

CIVIL WRIT PETITION NO..... OF 2002

1. The Petitioner is a citizen of India and is filing this present Petition as a Public Interest Litigation to enforce the fundamental rights of citizens under Article 21 of the Constitution of India. Due to the menace posed by the ever-increasing populations of straying dogs, the Right of the Petitioner and other citizens to a decent environment and to lead a healthy life without fear or danger is under constant threat.
2. The Respondent has been vested with the responsibility and duty of providing its citizens including the Petitioner a safe environment to lead a healthy life without fear or danger. The Respondent has in fact failed to carry out this duty and as a result thereof the fundamental right to life of the citizens are threatened in violation of Article 21 of the constitution of India.
3. The Petitioner is compelled to approach this Honorable Court since the Respondent, via the Ministry of Culture, has issued the Dog Control Rules, 2001 (**Annexure A**) which direct local authorities to implement faulty and unscientific practices to control hydrophobia (or rabies), rising dog populations and dog bites/attacks.
4. It is estimated that more than 30,000 people dies of rabies in India annually. Rabies is a horrifying, incurable, fatal disease, incomparable with other diseases, the burden falling most heavily on children. However, the transmission of rabies from dogs to humans is wholly preventable – a fact that

has been proved in both developed and under-developed countries around the world.

5. There have been numerous newspaper reports regarding unprovoked attacks made by straying dogs on human beings. Be it the case where a three and a half year old girl, Ishita Satyajit, had to undergo plastic surgery after being attacked by a dog at the Delhi Golf Club, or where seven year old Reema Kamdar was attacked by a dog outside her own home or where a scooterist was attacked by a pack of five dogs, what is apparent is the grave danger being faced by citizens during the normal course of life. What the newspaper articles serve to highlight is the glaring negligence of the Respondents. Copies of the Newspaper reports are collectively annexed hereto and marked as **Annexure B**.
6. The menace of increasing dog populations is also evident from the Writ Petition filed by the Airport Authority of India before the Honorable Bombay High Court against the Municipal Corporation of Greater Mumbai and others, wherein it was stated that dogs have been found on the runway as result of which during the period 5th November, 2000 and 30th November, 2000 on 15 occasions take off and landing of the aircrafts had to be aborted, thereby causing massive risk on the safety of the passengers and aircrafts. A copy of the Order dated 18th April, 2001 passed by the Honorable Bombay High Court in the said Writ Petition is annexed hereto and marked as **Annexure C**.
7. The 1998 W.H.O. South East Asia Regional Report on the Elimination of Rabies (attached as **Annexure D**) states:

‘Both sylvatic and urban rabies have been present in [India] since ancient times. Urban canine rabies is however, responsible for significant mortality, morbidity and economic harm due to loss of precious livestock. The dog population in India, which was 18.8 million according to the 1982 census, rose to 19.7 million in 1987 and is now estimated to be 25 million [in 1998]. (pp.9 para.#9, emphasis supplied)’.

‘...Estimates on the basis of data obtained from various infectious disease hospitals, which act as sentinel centers for patients with hydrophobia, reveal about 30,000 deaths per year due to rabies..... 45% are children less than 14 years of age. (pp.10 para.#1, emphasis supplied).

...Primary results on the basis of studies conducted by the National Institute of Communicable Diseases project an annual incidence of about 2.12 million cases of animal bites. More than 95% of bites [1.9 million cases] are inflicted by dogs. (pp.10 para.#2, emphasis supplied)

‘...the lack of a comprehensive strategy and effective inter-sectoral coordination, coupled with obstructive socio-cultural and religious myths have resulted in a perpetuation of the rabies problem in India....(pp.10 para.#6, emphasis supplied).

8. The Petitioner draws the attention of this Honorable Court to relevant facts giving rise to the present petition, which are as under:

- a. Dogs have been domesticated by man and have remained the companion and support of human activities.
- b. In any society there are degrees of supervision provided to dogs by human beings and the same can be categorized as under:

Sl. No.	Category	Particulars
1.	Restricted or Supervised dogs	Fully dependent and fully restricted or supervised
2.	Family dogs	Fully dependent and semi restricted
3.	Neighborhood dogs	Semi dependent and semi restricted or unrestricted.
4.	Feral dogs	Independent unrestricted and sustains on the human wastes and for whom no body is responsible.

- c. There has been a rise in the number of unsupervised dogs in all urban cities in the country. 'Community owned' dogs and ownerless dogs both roam (*stray*) and reproduce freely. Rearing success may be high if humans provide shelter and protection. Such animals often feed on refuse and garbage and are the carriers of diseases.
- d. Though such dogs may be fed and sheltered, no one takes real responsibility for them. Nor can anybody be relied upon by an affected party for compensation or reliable rabies immunization and vaccination histories, thereby causing major threat to human life and depriving every human of the right to live according to certain standards and quality of life.
- e. Increasing numbers of straying dogs, *whether owned or not*, in any society soon become a health hazard, particularly as they roam around without immunization and vaccination for rabies. As such straying dogs,
 - i. harm themselves in fights and often remain injured without assistance and medication thereby spreading diseases;
 - ii. cause injury to humans. Straying dogs have been found to attack passers by, hawkers, pedestrians and children. Since these

dogs are not immunized, they transmit diseases particularly rabies, which is fatal for human beings.

iii. cause accidents and damage to human property. Due to their unrestricted movements in any area, such stray animals are found to cause major accidents;

iv. lead to unhygienic living surroundings due to littering, defecating and urinating in public areas and on roads and pavements;

v. cause disturbance by their incessant barking.

f. There are three separate issues that Dog Control legislation must deal with:

- i. Preventing the transmission of Rabies from dogs to humans
- ii. Preventing and reducing dog bites/dog attack incidents
- iii. Dog population control

g. Around the world, initial attempts to control rabies transmission from dogs to humans and rising stray dog populations involved the impounding and killing of dogs rounded up by Municipal Authorities – a method referred to as ‘catch-and-kill’.

h. In the year 1986, a working group of scientists, animal control professionals and animal protectionists met to provide recommendations for controlling dog populations. In 1990, the W.H.O. and the World Society for the Protection of Animals (W.S.P.A.) issued Guidelines for Dog Population Management (annexed hereto and marked as **Annexure E**), which urged:

- Registration and identification of all dogs;
- Annual re-immunization of a minimum of 85% of the total dog population;
- Low-cost/free neutering of owned dogs, especially in low-income group areas;
- Controlling markets, street food vendors and clearing up rubbish to control the carrying capacity of the environment of free roaming dogs;
- Encouraging responsible pet ownership to reduce abandonment.
- Adoption of humane methods of euthanasia;
- Elimination of ownerless dogs.

‘Elimination’ does not necessarily mean killing but includes adoption, re-homing and permanent sheltering.

i. In India, a centrally sponsored scheme was started in 1984 under the technical guidance of the Animal Husbandry Department that outlined measures to control rabies as follows:

- i. Prophylactic vaccination of pet dogs
- ii. Post-bite vaccinations to animals bitten by dogs
- iii. Elimination of ownerless dogs

Dogs caught by Municipal Authorities were held at Dog Pounds for three days to allow owners to reclaim their wards. Unclaimed dogs were destroyed by poisoning or electrocution.

- j. In 1992, a Suit (No. 1246 of 1992) was filed in the District Court in Delhi by Smt. Maneka Gandhi against the Municipal Corporation of Delhi, seeking judicial intervention to uphold the Prevention of Cruelty to Animals Act, 1960 by preventing use of cruel methods of killing ownerless dogs. The Court in its order dated 16th December 1992, directed the MCD/NDMC to seriously consider the proposals of Smt. Maneka Gandhi for the control and management of dogs. A copy of the said Order dated 16th December, 1992 is annexed hereto and marked as **Annexure F**.
- k. Following this Order, in the last decade, four different Ministries of the Union of India i.e. Ministry of Environment and Forests, Ministry of Social Justice and Empowerment, Ministry of Culture and Ministry of Programming and Statistics have spent crores of rupees out of public funds to contain rabies and rising dog populations by implementing the Animal Birth Control/Anti Rabies ("ABC/AR") Program that involves the capture, sterilization, immunization, marking and release of dogs back onto the streets. The said Program has been implemented in Delhi, Mumbai, Kolkatta, Chennai, Bangalore, Pune, Chandigarh, Goa, Vishakapatnam, Hyderabad and Jaipur with funding from the various Ministries and the Animal Welfare Board of India.
- l. To prevent the indiscriminate destruction of dogs, the Viniyog Parivar Trust & others filed a Writ Petition (WP 1596 of 1998) before the High Court of Bombay against the Municipal Corporation of Greater Mumbai and others. The Honorable Court in its Order dated 5th October, 1998 laid down Guidelines for Dog Control and Management. A copy of the said Order is annexed hereto and marked as **Annexure G**. Similar petitions were filed around the country in Courts including the High Court of Hyderabad and Goa.
- m. However, in light of the increasing menace posed by straying dogs, the Honorable High Court of Bombay ordered a *Suo Moto* review in July, 2001 (No. 1598 of 2001, attached as **Annexure H**) of their 1998 Order (under WP1596 of 1998).
- n. The said Guidelines prevent local authorities from fulfilling statutory duties including and not limited to (i) containing the spread of disease, (ii) keeping the streets free of straying animals and (iii) preventing nuisance as defined in several Municipal Acts and byelaws in force

around the country. This is evident from the affidavit filed by the Municipal Corporation of Greater Mumbai (**Annexure I**) in the aforementioned Suo Moto (WP 1598 of 2001) and in the testimony of the Commissioner of Police, Bangalore in the Lok Ayukta case no. ____ (**Annexure J**).

- o. In the said Affidavit (**Annexure I**) it is also stated that due to non-performance of Animal Welfare Organizations ("AWOs") Municipal Authorities are unable to fulfill their obligations and duties towards the citizens.
- p. Despite the Honorable High Court itself deciding to review the said Guidelines, the Ministry of Culture has compounded the issue by enforcing the Dog Control Rules, in December, 2001 based on the said Guidelines (**Annexure A**). The said Rules make it obligatory for Municipal Authorities to implement the Animal Birth Control/Anti-Rabies ("ABC/AR") Program in cooperation with Animal Welfare Organizations ("AWOs").
- q. *Ex facie*, the Dog Control Rules, 2001 makes it impossible or at any rate burdensome for Municipal authorities to effectively control and manage the problem of straying dogs. In this alarming situation there is a real and serious danger to Indian cities being overrun with stray dogs thereby causing threat to healthy life and environment without fear or danger to the citizens.
- r. The Animal Welfare Board of India and various Ministries of the Respondent have claimed over the last decade that the W.H.O. has recommended the ABC/AR Program. However, a comparison between the W.H.O./W.S.P.A. Guidelines and the current Dog Birth Control Rules framed by the Respondent, shows many discrepancies, which relate to:

(i) Focus

The W.H.O./W.S.P.A. Program describes four distinct categories of dogs by degree of supervision viz., Fully Restricted, Family owned, Neighborhood owned and Feral. The Program was designed for owned dogs (first three categories).

The Dog Control Rules, 2001 categorize dogs simply as (i) pet dogs and (ii) street dogs. The said Rules are focused only on unclaimed/ownerless dogs.

(ii) Release and Rabies control

The W.H.O./W.S.P.A. state that for transmission of rabies from dogs to humans to be eliminated, it is essential that 85% of all dogs in an area be re-immunized every year. The W.H.O does not recommend the

release of unclaimed, captured dogs, as it is not possible to re-immunize them annually. It is for this reason that the W.H.O recommends the humane killing of unwanted/ownerless dogs captured by local authorities.

The Dog Control Rules, 2001 do not even mention re-immunization. In fact the Rules require local authorities to release dogs that cannot be re-immunized against rabies such release is a direct cause of interference with the lives of citizens.

(iii) Reporting and Monitoring

The W.H.O./W.S.P.A. Guidelines stress on the importance of inter-sectoral cooperation between hospitals, dog control authorities and sanitation departments for successful rabies and canine control.

The Dog Control Rules, 2001 neither suggests nor provides any such mechanisms. **The fact that rabies is not a notifiable disease under any Municipal Act in the country is indicative of the status of State monitoring of this deadly disease.** It is for this reason that the W.H.O. estimates that rabies fatalities in India are likely to be ten times higher than the reported 30,000 cases.

The AWBI ABC/AR Program is in fact monitored entirely by the AWBI and participating NGOs themselves.

*In fact, the Program has even reduced the number of dogs registered with local authorities since it was introduced (as is represented in the Affidavit filed by the MC of Greater Mumbai in Suo Moto WP 1598 of 2001, **Annexure I**).*

1. It is clear that present statute(s) and the rules and regulations prevent the Municipal Authorities from effectively performing statutory and constitutional obligations in getting rid of straying dogs and properly regulating dog ownership. This has resulted in deprivation of the constitutional right to quality of life of the citizens of India. The Petitioner is filing this Writ Petition to enforce such a right and for a direction to the Respondents to perform their duties.
2. It is submitted that the Directive Principles of State Policy and the Fundamental Rights together form the core of the Constitution of India and supplement each other in the establishment of a welfare state. Although the Court(s), *per se* cannot enforce the Directives Principles, this Honorable Court has issued various directions to the Government and administrative authorities to take action to remove grievances that have been caused by non-implementation of the Directives principles. Article 47 of the Constitution clearly states that it is the duty of the State to raise the level of standard of living and to improve public health. However, the Respondent has failed to

perform its duty. The Court by its affirmative action can direct a defaulting authority, which has failed to perform its duties or enforce this duty against the defaulting local authority.

3. The Respondent is obliged by the Constitution to provide and take all necessary steps for assuring the welfare of its citizens, which the Respondent has failed to do, thereby resulting in threat to the health and life of every citizen including the Petitioner. These failures of the Respondent has caused an increase in the population of dogs, thus the streets are over run by stray dogs which carry the dreaded disease of rabies and also a host of other diseases including newly discovered cases of rickettsia or rocky mountain spotted fever which is transmitted through infected dog tick.
4. Despite the gravity of the stray dog and rabies situation in India, the Respondents have taken no remedial action. The Petitioner is a citizen of India and is entitled to invoke the extraordinary jurisdiction of this Honorable Court under Article 32 of the Constitution of India. The Petitioners, therefore, have been constrained to file the present Petition before this Honorable Court on the following amongst other grounds:

2. **GROUND**S

- A. For that the right to life would take within its sweep the right to a decent environment as well. Quality of life is inherent in the guarantee offered under Article 21 and would include the right to lead a healthy life without fear or danger. It is the duty of the State to take all necessary steps for the said purpose, which they have failed to do. It is due to this failure on the part of the Respondent that the number of straying dogs on the streets of cities, towns and villages in India have multiplied, which has led to danger, not only to the life of the citizens but to the dogs as well due to which they suffer from starvation, disease and accidents.
- B. Public health and dog control is the responsibility of local government as defined in Municipal Acts in force around the country. The Dog Control Rules, 2001 imposes rules issued by the Ministry of Culture, a Central Authority on a State subject and transfers State responsibility of rabies and dog control to voluntary organizations.
- C. The said Rules prevent local authorities from fulfilling statutory duties including and not limited to (i) containing the spread of disease; (ii) keeping the streets free of straying animals and (iii) preventing nuisance as defined by several Municipal Acts and byelaws made there under and those which are in force around the country.
- D. Section 268 of the IPC, 1860 defines public nuisance as:

...any act or illegal omission which causes any common injury, danger, or annoyance to the public or the people in general, who dwell or occupy

property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

The Dog Control Rules, 2001 makes it mandatory for the State to release unclaimed dogs back to the streets after a one-time vaccination. This makes the State itself culpable of public nuisance by permitting the State to release unclaimed dogs back to the streets. Sterilization alone does not prevent dogs from adding to public nuisance by barking, biting, transmitting disease, causing accidents and straying onto airports thereby causing tremendous damage to human life and property and *creating a dangerous public health hazard by releasing dogs that cannot be re-immunized annually.*

Section 133, subsection (e) of the said Act empowers the State to penalize owners of such “*dangerous animals*” and gives the State the right to destroy such owned animals. In light of the Dog Control Rules, 2001 this would permit the State to punish an individual for a wrongdoing it is itself responsible for committing.

- E. The Dog Control Rules, 2001 are in contravention to its own parent legislation viz., the Prevention of Cruelty to Animals Act, 1960. Chapter III subsection 11(i) of the said Act states:

...if any person without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst;

Subsection 11(j) of the same Act states:

....if any person willfully permits any animal, of which he is the owner to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animals, of which he is the owner, to die in any street;

These sections make it an offense for owners to abandon or allow their animals to roam freely on the streets because this inflicts injury, unnecessary pain and suffering on the animals. *By the said Rules, however, the State is itself responsible for releasing unclaimed/ownerless animals to the streets and is thereby guilty of the said offenses.*

- F. The Animal Welfare Board of India, set up under the Prevention of Cruelty to Animals Act, 1960 was amongst other things, established to *encourage the formation of pinjrapoles, rescue homes, animal shelters and sanctuaries for ownerless and unwanted animals.*

This objective of the parent Act, which was to ensure the safety of animals and recognize their right to live in a safe and disease free environment, has been defeated by the Dog Control Rules, 2001.

- G. The fundamental right to life is more than a mere survival or animal existence and includes right to live with human dignity. It is further submitted that the right to life includes those aspects of life, which goes to make a man's life meaningful, complete and free of threat to life and liberty and is worth living. By the failure of the Respondent in carrying out its duties and ensuring a life free of any fear and threat to the Petitioner, the fundamental right of the Petitioner has been seriously prejudiced and/ or violated.
- H. The Respondent has without justification failed to perform statutory and constitutional duties towards the citizens of India. The Petitioner is entitled to a direction from this Honorable Court to the Respondent to perform its duties.
- I. The inaction of the Respondent has deprived the Petitioner and other citizens of their right to live in a healthy, clean and secure environment – a fundamental right enshrined in Article 21 of the Constitution of the Petitioner has been violated by the Respondent.
- J. The Petitioner craves leave to amend and add grounds in the present Writ Petition.
- K. That the Petitioners have no other efficacious remedy except to approach this Honorable Court by way of the present petition.
- L. That the Petitioners have not filed any other similar writ petition(s) either before this Honorable Court or before any of the Honorable High Court(s) in India.

PRAYER

Under the facts and circumstances stated above, the Petitioner therefore prays as follows:

- 1. That this Honorable Court may be pleased to issue an appropriate writ, order or direction setting aside the Dog Control Rules, 2001 as being unconstitutional;
- 2. That this Honorable Court may be pleased to issue a writ of mandamus, or other appropriate writ, order or direction to the Respondent to:
 - a. Establish a Committee to study the feasibility of implementation of the Guidelines for Dog Population Management and Strategies for Elimination of Rabies as detailed by the World Health Organization or other guidelines based on experiences of countries which have successfully dealt with the problem such as western countries, Singapore, Thailand, Malaysia and the like, in all Class I cities (having population over 1 lakh) of India;
 - b. Declare Rabies as a Notifiable Disease under relevant sections of

various Municipal Acts in force around the country;

- c. Consider framing appropriate guidelines rules, regulations and/or Acts to address the issues raised in this Petition;
 - d. Strengthen the Prevention of Cruelty to Animals Act, 1960 with more stringent penalties for abandonment of animals;
3. To issue a writ of mandamus to the Municipal authorities to:
- a. Perform their statutory duties in removing nuisance caused by straying dogs;
 - b. Refrain from releasing any unclaimed/ownerless dogs on to city roads;
 - c. In the interests of animal welfare, direct that local authorities transfer captured dogs instead to facilities maintained by Animal Welfare Organizations, that are an extension arm of the State, to provide for adequate and humane means to control of such dogs by means such as adoption and/or permanent sheltering while permitting euthanasia for those dogs where the adoption or permanent sheltering cannot be provided;
4. To issue any other or directive as the Honorable Court may deem fit.

FILED BY N
GANPATHY
Advocate for the Petitioner

Place : New Delhi

Date : August ____, 2002

LIST OF ANNEXURES

No.	Title
A	Dog Control Rules, issued by Ministry of Culture, December, 2001
B	Newspaper reports of stray dog attacks
C	Order of the Bombay High Court, dated 18 th April, 2001 in WP filed by AAI
D	Regional Strategies for the Elimination of Rabies, Report of an Informal Consultation, New Delhi, 1998 – W.H.O. South East Asia Regional Office
E	Guidelines for Dog Population Management, W.H.O./W.S.P.A, Geneva, 1990
F	Order of the Delhi District Court, dated 16 th December, 1992 in WP 1246 of 1992
G	Order of the Bombay High Court, dated 5 th October, 1998 in WP 1596 of 1998
H	Bombay High Court Suo Moto Review Petition No. 1598 of 2001
I	Affidavit filed by the Municipal Corporation of Greater Mumbai in WP 1598 of 2001
J	Testimony of the Commissioner of Police, Bangalore in Lok Ayukta Case No.:_____
K	Report of WHO Consultation on Dog Ecology Studies Related to Rabies Control, Geneva, Switzerland, 22-25 February 1988, WHO/Rab.Res./88.25, reported in http://groups.yahoo.com/group/A-Animal_NoKill_City/message/2869
L	Dog Population Management, Joy Leney and Jenny Renfry