



ANIMAL RIGHTS: A DOMESTIC AND GLOBAL PERSPECTIVE

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INTRODUCTION

The basic instinct of life is survival, but it has completely been forgotten that, the rule of nature is “survival of the fittest”, not “exploitation of the vulnerable”. Since the beginning, the primary inclination of man has been towards “survival”, which in the course of time had been replaced by “entertainment” and has now finally resulted in “cruelty”. The focal point here is that of animal rights. The issue in hand has been dragged to a point where it has finally led to a state of natural emergency, which needs to be curbed by implementing harsh and immediate measures, before it leads to further irreversible destruction. An expedient course of action is pertinent in order to fill the lacunas existing in the potential animal protection regime in international and domestic laws.

The basis of rights originated because “something of intrinsic value was taken away”, here, “intrinsic value” signifies the legal rights of the non-human animals. Therefore, this article will highlight, how rights and duties are corollary to one another, tied in a common thread namely “animal protection”.

THE INDIAN LEGAL REGIME: THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

India’s vision of promoting “animal welfare” was first manifested with the enactment of “Prevention of Cruelty to Animals Act, 1960” (PCA Act). This persuaded the setting up of various animal welfare organizations and establishment of Animal Welfare Board of India (AWBI). The PCA Act, 1960, has till date not been amended. *“An important point to be beheld is that there exists a timeline of unimplemented bills introduced in the Parliament from 2011 till date. The first one being the Animal Welfare Act, 2011 introduced by AWBI followed by the animal welfare bill, 2014 and another private bill put forward in 2016. The primary agenda of all the three unimplemented drafts was to replace the PCA Act by broadening the horizon and scope of animal welfare. The bills aimed at promoting, building and supporting animal welfare organizations by giving them a stronger foundation. The major driving force behind replacing the previous legislation and introducing a new one is stricter penalties which can be clearly observed by the fact that stringent and more accurate penalties were proposed against animal cruelty. Additionally, a more comprehensive and extensive definition of animal abuse was included in the bills. This signifies the point that the legislative intent was always to further the objective of animal welfare but the intent could never be put into practice which brings us back to square-one.”*¹ This is a clear demarcation of the fact that despite progressive steps being introduced, implementation has once again proven to be a drawback even in animal welfare.

Evidently, something more was required to fill the void that was still existing, henceforth,

¹ *People’s Charioteer Organization v. Union of India*, Writ Petition filed on August 10, 2020.



the judiciary played a crucial role in this regard.

CONSTITUTIONAL PROVISIONS AND THE ROLE OF INDIAN JUDICIARY

N.R. Nair and others v. Union of India² was a milestone where “animal rights” were first recognised. In the aforesaid case, the court firmly held, *“That where legal rights are concerned, there exists a wall between human and non-human animals that needs to be demolished. The exclusivity of legal rights towards human-animals requires a positive change for the well-being of non-human animals. There lies a fine difference between providing protection and granting rights. Elucidating further the judiciary stated that although protection by law is being provided to the wildlife and endangered species on the verge of extinction, the very idea of granting basic legal rights to animals is denied.”*³

Another aspect, yet to be dealt with was, traditional practices being used as an excuse for inhumanly treating the “non-human animal”. Once again, the primary focus has shifted from fundamental duties to blind faith in traditional practices, which was expounded upon in the landmark judgement of **Animal Welfare Board of India v. A. Nagaraja and others**⁴, wherein, “Jallikattu”(bull-fighting) was banned. Supreme Court further elucidated that, the provisions of the PCA Act were indicative of animals rights *“to live in a healthy and clean atmosphere”*⁵ or *“not to be beaten, kicked”*⁶, in this the court has clearly established a connection between Animal Rights and

Article 21 of the constitution. Jallikattu is not only an example where entertainment takes the form of cruelty but is also violative of Article 21 as expressed in the **Nagaraja Case**. *“Bulls are poked, beaten and deliberately agitated before they are forced into the jallikattu arena, where more than 30 bull tamers are waiting.”*⁷ It further expanded the ambit of the term “life” as mentioned in “Article 21” of the constitution. The court was of the view that, *“Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word life has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, life means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity.”*⁸

Furthermore, where “life” comes into the picture, the concept of “Fundamental duties” becomes more crucial. It is an established fact that the non-human animal is completely dependent upon the human animal where fundamental rights are concerned, therefore, it becomes a responsibility to prioritise and fulfil “Fundamental Duties” in this respect. In the present scenario, the Constitution endeavours to inculcate a mutual sense of accountability on the part of the citizens through “Fundamental duties” and simultaneously on the part of the State in the

² AIR 2000 Ker 340.

³ *N.R Nair and others v. Union of India*, AIR 2000 Ker 340.

⁴ (2014) 7 SCC 547.

⁵ *Animal Welfare Board of India v. A. Nagaraja and others* (2014) 7 SCC 547.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*



form of “Directive Principle of State Policy” (DPSP). Hence, the key to ensure “animal welfare” is to establish a balance between rights and duties. Also, another noteworthy observation was made in the case **Javed and others v. State of Haryana and others**⁹, that, “*Fundamental rights are not to be read in isolation. They have to be read along with the chapter on directive principles of State policy and the fundamental duties enshrined in Article 51A.*”¹⁰ Thus, the correlation between Fundamental Rights, DPSP and Fundamental Duties is coherent.

It is important to understand that, rights and duties are available only at the disposal of a “legal person”, hence, to give non-human animals the identity of a legal person is of paramount importance. The year 2018 marked as an apotheosis in the path of “animal rights”, where, in the case **Narayan Dutt Bhatt v. Union of India and others**¹¹ non-human animals were given the identity of a “legal person” in the state of Uttarakhand. In the subsequent year, the same view was expressed in **Karnail Singh and others v. State of Haryana**¹², where the court beheld 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 welfare/protection of animals*”¹³

The doctrine of “*parens patriae*” was reiterated in **Narayan Dutt Bhatt v. Union of India**¹⁴, where this time, in addition to citizens and state, there was a need felt to bring the court within the ambit of duty towards animal protection. Henceforth, it was held that, “*The court has also a duty under the doctrine of parens patriae to take care of the rights of animals, since they are unable to take care of themselves as against human beings.*”¹⁵

Now, a question arises as to why, despite the Constitutional Provisions and the support of the Judiciary in broadening the horizon of “animal welfare”, the problem still exists? Clearly, something more is required. A suggestive measure in this regard is a progressive legislative action to suit the need of the hour. But, changes happen in stages, and ultimately, responsibility lies in the form of duties to be fulfilled. Yet, it is to be realised that incidences like cutting down of trees in “Aarey Forests” in Mumbai for developmental activities nullify the progress made so far where, if not directly, the non-human animals are indirectly being affected by destroying their natural habitat. This in turn brings us back to square one where there is an immediate need to break the loop. Recent incidents like killing of a pregnant elephant from Attappadi, Kerala (May 27, 2020) and a cow from Ayodhya, Uttar Pradesh (July 4, 2020), makes it extremely important to pause and reflect on the legal framework that exists where animal welfare is concerned, because clearly, a more

⁹ AIR 2003 SC 3057.

¹⁰ *Javed and others v. State of Haryana and others*, AIR 2003 SC 3057.

¹¹ 2018 SCC OnLine Utt 645.

¹² *Karnail Singh and others. v. State of Haryana*, 2019 SCC OnLine P&H 704.

¹³ *Ibid.*

¹⁴ *Supra* note 11.

¹⁵ *Narayan Dutt Bhatt v. Union of India*, 2018 SCC OnLine Utt 645.



comprehensive legislation is an immediate requirement. Another issue is a lack of substantial data available related to animal cruelty. *“It is worthwhile to mention here that there are absolutely no government data or any public record which has been maintained in order to keep a track of cases of Animal Abuse and Animal Cruelty in India. The NCRB reports, for reasons beyond one’s imagination, choose not to publish specific data related to crimes against Animals under the Prevention of Cruelty to Animals Act, 1960. Also, NCRB reports do not contain any separate records of statistical data related to crime against Animals under Section 377, 428, 429 of IPC.”*¹⁶ It is an established fact, that the Fundamental Duties of the human animal, are actually the rights of the non-human animals. Therefore, this becomes a grave responsibility on the part of the human animal, to “protect the vulnerable”, rather than “exploitation of the vulnerable”.

NEED FOR A UNIFORM GLOBAL STANDARD

People for the Ethical Treatment of Animals (PETA) has strongly mentioned that, *“Human beings create temporary and arbitrary boundaries to exclude beings who aren’t like them. Human beings have justified wars, slavery, sexual violence, and military conquests through the mistaken belief that those who are “different” do not experience suffering and are not worthy of moral consideration.”*¹⁷ Thus, now it becomes a global responsibility to reverse the damage that has been caused by the human centric

approach and, promote and create awareness with respect to the concept of “**animal protection**”. Hence, there is an immediate need to establish a “**uniform global standard**” that the countries worldwide, shall strive to achieve in order for them to attain the universal goal of animal protection. The major obstacle here is the complete absence of an instrument of a binding nature like a treaty¹⁸, which is undoubtedly the main source of international law¹⁹. Therefore, a global instrument, such as a framework convention on animal protection, can constitute an important step to the recognition of the importance of granting global protection to animals.²⁰ The aforesaid measures shall create sufficient “**international pressure**” to direct the nations throughout the globe, to implement the provisions mentioned in the binding treaty with regard to animal protection. *“Another aspect as to why a binding treaty is necessary is that, the leaders of a country may change their minds at will, but most find it in their best interests to restrict their freedom of action by becoming members of a treaty under which other countries also agree to restrict their freedom.”*²¹

INTERNATIONAL LEGAL REGIME AND FRAMEWORK

International Court of Justice, being an important international judicial organ has remarkably showed concern in the “**Japan Whaling Case**” by supporting the protection of the whales in the Antarctic Ocean, condemning and putting an end to some so-

¹⁶ *Supra* note 1 at 37.

¹⁷ People for the Ethical Treatment of Animals, available at: <https://www.peta.org/features/what-peta-really-stands-for/> (Last visited on October 27, 2020).

¹⁸ David Favre, “An International Treaty for Animal Welfare” 18 *Animal L.* 237 (2012).

¹⁹ D’Amato, Anthony, “Treaties as a Source of General Rules of International Law” 120 *Faculty Working Papers* (1962).

²⁰ Sabine Bels, “A Global Approach to Animal Protection” 20 *Journal of International Wildlife Law and Policy* 105-123 (2017).

²¹ *Supra* note 18 at 240.



called scientific but, in reality, commercial whaling led by Japan.²² Also, in the “**EC Seals Case**”, “**animal welfare**” was highlighted by the **World Trade Organization**, wherein, it was beheld that “*The dispute is one of the most polarising and complex in the WTO’s recent history, and marks the first time that the Appellate Body has accepted animal welfare as moral grounds for justifying a country’s violation of the global trade body’s most favoured nation principle.*”²³

The fact that there have been proposals like the “**Earth Charter**” and “**World Charter**” in the UN cannot be overlooked. A vital point to be noted is that, nature has never distinguished between the “**Human Animal**” and the “**Non-Human Animal**” and has treated both equally throughout. The abovementioned Charters reflect the same approach. It is mentioned in the **World Charter** that, “*every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action.*”²⁴ The first principle of the **Earth Charter** initiative from 2000 provides that, “*all beings are interdependent and every form of life has value regardless of its worth to human beings*”²⁵.

In spite of all the efforts made by the International Organizations, there still exists a gap between international law and animal protection. This gap can be filled by an

umbrella treaty such as the “**International Convention for the Protection of Animals**” (Hereinafter referred to as ICPA). To grasp the need of global standard of animal welfare, first we need to understand the issues that are arising in the absence of the same. In the present scenario, it becomes a cumbersome task for those working towards animal rights to achieve the end goal of animal welfare. This is because there is no set global standard through which their efforts can be measured and monitored. Thus, ICPA will act as a solid support system in promoting animal rights.

LEARNINGS FROM GLOBAL PRACTICES

Globally, there exists wide divergence in the treatment of animal abuse. With regard to global practices, countries like Austria, Switzerland and UK are known for implementing stringent animal welfare laws. Discussing animal welfare legislations in Austria, firstly, “*the protection and well-being of animals and that of humankind is measured on the same pedestal as suggested under the Austrian Animal Welfare Act, 2004 (Austrian Act)*”²⁶. Secondly, “*the fines in case of violation of the laws can be anywhere from \$2,420 up to \$18,160 in cases of extreme cruelty*”²⁷. Moreover, the hefty fines imposed under the Austrian Act make it difficult for the perpetrator to commit the crime and get away with it easily.

Another example can be taken from the Swiss Animal Welfare Act wherein, “*serious*

²² *Whaling in the Antarctic (Australia and New Zealand v. Japan) (Judgement)* [2014] ICGJ 471.

²³ World Trade Organization, *European Communities Measure Prohibiting the Importation and Marketing of Seal Products*, Appellate Body Report WT/DS400/16/Add.7 WT/DS401/17/Add.7 (October 16, 2015).

²⁴ World Charter for Nature, available at: file:///C:/Users/Administrator/Downloads/A_RES_37_7-EN.pdf (Last visited on October 27, 2020).

²⁵ The Earth Charter, available at: <https://earthcharter.org/read-the-earth-charter/preamble/> (Last visited on October 27, 2020).

²⁶ *Supra* note 1 at 14.

²⁷ *Ibid.*



*infringements of its provisions may lead to a ban on keeping animals, breeding animals, handling animals commercially, or trading in animals*²⁸. Austria and Switzerland have progressively inculcated animal welfare legislations into their legal systems as they have always equated the well-being of animals to that of humans, and “*under their legal system animals are never considered to be as creatures that are subservient to humans*”²⁹. UK, Germany and Hong Kong have been seen adopting similar values as Austria and Germany into their legal regime. Thus, such stringent measures can be taken as an example for more evolved animal welfare practices globally.

ANIMALS AS LEGAL PERSONS

A pertinent question that still remains unanswered though, is whether the protection of animal welfare and the issue of their humane treatment, has achieved the status of a generally binding international norm, in the form of customary international law? But the answer and a clear absence of its reflection in the civilized legal system today is something that we should zero in on. Most of the legal systems do not even recognise Animals as “**legal persons**”³⁰ and hence, these animals are generally kept out of the purview of any protective legislation, thereby implying lack of accountability. “*Against the background that corporations can be persons for purposes of domestic commercial law, and that the legal status of humans has changed from objects to subjects of international law,*

there is no intrinsic conceptual barrier to assigning international legal personality to animals—basically because personhood is a purely technical juridic device, a legal fiction”³¹. One of the core values behind the genesis of rights is protection but when protection is itself under the scanner, granting of rights becomes a vital issue that needs to be addressed.

CONCLUSION

Martin Luther King rightly said that, “*Injustice anywhere is a threat to justice everywhere.*” Henceforth, equality before being granted, is a reverence bestowed upon all living beings by nature. “*No creature on earth, has more, or less right of existing with dignity.*”³² It has been well established above, that there are various proposed international and national mechanisms to put an end to this horrifying trajectory of animal abuse. Now, a serious question arises, as to where are we lacking in implementing these mechanisms to finally put an end to this contemporary issue of animal abuse.

²⁸ *Ibid.*

²⁹ *Id.* at 15.

³⁰ Catherine Sykes, *The Beasts in the Jungle: Animal Welfare in International Law* (2011) (Unpublished LL.M. thesis, Dalhousie University).

³¹ Anne Peters, “Toward International Animal Rights”, in A. Peters (ed.), *Studies in Global Animal Law* 109-120 (Springer, Berlin, Heidelberg, 2020).

³² Anthony Douglas Williams, *Inside the Divine Pattern*, available at: <https://www.goodreads.com/quotes/7809632-not-a-single-creature-on-earth-has-more-or-less> (Last visited on October 27, 2020).