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## CONSIDERATION OF ANIMALS AS LEGAL PERSON

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Ambika Swain, KIIT School of Law

### ABSTRACT

Animal cruelty stories make headlines every day, whether it's the man who kills a rat or cat, or the dog being tied with a chain outside in a cold winter. Animal cruelty can take many different forms, including simple neglect, gross neglect, intentional abuse, animal hoarding, organised abuse, ritualistic abuse, or animal sexual assault.

Animal cruelty cannot be ignored since it has been shown to have major repercussions, from the fact that it is associated with other crimes to the fact that these actions inflict animals that cannot speak for themselves great suffering.

The concept of considering animals as legal persons is a relatively new and controversial idea. At its core, the idea is to grant certain legal rights and protections to animals that are typically reserved for human beings.

The argument in favour of this idea is that animals are capable of feeling pain, suffering, and pleasure, and therefore deserve certain legal protections. By granting animals legal personhood, they would be recognized as beings with intrinsic value and deserving of respect and protection. This could include protections from cruelty, exploitation, and neglect.

However, the concept of animal legal personhood raises many questions and challenges. For example, what specific rights and protections should animals be granted? How would these rights be enforced? How would this impact the industries that rely on animals for food, entertainment, and research?

## **COUNTRIES CONSIDERING CERTAIN ANIMALS AS LEGAL PERSON**

Currently, a few countries have recognized certain animals as legal persons, including New Zealand, India, and Argentina. However, these laws are still relatively limited in scope and the concept of animal legal personhood is still a subject of debate and exploration.

The concept of considering animals as legal persons is an emerging field of law and ethics that challenges the traditional view of animals as mere property or objects. In recent years, the notion of giving animals legal personality has gained popularity, especially in the wake of campaigns for animal rights and welfare. Some countries, such as New Zealand and India, have already recognized certain animals, such as chimpanzees and dolphins, as legal persons, while others, such as Argentina and France, have recognized animals as sentient beings with legal rights.

They might be animals but in India they now have human rights. It was all possible because of the decision taken by a judge in a State High Court.

Justice Rajiv Sharma of Punjab and Haryana High Court stated that all the animals have honour and dignity. To safeguard and advance the welfare of all animals, including birds and water-based creatures, the law must be given the status of a legal body or a person. All species have an intrinsic right to exist, and this right must be maintained. The ruling by the Punjab and Haryana High Court is a big step forward in Twitter. It has been wonderfully stated by a man named Arindam Goswami that the decision may not be “the solution but this is surely a beginning. This may not stop killing animal altogether but will surely reduce cruelty towards animals. Well done judiciary!”

But others think the judge has lost his mind and asked whether the focus should be on improving the rights of people before those of animals now. This is not the first time animals have been declared legal entities. Last year the same judge made a similar ruling in the neighbouring state of Uttarakhand and the year before that Justice Sharma declared the River Ganges is equal to a person and a legal entity but not everyone believed that 2017 ruling carried much legal weight.

Environmental activist Vimlendu Jha stated that nothing will change unless and until the State machinery, the Government machinery, and the Government structures act on things that they were already required to do. They were supposed to clean the Ganga, the primary source of water and livelihood for nearly thirty to forty percent of North India. The river Ganges decision

was overturned a few months after it was made. The latest ruling on animals could see a different outcome because it includes an extensive list of specifications about how animals should be treated there's a limit to the load and animal can carry sharp instruments cannot be used on the animals. An animal can only pull a vehicle when the temperature is less than 37 degrees or more than 5 degrees and they should not be walking for more than 2 hours. Animals pulling carts on the road have the right of way and must be wearing fluorescent reflectors. Animals should have access to shelter and not be kept starving so if enforced this ruling should mean humane treatment for animals but does this really give them human rights.

Writs of Habeas Corpus were filed on behalf of 4 captive Chimpanzees in New York by an advocacy group led by Steven M. Wise. The name of the Project was "Nonhuman Rights Project". The lawsuits were dismissed but Mr. Wise declared he would appeal. He thinks that the past use of Habeas Corpus cases as a weapon against human slavery provides a blueprint for how to fight for legal rights for Nonhumans to end human enslavement. Mr. Wise contends that chimpanzees are sufficiently similar to humans to warrant the grant of some legal rights. He doesn't seek to create a fully-fledged planet of the apes, but rather a restricted right to bodily liberty. The cases demanded that the chimpanzees be set free to go to sanctuaries where they would have more freedom.

Have you ever felt pain? Let it be yes or no but never believe that animals suffer less than humans. The pain is same for them as it is for us. Even worse because they cannot help themselves. Animal rights is the thought process that all animals have basic rights like all human beings and they do not deserve to be killed at our hands or made to be suffered. It is preferable to avoid thinking of animals as our goods at any cost. It is wrong to view animals as our resource. If we can accept the fact that animals are not born to be killed or exploited at our hands, we can approach a human view of treating animals and can then genuinely discuss the rights of animals. Our conduct towards animals will be immoral and unpleasant if we accept the incorrect belief that they are products we utilise. We will be incredibly indifferent, which is the antithesis of what it is to be a person, if we believe animal species have no moral standing. The improper way of thinking can make it difficult to comprehend and reason about anything in our lives. Animals are living creatures. They too feel pain and suffering. Considering the idea of animals having rights is therefore not irrational. When we think about animal rights, thousands of animals are kept in farms and slaughter houses. Some animals are taken to farms and people do different kinds of experiments with them. Sometimes they also kill the animals with the experiments. Millions of animals are subjected to cruelty by humans every year in

laboratories. Hence it is barbaric to meaninglessly kill animals in the name of research. People should never believe that animals are useless dumb creatures. They too have a soul. Their emotions may not be as nuanced as those of humans. Humans are different than other animals. We have a moral compass and try to justify the events around us, hence when we think about any living creature being hurt it makes us sad. We should not kill or capture animals. We can peacefully handle them. Animals are soulful creatures.

## **PROPERTY STATUS ISSUES**

The animals' property position has certain inherent problems or flaws. The first is that the legal classification of animals has failed to keep up with advances in science, technology, and current philosophical knowledge. They, the animals, have been acknowledged as property from the time when all of the world's greatest and most educated philosophers believed that humans had been given sovereignty over all animals by God himself. It was also considered that they lacked moral standing due to their lack of rationality and autonomy. But, current philosophers' perspectives have shifted. He claimed there that because both people and animals have the potential to suffer, feel pain, and enjoy pleasure, their interests should be given equal moral attention. Scientists have come to recognise that humans evolved from other animals since Darwin published his theory of evolution and different species of animals exhibit diverse degrees of sentience.

The second difficulty with animals as property is that they appear to be misclassified as such. They are distinct from other types of transportation such as cars, buses, and land because, unlike inanimate objects, they can operate independently. People can also endure and engage in intellectual agony to varied degrees. When they are classified in this category, the law has objectified them. Once it is agreed that they have varying degrees of consciousness and so ethically important interest, it becomes difficult to justify treating such beings as objects.

Because they are classified as property, they cannot acquire legal personality, which is required for having and enforcing legal rights. Without any legal rights, even minor legal rights of humans can easily trump the rights of animals.

In today's globe the animal welfare rights do exist but instead of forbidding the exploitation they are regulating it e.g. the recent beef ban in India. Furthermore, they do not apply to all animal species equally. In India, for example, one can murder a chicken without a permit and eat it without facing any legal consequences, but butchering a cow and using its meat for

culinary purposes without a legitimate licence from the government can result in severe legal consequences. However, the protection provided by various laws is enforced by philanthropic groups, such as PETA, who rely on donations.

### **LEGAL PERSONHOOD LIMITED TO HUMANS? NO**

It is worth noting that the notion of legal person-hood is not necessarily equivalent with, nor limited to, human beings. Legal personality, in the formalist perspective, is a made-up concept that is not exclusive to humans. This clause makes it impossible to argue that animals should not be considered legal people because they biologically belong to the human species.

### **WORLDWIDE ADVANCES IN THE LEGAL STATUS OF ANIMALS**

Many countries, including Germany, Switzerland, and Austria, have altered their separate Civil Codes to change the legal status of animals. These countries have proclaimed that animals are not objects and are not to be the subjects of laws dealing to objects. Several governments around the world are focusing their efforts on changing the legal status of some animals. In the United States, for example, there are litigation attempting to have chimps deemed legal persons so that a writ of habeas corpus can be granted for his liberation.

### **A LIST OF NATIONS THAT NO LONGER CLASSIFY ANIMALS AS PROPERTY**

Many European countries' civil codes contain particular laws concerning the legal status of animals. For instance, Article 285 of Austrian Civil Code, that came into existence in 1988, specifies that 'animals are not objects; they are protected by particular legislation'. It also contains clauses stating that certain rules pertaining to objects are not to be applied to animals unless there is a conflicting provision. Similar provisions can be found in the German and Swiss Civil Codes.

Initially, these regulations appear to have altered the legal position of animals in these countries. Such pronouncements that animals are no longer objects and are not subject to the legal status of objects can easily lead one to believe that the legal status of animals has changed. Nevertheless, this is wrong. While these laws have changed the extent to which animals are subject to the law of objects, they have not gone so far as to classify animals as 'people'.

## **ADDITIONAL ADAPTIVE METHODS**

### **Romania**

In February 2014, an independent MP named Remus Cernea submitted a bill to give dolphins legal personhood. Article 1 of the proposed law stated that the all species of dolphins, in the territory of Romania, receives particular protection with each individual of this species being considered to be a "non-human person". Article 2 of this proposed law defines a non-human person as any being that does not belong to the human species but possesses a developed intelligence, that is the capacity to form complex social relations, and is the bearer of some rights such as the right to life, the right to bodily integrity and to be free of any brutality, the freedom to roam about in their natural habitat, and the right to protection in their natural habitat.

### **India**

There are no special laws in India regulating the legal status of animals, as there are in other European countries. Nonetheless, there are some provisions in the Indian constitution for the protection of animals or animal welfare in the form of Directive Principles of State Policy (DPSP), and there are specific case laws relating animal cruelty protection.

According to Article 48 of the Indian Constitution, the State must work to set up the agriculture and livestock industries along cutting-edge, scientific lines. In particular, it must take action to protect and improve breeds of cows and calves as well as other milch and draught cattle and to outlaw their slaughter.

## **APPROACHES TO CHANGE THE LEGAL STATUS OF ANIMALS**

In general, several countries use two methods or ways to change the legal status of animals in their borders. Austria and Germany Switzerland and Romania are two countries that have used legislation to change the legal status of animals or, at the very least, to remove them from the category of mere objects. Yet, this strategy is vulnerable to political and public backing. To adopt such laws, a large degree of political and popular support will be required; if that support is obtained, it can easily, effectively, and rapidly bring about equitable changes in the personhood of animals.

Nonetheless, countries such as the United States and India have used litigation to attain some form of animal personhood. Instead of waiting for governments to pass animal-related legislation, advocates in these countries are adopting strategic lawsuits. However, it has the

constraint that litigation, from filing claims in lower courts to filing appeals in higher courts, would consume a significant amount of time and resources, the majority of which will be monetary. The outcome of this strategic action appears to be late and slow, but if a court determines a specific animal to be a common law legal person, it will set precedents for obtaining personhood for other animals with similar cognitive capacity and the ability to form social relationships.

Courts play a role in making laws in the common law legal system. While lower courts are required to follow the precedents established by higher courts, higher courts usually have the opportunity to improve by revising old or existing outdated common law concepts. Yet, the usefulness of the litigation strategy should not be underestimated because even unsuccessful action can assist to change cultural views and raise public support and awareness about a particular issue. This can pave the path for further progressive laws.

To make something implemented, there should be strict rules and regulations. Some rules and laws has been stated in our Constitution, Indian Penal Code and in certain acts relating to protection of Animals.

World's 7<sup>th</sup> largest country, India hosting 4 of the world's biodiversity hotspots becomes one of the most bio diverse regions. It is a home to many creatures and species. Animal preservation, protection and welfare has become a priority in the country recently. Animal Protection is preserved in the Constitution of India as a fundamental duty. The Prevention of Cruelty to Animals Act 1960 and the Wildlife Protection Act 1972 are looked into at central level and cattle protection and cow slaughter prohibition legislation are looked into at state level. There are many welfare legislations for animals in India.

All substantive aspects of criminal law are encompassed in the Indian Penal Code of 1860 which is declared as the official criminal code of India. All acts of cruelty towards animals, including killing, poisoning, maiming or rendering them worthless. The laws mentioned above are enacted to prevented undue pain and suffering in animals and in response to changing conditions some laws are still being enacted. In addition to specific statutes, torts law, constitution laws also protect Animals rights.

### **THE CONSTITUTION OF INDIA, 1950**

According to the Indian Constitution of 1950, it is the obligation of every citizen of India to safeguard and improve the natural environment, including forests, lakes, rivers and animals

and to have compassion for all living creatures. Animal preservation is supplemented by Art. 48A's Directive Principle of State Policy. Article 48A may be made enforceable under the scope of the right to life guaranteed by Article 21 even if it is not now enforceable in court.

### **The Right to Life of Animals**

With regard to Article 21, the Supreme Court notably held:

Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. 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."

It states: The state will work to conserve and improve the environment, as well as to protect the country's forest and animals.

The 42<sup>nd</sup> Amendment introduced both of the aforementioned constitutional protections in 1976.

While they are not immediately enforceable in Indian Courts, they do establish the framework for legislation, policies and government directives promoting animal protection at the national and state levels.

### **LEGAL SOURCES**

The Constitution, statutes (legislation), customary law, and case laws are the basic sources of law in India. India is a federal union consisting of 28 states and eight union territories. The individual states are controlled by their respective state governments, whilst the Union Territories are federal areas directly governed by the Indian central government. The Parliament of India is the country's top legislative body, whereas each Indian state has its own State Legislature. Laws are enacted by Parliament for the entire country, state legislatures for individual states, and union territory legislatures for individual union territories. Only the Indian Constitution can check and control central laws established by Parliament. State laws can be overruled.



In addition to these basic statutes, there is a significant corpus of secondary legislation, such as rules, regulations, and by-laws made by Central/State governments and local authorities such as municipal corporations and gram panchayats (local village bodies). The three branches of government in India are vested with diverse functions due to the division of powers between the Legislature, Executive, and Judiciary parts of government. While the legislative has the primary responsibility for drafting law, the Executive branch is sometimes granted the responsibility to draught legislation, which is known as delegated legislation.

India adheres to the common law system, which is based on recorded legal precedents handed down by the British colonial. As a result, it places a high value on precedents and case laws in the formation of law and jurisprudence. Judicial decisions of higher courts, such as the Supreme Court of India and High Courts of various States, carry great legal weight and are binding on lesser courts.

India is a land, rich in religious and cultural diversity. As a result, some personal laws, local customs, religious texts, and conventions that do not violate statute, morality, public policy, or larger societal welfare are recognised as having a legal character and are taken into account by courts in the administration of justice.

### **DISTRIBUTION OF AUTHORITY BETWEEN THE CENTRE AND THE STATES**

Article 245 of the Indian Constitution states that, pursuant to the Constitution, the Indian Parliament may adopt legislation for the entire or a portion of India's territory. India's territory consists of states, union territories, and additional areas such as enclaves inside India.

Article 246 specifies the subject matter of laws enacted by Parliament and state legislatures. The subject matter is divided into three lists in the Seventh Schedule:

The following issues have been assigned to the State and Concurrent List in the area of animal rights.

1. The Union List: The Parliament has the only authority to enact legislation pertaining to the issues included in this list.
2. The State List: Laws pertaining to the issues listed in this list may only be passed by state legislatures.
3. Concurrent List: The items on this list may be the subject of laws passed by both the

Parliament and State Legislatures.

The States have the authority to preserve, protect, and improve stock, prevent animal diseases, and enforce veterinary training and practise, according to Item 15 of the State List.

Both the Centre and the States have the authority to legislate on the following items on the Concurrent List:

1. Item 17: "Prevention of cruelty to animals."
2. Item 17B: "Protection of wild animals and birds."

### **THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960**

The Prevention of Cruelty to Animals Act 1960 is India's primary cruelty statute. The Act's goal is to prevent unnecessary pain or suffering on animals and to reform legislation connected to animal cruelty prevention. Any living being that is not a person is considered an "animal" according to the Act.

In accordance with Chapter II of the Act, the Government of India formed the Animal Welfare Board of India (AWBI) with the functions of offering suggestions to the central government on improvements and best practises to minimise needless suffering caused by shipping, using animals in research, and maintaining animals in captivity. Assistance with funding, adoption centres, and facilities for old animals was also a measure taken by the board. Offering advice to the government on legislation governing animal hospitals and medical services. Educating the public and increasing their understanding of humane animal handling. Making broad suggestions on animal welfare to the federal government.

The Act defines various forms of animal cruelty under Section 11:

Any animal being beaten, kicked, overpowered, overburdened, tortured, or subjected to needless suffering. Putting an ailing, wounded, or unsuitable animal to work (both the owner and the user are subject to penalty. Giving any animal a harmful drug or medication can also lead to death of that animal. Inflicting pain and anguish on an animal while transporting it in a vehicle. Placing any animal in a cage without giving it a chance to move about comfortably. Suspending an animal for an inordinate length of time on an excessively long or heavy chain. Keeping an animal in complete and routine confinement without giving it a chance to exercise.

However, the Act does not deem the castration or dehorning of cattle in the approved manner,

the killing of stray dogs in lethal chambers in the specified manner, or the killing of any animal by order of the law to be cruel. There is a great deal of freedom in this Section.

The Act's Part IV discusses animal experiments. Animal experimentation is not prohibited by the Act when it is done to better understand physiology or to fight illness, whether it affects people, animals, or plants. A Commission for the regulation and supervision of animal experiments is to be established by the federal government, with the power to halt research if required.

The fine for animal cruelty is Rs. 10, which can go up to Rs. 50 after the first conviction. A subsequent conviction within three years of a prior offence is punished by a fine of Rs. 25, which may not exceed Rs. 100, a three-month sentence in jail, or a combination of the two. Phooka or any other technique to stimulate nursing that is hazardous to the animal's health is punished by a fine of Rs. 1000 or by up to 2 years in jail, or both. Additionally, the government has the power to forfeit, seize, or kill the animal. A fine of up to Rs. 200 may be imposed for any infringement of the committee's animal testing policy.

## **CASES RELATED TO ANIMAL PROTECTION AND WELFARE**

### **1. Animal Welfare Board of India v. A. Nagaraja & Ors.**

Animal Welfare Board of India v. A. Nagaraja & Ors<sup>1</sup>, the case where Supreme Court gave a broad interpretation of the law on animal rights and brought certain of them under the purview of the right to life. The Supreme Court found in favour of the AWBI and affirmed the application of the Jallikattu prohibition. It asserted that Article 51 A (g) of the Constitution is the "magna carta of animal rights" and provided a number of recommendations to protect the "life" of animals under Article 21.

### **2. Abdul Hakim Qureshi v. State of Bihar (1961)**

The Supreme Court considered a plea in Abdul Hakim Qureshi v. State of Bihar (1961)<sup>2</sup> that questioned the constitutionality of the laws in the state of Bihar prohibiting cow slaughter. By denying Muslims the opportunity to freely practise religious customs like killing cows on Bakr-Id Day, the petitioner argued that the regulations violated their basic right to freedom of religion (as guaranteed by Article 25). The Supreme Court of India

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<sup>1</sup> Animal Welfare Board of India v. A. Nagaraja & Ors, (1949) 6 SC 648 (India).

<sup>2</sup> Abdul Hakim Quraishi And Others v. The State Of Bihar, (1961) 2 SCR 610 (India).

ruled that no Islamic source, including the Hidayah and the Quran, made it compulsory of the killing of cows; alternatively, a goat or a camel might be offered. The Court concluded that a complete prohibition on cow slaughter did not violate Muslims' right to freedom of religion. The Court ruled that the rules only apply to cows, calves, and other animals that have the ability to provide milk or that can function as drought resistance in the framework of Article 48. Thus, Article 48 does not forbid the killing of any and all cows or animals.

### **3. Sachidanand Pandey & Ors. v. The State of West Bengal & Ors. (1987)**

The Supreme Court ruled in *Sachidanand Pandey v. The State of West Bengal & Ors.* (1987)<sup>3</sup> that anytime a case involving the conservation of the ecosystem is filed before the Court, Article 48A must be taken into consideration.

## **CONCLUSION**

As we all know, having legal personality entails having the right to sue or be sued, which means that a legal person can sue on his or her own behalf and can be sued by another legal person. Yet currently, granting these legal rights or recognising anything as a legal person has a broad horizon to span. Giving non-humans personhood became a point of contention, much as giving animals personhood for the sake of protecting them from mistreatment. Yet, granting personhood to all animals could cause major problems for non-vegetarian people. This would be a violation of their right to life, as everyone can live their life anyway they want. The study suggests that certain basic legal rights against animal abuse be granted, but not complete personhood.

With the adoption of the 42nd Amendment to the Indian Constitution in 1976, India made a proactive choice in laying the groundwork for animal protection. Animal protection laws have been passed both at the federal and state levels as a result of the constitutional provisions defining the need to protect animals, with the Prevention of Cruelty to Animals Act of 1960 being the most noteworthy example. A substantial body of legal scholarship in the area of animal law has also been established by Indian courts over the years.

In India, there is still more work to be done before animal law is properly established on a firm foundation. Animal protection provisions in the Indian Constitution are still regarded as concepts rather than as binding legislation. The Prevention of Cruelty to Animals Act of 1960

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<sup>3</sup> *Sachidananda Pandey v. State Of West Bengal & Ors*, (1987) 2 SCR 223 (India).

imposes penalties for cruelty to animals, but they are not severe enough to effectively prevent such offences. The statute has a number of clauses that give room for responsibility to be avoided and is not severely enforced. To provide India a stronger animal protection law, significant improvements must be made in this area.