



Gujarat State Law Commission

JUSTICE M. B. SHAH

Former : Judge, Supreme Court of India,
Chief Justice, High Court of Bombay
President, N.C.D.R.C., New Delhi.

Chairman, Gujarat State Law Commission

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No.GSLC/2021/ACS_LPAD/01

Date: 05th January, 2021

Dear Shri *Agarwalji,*

Government of Gujarat, Legislative and Parliamentary Affairs Department; vide its Resolution No.LAC/2006/44/110/Law Cell, dated 31st December, 2013; had appointed the undersigned as Chairman of the State Law Commission.

Till date, the Commission under the chairmanship of the undersigned has submitted in all **nineteen reports** on various points for consideration and for taking further needful actions.

Today, the Commission submits its **Twentieth Report**, namely, "*Recommendation for taking appropriate steps to control incidents where cows die after ingesting plastic*".

Two sets of the aforesaid report and one C.D. containing soft copy thereof are sent herewith for consideration and for taking needful action.

With warm regards,

Yours sincerely,

M. B. Shah
Justice M. B. Shah (Retd.)
Chairman

Encl. : As above

✓ To,
Shri Manoj Agarwal (IAS)
Additional Chief Secretary (Addl. Charge)
Legislative and Parliamentary Affairs Department
Block No.4, Fourth Floor, Sardar Bhavan,
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सत्यमेव जयते

20TH REPORT

**Recommendation for taking appropriate
steps to control incidents where cows
die after ingesting plastic**

05th JANUARY, 2021

JUSTICE M. B. SHAH

**FORMER JUDGE
SUPREME COURT OF INDIA**

AND

**CHAIRMAN
GUJARAT STATE LAW COMMISSION**

Recommendation for taking appropriate steps to control incidents where cows die after ingesting plastic

1. At the outset, it is to be highlighted that:—

- (i)** In India, since centuries, for animals, society is having compassion all throughout and not only that, some animals are worshiped. Compassion is to such an extent that without feeding the animal—may be dog / goat / cow or other milky animals, person would not take his meals.
- (ii)** Mahatma Gandhiji, Father of the Nation always believed, preached and practiced AHINSHA. He never agreed for slaughter of animals for meat export. The country owes some obligation to the Father of the Nation and respects his philosophy.
- (iii)** Before that, Guru Nanak also preached the principles of AHINSHA.
- (iv)** It is the philosophy and practice of Jainism to follow AHINSHA in its minutest form. Therefore, it has never endorsed slaughtering of animals for meat consumption. Recent history, since the age of Bhagwan Mahaveer, AHINSHA is adopted as a part of daily routine life by Jains.
- (v)** Similarly, Lord Gautam Buddha preached all throughout AHINSHA as the foundation of religions and way of life.

(vi) Lord Christ said to himself, *"Still I have to go far. This little sheep seems to be tired. So, I take it on my shoulder."* **This reveals his compassion for the sheep.**

Further, out of tenth commandment, fifth commandment provides that *"Thou shall not kill"* (Gensis – Chap. 1–297)

(vii) Even Mohammad Paigambar, in a religious scripture "Hadith", stated that, *"Be kind to all creatures because Almighty has bestowed his kindness upon you."*

(viii) In Kuran–e–sarif, while describing HUZ, it has been pointed out that, *"Slaughtering of animals and destroying farms is to bring havoc on earth and Almighty does not approve of it."*

Let us try to see that havoc is not brought on earth.

2. **On the basis of the aforesaid philosophy and culture of the country, Constitution of India provides fundamental duties/directive principles which are as under:--**

(i) Article 48 deals with "Organization of agriculture and animal husbandry" which specifically provides that, *"The State shall endeavour to organize 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.**"*

(ii) Article 48A deals with "Protection and improvement of environment and safeguarding of forests and wild life" which specifically provides that, *"The State shall endeavour to protect and improve the environment and to safeguard the forests and **wild life of the country.**"*

(iii) Article 51A deals with "Fundamental duties" and according to Clause (g), it shall be the duty of every citizen of India to protect and improve natural environment including forests, lakes, rivers and **wild life, and to have compassion for living creatures.**"

3. It is also known that for protecting animals, various laws are enacted.

(i) First Act was passed for Prevention of Cruelty to Animals Act, 1920 which stands repealed.

(ii) Royal Society for the Prevention of Cruelty to Animals Act, 1932 was enacted which *inter-alia* provided that, *"The objects of the Society shall be to promote kindness and to prevent or suppress cruelty to animals and to do all such lawful acts as the Society may consider to be conducive or incidental to the attainment of those objects."*

(iii) Subsequently, Prevention of Cruelty to Animals Act, 1960 was enacted. Some provisions are as under:--

"2. Definitions

In this Act, unless the context otherwise requires,

(a) *“animal” means any living creature other than a human being;*

...

(c) *“captive animal” means any animal (not being a domestic animal) which is in captivity or confinement, whether permanent or temporary, or which is subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from captivity or confinement or which is pinioned or which is or appears to be maimed;*

(d) *“domestic animal” means any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose for the use of man or which, although it neither has been nor is being nor is intended to be so tamed, is or has become in fact wholly or partly tamed;*

...

3. Duties of persons having charge of animals

It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

...

9. Functions of the Board

The functions of the Board shall be—

(a) to keep the law in force in India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time;

... ..

(k) to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like;

(l) to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals."

Afore–quoted Section 3 of the Act specifically provides that, it shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well–being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.

(iv) Next enactment is Prevention of Cruelty to Animals Act, 1986. The purpose of the said Act was to prevent cruelty to animals, to encourage the considerate treatment of animals and to improve the level of community awareness about the prevention of cruelty to animals.

Section 9 of the said Act deals with “Cruelty” which reads:—

“(1) A person who—

- (a) *wounds, mutilates, tortures, overrides, overdrives, overworks, abuses, beats, worries, torments or terrifies an animal; or*
- (b) *loads, crowds or confines an animal where the loading, crowding or confinement of the animal causes, or is likely to cause unreasonable pain or suffering to the animal; or*
- (c) *does or omits to do an act with the result that unreasonable pain or suffering is caused or is likely to be caused to an animal; or*
- (d) *drives, conveys, carries or packs an animal in a manner or position or in circumstances which subjects or subject, or is likely to subject it to unnecessary pain or suffering; or*
- (e) *works, rides, drives or uses an animal when it is unfit for the purpose with the result that unreasonable pain or suffering is caused to an animal; or*
- (f) *is the owner or the person in charge of an animal which is confined or otherwise unable to provide for itself and fails to provide the animal with proper and sufficient food, drink or shelter; or*
- (g) *sells, offers for sale, purchases, drives or conveys a calf, which appears to be unfit because of weakness, to be sold or purchased or to be driven or conveyed to its intended destination; or*

- (h) *abandons an animal of a species usually kept in a state of confinement or for a domestic purpose; or*
- (i) *is the owner or the person in charge of a sick or injured animal and unreasonably fails to provide veterinary or other appropriate attention or treatment for the animal; or*

... ..

commits an act of cruelty upon that animal and is guilty of an offence and is liable to a penalty of not more than, in the case of a natural person, 246 penalty units or imprisonment for 12 months or in the case of a body corporate, 600 penalty units."

Considering the aforesaid provision, it is apparent that killing of such animals for food (particularly, that of cows which are worshiped in this country since years) is not permissible.

- (v) **In addition, even for protecting wildlife, there is the Wildlife (Protection) Act, 1972. Section 9 thereof deals with "Prohibition of hunting" which provides that, "No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under Section 11 and Section 12."**

Schedule I, II, III and IV contains all species of the animals in the country.

4. It is to be stated that, Indian economy is based on agriculture and 70% population is still living in rural areas. They depend on cattle for various purposes, including milk, fertilizer, etc. Cattle are still the backbone of Indian agriculture. They are part of social rural life and serve the society in numerous ways.

5. **At this stage, it is to be highlighted that, in view of the judgment rendered by the Honourable Supreme Court of India, in the case of State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors. [2005 (8) SCC 534], indirect slaughter of cows is not permissible. For this purpose, it would be relevant to quote some observations made in the said case:—**

“Cow progeny excreta is scientifically recognized as a source of rich organic manure. It enables the farmers avoiding the use of chemicals and inorganic manure. This helps in improving the quality of earth and the environment.

Cows are milch cattle. Calves become draught or milch cattle on attaining a particular age. Having specifically spoken of cows and calves, the latter being a cow progeny, the framers of the Constitution chose not to catalogue the list of other milch and draught cattle and felt satisfied by employing a general expression ‘other milch and draught cattle’ which in their opinion any reader of the Constitution would understand in the context of the previous words ‘cows and calves’....

No doubt, cow ceases to be 'milch' after attaining a particular age. Yet, cow has been held to be entitled to protection against slaughter without regard to the fact that it has ceased to be 'milch'. This constitutional position is well settled. So is the case with calves. Calves have been held entitled to protection against slaughter without regard to their age and though they are not yet fit to be employed as 'draught cattle'.

Following the same construction of the expression, it can be said that the words 'calves and other milch and draught cattle' have also been used as a matter of description of a species and not with regard to age. Thus, 'milch and draught' used as adjectives simply enable the classification or description of cattle by their quality, whether they belong to that species. This classification is with respect to the inherent qualities of the cattle to perform a particular type of function and is not dependant on their remaining functional for those purposes by virtue of the age of the animal. 'Milch and draught cattle' is an expression employed in Article 48 of the Constitution so as to distinguish such cattle from other cattle which are neither milch nor draught.

Any other meaning assigned to this expression is likely to result in absurdity. A milch cattle goes through a life cycle during which it is sometimes milch and sometimes it becomes dry. This does not mean that as soon as a milch cattle ceases to produce milk, for a short period as a part of its life cycle, it goes out of the purview of Article 48, and can be slaughtered. A draught cattle may lose its utility on account of injury or sickness and may be rendered useless as a draught cattle during that period. This would not mean that if a draught cattle ceases to be of utility for a short period on account of sickness or injury, it is excluded from the definition of 'draught cattle' and deprived of the benefit of Article 48.

This reasoning is further strengthened by Article 51A(g) of the Constitution. The State and every citizen of India must have compassion for living creatures. ... A cattle which has served human beings is entitled to compassion in its old age, when it has ceased to be milch or draught and becomes so-called 'useless'. It will be an act of reprehensible ingratitude to condemn a cattle in its old age as 'useless' and send it to a slaughter house taking away the little time from its natural life that it would have lived, forgetting its service for the major part of its life, for which it had remained milch or draught. We have to remember: the weak and meek need more of protection and compassion. ...

*In the present case, we find the issue relates to a total prohibition imposed on the slaughter of cow and her progeny. The ban is total with regard to the slaughter of one particular class of cattle. The ban is not on the total activity of butchers (kasais); they are left free to slaughter cattle other than those specified in the Act. It is not that the writ petitioner-respondents survive only by slaughtering cow progeny. They can slaughter animals other than cow progeny and carry on their business activity. In so far as trade in hides, skins and other allied things (which are derived from the body of dead animal) are concerned, it is not necessary that the animal must be slaughtered to avail these things. The animal, whose slaughter has been prohibited, would die a natural death even otherwise and in that case their hides, skins and other parts of body would be available for trade and industrial activity based thereon. **We hold that though it is permissible to place a total ban amounting to prohibition on any profession, occupation, trade or business subject to satisfying the test of being reasonable in the interest of the general public, yet, in the present case banning slaughter of cow progeny is not a prohibition but only a restriction.***

The dung of the animal is best natural manure and is better in all respect than artificial manure. The grains produced by using artificial manure lose much of its utility to the human beings. It is also extremely useful for production of biogas. With regard to importance of cow-dung, the Honourable Court *inter-alia* observed that, "Biogas has traditionally been produced in India from cow dung (gobar gas). However, dung is not adequately and equitably available in villages. Technologies have now been developed for using tree-based organic substrates such as leaf litter, seed starch, seed cakes, vegetable wastes, kitchen wastes, etc. for production of biogas. Besides cooking, biogas can also be used to produce electricity in dual fired diesel engines or in hundred per cent gas engines. Ministry of Non-conventional Energy Sources (MNES) is taking initiatives to integrate biogas programme in its Village Energy Security Program (VESP). Production of pesticides and biogas depend on the availability of cow-dung."

In addition, it is to be stated that in the case of **Karuna Society for Animals & Nature & Ors. v. Union of India & Ors. [Writ Petition (Civil) No.154/2012]**, the Honourable Supreme Court of India passed an order dated 15th July, 2016, *inter-alia* observing that, **use of plastic by the residents which is often consumed by the animals adversely affects their digestive tract resulting in their death** and postmortem of such dead animals will be conducted ultimately polluting the whole of the areas where the public residents are residing thereby the public residents would suffer on account of unhygienic conditions that would prevail in the area.

However, after hearing the learned counsel for the parties, the Court observed that, "*the situation is very alarming but it is not for this Court to monitor the functioning of concerned authorities & local authorities to see that the areas of the local self government are not polluted. Accordingly, we direct the Union of India and the State Governments to consider the prayers in the petitions and take all necessary steps in the matter in accordance with law by constituting committees consisting of competent persons who have got sufficient knowledge on the subject matter. The Central Government may also set up an appropriate monitoring mechanism in the matter. In our considered view, the respective regional Natural Green Tribunal benches can monitor and regulate the cases by passing/giving orders or directions to all the concerned statutory authorities and local self governments in the country for discharge of their constitutional and statutory duties.*"

6. **At present, as the cows are not fed properly, they are left in the society looking for food and the result is, they pick through plastic waste and other indigestible substances. However, once milk production decreases, the owners of cows usually abandon them.**
7. **In this set of circumstances, it is necessary to see that cows are properly fed by the owners and not left in the society for their food.**

8. It is observed that the animals, particularly, cows roam the streets looking for food and it appears that the waste management system of the local authority is extremely lacking and many of the times; such animals are not fed properly. It also appears that, farmers / owners / occupants do not afford to feed their cows, when they stop giving milk and, therefore, they are often let loose to find the nutrients they need on the streets.
9. As cows pick through piles of garbage, they also consume plastic and unsurprisingly, the biggest plastic pollutant digested by cows is plastic bags. The bits of plastic consumed build up in their internal organs which make it difficult for cows to eat. Because of this reason, perhaps, milk production drops. There may be treatment to prevent their death but once milk production stops, farmers / owners / occupants usually abandon cows rather than spend money on their treatment. Resultantly, in number of cases, the animals (cows) loose their valuable lives, after ingesting plastic.
10. **At this stage, it would be relevant to quote the newspaper report published on 03rd December, 2020 in the Ahmedabad Mirror:—**

"Yet another cow dead after ingesting plastic, but does anyone care?"

*Neither the Animal Husbandry Dept. nor the Gauseva and Gauchar Vikas Board knows how many cows have died consuming plastic or in unnatural ways. **Yet, another cow is dead along with her unborn calf and this time, after having consumed 53 kgs. of plastic and the death was never officially reported.***

While Gau Raksha has turned out to be quite an important subject in the current political scenario, neither the Animal Husbandry Department nor the Gauseva and Gauchar Vikas Board know how many cows have died due to plastic consumption or have had unnatural deaths.

Natu Parmar, a former cattle skinner turned Gau Rakshak who runs a shelter (Panjrapol) for abandoned cows in Surendranagar, is lamenting the demise of Captain, an 8-year-old pregnant cow. She died on November 28 after three days of intense pain and inability to even stand as the huge amount of plastic she had ingested slowly killed the calf in her womb.

With no advanced surgical procedures available in Surendranagar and nearest major veterinary centres located at Anand and Junagadh agricultural universities, Captain had little hope of surviving after what the informal postmortem revealed – “53 kgs. of plastic, 11 iron nails, and six stapler pins,” said Parmar.

*The postmortem was shot on film as evidence of what plastic can do to the animal that is considered sacred in several religions. After officials at the Government Veterinary Helpline Number 1962 told him that she would need surgery, Parmar said he got in touch with doctors at the Anand Agricultural University. They informed him that they could perform the surgery and that the cow would have to be kept there for seven days on medication. **However, they even told him that they could not confirm if Captain would survive.***

‘Handprint stays on cow’s body due to plastic’

*Mirror spoke to Dr. Pinesh Parikh, HOD of Veterinary Surgery at Anand Agricultural University on such incidents. He said, **“Of the cows who are left out on the streets in cities and towns, more than 80% brought to us for treatment have ingested plastic. There is usually 2–5 kgs. of plastic in such cows. In some cases, it is so apparent that when you press the side of the cow’s body near the ruminant stomach, it leaves a handprint on the body due to plastic.”***

Deaths of cows remain a mystery. Parmar claims that local authorities delay the post mortems of bovines and mostly, only do so when a question of insurance arises and claims have to be presented. "There have been cases where bodies of cows lay rotting for two or three days, sometimes even ravaged by dogs before someone comes to conduct the post mortem and haul away the body. The system is such that nobody wants to go through this hassle and directly give the bodies to cattle skimmers," he said.

No system to report unnatural deaths of cows

Asked about reporting of unnatural deaths of cows in Gujarat, Dr. K. A. Vasava, Additional Director of Animal Health at the Directorate of Animal Husbandry, said, "Any death reported to the dispensary, ought to be recorded and reported. For that, we have an animal disease surveillance system. But when significant mortality is seen due to diseases, it is certainly reported. In urban and semi-urban areas, cows are like scavengers and eat from dumps."

Asked again whether only disease-related deaths are being reported, Dr. Vasava said, "No, all unnatural deaths are reported." When asked for data on unnatural deaths of cows in Gujarat, Dr. Vasava however said that it would come under the purview of the Gauseva and Gauchar Vikas Board.

Mirror then contacted Dr. Kanti Damor, Joint Director of the Gauseva and Gauchar Vikas Board who also gave no clear indication of the status of animal health and death reporting at the state level. N. B. Upadhyay, the Secretary of Animal Husbandry, Cow Breeding and Fisheries, told Mirror, "Unfortunately, there is no system to report such singular unnatural deaths of cows and reporting is only done when a number of animals die due to certain reasons."

"We are determined to set up such a system at the earliest," added Upadhyay."

11. Provision with regard to single–use plastic bags in few States of USA:--

It is learnt that States, namely, California, New York, Oregon, Vermont, and four others (USA), have banned single–use plastic bags. In August–2014, **California** became the first State to enact legislation imposing a state–wide ban on single–use plastic bags at large retail stores. The bill required a 10–cent minimum charge for recycled paper bags, reusable plastic bags, compostable bags at certain location.

It is also learnt that, **New York** became the third State to ban plastic bags in the year 2019 with passage of Senate Bill 1508. The law, which goes into effect March–2020, will apply to most single–use plastic bags, provided by grocery stores and other retailers. Bags distributed at the meat/deli counter and bulk food area are exempt as well as newspaper bags, trash bags, garment bags, bags provided by a pharmacy for prescription drugs and restaurant takeout bags. The law allows individual counties the option of placing a 5–cent fee on paper bags with 2–cents going to local governments and 3–cents to the State’s Environmental Protection Fund.

It is learnt that seven States of India, including Gujarat have imposed partial ban on plastic carry bags at religious/historical places. Many of the States have imposed complete ban on plastic carry bags.

Question is, whether the ban imposed on use of plastic bags is properly implemented or otherwise?

It appears that in the absence of proper enforcement of plastic bags' ban, garbage continues to cover the streets and becomes a main source of food and cause of death – for roaming cattle.

- 12.** It is felt that the incident of ingesting the plastic by the cows is increasing day-by-day and, thus, lives of such animals remain in danger which is **one kind of indirect slaughter of animals** and, therefore, appropriate steps are required to be taken by the State Government to control incidents where animals (such as, cows) die after ingesting plastic.

As observed earlier, indirect slaughter of cows is not permissible, in view of the decision rendered by the Honourable Supreme Court of India in the case of **Mirzapur Moti Kureshi Kassab Jamat (Supra)**.

It is true that in the State of Gujarat, there is the Gujarat Animal Preservation Act, 1954 which was amended lastly in the year 2017. Amended Section 8(2) provides stricter provision to the effect that, "*whoever in contravention of the provisions of sub-section (1) of Section 5 slaughters any animal as specified in sub-section (1A) of Section 5 shall, on conviction, be punished with imprisonment for life but shall not be less than ten years and with fine which may extend to five lac rupees but shall not be less than one lac rupees.*"

13. Recommendations:—

(i) Need to introduce the penal provisions:—

There is the need to introduce the provision to the effect that whosoever is found to throw the waste materials, food, etc. in plastic bag on public road or in any form (increasing garbage and thereby creates pollution, too), should be penalized by appropriate fine.

(ii) Need to prepare the database:--

From the newspaper report titled as "Does Gujarat really care about its cows?" published in Ahmedabad Mirror on 01st September, 2018, it is learnt that the State has no record of cows dying due to unnatural causes.

It is reported therein that, *"In response to Mirror's RTI query, **the State Government replied that it has no clue, if cows are dying of plastic consumption and malnutrition.** This, even as thousands of cows roam the streets eating discarded plastic bags and non-biodegradable waste. Dr. B.J. Parmar, Joint Director of Animal Husbandry Department and Member Secretary of the Gauseva and Gauchar Vikas Board told Mirror, **"There is no policy to report unnatural deaths of cows. The real cause of death can only be found by conducting a post mortem examination of cows. This is not carried out all the time."***

The officials at the Gauseva and Gauchar Vikas Board should have the basic data on hand to assess welfare of cows in the State, and to record the unnatural deaths of cows.

Date : 05th January, 2021
Place: Ahmedabad



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