framework under Part III of the Constitution, is un-contentious and universally recognised. Animals should not be tortured, inflicted cruelty, killed etc. is universally stated.⁶³

Thinkers such as Kant believe that the grounds for possessing rights are dictated by reason, authority, religion, and so on.⁶⁴ A right is regarded as an entitlement of people, either by virtue of being human or through citizenship.⁶⁵ Human beings are rational beings, and they have fundamental rights just by virtue of their being, sometimes regardless of whether they are rational or irrational. For instance, In India a minor person, lunatic,⁶⁶ unborn child⁶⁷ and dead person⁶⁸ all have certain rights even when they do not have the capability to think

⁶¹Immanuel Kant, *The Doctrine of Virtue; Part II of the Metaphysics of Morals* (Translated by Mary J. Gregor), 109 (Harper & Row Publishers, 1964).

⁶²Dr.UdayShanker, “Do Animals Have a Right Under Article 21 of the Constitution of India? – Comment on Animal Welfare Board of India Case”, *Bharati Law Review* 68 (2014)

⁶³See, International Convention for the Protection of Animals, 1988, art. 1. The article explicitly states that “1. Humans and animals co-exist within an interdependent ecosystem. Humans and animals share an evolutionary heritage. Humans, as moral beings, have an obligation to act responsibly toward animals. 2. Life has intrinsic value. No animal should be killed unnecessarily or be subjected to cruel acts or to unnecessary suffering. 3. When humans have control over specific animals they have a positive obligation to provide these animals with an environment and care appropriate for the species.”

⁶⁴ Alan Gewirth, “The Basis and Contents of Human Rights”, 23 *NOMOS*120-121 (1981).

⁶⁵ Stephen P. Marks, “Human Rights: A Brief Introduction”, *Human Rights*, Harvard University (2017), available at <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/134/2017/07/Human-Rights-A-brief-intro-2017.pdf>. (last visited on November 29, 2023).

⁶⁶ They are entitled to all the human rights

⁶⁷ Children in womb have property rights. See, Prof.(Dr.) Binayak Patnaik, “Rights of the Unborn: A Human Right Agenda”, 6 *Indian Journal of Law and Justice* 2 (2015).

⁶⁸To die with dignity and have a decent burial etc. See, Harikumar Pallathadka, “The Rights of the Dead and Their Rights to have Dignity in their Last Rites: A Study in India During the Covid-19 Pandemic”, 7 *European Journal of Molecular & Clinical Medicine* 3234(2020).

reasonably. If a deceased human has rights, why cannot an animal have rights by virtue of its existence? Just because an animal lacks human cognition or the ability to express their anguish does not mean they should be denied their basic rights to human pleasure.

Kant asserts that there are no direct duties owed to non-rational beings. However, rational actors (humans) have indirect responsibilities or obligations toward animals and plants.⁶⁹ Kant says it is a man's "moral title" to kill animals without pain and that he can use animals for labour purposes, but animals should not be made subject to painful experiments.⁷⁰ Humans have a moral imperative not to abuse animals, according to Kant, since mistreating them demonstrates or stimulates the emergence of poor moral fibre and so conflicts with our primary responsibility to ourselves, that of moral consciousness.⁷¹ For Kant, when people abuse animals as rational agents, we are the ones who are mistreated, not the animals. Kant says that humans have an indirect duty to "gratitude for the long service of an old horse or dog", which adds to our moral self-perfection duty.⁷² Johann Wolfgang Goethe, publicized his conflicting deduction/inferences in his evolutionary poem *Metamorphose der Tiere* (translated as *Metamorphoses of the Animals*), 1803 and stated *Zweck sein selbstistjeggliches Tier* (translated as that any animal is an end in itself) and opposed Kant.⁷³ It stated "we think of the isolated animal as a small universe, which acts and exists for itself. Accordingly, *each animal is an end in itself*; and because all of its parts stand in direct interaction, because they have a relation with each other and are renewed in the cycle of life, each animal can be looked upon as physiologically complete".⁷⁴

David DeGrazia has listed three senses of animal rights.⁷⁵ The first is the "moral-status sense," according to which animals have some sort of moral standing and do not only serve to support human interests. Therefore, for their own sake, they should be respected and treated with compassion.⁷⁶ The second is "equal-consideration sense," which claimed that humans must accord animals and human analogous interests' equal moral consideration, such that an

⁶⁹*Supra* note 59

⁷⁰*Ibid.*

⁷¹*Ibid.*

⁷²*Supra* note 59

⁷³ Rod Preece, "Thoughts out of Season on the History of Animal Ethics", 15 *Society and Animals* 370 (2007).

⁷⁴ Robert J. Richards, *The Meaning of Evolution: The Morphological Construction and Ideological Reconstruction of Darwin's Theory (Science and Its Conceptual Foundations Series)* 35 (The University of Chicago Press, 1992).

⁷⁵ David Degrazia, *Animal Rights: A Very Short Introduction* 20 (Oxford University Press, 2002).

⁷⁶*Ibid.*

animal's suffering is equivalent to a human's suffering.⁷⁷ The “utility-trumping sense” is the third. Animals just like humans, have vital interests that should not be ignored unless it is an exceptional circumstance. For instance, animals have a right to liberty and should not be restricted, even if such action is profitable.⁷⁸

VI Animal Constitutionalism: The Constitutional Rights of the Animals

While many people regard animals as resources, the constitutional provision has over the years evolved to treat the welfare of specific animals as matters of fundamental constitutional significance.⁷⁹ The researcher has emphasised on the conception of animal constitutionalism that incorporates the state's duty to care for the needs of its most vulnerable creatures, especially in cases where those creatures are unable to express their constitutional rights.⁸⁰ Many constitutions around the world still haven't included animals welfare in their constitution (For example Belgium Constitution)⁸¹ but Egypt (Article 45),⁸² India (Article 51A, (g)),⁸³ Brazil (Article 225, §1, VII)⁸⁴ and many other nations all have provisions for animal welfare and protection in their respective constitutions signifying how crucial the notion of animal constitutionalism is today considering the various brutalities the animals face because of humans. For instance, the recent incident of killing pregnant elephant in putting firecrackers in a pineapple in Kerala,⁸⁵ raping and killing a female puppy in Kolkata,⁸⁶ MBBS students throwing a dog from terrace for fun and made a video of the same⁸⁷ and many others. The Indian Judiciary is also playing a proactive role in doing justice to animal constitutionalism reflected in our Constitution. Nevertheless, since it is impractical to grant animals all the essential rights outlined in the Indian Constitution, the researcher is not

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Jessica Eisen, “Animals in the Constitutional State”, *15 International Journal of Constitutional Law* 909 (2017).

⁸⁰ Elien Verniers, “Animal Constitutionalism: Paving the Way for Animal Inclusion in the Belgian Constitution”, *10 Global Journal of Animal Law* 2 (2022).

⁸¹ *Ibid.*

⁸² Egypt Constitution, art. 45.

⁸³ The Constitution of India, art. 51A (g).

⁸⁴ Brazil Constitution (Article 225, s. 1, VII).

⁸⁵ Sneha Mary Koshy, “Elephant Who Ate Firecracker-Filled Pineapple Walked for Days in Pain”, *NDTV*, (June 03, 2020), available at <https://www.ndtv.com/india-news/kerala-pregnant-elephant-that-ate-cracker-stuffed-pineapple-walked-for-days-in-pain-2239774>. (last visited on December 2, 2023).

⁸⁶ Chayyanika Nigam, “Horrible: 34-year-old man accused of raping female puppy to death in Delhi”, *India Today*, (Aug 31, 2017), available at: <https://www.indiatoday.in/mail-today/story/delhi-taxi-driver-rapes-female-puppy-animal-cruelty-pervert-1034748-2017-08-30>. (last visited on December 2, 2023).

⁸⁷ Arun Janardhanan, “Medical student throws dog from terrace, friend uploads video on social media”, *The Indian Express*, (July 6, 2016), available at: <https://indianexpress.com/article/india/india-news-india/video-of-chennai-man-throwing-dog-from-rooftop-animal-abuse-viral-video-animal-rights/>. (last visited on December 2, 2023).

implying that they should. However, animals should be treated with dignity and allowed to live free from cruelty and pain.

The Indian Constitution provides, in its Part III, individual rights that safeguard citizen's and non-citizen's freedom and welfare. The right-holder has constitutionally protected rights that prohibit anyone, including the state, from violating the inalienable interest. Article 32 is attributed as the "heart and soul" of the Indian Constitution.⁸⁸ However, in the researcher's opinion, Part III of the Constitution is the "heart and soul" of the Constitution because, without the fundamental rights mentioned in Part III, humans cannot live a civilised life. Over the years, the Supreme Court of India has broadened the ambit of rights for humans and animals, both. Supreme Court has enhanced the culpability of those who exploit and torture animals by adopting an animal welfare-oriented approach. In *People for Animals v. Mohazzim* the court held that; trading in birds is a violation of their rights. They have a fundamental right to fly and not to be caged by humans. However; they are subjected to illegal confinement and transported without proper arrangements of water, food, medical aid and other amenities. Even birds have a fundamental right to "live with dignity" like humans.⁸⁹ Furthermore, in *Animal Welfare Board of India v. A. Nagaraja*, it was held; all species have a fundamental right to a "dignified life". The interpretation of "life" under Article 21 has been broadened and expanded to encompass animal life, recognising that life does not mean mere survival but includes freedom from unnecessary torture and pain. This is guaranteed under Sections 3 and 11 of The Prevention of Cruelty to Animals Act, 1960 read with Article 51-A(g) of the Constitution.⁹⁰

The court in *Karnail Singh and Others v. State of Haryana* held that "the entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person".⁹¹ However, the leather industry in India is a sheer reflection of animal brutality and torture. It is not only a depiction of animal torture and slaughter but also a significant environmental polluter and a

⁸⁸ Dr B.R. Ambedkar had once said, "If I was asked to name any particular article in this Constitution as the most important — an article without which this Constitution would be a nullity — I could not refer to any other article except this one (Article 32). It is the very soul of the Constitution and the very heart of it". See, SankarshanBiswas, "Dr. Ambedkar's Contribution to Fundamental Rights and Federalism Enshrined in Constitution of India", *SSRN Electronic Journal* 8 (2013).

⁸⁹ *People for Animals v. Mohazzim*, 2015 (3) RCR (CRIMINAL) 94, para 4.

⁹⁰ *Animal Welfare Board of India v. A. Nagaraja s*, (2014) 7 SCC 547, para 72.

⁹¹ *Karnail Singh and Others v. State of Haryana*, (2019) 195 PLR 226, para 29.

serious environmental concern.⁹²The animal constitutionalism is significant because the Constitution is the grundnorm and anything placed in it becomes automatically crucial by including it in the Constitution.⁹³Animals have been repeatedly mentioned in the Indian Constitution in the Article 21,⁹⁴Article 48,⁹⁵Article 48A,⁹⁶ Article 51A(g),⁹⁷ Article 246.⁹⁸

In ancient texts, it has been mentioned that animals are equivalent to humans.⁹⁹ It considered both humans and animals to be creatures of the same God. However, as time went by, people began to perpetrate abuse of animals by subjecting them to dangerously unsanitary working conditions in order to suit man's selfish desires and companies' use of them as scapegoats for the mere accumulation of indefinite profits. It is critical to explain why wildlife should be considered to have a specific claim on human concern. It is not adequate to just state that inducing harm is bad; we must also clarify why this is so. The inability of animals to give or withhold permission is one of the two main reasons why they should be given the highest protection. Second, animals are unable to advocate for or express their personal desires.¹⁰⁰ As humans, we have the ability to demand and oppose the environment that makes us uncomfortable, as well as speak for ourselves. When animals are subjected to suffering, they experience pain and agony. They are, however, unable to articulate it. It is apparent that whether pain and misery are inflicted on an animal or a human, the outcomes

⁹² J. Kuldeep Singh observed "[t]hrough the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry." in *Vellore Citizens Welfare Forum v. Union of India* AIR 1996 SC 2715, para 9.

⁹³ *Supra* note 78 at 1.

⁹⁴ *Supra* note 84, art. 21. The article explicitly states that "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law."

⁹⁵ The Constitution of India, art. 48. The article explicitly states that "[t]he State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."

⁹⁶ *Id.*, art. 48A. The article explicitly states that for the "[p]rotection and improvement of environment and safeguarding of forests and wild life. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

⁹⁷ *Id.*, art. 51A, cl. (g). The article explicitly states that "[i]t shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures."

⁹⁸ *Id.*, art. 246. The article explicitly states that "[t]he Parliament has power to makes laws on the matters listed in Union List, State makes laws on the matters of State List and both on concurrent list."

⁹⁹ The *Śrīmad-Bhāgavatam (Bhāgavata Purāṇa)* states "[o]ne should treat animals such as deer, camels, asses, monkeys, mice, snakes, birds and flies exactly like one's own son. How little difference there actually is between children and these innocent animals." (*Śrīmad-Bhāgavatam (Bhāgavata Purāṇa)* 7.14.9). The Yajur Veda says that "[y]ou must not use your God-given body for killing God's creatures, whether they are human, animal or whatever." (Yajur Veda 12.32.90)

¹⁰⁰ The Revd Professor Andrew Linzey, "The Ethical Case for European Legislation Against Fur Farming", 13 *Animal Law* 154-155 (2006).

are the same. Pain is pain, regardless of whether you are a human or an animal. Jeremy Bentham has claimed that said that animals deserve “equal moral consideration” like human beings.¹⁰¹ Bentham asserted that neither the number of legs nor colour of skin is a factor to determine treatment or fate of any species. Furthermore, he remarked “the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?”.¹⁰²

The State is responsible for wildlife protection,¹⁰³ but it is also the responsibility of every citizen to protect the environment and have compassion for living species.¹⁰⁴ The consequentialist method must be employed to determine whether or not there should be a ban on animal killing for hides or leather. A dead body and a product, such as leather shoes or a fur coat, are the results of the leather industry. If a garment and footwear are more important than an animal, who is an animal, really? Immanuel Kant himself says indisputably that animals are “mere means” and “instruments” that can be exploited for human goals but doesn’t encourage the idea of torturing animals. The fundamental right of people to engage in trade and profession¹⁰⁵ is argued as another justification for not banning animal slaughter for leather because a complete outlawing of all animal slaughter, including slaughterhouses, tanning facilities, and other businesses and occupations that process skins, would deprive many of their livelihoods. Yet again, such a decision defies logic if a profession is chosen over the lives of helpless creatures. No rational human would prefer their profession over the lives of animals for the sake of fashion and vanity.

VII Concluding Remarks

Humanity has grown scientifically and technologically to the point that humans can travel into space and touch the ocean depths. However, no amount of technical progress can bring a dead animal back to life. Wealth, innovation, or science will not be able to restore the lives that have been lost. It is irreversible and cannot be repaired. With a growing availability of plant-based fabric substitutes, slaughtering animals merely for the sake of apparel is both superfluous and morally reprehensible. The leather and fashion industries exploit millions of animals by subjecting them to hazardous and unsanitary conditions to satisfy man's materialistic demands. The genuine leather can be swapped with vegan leather or artificial

¹⁰¹ Johannes Kniess, “Bentham on Animal Welfare”, 27 *British Journal for The History of Philosophy* 556 (2019).

¹⁰² Jeremy Bentham, *An Introduction to The Principles of Morals and Legislation* 311 (Clarendon Press, 1876).

¹⁰³ *Supra* note 84, art. 48A.

¹⁰⁴ *Id.*, art. 51A, cl. (g).

¹⁰⁵ *Id.*, art. 19(1)(g).

leather. The genuine fur can be swapped with faux fur. The leather and fashion industries can switch to alternatives and save millions of lives. The idea that animals are only instruments for people and can be used for experimentation, torture, or even as commodities for humans is an approach that should never be endorsed. The PCAA, 2022 should put a blanket ban and penalise leather production in India. The five “freedoms” must be switched with five “rights” to broaden the horizons of the rights of the animals. There should be a constitutional duty to not slaughter animals for leather and fashion to uphold animal constitutionalism. The researcher proposes that animals have moral standing and that an animal's suffering is comparable to a human's suffering. Animals, like humans, have rights that should not be ignored for economic growth and development. Animals need a higher pedestal and degree of protection due to their inability to protect themselves from such gruesome acts.