

# The Legal Status of Animals in India



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# The History of Animal Rights



- The concept of animal welfare predates animal rights due to the fact that animals are regarded, in many laws, as property.
- The concept of animals as property of human beings is a relic of Roman Law.
- However over the years there has been a lot of debate on the ethics of treating animals as property, chattel.
- Primarily because animals are “***sentient***” beings in their own right –The distinction is primarily based on whether or not the being with rights can think and feel emotions.
- This has been criticized as far too simplistic a distinction.

# Cultural trends



- Historically 2 distinct trends have emerged. While Western thought differentiated animals and humans as separate entities and where animals are seldom, if never, revered – Eastern culture sought to believe that animals and humans form a continuum and are sometimes revered as deities.
- Exceptionally in the west, Greek mythology contains several references to animals and humans living together, half man – half animal deities etc.
- Similarly much of Asian mythology contain stories of similar part animal deities. Even native cultural beliefs in all over the world respect and revere animals to a great degree.
- Western mythology only view animals as companions and farm equipment, their utility is limited in that respect and are never elevated or kept *at par* with humans as they often were in Greek, Eastern or native cultures.

# Legal Personhood to Animals



- **“Personhood”** is a complex concept, and it’s relevance and practical application is heavily debated. At it’s most simple form it is the treatment of animals at par with humans in every aspect. Including, for the purpose at hand, as having obligations and rights as individual humans do.
- Rivers and deities have been conferred “personhood”
- There is a strong belief that granting legal personhood to animals will ensure proper protection under the law and ensure the proper implementation of anti-cruelty laws.
- The **difference between animal welfare and animal rights** is that while welfare focuses on minimizing an animal’s suffering, animal rights believes that animals are individuals who are entitled to justice.

# Legal Personhood to animals



- It is a dated concept that only human beings are “persons” in the eyes of law, in the past even women and slaves were regarded to be property.
- In current practice, corporates, ships and even estates have come to be regarded as legal persons for various purposes. In India deities are persons in law who can sue and be sued
- Currently with pressure mounting to revise the minimal punishment given for acts of cruelty, a look at legal standing to animals is more relevant than ever before.
- It is natural that giving animals legal standing will do more than just lend them a voice that status quo allows. It will ensure that there is justice to animals who are victims of cruelty and put an end to the minimal punishments that simply pay lip service in the guise of welfare.



- While anti-cruelty and animal conservation legislation in India is based solely on animal welfare, there has been considerable progress towards granting animals tangible rights.
- It is clear that as the Courts continue to interpret these animal welfare laws in the context of Constitutional Rights and Duties, we are moving towards a future where it may be understood that animals also have certain rights that people cannot and should not violate without attracting criminal action.

# Constitutional Duty to treat animals with compassion



- The Constitution of India, 1950 under the Part IV Fundamental duties at Article 51A(g) states that “The State shall endeavour to “–
- “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;”
- Fundamental Duties are not immediately enforceable. However, the Hon’ble Supreme Court has made them enforceable in various decisions by reading additional meaning into the Fundamental Rights.
- In ***Francis Coralie Mullins v. Union of India*** 1981 SCR (2) 516, the Hon’ble Supreme Court declared that the Right to Life goes beyond mere existence and includes a **Right to live in dignity**. Thus, the Article 21 Right to Life is no longer purely a Civil and Political Right but has been interpreted by the Courts to further the ends of social justice.
- Therefore, there may be scope for the reading of the Article 51A(g) obligations into law and this has been done in many animal welfare decisions by the Hon’ble Supreme Court and Hon’ble High Courts.

# The Prevention of Cruelty to Animals Act of 1960



- The Prevention of Cruelty to Animals Act of 1960 was enacted with the view to ensure animals are treated without cruelty, free from infliction of unnecessary pain and suffering. The underlying concept of the PCA Act is dignity – in that human beings are dignified only when animals are treated without cruelty. It is therefore within human self-interest to treat animals with kindness.
- It is the status of the animal in relation to human beings which is the key
- The Act defines animals, owners and sets out the duties and obligations of animal “owners” – at Sections 3 and 11, acts that are cruel to animals are extensively described and made punishable. It is notable that these sections apply to not only animal owners but all individuals who are found to have been cruel to animals.
- The Act calls for the creation of an Animal Welfare Board, Society for the Prevention of Cruelty to Animals (SPCA) in each state and contains provisions at Part IV and Part V to ensure there is no cruelty or harm to animals used in experimentation and as performing acts.
- Be it noted that it is **not a rights based** legislation **but only** a welfare **(animal welfare legislation)**



# The Wildlife Protection Act of 1972



- The Wildlife Protection Act of 1972 was enacted in order to protect and conserve wildlife in India.
- It contains provisions to counter illegal poaching, hunting and killing of wild animals and includes schedules detailing endangered or otherwise protected species such as Elephants, Bengal Tigers, Lions and other wild animals that are threatened due to poaching and hunting.
- The Act specifies the setting up of sanctuaries and natural parks etc. to aid the conservation effort and calls for the appointment and creation of a Chief Wildlife Warden and Wildlife Advisory Board for the purpose.

# The Wildlife Protection Act of 1972



- Chapters V and VI set out the penalties for the sale, purchase and undeclared possession of animal articles, trophies and similar items.
- However, in 2015 the procedure contained to declare certain animals as vermin under Schedule V of the Act led to indiscriminate killing of Nilgai, Wild Pig and Rhesus Macaques as vermin in the states of Bihar, Uttarakhand and Himachal Pradesh. This calls into question the very purpose of such a procedure and the potential it holds for abuse in this law in a manner to the detriment of animal welfare and animal rights.
- All in all the WPAct is to preserve species in the interest of human beings so that ecology is preserved in the interest of human beings and in particular the male human beings

# Other legal remedies



- Flowing from the theory that animals are “property” under the law, remedy is available under Section 506 of the Indian Penal Code (IPC) which deems criminal intimidation to life and property as a punishable offence.
- Remedy to cruelty to animals is also available in the IPC under section 428 and 429 which makes it punishable to kill or injure any animal – including strays.
- In India, animal testing is illegal under The Drugs and Cosmetics Act of 1945 under the Rules in Rule 148 C and 135 B.

# Significant legal cases: *AWBI v Nagaraja*



- Animal Rights Jurisprudence in India had mostly followed the animal welfare route deciding on the basis of provisions in the Prevention of Cruelty Act and the Wildlife Protection Act
- Multiple Public Interest Litigations and Writ Petitions have been filed praying for relief on the basis that cruel practices towards animals – be it animal sacrifices, performing animals, maintaining failure to maintain the highest standards of care in the poultry and livestock industry etc. violate an animal's right to live a life free from cruelty and dignity.
- While a majority of these judgments were rendered along the lines of safeguarding animal welfare, the **2014 *AWBI v. Nagaraja*** was the first judgment to take a step towards granting animals rights, similar to the Right to Life guaranteed to Indian human citizens. This decision was the first to develop the concept of dignity for animals.

# *AWBI v. A. Nagaraja: Jallikattu*



- ***Animal Welfare Board of India v. A. Nagaraja*** (2014) 7 SCC 547 was a challenge to the use of bulls and bullocks in multiple events across the country, notably bullock racing in Goa and Karnataka and Jallikattu bull-fighting in Tamil Nadu.
- The SC Bench sought to elevate animal as “rights-holders”, recognizing their right to dignity and live lives free from cruelty.
- It held that the sport of Jallikattu and the practice of bullock racing is cruel by the definition in Section 3 and Section 11 in the Prevention of Cruelty to Animals (PCA) Act for the simple reason that Bulls are not performing animals or indeed accustomed to the rigour of long hours on their feet undertaking strenuous activity and making them run inflicts cruelty on them.
- Taking into account the cruelty suffered by animals as defined in the PCA Act and the Constitutional Duties under Article 51 (g) is to treat animals with compassion, the SC held the practice bull racing with the cruelty suffered by the bulls is a violation of the Fundamental Duty in Article 51A(g) read with the Article 21 Fundamental Right to Life

# *Gauri Maulekhi v. Union of India*



- *Gauri Maulekhi v. Union of India W.P.(C).No.881/2014* examined the legalities of animal sacrifice during the Gadhimai festival in Nepal which is said to have caused the cruel deaths of hundreds of thousands of chickens, goats and buffalo at its peak.
- The Supreme Court declared the practice of animal sacrifice of the scale practiced during the Gadhimai festival to be “demeaning and cruel”, declared a ban on the export of animals to Nepal without proper licenses.
- The SC noted that Indian animals shouldn’t be subject to such cruel treatment –and ensuring that the State carry out its responsibility to ensure that animals are not subject to any cruel treatment.

# Implementation of Animal Birth Control Rules



- In several states Municipalities have the power to destroy animals, including those who have rabies. The power is unguided. It has been sought to be used to destroy stray dogs
- PILs were filed in the Mumbai and Karnataka High Courts preventing such destruction of stray dogs
- SLPs against those judgments are currently being heard before the Hon'ble Supreme Court. Animal Rights organization have pressed for reading PC Act along with the Animal Birth Control(ABC) Rules. They press for the enforcement and implementation of the as a logical, humane and efficacious method (spaying dogs) to quell the problems associated with stray dog-human conflict.
- In the meantime the issue in Kerala, where has become very inimical on accounts of reports of stray dogs attacking human beings
- The Hon'ble Supreme Court has taken notice of the shocking incidents of violence in Kerala and other states and urged for humane methods to control overpopulation. The matter is pending final disposal

# Battery Chicken Cages



- FIAPPO had instituted writ petitions in the High Court of AP, Punjab, Maharashtra and Uttar Pradesh calling for the phasing out of severely restrictive and cruel battery chicken cages in the poultry industry.
- Measuring just as much as an A4 size paper, these battery chicken cages allow poultry farmers to stack several chickens in cages in a small space and the practice has continued on a false and insufficient basis that it increases productivity of the poultry farms.
- It is universally recognised that battery caged chickens are more prone to disease, generally unhealthy and suffer a great amount of stress and distress due to the cruelty they are subject to in the cramped and often severely dirty cages.
- The Hon'ble Supreme Court in 2016 decided to allow the transfer of all these various petitions to a single forum, that is the Delhi High Court, where the matter is pending



# Temple Elephants



- PeTA filed petitions challenging the cruel and inhumane treatment given to elephants in temple festivals, especially in Kerala before the Kerala High Court and the Supreme Court of India.
- The Hon'ble Supreme Court in 2015 took note of not only the visible suffering of the animals from the injuries visible on photographs taken during the festival but also the deep mental and psychological suffering of the elephants. Further, it went on to state that if one were to treat the elephants cruelly they would be held in contempt.
- In 2016, the AWBI compiled a report of the treatment of elephants in April's Pooram festival and found that there were many continued violations of the Hon'ble Supreme Court's order. This prompted the Hon'ble Kerala High Court to declare it is prohibited any elephants who were unfit to walk in the parade.

# Regulation of slaughterhouses



- A large batch of petitions are currently being heard by the Hon'ble Supreme Court filed by several Animal Welfare NGOs and concerned groups regarding the implementation of slaughterhouse rules to ensure that animal slaughter is performed with minimum pain and cruelty and with the highest standards of hygiene and safety.
- However this petition has been disposed off with an order that the issues may be taken if there is a violation of rules and laws

# How do we secure rights for animals?



- The underlying philosophy of the animal welfare laws is welfare.
- Moving forward, the biggest challenge lies in the implementation of the positive interpretations of anti-cruelty legislations put forth by the Hon'ble Supreme Court and High Courts in India.
- The *A. Nagaraja* judgment has allowed greater engagement with the legal process to secure basic rights for animals.
- The positive affirmation of the Right to a life of dignity to animals in the judgment has translated to greater awareness and also opened the road for similar victories to other animals in cruel and inhumane situations.
- This is the way forward jurisprudentially