

A CRITICAL ANALYSIS OF CRIMES AGAINST LIVESTOCK: FROM THE PERSPECTIVE OF THE PENAL CODE OF AFGHANISTAN

Muhammad Ibrahim Sekandary¹, Said Rahman Nasiri²

¹Lecturer of Law & Political Science Faculty at Rokhan Institute of Higher Education, Jalalabad, Afghanistan,

²Lecturer of Law & Political Science faculty at Rokhan Institute of Higher Education, Jalalabad, Afghanistan.

¹msekandary58@gmail.com, ²nasarisaidrahman2020@gmail.com

Corresponding Author: *

Received: June 05, 2024

Revised: July 15, 2024

Accepted: July 30, 2024

Published: August 05, 2024

ABSTRACT

This study offers a critical analysis of crimes against animals as defined by the Penal Code of Afghanistan, looking into the regulations, difficulties in enforcing the law, and cultural factors affecting animal care in Afghanistan. The Penal Code of Afghanistan discusses these crimes in detail, specifically from Article 898 to Article 900 and categorizes crimes against animals into three parts: harming and killing animals, abusing and mutilating domestic animals, and fighting animals and birds. The aim of the research is to improve animal protection and care for animals in Afghanistan, strengthen its animal welfare system, and clarify the position of the Penal Code of Afghanistan regarding crimes against animals. The importance of this study is to foster legal reform, enhance enforcement, promote public awareness, improve the moral foundation of society as a whole, develop a culture of sensitivity and accountability, and establish a strong system for the welfare of animals in Afghanistan. This work employs the doctrinal research methodology along with descriptive, explanatory, and analytical research approaches. It is worth mentioning that this research study is entirely based on library sources. Most of the sources are reputable and trustworthy textbooks, scholarly published and unpublished journal articles, law reports, and online websites related to the research area. The findings underscore the need for enhanced legal reforms, improved judicial capacity, and greater accountability to ensure a safer and more equitable environment for livestock. This research contributes to the ongoing discourse on livestock and birds' welfare in Afghanistan, offering insights for policymaker and livestock professionals aiming to strengthen the intersection of law and environment.

Keywords: Penal Code, Afghanistan, livestock, offenses, penalty.

INTRODUCTION

Animal crimes encompass a range of unlawful acts that cause harm, suffering, mutilation, or death to animals. Due to the aforementioned acts, animals in Afghanistan suffer greatly today from mutilation and killing; therefore, they should receive the same protections as other crime victims. Crimes against livestock have become a reality in the current era; however, they have ancient roots and were frequently declared a sin in the past. Religious scriptures frequently support giving animals a fair and equal status because of their significance in the food chain.

(Vats & Mehra, 2018). The sacred religion of Islam has established special orders regarding the lives of living beings and the fulfillment of their vital needs. Almighty Allah states that there is neither an animal on land nor a bird that flies with its wings, but they are communities like yourselves. We have not omitted anything from the book. We will then gather them towards their Lord. (<https://wiki.ahlolbait.com/>, 2024). Moreover, Allah says, how many are the creatures that carry not their own sustenance? It is

Allah who feeds (both) them and you: for He hears and knows (all things).

(<https://ayahsurahquran.com/ar/29/translate-2-60>).

It inters from these Quranic verses that all living things have social structures; however, with a slight difference, including human beings, livestock, birds, etc. Additionally, sustenance for both humans and animals is the responsibility of Almighty Allah; therefore, the sacred religion of Islam has a special care for the vital needs of all living things, such as human beings, animals, birds, etc. Furthermore, the fact that abusing, mutilating, and killing animals is called an evil act and a great loss.

Crimes against animals are a significant issue in the broader field of criminal justice, often overlooked despite their considerable importance. Particular provisions in the Penal Code of Afghanistan aim to safeguard animals from abuse, mutilation, and death. The implementation and enforcement of these regulations are riddled with challenges, such as political instability, limited resources, and cultural attitudes that may not accord priority to the care of animals. This critical study aims to investigate the effectiveness of the Penal Code of Afghanistan in addressing animal-related crimes, pinpoint any gaps and contradictions in the legal framework, and suggest potential changes to enhance the overall situation.

In this research study, the following subjects are going to be discussed: definition of animal offenses, types of animal offenses in the Penal Code of Afghanistan, harming and killing of animals, abusing and mutilating of domestic animals, and fighting animals and birds.

1. DEFINITION OF CRIMES AGAINST ANIMALS

There are various definitions of crimes against animals, some of which include the following: Animals may suffer from physical abuse, neglect, or abandonment. This includes inadequate food, drink, shelter, and medical treatment. (Deedar, 2023). Organizing, participating in, or endorsing events that coerce animals into fighting for entertainment or gambling often leads to severe injuries or even death. (Lawson, 2017). Moreover, the act of unlawfully mutilating or disfiguring animals, such as through unauthorized branding, ear cropping, tail docking, or other practices that cause pain and suffering without a legitimate

purpose, is considered a violation of the law. (Livingston, 2001).

2. TYPES OF CRIMES AGAINST ANIMALS

There are a vast variety of damaging activities that can be considered crimes against animals. These actions have the potential to inflict suffering, injury, or even death upon animals. According to the Afghan Penal Code, crimes against animals include harming and killing animals, abusing and mutilating domestic animals, and fighting animals and birds. Each of the above-mentioned crimes is going to be discussed as follows:

3.1 Harming and killing of animals:

According to the Penal Code of Afghanistan, the first type of animal crime is the harming or killing of an animal. The infliction of undue suffering, pain, and death upon animals is a serious act that constitutes animal abuse and killing. These behaviors involve physically mistreating animals, such as beating, burning, or abusing them, resulting in severe suffering and injury. Neglect is another type of injury in which the animal is denied necessities such as food, water, shelter, and medical attention, resulting in severe suffering and sometimes even death. (Vats & Mehra, 2018). Killing animals for no reason is a serious violation of their rights. These crimes inflict severe pain on animals and represent social, ethical, and moral flaws, emphasizing the necessity for strict legal protections and societal change to treat all animals humanely. (Nurse, 2013).

Article 898 of the Penal Code of Afghanistan clarifies that a person who kills or injures someone else's animal by mistake will be fined five thousand Afghanis. (The Penal Code of Afghanistan, 2017). In the above-mentioned article, the term "mistake" is used. It is appropriate to discuss it in the following manner:

Mistake: The occurrence of an action without the intention of the doer is called a mistake. Therefore, unintentional crimes involve actions taken without the perpetrator's intention. Mistakes arise from misunderstandings, lack of knowledge, or oversight and can occur in personal, professional, or learning contexts. (The Ministry of Awqaf and Islamic Affairs, 2007). In other words, a mistake means that something happens without the will of the doer. In unintentional crimes, the perpetrator does not

intentionally attempt to commit a wrongdoing; instead, it occurs without their intention. (Awadh, 1347 Hijri). When someone commits a crime due to negligence, carelessness, or non-compliance with laws and regulations, and they do not foresee the consequences of their actions, it is considered unintentional. (The Penal Code of Afghanistan, 2017).

The nature of a mistake from the perspective of criminal law: The term "mistake" in criminal law refers to an inaccurate understanding or belief that influences the likelihood of holding an individual accountable for committing a crime. When an individual intends to carry out a lawful action, they unintentionally achieve a criminal outcome, such as taking a human life instead of a victim. (Walidi, 1382 AH). According to the idea that ignorance of the law is no excuse, criminal law generally does not allow mistakes of the law. Mens rea, often known as criminal intent, is a critical component in the process of establishing guilt. In criminal law, the nature of a mistake is crucial for assessing whether or not mens rea is present. (Tawheed Khana, 1386 AH).

From the point of view of the author, a person wants to do a criminal act for a legitimate result, but every time he does the act, there are some faults and defects in his action. Based on these faults, the person's intentionally initiated action leads to criminal consequences. For example, Ahmad wants to go to university, so he starts driving. After some time, an accident occurs, and he hits a guy, and the guy is killed on the spot. Ahmad's deliberate action is evident here, as he aimed for a justifiable outcome - a university education. That is why it could be said that it cannot be called unintentional or accidental murder because the intention was included, but indirectly.

Analysis of the Article: This article delves into the situations where an error can cause harm to an animal. These cases are distinguished from those involving intentional cruelty to animals or reckless behavior toward animals, since this implies that the individual did not have malevolent intent or criminal carelessness. The article implicitly acknowledges that the perpetrator's mental condition was not evil or deliberately harmful. The stipulated penalty is a fine of five thousand Afghanis. This monetary punishment serves two purposes: providing the animal owner with a form of compensation and

acting as a deterrent. Additionally, the fine serves as a form of compensation for the animal owner in the event that they have suffered a loss or injury to their animal. Taking this step acknowledges the importance of animals in Afghan society, as well as the need to address the harm they cause.

3.2 Abusing and mutilation of domestic animals:

The second type of crime against animals mentioned in the Penal Code of Afghanistan is the abusing or mutilating of domestic animals. Abuse and mutilation of domestic animals are serious acts that cause unnecessary pain, grief, and long-term damage to innocent creatures. Domestic animals are victims of these violations. The use of physical violence, such as beating, burning, or starving animals, is an example of abuse. This type of abuse frequently results in severe injuries or even death. Mutilation is the intentional damage or severe change to an animal's body, such as illegal docking of the tail, cutting of the ears, or branding of the animal (Rojas, Monsalve, Daniel, et al., 2022). Mutilation causes the animal to suffer terrible pain and to be permanently disabled. Not only do these actions demonstrate a terrible hatred for the welfare of animals, but they also bring to light problems that are more widespread in society and ethics. This kind of cruel behavior might be an indication of more serious psychological issues, and it is frequently associated with other types of violent behavior. Taking action to address these violations through the implementation of tough regulations, effective enforcement, and public education is absolutely necessary in order to promote the humane treatment of animals and to cultivate a society that is compassionate and ethical. (Williams, Dale, Clarke, et al., 2008).

Article 899 of the Penal Code of Afghanistan clarifies that a person is sentenced to a fine of five thousand to ten thousand Afghanis in one of the following cases:

1. In case a domestic animal is cruelly tortured, mutilated or treated badly in any other way.
2. In case that the rider or carrier animal is loaded beyond its capacity, or the sick, injured or disabled animal that does not have the strength to work is used. (The Penal Code of Afghanistan, 2017).

Analysis of the Article: The article establishes a legal framework to penalize those who abuse

domesticated livestock. This framework includes fines ranging from 50,00 to 10,000 Afghanis. Specifically, it identifies two major offenses:

Domestic animals that have been subjected to cruel treatment, mutilation, or harm: The provisions of this article address serious physical harm, intentional deformity, and any other sort of harsh treatment that causes domestic animals to suffer unnecessarily. To protect the welfare of animals, the fine acts as both a deterrent and a punishment. Its purpose is to impose financial consequences on perpetrators.

Overloading or Abusing Sick, Injured, or Disabled Animals: This section addresses the mistreatment of animals employed for labor-intensive tasks like riding or hauling objects. Both the usage of animals who are sick, damaged, or incapacitated and therefore unsuited for work are punished by this law. It also penalizes the practice of overloading livestock beyond their ability. In these circumstances, the law aims to prevent the physical harm and suffering that animals may endure due to overburdening or abuse.

3.3 Fighting animals and birds: The third type of crime against animals mentioned in the Penal Code of Afghanistan is the fighting of animals and birds. Fights between animals and birds, such as dogfighting and cockfighting, are considered to be cruel and unlawful activities. These fights force animals into violent confrontations, often leading to severe injuries or even death. These methods not only cause a great deal of misery for the animals involved, but they also reveal more fundamental problems of cruelty and disrespect for animal welfare. (Touroo & Reisman, 2017). Participants and event organizers perpetuate a cycle of violence and abuse, exploiting these creatures for entertainment and gambling purposes. (Khaleeli, 2018). Criminal behavior, including unlawful betting and organized crime. It is necessary to have severe legislation, effective enforcement, and public awareness programs to combat animal fighting. Raising awareness about the cruelty and legal consequences of these behaviors is critical. It is absolutely necessary to protect animals from such horrific treatment in order to cultivate a society that is more empathetic and ethical. (Vats & Mehra, 2018).

Article 900 of the Penal Code of Afghanistan clarifies that a person who engages in fighting animals (dog, sheep, camel) or birds (cock, partridge, quail) will be fined 10,000 Afghanis. (The Penal Code of Afghanistan, 2017).

Analysis of the Article: The article stipulates that an individual involved in the fighting of animals like dogs, sheep, camels, or birds like cocks, partridges, and quails faces a fine of 10,000 Afghanis. It is important to note that the provisions of this law address several important concerns about public ethics and livestock welfare. Furthermore, the article includes a wide variety of animals and birds that are frequently used in such horrific spectacles, emphasizing that participation in animal fighting is a criminal offense. This prohibition represents a stance against the deliberate and organized harming of animals for entertainment.

Additionally, the law intends to create a large financial disincentive against those acts by establishing a standard punishment of 10,000 Afghanis. Having a standard penalty guarantees that the consequence is severe enough to deter individuals from participating in animal fights and from organizing them. Animal fighting frequently links to other unlawful activities, such as gambling and organized crime, both of which are considered violent. Addressing the issue of animal fighting can also help reduce the prevalence of these linked criminal behaviors by implementing stringent sanctions, thereby contributing to the overall social structure and safety. For effective enforcement of this law, procedures for continuous supervision and reporting methods must be in place. Law enforcement authorities must equip themselves with the necessary resources and training to discover, investigate, and punish incidents of animal fighting. In addition, the cooperation and awareness of the general public are essential in the process of reporting unlawful activity.

Commentary: The Penal Code of Afghanistan divides crimes against animals into three parts and provides similar punishments in articles 898, 899, and 900. These punishments include a fine not exceeding 10,000 Afghanis. The author criticizes that the Penal Code of Afghanistan solely advocates for monetary penalties for animal-related offenses, leaving out other forms of punishment such as imprisonment, a stance that lacks appropriateness

and logic. Another critique of the Penal Code of Afghanistan is that it categorizes crimes against livestock and birds into three parts, which is not a complete division and leaves behind other important crimes. For instance, it fails to include crimes such as animal hoarding, wildlife trafficking, and the trading of illegal (haram) animals for meat.

Conclusion

The Penal Code of Afghanistan classifies certain harmful actions that have major ethical, economic, and social ramifications as crimes against animals. The Penal Code of Afghanistan details a wide range of crimes, from Article 998 to Article 900. Animal harm and killing, domestic animal abuse and mutilation, and animal and bird fighting are just a few examples. The critical analysis of these crimes underscores the significance of establishing comprehensive legal frameworks to prevent abuse, killing, mutilation, neglect, and misuse of animals. The Penal Code of Afghanistan attempts to discourage harmful activities and encourage ethical livestock-raising methods by imposing penalties for acts of violence, overloading, and poor treatment of animals. However, effective enforcement, public awareness programs, and education are crucial to achieving the full impact of these legal measures. Not only will strengthening these areas benefit animals, but it will also contribute to the development of a society that is more empathetic and knowledgeable about ethical issues. In the end, the legislative protections for animals reflect broader beliefs and the commitment to ensure fair and just treatment of all living beings in Afghanistan.

Recommendations

Afghanistan can develop its legislative and institutional framework by implementing the following suggestions: This will allow the country to protect livestock better, encourage humane treatment, and provide support to the agricultural community.

1. The current government of Afghanistan had better periodically review and update the Penal Code of Afghanistan to address any ambiguities or gaps in the legal framework. Clarifying the definitions of offenses and ensuring that penalties are proportionate to the severity of the crimes can improve the law's effectiveness.

2. To effectively enforce the provisions of the Penal Code against livestock crimes, law enforcement agencies must be well-trained and adequately resourced. Specialized units or officers focused on animal welfare should be established to ensure a thorough investigation and prosecution of these offenses.
3. Conducting public awareness campaigns is crucial to inform livestock owners, farmers, and the general public about the legal protections for livestock and the consequences of violating these laws. Educational programs should emphasize the importance of humane treatment and proper care of animals.
4. Encouraging community involvement in monitoring and reporting livestock crimes can help improve enforcement efforts. Establishing hotlines or online platforms for anonymous reporting can facilitate the timely identification and investigation of offenses.

REFERENCES

1. The Penal Code of Afghanistan. (1396 Hijri). Official Gazette. The Ministry of Justice. serial number, 1260.
2. Dictionary of legal terminology. (1387 Hijri). Lecturers of Kabul University. Afghanistan judicial affairs project.
3. Abhishek Vats & Janhvi Mehra. (2018). Crimes against Animals: Harm to the Whole World. Supremo Amicus. Volume 7, 1-11.
4. Andrew N. Ireland Moore. (2005). Defining Animals as Crime Victims. Journal of Animal Law, 1, 91-108.
5. Mohammad Sadar Tawhid Khana. (1386 Hijri). Guideline of Macks Plan Institute for the Criminal Law of Afghanistan, the financial aid of the ministry of foreign affairs of the federal government of Germany.
6. Angus Nurse. (2013). Animal Harm: Perspectives on Why People Harm and Kill Animals. Publisher: Farnham, UK; Burlington.
<https://cljbooks.rutgers.edu/books/animal-harm/>.

7. Abdul Ghafoor Khaleeli. (2018). Animal fighting and cruelty. <https://kabull.com/new1>.
 8. Abdul Qadir, Oudh, (1347 AH). translation, Abdul Hadi Hidayat. Islamic criminal legislation and statutory laws,
 9. Mohammad Saleh, Walidi. (1382 AH). General criminal law requirements. First edition, Tehran, Khurshid publications.
 10. Mota-Rojas, D., Monsalve, S., Lezama-García, K., Mora-Medina, P., Domínguez-Oliva, A., Ramírez-Necoechea, R., & Garcia, R. D. C. M. (2022). Animal abuse as an indicator of domestic violence: One health, one welfare approach. *Animals*, 12(8), 977.
 11. Williams, V. M., Dale, A. R., Clarke, N., & Garrett, N. K. G. (2008). Animal abuse and family violence: Survey on the recognition of animal abuse by veterinarians in New Zealand and their understanding of the correlation between animal abuse and human violence. *New Zealand Veterinary Journal*, 56(1), 21-28.
 12. Intarapanich, N. P., Touroo, R. M., Rozanski, E. A., Reisman, R. W., Intarapanich, P. P., & McCobb, E. C. (2017). Characterization and comparison of injuries caused by spontaneous versus organized dogfighting. *Journal of the American Veterinary Medical Association*, 251(12), 1424-1431.
- Lawson Claire. (2017). Animal fighting. *The Palgrave international handbook of animal abuse studies*, 337-362.