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# **A LEGAL ANALYSIS ON THE FEASIBILITY OF GRANTING ANIMAL RIGHTS CONSTITUTIONAL PROTECTION IN INDIA**

AUTHORED BY - NIKARA FERNANDEZ

## **1. Introduction**

Over time, many arguments have been made for and against the issue of granting nonhuman animals legal personality. This requires a shift from the 'property status' to a legal status that grants them inherent and independent rights by virtue of the fact that they too share similarities with humans such as sentience and decision-making capabilities. Currently, animals are subject to various kinds of cruelty which will be discussed throughout the paper. Despite India having various kinds of legislation to protect animals, still the atrocities towards them continues. There is an urgent need to provide them a suitable legal protection so that their conditions and existence do not deteriorate and become extinct one day. By elevating their rights to a fundamental constitutionally protected level, they will avail of justice more efficiently and wrongdoers/perpetrators will not be able to circumvent the law as the Constitutional fundamental rights reign supreme over the current statutory laws aimed at protecting the welfare of nonhuman animals.

## **2. Evolution of animal protection in India**

### **A. Indian Philosophy**

#### **(i) Ancient period**

The evolution of the relationship between man and beast has seen significant changes over the history of civilization. In India especially, animals hold an almost sacred position under various religious texts. In the Dashavatara of Lord Vishnu, four of his ten primary avatars are animals; these are Matsya (fish), Kuruma (turtle), Varaha (boar) and Narsimha (half lion, half man). Similarly, numerous depictions of Hindu Gods include animals by their side. Examples of the same would be Garuda, the eagle of Lord Vishnu and Nandi, the bull of Lord Shiva. Certain Indian mythological Gods themselves are depicted in the form of animals like Lord Ganesha (elephant) and Lord Hanuman

(monkey). Ancient Indian texts such as the Vedas, Upanishads and Puranas all share the common essence of animals being linked with Gods and Goddesses and hence they recognised animal rights to co-exist with that of man. Animals, both domestic as well as wildlife were worshipped by people and any cruelty meted out to them was severely punished. The Manusmriti condemned hunting as a heinous act and directed the kings and kshatriyas to forbear from the same. The Shlokas reflected the same ideal by holding the caretaker of the animal responsible for the harm that happens to any animal during the period it is in his care. The Isha Upanishad stated the ‘No creature is superior to any other. Human beings should not be above nature and no species was to encroach over the rights and privileges of other species.’

The Indian ideal of ahimsa or non-violence in thought and deed are reflected in the Vedas with respect to animals. The Rig Veda condemned all forms of killing of animals, even for food. The Yajur Veda stated that service to animals leads to heaven and the Atharva Veda stated that the earth was created for the enjoyment of human beings and creatures of all kinds alike. Jainism also believes strongly in the ideal of non-violence as being a guide to all of morality. Jains looked after sick and injured animals thousands of years before the idea of animal shelters were thought of in countries abroad. The Epics such as the Ramayana, Mahabharata and Bhagvad Gita all emphasize on the importance of showing mercy and sympathy to all living things and avoiding cruelty to men and animals. However, these texts did provide certain exceptions by permitting the killing of animals for religious purposes.

### **(ii) Medieval period**

The most prominent of the rulers of Medieval India who took great measures to protect animals was the Mauryan ruler Ashoka. The protection of elephants in particular was held in high regard by him. He embraced Buddhism and protected many birds and animals and gave up the tradition of the royal hunt. He also prohibited the killing of certain species of animals such as parrots, rhinoceros, ruddy goose, etc. Medical facilities for animals were also developed during his reign even in territories beyond his own empire.

There was a change in heart during the Mughal regime wherein hunting was once again adopted as a great sport. Thus, there was a sharp decline in the wildlife population during this period due to the lack of legal control on hunting.

### **(iii) British period**

The early British period further led to the exploitation of animals wherein people were rewarded for killing animals. In the Presidency town of Madras for example, collectors paid 25 rupees for each specimen. The Maharaja of Kota in Rajasthan awarded anyone who killed a lion with a prize of 25 rupees and as a result of the same, by 1920, the lion was extinct in British India. Similarly, the cheetah population was already in serious decline and is now extinct in India. There was a demand for animal products as well such as goods made of tusks, skin and horns of the animals.

### **(iv) Post-independence period**

In the post-independence era, the state of the wildlife population in India was bleak and people began to recognise the urgent need to conserve and preserve the same. People needed to be reminded of their duty towards the nonhuman animals and to treat them with compassion and kindness. Mahatma Gandhi, stated that ‘the greatness of a nation and its moral progress can be judged by the way its animals are treated’, this appealed to the inner conscience of the people to take accountability for their actions and stop treating animals with cruelty.

## **B. Western philosophy**

However, over time, nonhuman animals, rather than being respected for their inherent worth, started being looked at as the property of man. In other words, animals were being used as a means to an end. A strong propounder of this belief was the philosopher Immanuel Kant who argued that since animals were neither rational nor autonomous, their lives were not ends in themselves.<sup>1</sup> Therefore, the duties that man had towards animals were merely indirect duties they had towards humanity; treating animals with kindness was seen as a means to strengthen the disposition of being kind to humans. Rene Descartes supported the process of vivisection with the argument that animals were like clocks or robots- machines that moved and made sounds but had no feelings.

A slight change in this outlook was brought about by the philosopher Jeremy Bentham who posed the question of whether animals could suffer<sup>2</sup>. This brought in the idea of animals being sentient beings, having the capacity to feel pain and pleasure. Peter Singer, an Australian Philosopher, further

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<sup>1</sup> Gail Tulloch, Steven White, ‘A Global Justice Approach to Animal Law & Ethics’ [2011] 6 Austl. Animal Protection Law Journal 29

<sup>2</sup> Jeremy Bentham, *An introduction to the principles of morals and legislation*, (Dover Publications 2007)

proposed<sup>3</sup> various theories to further buttress the argument posed by Bentham that the difference between animals and man was one of degree, rather than kind. Hierocles, a Neoplatonist philosopher of Greece put forward his theory of the Circles of Compassion wherein he stated that man lived in a series of concentric circles. The innermost circle was believed to be the body and the outermost one was to be the universe. To move these circles inwards was believed to be the continuous task of moral development. Singer extended this metaphor to back his theory of animal rights by stating that one must explicitly extend the circle of his/her own concern beyond the boundary of his/her species to include animals and the environment as well.

The strongest theory that has been propounded which can be used as an argument in favour of granting animals legal rights is Martha Nussbaum's capabilities approach which will be elaborated upon later in this paper.

### **3. Constitutional provisions**

Although the Constitution of India contains certain provisions that aim towards animal welfare, these provisions are merely guidelines that cannot be enforced against any individual. This is the issue that needs to be fixed by introducing provisions that can actually be implemented and put into effect rather than merely act as words on a piece of paper. A majority of these provisions are in the form of Directive Principles of State Policy which are the duties imposed upon the State. Article 48<sup>4</sup> deals with the organization of agriculture and animal husbandry. It states that such organization must be based on modern and scientific lines and that the State should take measures to preserve and improve the existing breeds and prohibit the slaughter of cows, calves and other milch and draught cattle.

In one of the Constituent assembly debates<sup>5</sup> it was argued by Pandit Thakur Das Bhargava, Seth Govind Das and R.V. Dhulekar that the provisions prohibiting cow slaughter should be included within the ambit of Fundamental Rights however the same was rejected by Dr. B.R. Ambedkar on the grounds that Fundamental Rights dealt only with human beings and not animals. Article 48A<sup>6</sup>

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<sup>3</sup> Peter Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals*, (HarperCollins 1975)

<sup>4</sup> The Indian Constitution, art. 48

<sup>5</sup> Constituent Assembly Debates on 24<sup>th</sup> November, 1948

<sup>6</sup> The Indian Constitution, art.48A

deals with the duty of the State to protect and improve the environment and safeguard the forests and wildlife of the country.

Article 51A(g)<sup>7</sup> forms a part of the fundamental duties of an individual. According to this Article, it is the duty of every citizen of India to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures. The aspect of humanism which forms a part of Article 51A(h)<sup>8</sup> indicates an inclusive sensibility for our species as it involves feelings of benevolence, compassion and mercy. Humanism also includes the duty of man to look after the welfare and well-being of animals and to prevent the infliction of pain or suffering on them. There have been numerous case laws that have dealt with these two articles which will be discussed further in the paper.

Article 246 of the Constitution<sup>9</sup> is known as the 7<sup>th</sup> schedule of the Constitution and it specifies the three lists which divide the powers of governance between the Union and the States. Item 17 and 17B of the Concurrent list deal with the prevention of cruelty to animals and the protection of wild animals and birds respectively. Item 15 of the State list deals with the preservation, protection and improvement of livestock and the prevention of animal diseases. It also includes the acts of veterinary training and practice. Item 15 of the 12<sup>th</sup> Schedule also deals with the prevention of cruelty to animals.

## **4. Common law remedies**

The Indian Penal Code<sup>10</sup> has certain provisions that aim at protecting animal welfare. Section 47 of the Code provides a definition for the word ‘animal’ to mean any living creature other than a human being. Killing of such animals in public places amounts to public nuisance under Section 268 of the Code as it can be deemed to cause common injury, danger, or annoyance to the public/people in general who occupy property or dwell in the vicinity. Section 428 of the Code provides a penalty of a maximum of two years imprisonment/fine/both for those people who cause mischief by

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<sup>7</sup> The Indian Constitution, art.51A(g)

<sup>8</sup> The Indian Constitution, art.51A(h)

<sup>9</sup> The Indian Constitution, art.246

<sup>10</sup> The Indian Penal Code 1860

killing/maiming/poisoning/rendering useless animals of the value of Rs.10. Similarly, Section 429 of the Act provides a penalty of a maximum of five years imprisonment/fine/both for those individuals who cause mischief by killing/maiming certain specified cattle and animals of any value or any animal of the value of Rs.50. These two provisions essentially make it a punishable offence to kill or injure any animal including strays. It is therefore the duty of every civil person to take all responsible measures to ensure the well-being of animals and prevent cruelty towards them.

Section 503 of the Code deals with criminal intimidation which can be applied in such cases where animals are seen as the property of man. The remedy for the same is found under Section 506 of the Code.

Following the above authorities, several Acts and rules have been made by the legislature and executive to specifically address problems of exploitation and cruelty towards animals but these too provide numerous exceptions and are not adequately implemented and enforced. Examples of the same would be the Prevention of Cruelty to Animals Act<sup>11</sup>, the Wildlife (Protection) Act<sup>12</sup>, the Drugs and Cosmetics Act<sup>13</sup> (regarding the use of animals in cosmetic testing), the Slaughterhouse Rules 2001, etc. Discussing the shortcomings of the same is beyond the scope of this paper but it is clear that they have fallen short of their objectives as instances of cruelty towards animals with complete disregard of their rights continue to take place unabated.

## **5. The Capabilities Approach**

The Capabilities Approach is a unique proposition which poses a logical explanation as to how nonhuman animals deserve legally protected rights as they possess several similar characteristics (which she terms as ‘capabilities’) to human beings who are granted these same legal rights and personality. Nussbaum proposed the same in her book titled ‘The Quality of Life<sup>14</sup>’ in 1993 wherein she defined capabilities as ‘universal objective norms, rejecting cultural relativism and the charge that

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<sup>11</sup> The Prevention of Cruelty to Animals Act 1960

<sup>12</sup> The Wild life (Protection) Act 1972

<sup>13</sup> The Drugs and Cosmetics Act 1940

<sup>14</sup> Nussbaum, Martha, and Amartya Sen (eds), ‘The Quality of Life’ (1993) Online edition, Nov. 2003), <<https://doi.org/10.1093/0198287976.001.0001>> accessed 28 Oct. 2022

all universals are bound to be insensitive to regional and cultural specificity'. She proposes ten capabilities, nine of which are applicable to nonhuman animals. Several Indian case laws that have been decided by the judiciary over the years relating to the prevention of cruelty and exploitation to animals reflect the principles put forward in the capabilities approach. For example, in the case of *N.R. Nair v. Union of India and Ors*<sup>15</sup>, there was a notification issued by the Central Government on the 2nd of March, 1991 under Section 22 of the PCA Act banning the training and exhibition of bears, monkeys, tigers, panthers and dogs. The Indian Circus Federation challenged this notification by which dogs were excluded from the list. An order was then issued in 1997 by the Delhi High Court requiring the Government of India to have a fresh look into the notification. The Committee prohibited this notification. The present petitioners thus stated that this order was arbitrary and that the Central Government had no right to issue such notifications banning the exhibition and training of any animal. The Court however, affirmed the order of the High Court in banning the appellants from training or exhibiting the animals in keeping with the aims and objectives of the PCA. In short, the capabilities are as follows:

- i) The capability to continue one's life whether they take a conscious interest in the same or not. This parameter puts a particular pressure on the meat industry to reform its practices of killing nonhuman animals for human consumption. It also stirs up the debate of whether one is justified in following a non-vegetarian diet when it has scientifically been proven that it is indeed possible for man to live a healthy life to the fullest and derive their source of protein from alternate sources and dietary supplements. This also indicates the problematic nature of killing animals for sport and fur and in general any activity that causes harm to the life of a nonhuman animal in order to bring about some human benefit.
- ii) The capability of an animal to have their bodily health protected. This can be respected by banning cruel treatment of animals and neglect as well as the confinement and ill-treatment of animals in their use in industries. Industries, especially circuses mete harsh and cruel treatment to the working animals by making them perform trivial acts that go against their natural tendencies. This parameter is also applicable in the regulation of zoos and demands that zoos maintain adequate nutrition and space for their animals.
- iii) The capability of maintaining one's bodily integrity. This is applicable to the prohibition

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<sup>15</sup> *N.R. Nair v. Union of India and Ors*. AIR 2001 SC 2337

of declawing and tail docking which is done to nonhuman animals in order to make them more attractively appealing for humans. These processes cause immense pain to the animals, both mentally and physically. An Indian case law that dealt with the same was that of *KCI v. UOI*<sup>16</sup> wherein The petitioner was alleged to be subjecting puppies of certain breeds such as Doberman, Cocker Spaniel, Great Danes and Boxers among others to unnecessary and avoidable cruel cosmetic surgeries such as tail docking and cropping of their ears on request of the dog owners. This was alleged to be against the law as it was causing immense pain, suffering and discomfort to the animals which amounted to cruelty under the PCA Act, 1960 which is a punishable offence. The Court held that Section 11(3) of the PCA Act provided for certain situations wherein the provisions of the Act are inapplicable. Applying this Section to the tail docking and ear cropping of dogs, the same cannot be brought under the ambit of cruelty provided it was being done in a safe manner, as prescribed by the law.

- iv) The capability of recognising ones senses, imagination and thought. This mandates that nonhuman animals should have free access to sources of pleasure to their being and should be allowed to move freely in an environment in such a manner as to please their senses.
- v) The capability of feeling emotions and being entitled to lives where they can have attachment to others which are not controlled by some human external force putting them in a position of isolation or fear. This is applicable to farm and zoo animals that are confined in cages away from others of their kind who form the objects of their natural affection.
- vi) The capability to practically exercise their sense of reason and frame goals and projects to plan their lives. This is not entirely applicable to nonhuman animals but can be extended to giving them adequate room to move around and opportunity for activity wherever the animal is capable of doing so.

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<sup>16</sup> *Kennel Club of India (KCI) v. Union of India*, AIR 2013 (NOC) (Supp) 1439 (Mad.)

- vii) The capability of forming affiliations that are rewarding rather than tyrannical in nature and live in a place of public culture that respects these nonhuman animals and treats them as dignified beings.
  
- viii) The capability of living in an interdependent world where all species therein cooperate and form mutually supportive relations with one another.
  
- ix) The capability to play which is central to the lives of sentient animals. They require space, light, sensory stimulation and the presence of other members.
  
- x) The capability of controlling ones own environment wherein nonhuman animals are treated with respect and justice and can be represented in a Court of law.

Nussbaum however recognises that this switch from using nonhuman animals as a means to an end cannot happen overnight and they will have to be exploited for some necessities. There should thus be a balance that is struck wherein these animals are only used for food and research. While these exceptions can be permitted, it is essential that the treatment of these animals is improved during their life and to ensure that they are killed in the least painful manner. In research as well, it should be ensured that their living conditions are improved and such research is carried out only when absolutely necessary on less complexly sentient animals and this process is shifted to computerised methods. There thus needs to be shift from the approach of ‘freedom from’ to ‘freedom to’.

The current Indian laws lack adequate and stringent punishment for instances of cruelty and exploitation for these nonhuman animals and even where provisions for punishment exist, they are measly and can be easily bypassed through loopholes in the law. In order to provide absolute protection to these nonhuman animals, they need to be awarded legal personality and given rights in the supreme law of the land namely the Indian Constitution. This would require a shift from the property status of animals to one of personhood. The capabilities approach suggests the inclusion of a commitment to recognise animals as subjects of political justice as well as a commitment that they will be treated with dignity in every nation’s Constitution. The mere inclusion of animal recognition

in constitutional provisions is not adequate in itself to enshrine the extensive protection for animals<sup>17</sup>

## **6. International measures**

### **A. The European Convention for the Protection of Animals during International Transport (1968)**

This was an important step taken at the international level to ensure that the right of animals to humane treatment, consistent with the modern conceptions of animal welfare is guaranteed to animals even during their transport across borders. It focused on the importance of international cooperation and detailed rules for the same have also been established for the transport of these nonhuman animals by rail, road, water and air. What is lacking however are studies as to the specific welfare requirements for each animal as these studies have not yet been completed. Some of the essential welfare requirements laid down in this Convention are that the animals must be proven to be fit for transportation, given adequate rest both before as well as after the journey, given adequate space, ventilation and supply of food and water. An Indian judgement that dealt with similar instances is that of *Gauri Maulekhi v. State of Haryana and Ors*<sup>18</sup>, wherein camels were being brought into the State of Haryana illegally. The transportation of these animals was being done in a cruel manner as a result of which some of them would succumb to suffocation, over-crowding and injuries that were inflicted upon them by their handlers. These animals who did not die on route would be slaughtered soon after reaching the destination which is in violation of the law, namely the Prevention of Cruelty to Animals Act, 1960. The Court held that according to the Foreign Trade (Development and Regulation) Act, 1992, live cattle and buffalo fell under the scope of animals that cannot be exported without the exporter having a license to export them. The Court also held that transporting the cattle in such manner was subjecting them to unnecessary pain and suffering and hence fell under the definition of Cruelty under the PCA Act. The case of *Mrs. Gauri Maulekhi v. State of Uttarakhand and Another*<sup>19</sup> dealt with the housing facilities for hens which prior to the case were carried out in a deplorable condition in battery cages which the petitioner alleged was illegal as it amounted to subjecting the hens to unnecessary torture.

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<sup>17</sup> White, S., 'Into the Void: International Law and the Protection of Animal Welfare' (2013) *Glob Policy*, 4: 391-398 <<https://doi.org/10.1111/1758-5899.12076>> accessed 10 October 2022

<sup>18</sup> *Gauri Maulekhi v. State of Haryana and Ors.* (2018) CWP No. 5845 of 2015

<sup>19</sup> *Mrs. Gauri Maulekhi v. State of Uttarakhand and Another* (2018) W.P (PIL) No. 198 of 2016

## **B. International Constitutions**

All Constitutions all over the world such as the Basic law for the Federal Republic of Germany<sup>20</sup>, the Swiss Constitution<sup>21</sup>, the Civil Code of Austria<sup>22</sup>, the Constitution of the State of Salzburg<sup>23</sup> and the Constitution of Slovenia<sup>24</sup> have included provisions that indicate their commitment towards animal welfare. However there needs to be a shift from the focus of animal welfare to animal rights as the latter hold more water in protecting animals than the former. Gillespie<sup>25</sup> aptly stated that the international treaties as well (for example the ICPA<sup>26</sup>, the International Convention for the Regulation of Whaling (1946), CITES<sup>27</sup> and CMS<sup>28</sup>) focus on conserving the nonhuman animals and preventing them from becoming extinct as a species rather than extending justice to them in recognition each individual animal can experience pain and pleasure. David Favre writes<sup>29</sup> that on an international level, although ‘the environmental perspective of the importance of wildlife as part of ecosystems is well accepted, the conditions of life and death of individual animals at the hands of humans around the world are not yet a focus of legal drafting’.

## **C. The Universal Declaration on Animal Welfare (2000) (UDAW)**

This was a campaign conceived and proposed by a group of prominent animal welfare organisations all around the world in order to get the same adopted by the United Nations to universally recognise that animals are sentient and that animal welfare must be protected by all member states to aid in the achievement of globally important goals (the SDGs). Although it has not yet been adopted by the United Nations General Assembly, it contains important provisions that aim at improving the welfare of nonhuman animals. There have however been sceptical arguments against this declaration as it might not be all that effective in reality as it focuses on a welfare-based approach rather than a rights based one. Additionally, a declaration is an unenforceable object against any of its signatories as they have no binding effect on its member States to do or stop doing anything. At best, this would create

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<sup>20</sup> Basic law for the Federal Republic of Germany 1949, art.20(a)

<sup>21</sup> The Swiss Constitution 1999, art. 78, 80 and 120(2)

<sup>22</sup> The Civil Code of Austria 1812, s. 285(a)

<sup>23</sup> The Constitution of the State of Salzburg 1946, art.9(6)

<sup>24</sup> The Constitution of Slovenia 1991, art.72

<sup>25</sup> Gillespie (2009, p. 352)

<sup>26</sup> The International Convention for the Protection of Animals (ICPA) 1988

<sup>27</sup> The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973

<sup>28</sup> The Convention on the Conservation of Migratory Species of Wild Animals 1979

<sup>29</sup> David Favre, ‘An International Treaty for Animal Welfare’, [2012] 18 Journal of Animal Law 237

a general affirmation that animal welfare issues are important to the global community<sup>30</sup>. The UDAW is being led by the World Society for the Protection of Animals which is premised on the Universal Declaration of Human Rights (1948). What is also hoped is that just as how the UDHR became the basis for subsequent enforceable international conventions, the UDAW would do the same for animals which will also urge nations to adopt a rights-based approach towards animals in their Constitutions.

#### **D. The Animal Rights Movement**

The animal rights movement which is also referred to as the abolition movement sees man's use of animals as the key problem behind the exploitation of nonhuman animals. This movement seeks to challenge the property status of animals and instead secure for them fundamental rights that are absolutely protected and cannot be sacrificed under any circumstances to a higher human need. Tom Regan<sup>31</sup> calls this movement one that seeks 'no cages' for animals. Gary Francione in one of his articles<sup>32</sup> provided a set of criteria for measuring whether any law actually recognises that animals have more than a mere extrinsic value and this is an incremental step towards making laws that completely abolish the property status of animals.

### **7. Important judgements**

A landmark judgement in the international sphere that aimed at granting at least some nonhuman animals who have the capacity to possess legal rights a common law status rather than the status of mere things was that of *Leo v. Stanley*<sup>33</sup> wherein the petitioner sought to grant the petition on behalf of two adult male chimpanzees who were held at a University in New York and used as research subjects in studies on the locomotion of chimpanzees and other primates. The essence of this case was to grant legal rights for chimpanzees and ultimately for other animals as well. Unfortunately, Judge Barbara Jaffe issued notices stating that chimpanzees are neither legal persons nor quasi-persons as personhood works in an 'all or nothing' fashion.

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<sup>30</sup> Liebman (2011, p.25)

<sup>31</sup> Tom Regan, *The case for animal rights* (University of California Press, Berkeley 1983)

<sup>32</sup> Francione, Gary L. *Rain without Thunder: The ideology of the animal rights movement* (Temple University Press 1996)

<sup>33</sup> *ex rel. Leo v. Stanley*, 2015 N.Y. Slip Op. 25257 (N.Y. Sup. Ct. 2015)

A landmark Indian judgement that reflects the notions of animal welfare is that of *AWBI v. A. Nagaraja and Ors.*<sup>34</sup> wherein two issues were brought before the Supreme Court of India. One was challenging the validity of the Tamil Nadu Regulation of Jallikattu Act, 2009 (TNRJ Act) and the other was challenging the Central Government notification dated 11.7.2022 under Section 22(ii) of the Prevention of Cruelty to Animals Act, 1960 (PCA Act). The plaintiff was a board that was established under Section 4 of the PCA with the specific purpose of promoting animal welfare and protecting animals from being subjected to unnecessary pain or suffering. It brought this present petition to the Court as they alleged that the practice of Jallikattu was violative of Sections 3, 11(1)(a) and (m) and Section 22 of the PCA Act. It was alleged that the manner in which the practice of Jallikattu was conducted subjected the bulls to physical and mental torture merely for human pleasure and enjoyment. They asserted that the PCA Act, being a parliamentary legislation an overriding effect over any historical, cultural or religious practice. Moreover, bulls were not included under the ambit of ‘performing animals’ under Sections 21 and 22 of the Act. The petitioners also alleged that subjecting the bulls to such unnecessary pain and suffering went against Articles 51A(g) and 21 of the Constitution of India. The Court held that animal welfare laws were required to be interpreted while keeping in mind the welfare of the best interest of the animals to just exceptions only out of human necessity which have been enumerated under Sections 11(3) and 28 of the PCA Act. Jallikattu did not fall under the protection of this provision as it was an avoidable practice and hence cannot be permitted under law.

Another recent case that recognised nonhuman animals as being legal personalities worthy of carrying rights was that of *Karnail Singh v. State of Haryana*<sup>35</sup> which dealt with the secret export of cows to Uttar Pradesh in a truck. The police picketed the truck at the border and recovered the truck and the driver as well as the conductor. The cows were packed in a cruel and brutal manner without following the rules laid down by the State of Haryana regarding Motor Vehicles. The Court stated that ‘The conferral of legal personality upon rightless objects or beings carries with it legal recognition that those objects of beings have ‘worth and dignity’ in their own right. The Court also held that ‘The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Haryana are hereby declared persons in loco parentis as the human face for the

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<sup>34</sup> *Animal Welfare Board of India v. A. Nagaraja and Ors.* (2014) 7 SCC 547

<sup>35</sup> *Karnail Singh v. State of Haryana* (2019) SCC OnLine 704

welfare/protection of animals.’ The Court concluded this judgement with the adage, ‘Live and let live.’

## **8. Conclusion**

It is therefore evident that the judiciary has already taken steps to declare that nonhuman animals are indeed legal persons and are capable of having legally enforceable rights. It is upto the legislature to put pen to paper and include these rights within the ambit of fundamental rights so that animal rights litigations can be efficiently handled and animals are given the justice they inherently deserve. By giving animal rights the status of fundamental rights, it will be easy for individuals to take up the cause of the animals and represent them in a Court of law through the writ jurisdiction of Courts under Articles 32 and 226 of the Constitution. This will bring numerous other instances of animal exploitation that go unnoticed to the surface so that the legislature can identify the gaps in the legislative framework and amend/pass new laws to fix the same.

