

Navigating the streets

Examining the legal and policy dimensions of free-ranging dog management in India

Gautam Aredath*

Abi T. Vanak**

Abstract

The Indian government's approach to dog population management for the last two decades – the animal birth control (ABC) program – has yielded poor results. Aside from its implementation failures, the ABC is scientifically unsuited to the scale and severity of the harms posed by free-ranging dogs. It is based on a deficient understanding of both animal behaviour and animal welfare. The Indian Supreme Court, which is hearing multiple petitions relating to the danger to human life and safety posed by India's burgeoning population of free-ranging dogs, has issued interim orders that restrict alternative interventions such as long-term sheltering and euthanasia. While the legal dispute has meandered through the judicial system for more than a decade, the harms caused by free-ranging dogs continue unabated. Recent legislative changes, which encourage the maintenance of dogs on streets, have pushed government policy in a seemingly regressive pathway. This paper presents a critical discussion of the legal and policy position, and suggests integrated and contextual approaches for viable dog population management.

Keywords: stray dog, conflict, animal birth control, animal cruelty, Supreme Court, Article 21

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* Gautam Aredath is a policy analyst at the Centre for Policy Design at Ashoka Trust for Research in Ecology and the Environment, Bangalore.

** Abi T. Vanak is the Director of the Centre for Policy Design and Senior Fellow (Professor) at Ashoka Trust for Research in Ecology and the Environment, Bangalore.

1. Introduction

The Indian Supreme Court has been dealing with a dogged problem since 2009. In *Animal Welfare Board of India v. People for Elimination of Stray Troubles & Others* (“AWBI v. PEST”),¹ and connected matters, the apex court was called upon to adjudicate on the legality of the killing of stray dogs (or free-ranging dogs).² In the Indian context, this is an issue that requires a careful balance between animal cruelty and human welfare, due to the scale and severity of the conflict between humans and free-ranging dogs.

It is estimated that, in India, the annual number of person-days lost because of animal bites (91.5% of which are dogs) is 38 million, and the cost of post-bite treatment is about \$25 million (Menezes 2008: 564). There are 15.31 million ‘street’ dogs as per the Government of India’s 20th Livestock Census 2019, whereas other estimates suggest this to be nearly 60 million (Gompper 2013: 20). Annually, India has around 17 million cases of dog bites, and this leads to around 20,000 human deaths due to rabies infection (Gongal & Wright 2011: 3), although the number of deaths is likely to reduce due to better availability of vaccines for humans. To put this into context, a person is bitten every 2 seconds and someone dies from rabies every 30 or so minutes.

While there are no comprehensive estimates available for other deaths and losses caused by free-ranging dogs, such as fatal attacks on humans, road traffic accidents, and attacks on domestic animals, these are likely to be substantial. An analysis of road accident insurance claims by an insurance provider revealed that stray animals were the second-most frequent cause of accidents, out of which 58% were caused by dogs (Dash 2022). In addition to the impacts on public health and safety, studies have shown that free-ranging dogs constitute a threat to native wildlife through predation and competition for resources (Marshall et al. 2022, Doherty et al. 2017).

On the other hand, an animal rights NGO that studied secondary sources on violence against animals captured more than 17,000 instances of human action that caused or was intended to cause the death of dogs between 2010 and 2020 (Federation of Indian Animal Protection Organisations n.d., 83). These include instances of gruesome and mass killing of free-ranging dogs, often in the wake of attacks on humans.

The case before the Supreme Court arose from a Bombay High Court judgement in *People for Elimination of Stray Troubles & Another v. State of Goa & Others* (2008) which upheld municipal laws in Maharashtra and Goa that permitted local authorities to euthanise (or “destroy”, as many laws clunkily put it) stray dogs to mitigate the harm caused to humans, provided that such power was exercised reasonably depending on the extent of the nuisance or danger posed by the animal. The petitioners before the Supreme Court argue that the killing of dogs, other than to alleviate the animal’s suffering, is inhumane and must be outlawed.

The Animal Welfare Board of India (AWBI), a statutory body under the Department for Animal Husbandry and Dairying (DAHD) of the Government of India and the lead petitioner, advocates for

animal birth control (ABC) programs as an alternative and exclusive strategy to reduce the free-ranging dog population, and to manage the human-dog conflict. This approach focuses on catching-neutering-vaccinating-releasing free-ranging dogs, on the basis that sterilisation will stabilise the dog population in a given area and progressively reduce it.

While the Supreme Court has issued interim orders staying the killing of dogs (except incurably ill or mortally wounded ones) and requiring the government to scrupulously implement ABC programs, it has not yet (despite the passage of over 14 years) completed the hearings on this matter to issue final orders. These proceedings have not only been slow, but also limited in scope (for e.g., the effect of free-ranging dogs on native wildlife has received scant consideration).

Meanwhile, other judicial interventions have read in a right to feed free-ranging dogs and a right of dogs to be fed,³ and the union government has brought in legislative changes (i.e., Animal Birth Control Rules, 2023) that promote the maintenance of dogs in public places without individual ownership.

This article critically examines India's existing legislative and policy framework for dog population management, and argues that it is inadequate to address the multiple negative effects of free-ranging dogs, unsuitable for the scale and severity of these effects, and incompatible with globally-accepted scientific approaches. Based on the principles and policy gaps identified, it highlights the need for an alternative approach that has the flexibility to utilise a range of interventions, and is adaptable to local circumstances, for viable dog population management in India.

The remainder of the paper is structured as follows: part 2 discusses the shortcomings of ABC programs, and alternative approaches to dog population management; part 3 examines various laws relating to the control of free-ranging dogs, and the rules made for animal birth control; and part 4 discusses the deficiencies in the ABC rules. Part 5 seeks to answer three questions implicated in the legal challenges: whether there is a conflict between state and union laws; whether the ABC rules are *ultra vires* the parent legislation; and whether animal rights nevertheless prevail. Part 6 concludes by putting forth two broad principles for effective dog population management.

2. Dog population management

The primary rationale behind the ABC program comes from the assumption that fertility control will result in fewer offspring per female over time, and that the existing population will prevent the immigration of unsterilised animals into the population. This method has been successfully used in a very limited set of conditions – where populations of the target animals (either dogs or cats) were small, there was a low probability of new individuals immigrating into the population, and most of the animals were sterilised within a very short time frame.

In India, generally, none of these conditions are met. India has a large panmictic population⁴ of dogs. This means that there is a constant availability of a source population of dogs to repopulate areas where their numbers have been reduced. This is the main argument against culling of dogs. However,

it also holds true for sterilisation, because of the limited geographical scope of its application. A study found that if 62-87% of dogs in an environment were kept sterilised continuously, it would still take 13-18 years for the population to decrease by 69% (Totton et al. 2010, 55). However, if the ABC program was at a low coverage rate or intermittent, then the population rarely dipped below 20-30% and recovered to pre-intervention levels very quickly.

ABC programs usually entail local governments setting targets for sterilisation – based on budgets and available facilities – that are often grossly inadequate for the scale of the problem. Further, there is inconsistent evidence that sterilisation can lead to reduction in the aggressive behaviour of dogs (Mikkola et al. 2021, 1-2). A large-sample study of 13,787 (owned) dogs found that sterilisation procedures “[do] not result in a predictable decrease in aggressive behaviour across all male and female dogs, although it might be effective in some” (Farhoody et al. 2018, 11). This study indicated that a number of environmental and genetic factors contribute to aggression, and that reducing aggressiveness needs individualised veterinary intervention.

An expert committee report of the Food and Agriculture Organization states that “*no single DPM (dog population management) method will fit all situations, and interventions need to be tailored to suit the specificities of the location including the desired aim of the intervention*”, and that “*the ultimate goal should be a situation in which all dogs are responsibly owned*” (Food and Agriculture Organization 2014, 8). Similarly, the Terrestrial Animal Health Code of the World Organisation for Animal Health considers the promotion of responsible ownership as one of the guiding principles for dog population control, and recommends a range of control measures that are to be considered in accordance with the national context and local circumstances (World Organisation for Animal Health 2019, 410-12).

The World Health Organisation (WHO) recommends a multi-pronged approach for managing dog population, ranging from birth control for owned and semi-restricted dogs to humane killing for dogs which cannot be rehomed and feral dogs (World Health Organisation 1990, 90). These studies recognise that dogs are most suitably maintained under the sustained care of humans. Rehoming or the adoption of dogs is a potential intervention, although India has one of the lowest rates of pet dog ownership worldwide (Cherian et al. 2020).

An alternative to rehoming is the long-term sheltering of dogs. Currently, in India, sheltering of animals is primarily aimed at stray cattle – despite recognition that allowing other types of stray animals, including dogs, on the streets amounts to cruelty (AWBI 2018). Whilst such long-term sheltering would involve incremental cost, these expenses will result in the permanent removal of free-ranging dogs from the streets and public places, and avoided public cost, unlike the ABC program. Interventions such as sheltering and movement restrictions also have synergistic effects on birth control measures (Smith 2020, 84).

3. The statutory landscape

Both the union government and state governments have legislative competence on matters relating to dog population management.⁵ These matters include ‘local government,’ ‘public health and sanitation,’ ‘prevention of animal diseases’ and ‘pounds’, with respect to which state governments have competence, and the ‘prevention of cruelty to animals’, with respect to which both the union and state government can exercise law-making powers.

As a result, laws related to dog population management exist at both levels of government. The conflict between such legislations, or the issue of repugnance, is an important question for adjudication before the Supreme Court and is discussed in part 5.1.

3.1. State laws

A number of laws empower and obligate sub-national governments to control free-ranging dogs. In the state of Karnataka, for instance, the following laws apply:

- The Karnataka Municipal Corporations Act obligates the corporation to make reasonable and adequate provision for the “confinement or destruction of stray or ownerless dogs” (The Karnataka Municipal Corporations Act 1976a).
- It also grants discretionary powers to the corporation to take measures to promote public safety,⁶ health and convenience (The Karnataka Municipal Corporations Act 1976b).
- Similarly, the Karnataka Panchayat Raj Act imposes an obligation on gram panchayats to kill rabid and ownerless dogs within their boundaries (The Karnataka Panchayat Raj Act 1993a).
- It also contains provisions that enable gram panchayats and gram sabhas to take measures aimed at public safety and the convenience of residents (The Karnataka Panchayat Raj Act, 1993b).
- The police has powers to detain and to kill (after consultation with a health officer) or sell stray dogs found wandering in the streets or in any public space (The Karnataka Police Act 1963). Dogs wearing a collar with the name and address of an owner inscribed are to be held for three days after notice to the owner before such steps can be taken.
- The Karnataka State Road Safety Authority has powers to direct necessary measures if the movement of animals on a public road is likely to cause accidents or cause obstruction to the free flow of traffic or distract the attention or obstruct the vision of the driver of any vehicle (The Karnataka State Road Safety Authority Act 2017a), and to implement projects, programmes, and schemes relating to road safety from time to time (The Karnataka State Road Safety Authority Act 2017b).

Similar laws, particularly those specifying local governments’ functions relating to free-ranging dogs, are generally present in all states. These laws enable sub-national governments to act on the problems caused by free-ranging dogs through various steps including, but not limited to, killing.

3.2. Union laws

Under the Constitution, the state has a nonjusticiable obligation to protect and improve the environment and to safeguard the forests and wildlife of the country (The Constitution of India 1950a), and citizens have a duty to protect and improve the natural environment and to have compassion for living creatures (The Constitution of India 1950b).

The Prevention of Cruelty to Animals Act (PCA) is a “welfare legislation”⁷ that prevents the infliction of unnecessary pain or suffering on animals and penalises animal cruelty. However, it recognises that the protection afforded to animals is subject to exceptions that are necessary to protect human interests. The question of what constitutes ‘unnecessary’ cruelty under the PCA was discussed in the Parliament, but it acknowledged that practices that are part of the society’s economic, religious, and scientific pursuits may involve the use of force and violence against animals which it may deem acceptable (Lok Sabha Secretariat, 1960).

Pertinently, the exceptions carved out to the penal provisions recognise the harms posed by free-ranging dogs. These include “the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed”⁸ and “the extermination or destruction of any animal under the authority of any law for the time being in force”. The PCA requires the AWBI “*to take all such steps as the board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so*” and to encourage the formation of animal shelters for animals that “*have become old and useless or when they need protection*”. Further, the PCA envisages the union government making rules for the “*methods of destruction of stray dogs*”.

In addition to these laws, Section 133 of the Code of Criminal Procedure (1973) relating to public nuisance requires any person possessing any dangerous animal to destroy, confine or dispose of such animal in accordance with an executive magistrate’s order. The Prevention and Control of Infectious and Contagious Diseases in Animals Act (2009), which is a crucial piece of legislation for the prevention of zoonotic diseases and epidemics, requires *inter alia* the segregation of animals affected with scheduled diseases by the person in charge, movement restrictions in declared controlled areas, and euthanasiation of animals infected with a scheduled disease to prevent its spread and to protect public health.

3.3 Animal birth control rules

The operational provisions for dog population management were issued by the union government through delegation legislation under the PCA, first, through the Animal Birth Control (Dogs) Rules, 2001 and was subsequently modified through the Animal Birth Control Rules, 2023 (ABC Rules).⁹ Instead of the term ‘stray dogs’ used in the PCA, the rules use the term ‘street dogs’ (and ‘community animals’ in the 2023 rules, the implications of which are discussed later). While the analysis in this

part is based on the provisions of the 2023 Rules, as it currently applies, these are largely consistent with its predecessor (notably, many of the ongoing legal disputes relate to the 2001 rules).

Local authorities, such as municipalities and district panchayats, are responsible for the conduct of ABC programs, which may be done directly, or through animal welfare organisations recognised by the AWBI. The 2023 Rules introduce the requirement of a certificate of project recognition for the proposed ABC centre from the AWBI before commencing operations.

The local authorities are responsible for ensuring necessary facilities in the ABC centres such as sufficient number of kennels, vans for transportation, incinerators and for the maintenance of records of their ABC operations. The 2023 Rules also introduce a monitoring mechanism consisting of monitoring committees at the local, state and national levels and contain more stringent conditions regarding record keeping and reporting.

The responsibility for conducting ABC rests with the owner in the case of pet dogs, and with the local authorities in the case of other dogs. ABC shall be conducted for the 'general purpose' of controlling the excess population of street dogs, and on 'specific complaints' about dog bites from suspected rabid dogs.

Before capturing the dogs in the manner prescribed by the rules, the implementing agency is required to provide a public notice to the residents of that area regarding the capture, and that the dogs will be released in the same area after the procedures. The dogs are to be identified with a numbered collar upon their arrival at the ABC centre, to ensure that they are released in the same area where it was captured. In the case of complaints regarding dog bites or rabid dogs, such animals shall be captured and kept for observation at the ABC centre.

If such a dog is found not to have rabies, but has some other diseases or is furious in nature, it is to be handed over to an animal welfare organisation, for curing and releasing the dog after 10 days of observation. Euthanasia is permitted only for incurably ill and mortally wounded dogs, except that suspected rabid dogs are to be allowed a natural death. Pursuant to a change introduced in the 2023 Rules, the local authority may establish an animal helpline, and complaints received on this helpline shall be recorded in a permanent register.

Another key change in the 2023 Rules is the introduction of provisions relating to the feeding of community animals. Community animals are defined as any animal born in a community for which no ownership has been claimed by any individual or an organisation, excluding wild animals. Resident welfare associations, apartment owners' associations, and local body representatives of an area are made responsible to make necessary arrangements for the feeding of community animals residing in the area, including the designation of feeding spots, feeding time, and feeders. Individuals residing in the area or premises may be involved in this activity.

The community or local body is responsible to ensure that the relevant arrangements are mutually agreed, in a manner that minimises interference with play areas, entry/exit points, and other places likely to be frequented by children and senior citizens. The Rules contemplate an ad-hoc animal welfare committee being set up at a micro-level (i.e., including the complainant and the representative of the concerned community or local body) to decide on any conflict arising from feeding activities. Any aggrieved party (except the complainant, as per rule 20(3) of the 2023 Rules) may appeal the decision before the state animal welfare board.

Finally, the Rules exclude the application of any other acts, rules, regulations or bye-laws that are in force in the state or the local areas in respect of “*any of the matters for which provision is made in these rules*”, to the extent the former “contains provisions more irksome to the animal than those contained in these rules”.

4. Deficiencies in the ABC rules

In stark contrast to the legislative scheme of the PCA – that includes the sheltering and killing of free-ranging dogs, and the scientifically recognised need for integrated and contextual approaches in dog population management – the ABC Rules focus exclusively on sterilisation and vaccination. The shortcomings of this approach are discussed below.

4.1. Works in a siloed manner

Free-ranging dogs can negatively impact public safety, public health, and biodiversity conservation, and their management requires a multi-sectoral approach. This need is well-recognised by the government, as shown by the One Health approach for rabies elimination adopted through the National Action Plan for Dog-Mediated Rabies Elimination from India by 2030 (Ministry of Health & Family Welfare 2021). It identifies six union government ministries¹⁰ as the key stakeholders for the prevention, control, and elimination of rabies, in addition a number of supporting government and non-government stakeholders. DAHD and AWBI are amongst these stakeholders.

The National Action Plan has identified “*fragmented activities of animal health components such as dog population management and mass dog vaccination across the sectors*” as one of the key challenges in realising One Health in the context of rabies. Despite this recognition, dog population management under the ABC Rules is conspicuously lacking in a multi-sectoral, multi-stakeholder approach, and is formulated and implemented solely by the MoFAHD (in conjunction with AWBI). As a result, the full range of consideration implicated in dog population management is absent in the current legal and policy framework.

The omission of other key stakeholders arguably results in the insufficient consideration or neglect of relevant objectives, such as rabies eradication and biodiversity conservation, in the ABC Rules. Therefore, it is necessary to integrate a broader range of stakeholders in the implementation of the

ABC, to ensure that it is cognisant of and responsive to their objectives, and that they can exert pressure on the MoFAHD and AWBI to secure better outcomes.

4.2. Neglects constraints to implementation

The effectiveness of ABC is crucially reliant on the coverage that can be attained within a short time frame. However, the local authorities that are primarily responsible for its implementation have meagre or no budgetary allocations for this purpose, and are riddled with weak capacity (Sudhi 2022; Timsina 2019; Chakraborty 2023). The financial resources allocated by Indian cities for ABC is typically half of the requirement calculated for highly conservative modelling scenarios (Belsare & Vanak 2020).

In the context of the 2001 Rules, the AWBI has submitted to the Supreme Court that “*in most states [implementation] has been ... inadequate, haphazard and poorly planned*” and that “*the shortage of resources has also led to huge cruelties being inflicted on the animals, and in increased conflict*” (AWBI v. PEST & Others 2016).

The grants-in-aid received by AWBI from the union government for the ABC program reduced from Rs. 41.17 lakh in 2015-16 to Rs. 7.35 lakh in 2019-20; of the latter, only Rs. 2.93 lakh was utilised by AWBI. India’s local governments have notoriously weak capacity to raise their own sources of revenue, and remain heavily dependent on grants from Union and State governments to perform their functions (National Council of Applied Economic Research 2022, 57).

The failure to address the inadequacy of human, physical and financial resources that are required to implement ABC at scale in the legal and policy framework continues to impede ABC programs, despite increased focus in the 2023 Rules to some aspects of implementation (such as the registration of implementing agencies and the inclusion of monitoring mechanisms). Tellingly, there are only 17 animal welfare organisations in the whole country that have been granted permission by AWBI to implement the ABC program as of July 2022 (Government of India 2022).

Although dog population management is an inherently local issue, with its effects primarily felt by local government and population, the Rules do not contain any margin for the consideration of local factors, and instead constrains the ability of the local government to adopt alternative measures that may be more suitable and feasible to implement (while complying with the PCA’s objective of preventing unnecessary cruelty).

4.3 Fails to address human-dog conflict

Despite the union government and AWBI’s position that the ABC program is the only intervention to be used for mitigating the harms caused by free-ranging dogs, the issue of human-dog conflict receives only passing mention in the rules. Under the 2023 Rules, local authorities are required to record and resolve *conflict cases* involving dog bites or rabid dogs, but the limited scope of action contemplated of curing and releasing such (non-rabid) dogs after 10 days of observation has

tenuous scientific validity. There is no “cure” applicable in the case of furious dogs as contemplated in the rules.

Though one of the functions of monitoring committees under the rules is reducing man-animal conflict, this has not been included or detailed in the relevant schedules of the rules. On the contrary, the stipulation of releasing sterilised dogs to the same area from which they were captured creates a continued health and safety risk, as sterilisation does not remediate the various causes of dogs’ aggression. This stipulation also fails to take into consideration the carrying capacity of an environment for a species, which when exceeded (thereby affecting availability of food and shelter) causes conflict within the dog populations leading to heightened aggression (Boitani et al. 2016).

This can have some further absurd implications. The Solid Waste Management Rules, 2015, a national law, prescribes that landfill sites should be fenced or hedged to prevent the entry of stray animals. Due to ineffective implementation, however, landfills and other garbage disposal points are a prime source of food for free-ranging dogs. Releasing dogs, albeit sterilised and vaccinated, to such sites runs contrary to both common sense and the waste management rules. This concern also applies in the case of dogs that are present in public places, such as hospitals, railways stations, and airports.¹¹

4.4. Promotes maintenance of dogs on streets

Whereas globally-accepted scientific approaches to dog management have the removal of free-ranging dogs as their primary focus, the 2023 Rules contradict this approach. The duty imposed on community bodies or local bodies to feed ‘community animals’ encourages the continued maintenance of free-ranging dogs in streets and public spaces.

Despite the inclusion of a definition of community animals (see part 3.3), this category cannot be clearly identified in practice. As per the World Organisation for Animal Health (2019, 420), it is “*frequently impossible to decide if a free-ranging dog belongs to someone or not.*” Therefore, the definition has the scope to cover in its ambit all free-ranging dogs, although the rules continue to identify ‘street dogs’ and ‘community animals’ as separate categories. In the definition, the meaning of the terms ‘community’ (whether it is a human or animal community), ‘local body’ (which is different from ‘local authorities’ that is defined to include local governments), and what constitutes the ‘claiming’ of ownership by an individual or organisation are also unclear.

It appears that the purpose of this new classification is to retrofit the ABC Rules to the WHO’s recommendations, which are reproductive control for ‘family or neighbourhood dogs’ and humane killing for dogs that are feral or cannot be rehomed. The WHO’s description that “*although [feral dogs] may need human waste for sustenance, nobody will take responsibility for it*” (World Health Organisation 1990, 6) is apt for the condition of most free-ranging dogs in India, but the new category ostensibly attempts to convert them *en masse* into dogs taken care of by the community by stroke of the pen.

Additionally, the imposition of duties on private persons (such as residents' associations and local body representatives) to feed animals is untenable in law,¹² as well as unrealistic in practice. Feeding at public places increases the territoriality of dogs and their aggression towards strangers, and the unavailability of regular feeders will make such efforts counterproductive.

The 2023 Rules do not mandate accountability of the feeders by requiring adoption and/or registration of the dogs, which can affix responsibility under section 11 of the PCA for the animal's welfare and liability for any losses caused by it. This form of relationship, comprised of a right to keep and feed dogs without associated liability, will further impede the adoption of stray dogs. Further, the low capacity of local governments is likely to impede the monitoring of compliance with the feeding conditions (such as time, location and the avoidance of littering), or adequate scrutiny of the conflict resolution mechanism, which contemplates a committee being set up for each complaint.

4.5. Disregards 'more-than-human' problems

Human subsidisation of free-ranging dogs, such as through food provisioning, increases their population and causes spillover effects that threaten wildlife. Globally, dogs have contributed to 11 vertebrate extinctions, and are a known or potential threat to 188 threatened species, of which 30 are classed as Critically Endangered (Doherty et al. 2017, 57). In India, they have attacked globally threatened species such as green sea turtle, great Indian bustard, Bengal florican, vultures, red panda, golden langur, and Chinese pangolin, which adds to the endangerment of their populations (Home et al. 2017).

The ABC Rules, by restricting removal of free-ranging dogs and encouraging their feeding, aggravates this threat. The limited measures for dog population management aimed at biodiversity protection in India, such as the 'standard operating procedure to deal with stray/feral dogs in tiger reserves' developed by the National Tiger Conservation Authority (n.d.), adopt the ABC rules with minor tinkering, despite the human (and urban) centric focus of the rules. Such an approach is likely to have a limited impact (Ghosh & Aggarwal 2021).

While the defence of the ABC program is frequently framed in terms of animal rights and a more-than-human conception of society, this framing overlooks the harms caused by free-ranging dogs to other animal species. Therefore, the issue of dog population management needs to be viewed in a broader context of animal ecology and biodiversity conservation.

5. The questions of law

In this part, we formulate three questions that are fundamental to the ongoing cases, and present a discussion on these issues. Our overarching position is that the ABC strategy that is targeted at sterilisation and vaccination only must yield to more integrated and contextual interventions for effective dog population management. To that end, we argue that the state laws may be given their full effect (subject to necessary procedural safeguards and the prevention of unnecessary cruelty), and

the ABC Rules may be struck down or read down to remove the constraints that these rules impose on the state and/or local authorities.

It is, however, important to recognise that the role of the judiciary in resolving the broader issues is limited, and that action on the legislative and executive front is imperative for holistic, workable, and expedited solutions. Even so, the track-record of the Union government – using a patchwork of the Supreme Court’s interim orders to fashion judicial endorsement for legislative changes on the very matters that are impugned in the legal challenge (Ministry of Fisheries, Animal Husbandry & Dairying 2023) – adds to the urgency for a swift judicial verdict.

5.1. Is there a conflict between laws?

The bone of contention in the 2008 Bombay High Court (HC) judgement and the ongoing proceedings before the Supreme Court (many of which arise out of the 2001 rules) relate to the interplay between the state laws to control stray dogs and the ABC Rules. The application of the doctrine of pith and substance in deciding the issue of legislative competence allows for the co-existence of the state laws (of the nature referred to in part 3.1) and the ABC Rules under the PCA, as they are attributable to legislative entries in Schedule 7 of the Constitution identified for the respective governments (Venkatesan 2014, 14).

As such, the existence and resolution of any conflict depends on the test of repugnance that applies to any incidental encroachment in the exercise of the laws. The prevailing judicial view on this issue (though subject to some inconsistency and criticism) (Venkatesan 2014) is that “*if the subject matters covered by the legislations are ... different, then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same field*” and efforts should be made to reconcile the legislations in a harmonious manner (V.K. Sharma & Others v. State of Karnataka & Others 1990).

Consistent with this, the Bombay HC in *AWBI v. PEST* held that the municipal powers under the state laws are not extinguished by the ABC Rules, as the latter relates only to birth control and vaccination, and does not deal with the issues of nuisance and menace caused by stray dogs. The Karnataka HC also adopted a similar stand in *Jishnu G. & Others v. Bruhat Bangalore Mahanagara Palike & Others* that upheld the killing of dogs that are “a menace or cause nuisance” because of the narrower scope of the ABC Rules (however, the operation of this direction has been stayed by the Supreme Court).

Our analysis of the ABC Rules in the preceding part is supportive of the view that its scope is limited to birth control and vaccination, and that it is not exhaustive for the purposes of mitigating human-dog conflict. The state laws, on the other hand, require the management of the free-ranging dog population for the purposes of public safety, health, and convenience.

Courts have held that local authorities have a public and/or statutory duty to safeguard persons from the attack of stray dogs,¹³ and the Right to Life under Article 21 includes public safety,¹⁴ safe roads,¹⁵ and bodily integrity.¹⁶ Inaction and inadequate action by the government to mitigate the

harms caused by free-ranging dogs threatens these facets of the Right to Life. Due to the deficiencies in the ABC Rules, holding the state laws (or their provisions) repugnant will impede the use of integrated and contextual approaches for viable dog population management and, in turn, the ability to ensure the conditions required under Article 21.

A wider interpretation of the conflicts clauses of the ABC Rules (that excludes the effect of any other law that is more irksome to animals) can have further unwelcome implications. The Prevention and Control of Infectious and Contagious Diseases in Animals Act (2009), that permits euthanasia for animals infected with a scheduled disease, can potentially be impacted if the ABC Rules' narrower standard of incurable illness for undertaking euthanasia is accorded precedence.

Even municipal laws requiring the collection and removal of waste, which is a primary food source for free-ranging dogs, can be seen as more irksome to the animal than the obligations of local authorities set out in the ABC Rules. While such an outcome may be complementary to the idea that free-ranging dogs must be fed and maintained on the streets, it will be damaging for public safety and health, and contrary to the constitutional scheme – which, as discussed in paragraph 5.3, prioritises the (human) right to life over the rights of animals.

5.2. Are the ABC Rules *ultra vires* the PCA?

The ABC program, pursuant to the ABC Rules (both 2001 and 2023), contains significant departures from the provisions of the PCA. First, whereas the functions of AWBI set out in the PCA requires the sheltering or killing of homeless animals (PCA 1960a), AWBI's interventions for the management of free-ranging dogs under the ABC rules effectively exclude these methods, and instead focus on the maintenance of dogs in the streets and public places after sterilisation and vaccination.

This is in contrast to the approach of AWBI in the case of stray cattle, which requires local bodies to 'provide shelter, water, sufficient food, medical facilities, etc.' and construct cattle pounds and kanji houses (AWBI 2018). While such advisories of the AWBI can be read as being inclusive of stray animals, their purpose is often expressly curtailed to stray cattle (AWBI 2020), and the treatment of dogs is overridden by the ABC Rules, which do not contain provisions for (long-term) sheltering.

Second, whereas the PCA contemplates rules regarding the killing of stray dogs, the ABC Rules has the avoidance of their killing as one of its primary goals. Rule-making cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the parent legislation (*Global Energy Limited & Another v. Central Electricity Regulation Commission* 2009); therefore, we argue that the ABC Rules are *ultra vires* the PCA.

Though the equal treatment clause under Article 14 does not extend to animals, it must be noted that the distinction that is drawn in the 2023 rules between 'street dogs' and 'community animals' is artificial and arbitrary. Following a catena of Supreme Court judgements, for a classification to be valid '*it must not be arbitrary, artificial, or evasive, but must be based on some real and substantial*

distinction, bearing a just and reasonable relation to the object sought to be achieved by the legislature (R.K. Garg v. Union of India & Others 1981). The categorisation as street dogs and community animals is neither congruent with the objectives of the PCA, nor is it – as discussed in part 4.3 – a legible and separable categorisation, thereby amounting to unreasonable classification.

5.3. Do animal rights prevail?

The next issue that arises pertains to the rights of animals and correlative duties cast by law. Based on the constitutional scheme and the provisions of the PCA, the Supreme Court in a landmark judgement in *AWBI v. A. Nagaraja & Others* (2014) (“Nagaraja”) held that all living creatures have inherent dignity, the right to live peacefully and a right to protect their well-being, including the right to get food. These rights are, however, considered to be statutory rights, not rising to the level of fundamental rights protected by the Constitution.

The court, in this judgement, recognised the application of the ‘doctrine of necessity’ in the determination of the rights of animals¹⁷ and, in doing so, observed that the PCA permits the killing of stray dogs out of necessity to avoid harm to human beings. We argue that a subsequent Delhi High Court order in *Maya D. Chablani v. Radha Mittal & Others* (2021) that required the feeding of free-ranging dogs in public places, by relying on *Nagaraja* (as well as *AWBI v. PEST, that is sub-judice*), fails to take into consideration the doctrine of necessity.

This defect extends to the provisions relating to feeding in the 2023 Rules, which – as discussed in parts 4.2 and 4.3 – create a threat to public health and safety. Courts and scholars have recognised that the environmental duties in the Constitution were influenced by the United Nations Conference on the Human Environment 1972 (Bhullar 2022, 403). The Stockholm Declaration that resulted from this conference starts with a reinstatement of the fundamental right (of humans) to a life of dignity and well-being. Similarly, the Wild Life (Protection) Act, another key piece of federal legislation for the protection of animals, recognises that right to life is a derogation to the protection of animals (The Wild Life Protection Act 1972).

Additionally, the absence of the consideration of the negative effects of free-ranging dogs on wildlife species in the proceedings before the Supreme Court leads to an incomplete conceptualisation of the rights of animal. The current legal and policy framework for dog population management hampers the state’s duties and commitments to protect wildlife pursuant to the Wild Life (Protection) Act, 1972, as well as international instruments such as the United Nations’ conventions on the Conservation of Migratory Species and on Biological Diversity. Therefore, ineffective action for dog population management can lead to the weakening of the rights and protection of animals in a more holistic sense.

6. Conclusion

There is overwhelming evidence of the multiple negative effects of the burgeoning population of free-ranging dogs in India. The problematic endorsement of the ABC program for the last 20+ years has not just resulted in significant human cost, but also blocked the path for other interventions. The propping up of the challenge as a binary choice of culling versus neutering, as is ostensibly portrayed by the petitioners and animal rights organisations, is a strawman argument that needs to be resisted.

We propose that two key principles need to be recognised for more effective dog population management. First, it is important to utilise integrated approaches rather than the exclusive application of birth control (or even culling) for mitigating human-dog conflict. Individuals must be required (and encouraged) to assume the ownership of free-ranging dogs, pursuant to adoption and/or registration procedures, so that the dogs receive direct and sustained care, and to affix responsibility on the owners for any loss caused by the dogs. This will improve the accountability of individuals for the actions of their dogs, and contribute to effective dog population management.

In case adoption or rehoming is not feasible, maintaining dogs away from streets and public places through long-term sheltering will improve public safety and health, while providing animal welfare organisations and concerned individuals a responsible avenue to participate in the upkeep of these dogs. Humane euthanasia must be recognised as a last – *yet still humane* – resort for dogs that pose a danger to the safety of humans and wildlife (and, indeed, rabid dogs).

Second, it is important to ensure multi-stakeholder coordination to address the multiple negative effects of free-ranging dogs, and a one-size-fits-all mandate (such as the ABC Rules) is counterproductive for this essentially local problem. Based on objectives to be determined through a participatory process, such as the One Health framework, local governments must be empowered to choose appropriate interventions for dog population management, subject to checks and balances. While there must be overarching and uniform prescriptions for matters such as the standards for animal shelters, methods of euthanasia and birth control, and the institutional design of committees tasked with deciding the necessary measures, the interventions must be formulated locally in keeping with the principle of subsidiarity.

Coda:

A proposed amendment to the PCA 1960 seeks to retrospectively fix some of the infirmities in the ABC Rules, by amending the parent Act to remove the statutory exception from penal provisions for the killing of stray dogs, and to introduce the category of community animals within the parent Act. However, these legislative tweaks do not bear resemblance to the dire situation on the ground; they would aggravate, rather than mitigate, the present crisis.

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Notes

¹ Special Leave Petition (Civil) 691/2009 in the Supreme Court of India.

² This article uses the term “stray dogs”, which is commonly used in India, to mean any dog not under direct control by a person or not prevented from roaming (World Organisation for Animal Health, 2019: xx). The World Health Organisation suggests that this term may be imprecise and must be used only to define a dog that is not in compliance with local regulatory requirements (World Health Organization, 1990, 6). Terms such as feral, unowned, and homeless dogs are also used to describe this dog population. This definitional ambiguity is present in the Indian legal framework as well which inconsistently uses terms such as stray dogs, street dogs, and community-owned dogs. A more accurate description for this category is “free-ranging dogs” (see Beck 1973, 3), which is used this article with the same import as stray dogs.

³ “Community dogs (stray/street dogs) have the right to food and citizens have the right to feed community dogs but in exercising this right, care and caution should be taken to ensure that it does not impinge upon the rights of others or cause any harm, hinderance, harassment and nuisance to other individuals or members of the society.’
(Maya D. Chablani v. Radha Mittal & Others 2021)

⁴ A population in which mating is entirely random and any two (male and female) individuals are equally likely to mate.

⁵ Entries 2, 5, 6, 15, and 16 of List II (State List) of Schedule 7 of the Constitution of India, which *inter alia* relate to police, local government, public health, prevention of animal diseases, and pounds. Entry 17 of List III (Concurrent List) of Schedule 7, which relates to the prevention of cruelty to animals.

⁶ “The expression “public safety” means the state or condition of freedom from danger or risk for the people at large.’ (People’s Union for Civil Liberties v. Union of India and Another 1996)

⁷ Animal Welfare Board of India v. A. Nagaraja & Others (2014)

⁸ This sub-clause has been omitted in the draft Prevention of Cruelty to Animals (Amendment) Bill, 2022 published in November, 2022.

⁹ Effective as of 10th March, 2023.

¹⁰ Ministry of Fisheries, Animal Husbandry and Dairying (MoFAHD); Ministry of Health and Family Welfare (MoHFW); Ministry of Environment, Forests and Climate Change (MoEFCC); Ministry of Agriculture and Farmers Welfare (MoAFW); Ministry of Housing and Urban Affairs (MoHUA); and Ministry of Panchayati Raj (MoPR).

¹¹ In *Airport Authority of India v. Municipal Commissioner of Greater Mumbai* (2004), the Bombay High Court permitted the killing of stray dogs in the area of airports in emergent circumstances. However, the operation of the Supreme Court's interim orders would proscribe such a course of action.

¹² For instance, housing and residential welfare associations that are registered as societies are regulated by the applicable Societies Registration Act, and matters relating to their functioning are governed by the relevant statute and their articles of association or bye-laws.

¹³ “[T]here is a statutory obligation which has been imposed upon the local municipal authorities ... to safeguard the human beings cohabitating the particular local area from the danger of any stray dogs and/or any attack by such stray dogs.” (*Yusub v. State of Karnataka & Others* 2022); “It is crystal clear that there was a failure on the part of the said Municipal Corporation to perform its duty to take care of the citizens as it was the duty of the said Corporation to take all possible steps to curb the menace of street dogs.” (*Maruti Shrishailya Hale & Others v. The Commissioner, Sangli Miraj Kupwad Corporation & Others* 2018)

¹⁴ “It may further be noted [that] public safety is one of the important aspects of the fundamental right as provided in Chapter III of the Constitution of India. Article 21 deals with [the] right to life. Public safety falls within the ambit of Article 21 as [the] right to life includes safe life. Thus anything which endangers or impairs, due to conduct of anybody, either in violation or in derogation of laws, the quality of life and living of the people as envisaged under Article 21, it is the duty of the concerned authority to prevent such violation or breach of law.” (*Suo Moto v. State of Gujarat* 2006)

¹⁵ “[T]he right for a safe road to every citizen is a facet of Article 19(1)(d) and 21 of the Constitution of India and thus all authorities are bound to discharge them without fail. We hope that such authorities and the governments would rise to the occasion and do the needful in the larger interest of the public and remove all obstacles causing threat and danger to the road safety at the earlie[st] possible time and as specified above.” (*CA Xavier v. The Chief Secretary, Government of Kerala & Others* 2021)

¹⁶ “[B]odily integrity of an individual [is] recognised, assured and affirmed by the very essence of Article 21 of the Constitution.” (*Parhlad & Another v. State of Haryana* 2015)

¹⁷ “When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity.” (*AWBI v. A. Nagaraja & Others* 2014)