

Addressing Juridical Discrepancies in the Establishment of a Rights-Oriented Framework for Animal Treatment and Protection

Mr. Ashok Karnani^{1*}, Mr. Ashok Prem²

^{1,2}Assistant Professor-RNB Global University-Bikaner

*Corresponding Author: Mr. Ashok Karnani

*Assistant Professor-RNB Global University-Bikaner

ABSTRACT

As per the report of Federation of Indian Animal Protection Organization (FIAPO) and All Creatures Great and Small (ACGS), 4, 93,910 animals fell victims to crimes committed by humans from 2010 to 2020. The nature of these crimes included beating, physical abuses, intentional violence, acid throwing, irreparable harm and unnatural sex.

These facts and figure pertain to a country where we personify animals as God in our ancient scriptures and succeeding civilizations and some of those traditions are still in practice symbolically. This reality raised a very fundamental question about our societies' sensitivity towards living creatures. The core reason behind this sad reality is that humans have always undervalued non-human beings and never accorded them their intrinsic rights as available to themselves.

If we investigate Indian legal system, it has accommodated animals' concerns in constitution and in statutes also. However, the spirit of these laws have not translated into actionable reality. Now the question is if laws are not working to bring a social change where all living creatures may become entitled to natural rights of their survival then what else could bring that change. In this context, there could be two reasons, whether the development of laws failed to keep pace with the imperative of rights based approach or implementation mechanisms are ineffective.

In this unfortunate reality, there is a pressing need to move towards the rights based approach to animals instead of doing welfare for animals that too for humans' needs. . This transition requires revisiting the philosophies towards animals' rights and to find workable means and methods to bring social change where non-humans and humans could live in harmony instead of conflict.

This research paper intends to revisit the traditional and modern philosophies towards rights of animals and to highlight the reasons behind the existing gaps between the legal and constitutional mandates towards animals' rights and the existing status where violence against animals are very common. In addition, it seeks to suggest a set of workable solutions for the protection of rights of animals.

Keywords: Rights based approach, animal rights, animal laws, Indian traditions on animal protection

Introduction

Social attitude towards animals are very complicated and confusing. On one hand for some people animals are just like their family members and for others animals are commodity or property for monetary benefit, entertainment and self- interest. Human society commonly agrees with the notion that it is wrong and immoral to inflict unnecessary pain and suffering to the non-humans however, at the same time animals are

put to all sorts of context, which could not be justified as necessity¹. This is because of the different status in legislations given to the human and non-human animals. The embedded notion of superiority of humans treat animals as objects for the welfare of human beings.

The most prominent one is thinking and reasoning capabilities in humans based on which they acclaimed the supremacy over animal kingdoms. Due to the self-acclaimed supremacy, humans started using animals for their personal use and benefit at the cost of others' life in some cases and without even providing them environment for their survival. While doing so humans forgot the basic facts that each and every single species has equal value in maintaining ecosystem notwithstanding the fact that they have reasoning capacity or not. However, some great thinkers have discarded reasoning capability as a justification for degrading animals. Kant in his lectures on ethics stated that, *"If a man shoots his dog because the animal is no longer capable of service, he does not fail in his duty to the dog, but his act is inhuman and damages in himself that humanity which it is his duty to show towards mankind. We can judge the heart of a man by his treatment of animals."*²

In this context, argument of Jeremy Bentham is significant to mention, 'ability to suffer rather than to reason should inform the way law treats animals'. This argument contravenes the arguments of speciesism³. Bentham advocated the rights of the animals on the ground that animals can also suffer even if they cannot talk or not have reason like humans. Peter Singer, rationalist philosopher objected philosophies of speciesism, favoring one's own species by saying as racism violates the principle of equality by giving greater weight to the interest of their own members and subjugate others likewise favoring interest of human species to override the greater interests of members of other species is equally wrong and this practice should be discouraged⁴.

On the question of reason also, scholarly and popular work on animal behavior suggested that many of the activities that have thought to be limited to humans is practiced by non-humans also in natural way. Non-human species possess lasting ties with their family folks. Orangutan mothers live with their young ones for around ten years and continue to their bond even if they part company with each other. Solitary animals like chimpanzees, baboons, wolves, and elephants do maintain extended family, built on unique relations, and hold the bond for long. Researches in the area of animal psychology and their social stratifications validate the idea that they also possess power of logic and tender feelings for their near and dear ones. Trying climate of the Kalahari desert made animals like meerkats, also known as suricats, depend on group cooperation from extended family to withstand the adversities of the climate. They even prefer to stay with fatally ill and injured members for their care and they often do it at the cost of their own safety. The category of animals known to develop long bonds suffer after the departure of their parents. Charles Darwin ideates in his magnum opus the Descent of Man that grief of female monkeys are "so intense due to death of their young ones that they undergo certain kinds of death" processes in themselves. Jane Goodall's report of the death of the healthy 8-year-old chimpanzee Flint just three weeks after the death of his mother Flo also alludes that sorrow can have a devastating effect on non-human animals. From the above-mentioned examples, it is possible to say that many human traits are found in animals. Carl Safina in his book 'Beyond words: How Animals Think and Feel' explained these capacities possessed by non-human animals.

Status of animals in human societies influences by different philosophies and unfolded knowledge about animal kingdom and their role from ecological perspective.

Animal as Property:

If we approach the animals and their rights from ecological perspective, we find that it deals with people's choices regarding people's relation with the environment and the effect of those choices on people's lives. In addition, animals under this approach are elements within the environment. However, ecologists and environmentalists are to some extent successful in drawing attention of the world community towards the vulnerability of some animals and the required protections for them. This concern regulates the behavior of human beings with the help of criminal law. Nevertheless, this kind of protection towards animal is not

¹ Gray L Francione, Animals-Property or Person, available at <https://core.ac.uk/download/pdf/76622908.pdf>

² Animal Welfare in different Human Cultures, Traditions and Religious Faith, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4093044/> last visited on 19/10/2021.

³ This philosophy based on the view that only humans are morally considered no other species.

⁴ The Moral Status of Animals. Available at <https://plato.stanford.edu/entries/moral-animal/> last visited on 19/10/2021.

because rights of animals on their own account⁵.

There are differences of social, cultural, and physiological factors between humans and non-human animals. Man is the measure of all things particularly in reference to difference between human and other species of the world to claim supremacy of the human beings. This self-claim helps humans to construct and legitimize the hierarchy that reflects the interest of the human beings in preference to other living beings. This preference has been achieved through the assertion of the primary distinction based on 'reason'. Otherwise, it would be accounted for racism, which has been used as an ideological legitimization regarding violation of animals' rights. In other words, this assertion projected animals as property.

Welfare based Approach towards Animal:

Scholars advocated welfare-based approach for protection of rights instead of conferring personhood. Legal systems are evolving regarding animals for manifold reasons. One major reason for its evolution is shift from the egalitarian society to urban society. With this change, relatively few are involved in owning animals for economic utility rather now they own animals as companion for emotional utility. Second reason for this transformation in legal system is the advancement of scientific understanding about animals' mind and capability. Therefore, for protection of animals' rights and liberty restructuring of the laws are not required in terms of conferring personhood on animals. Instead, enforcement of existing laws that prohibit inflicting unnecessary pains on animals and ensuring their welfare are important.

As in Lavery's appeal while rejecting their prayers to consider non-human as legal person, third department held that, "our rejection of a rights paradigm for animals does not, however, leave them defenceless. When our laws or their enforcement do not go far enough to prevent animals from being mistreated, we should change our laws or improve their enforcement rather than assert that animals are legal persons"⁶. In this context views of philosopher Carl Cohen is relevant, "animals cannot be the bearers of rights because the concept of right is *essentially human*; it is rooted in the human moral world and has force and applicability only within that world." The connection between rights and duties comes first for the foundation of our society rather solely in analysis of specific obligations and rights for persons governed by our laws. Therefore, personhood arguments for intelligent animals cannot be based on the ground that personhood rights have been conferred on corporations. Because corporations are created by humans as a proxy for the rights and duties of their human stakeholders. Personhood is connected with human society in general rather than on individual-by-individual capacities analysis. Therefore, evolution of legal system to welfare of the animals is required instead of conferring personhood. The focus of this evolution of animal laws should be to make humans responsible in their treatment of animals.

Here the meaning of the animal welfare given by different institutions are relevant. Animal world means how an animal is coping with the conditions in which it lives as defined by the World Organization for Animal Health (OIE). An animal is in a good state of welfare if it is healthy, comfortable, and well nourished, safe, able to express innate behaviour and is not suffering from unpleasant states such as pain, fear, and distress as proven according to scientific evidences. Good animal welfare would include essential features like disease prevention and veterinary treatment, appropriate shelter, management, nutrition, humane handling and humane slaughter or killing. Animal welfare is a function of state of the animal; the treatment they receive such as animal care, animal husbandry, and humane treatment.

The World Organization for Animal Health issued guiding principles on animal welfare, which include the universally recognized —Five Freedoms, published in 1965 to promote the right to welfare of animals under human control. According to this concept, an animal's primary welfare needs can be met by providing: freedom from hunger, malnutrition, and thirst, freedom from fear and distress, freedom from physical and thermal discomfort, freedom from pain, injury and disease, and freedom to express normal patterns of behaviour.

⁵Valerio Pocar, Animal Rights: A Socio-Legal Perspective, Journal of Law and Society, Summer, 1992, Vol.19, No. 2 (Summer, 1992), pp. 214-230

⁶Richard I. Cupp jr., focusing on human responsibility rather than legal personhood for nonhuman animals, 33pace envt. L. Rev. 517 (2016). P. 12.

Right Based Approach toward Animals:

In legal system rights can be available to persons. Noted Jurists defined person in different ways. Sir John Salmond, observed, "Any being whom the law regards as capable of rights or duties." "One who has rights but no duties, or who has duties but no rights, is . . . a person."

⁸ Richard I. Cupp jr., focusing on human responsibility rather than legal personhood for nonhuman animals, 33 *pace envt. L. Rev.* 517 (2016). P. 12.

For Dean Roscoe Pound the "significant feature of legal personality is the capacity for rights." Professor John Chipman Gray observed that "there is no difficulty in giving legal rights to a supernatural being and thus making him or her a legal person." Gray make a proposition that there may be "systems of law in which animals have legal rights . . . and animals may conceivably be legal persons." And why not? There was no inherent reason why all nonhuman animals had to be legal things rather than legal persons. In brief, legal persons possess inherent value; legal 'things' possess merely instrumental value and exist for the sake and convenience of legal persons⁷. If one traces the history about personhood in legal systems, it may be apparent that even human beings were not treated on equal terms like slaves and women. Slowly and gradually broad and liberal meaning has been given to the term person and now every human being has rights and duties in the eye of law notwithstanding their conditions in life. However still there are some logical exceptions like person of infant age, lunatics, human in vegetative state etc.

Nevertheless considering the capability of non-humans to be the bearer of rights and duties is very uncertain. There are concrete foundations that animals are like human beings and therefore they must be considered as bearer of certain rights at least for their own survival and that of the species not for welfare but their rights *per se*. In recognition of their rights their capability to be conscious about the possessor of the rights should not be considered. This recognition of rights of animals requires change in human behavior in their relation with animals. In order to bring this change, animal activists, social movements have started working, even to the extent of institutionalizing these values in legal equations.

It is important to strike a balance between interests of humans and animals as mostly human interests become prioritized above animals'. Even trivial human interests precede those of animals'. This striking of balance between humans and non-humans are fundamentally partisan. In contrast, animal rights in reference to humans' ought to begin with a fair balancing in which the proper value of fundamental animal interests of life etc. is integrated. Animal rights would not categorically rule out animals being slaughtered for food, kept as pets, and used in scientific experiments but they would place a higher burden on the justification of such uses. Animal rights would thus preclude the current routine sacrifice of fundamental animal interests in favour of trite human interests.

International Legal Framework:

The world Organization for Animal Health

The need to fight animal diseases at global level led to the creation of the Office International des Epizooties through the international Agreement signed on January 25th 1924. In May 2003, the Office became the World Organization for Animal Health however it has kept its historical acronym OIE. This is a leading organization working for the animals signed by 182 countries. The OIE conducts scientific investigation to collect, analyze and disseminate veterinary scientific information among the member countries to control animal disease. This is an obligation on part of the member countries to provide information about diseases; and measures to protect from further spread. This institution works on the principles of international solidarity and provide all possible support to the countries to protect their animals from diseases and if it is transmissible to humans then it plays an active role.

Universal Declaration of Animal's Rights 1978

This declaration highlighted the importance of all living beings having nervous system to be cared and not subjected to bad treatment and cruelty. It acknowledges that all living beings have natural right that contempt

⁷ Steve M Wise, *The Struggle for The Legal Rights of Nonhuman Animals Begins – The Experience of The Nonhuman Rights Project In New York And Connecticut*, available at <https://animallawconference.org/wp-content/uploads/2019/10/Steven-Wise-The-Struggle-for-the-Legal-Rights-of-Nonhuman-Animals-Begins-Animal-Law-Vol.-25.3.pdf>.

of or even ignorance of these rights cause great damage to the nature and led men to indulge in criminal activities against animals. It proclaims that all living beings have right to survival on the basis of biological equilibrium. It advocates the specific legal status to animals by the countries. This declaration was revised in 1989 and in 2018.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Wild animal trading is a multi-billion business globally. The trade is diverse ranging from live animals and products derived from them, including food products, leather goods, wooden musical instruments, timber, medicines etc. Level of exploitation of animals are high in this trade, which leads to depleting their populations and bringing some species even close to extinction. These trade activities are not limited to internal boundaries of the countries but between the countries in a cross border manner. Therefore, international regulations and cooperation is required. CITES is constituted to regulate the trading of animals globally. CITES is an international agreement in which countries agreed to protect their flora and fauna and to regulate illegal trading of animals and wild and threatened plant species.

The Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD) emerged at the Rio Summit in 1992 to promote sustainable development of bio-resources. The CBD is the corpus of international rules, which aims to ensure the conservation of biological resources. This convention emphasised that species are integral part of the ecosystem in which live. Therefore, conservation and preservation of the species are pre-requisites for conserving the biodiversity as a whole. This convention propounded various principles for the preservation of biodiversity and environment by scientific means and by promotion of cultural practices and values. However, animal welfare is not included in its provisions even once. Even if it finds a mention, it is just as an incidental concern⁸. This convention is tilted towards the human needs and to encourage conservation of biodiversity to meet out the demands of food security, animals and micro-organism and their ecosystems.

International framework for the welfare and protection of animals are very weak. Initial treaties focused on the conservation of individual species that too for economically viable species. However, with the advancement of science and with the better evidences about the importance of conservation of species it gained some priority. Some of the scholars like David Favre proposed international framework for animal welfare.

Animals Rights in Indian legal System:

In pursuance to changed understandings and value towards animals and its reflection in international declaration, nations developed their laws on animals. These national laws including India's almost uniformly opted a central idea, keeping in mind the real consequences on economic and private citizens, based on the notion of forbidding unnecessary suffering of animals. Therefore, it is possible to infer that there are justifications for necessary sufferings of animals. Therefore, law acts as an instrument of measuring the suffering of others.

Before exploring the modern laws on animals, ancient India's ethos and values about animals should be discussed. In Indian ethos and values, animals find mention in religion, folk tales and mythology directly or indirectly. Ancient Indian culture always emphasized on the symbiotic relation between humans and animals. Despite having practices of animal sacrifice⁹ in tribal communities, animal protection was very well rooted in Indian cultural and ethical norms. These practices are reflected in Kautilya's Arthashastra that talks extensively about animal welfare and prohibited killing or injuring protected species and animals. Village headman was responsible for preventing cruelty to animals and a person found treating an animal cruelly could be restrained in any manner¹⁰.

In Hinduism, many animals are closely related to God. In Hinduism, there is a belief that when Brahma created

⁸Biodiversity, Species Protection and Animal Welfare under International Law, available at https://link.springer.com/chapter/10.1007/978-3-662-60756-5_9 last visited on 20-10-2021.

⁹ Verse 5.22 of Manu smriti that allowed killing of animals for sacrifice and feeding one dependent also but only when other means are not available to feed them.

¹⁰ Report 269, Law Commission of India 2017, p. 5, available at <https://lawcommissionofindia.nic.in/reports/Report269.pdf>

animals he hid a specific secret in each of them to signify their spiritual importance to humans¹¹. Many Hindu gods till today are represented as animals. For example, Ganesh with an elephants' head and Hanuman as Monkey.

Jainism and Buddhism:

Indus Valley Civilization known for a religious thought that ancestors return in animal form and therefore, animals must be treated with respect. This belief is reflected in Jainism, Buddhism and in other south Asian religions. These religions advocated two aspects of human-animal relationship: non-injury to all living beings. And their religious belief presented killing of any living being as sin. The second concept allows the soul of the people to take re-birth as non-human animals and vice-versa. These teaching resulted in dislike of unnecessary destruction of life and promoted vegetarianism and spread a belief that spirit of friendliness towards all living beings is the key to any civilization¹².

Animal Rights in Medieval India

Status of animals in medieval Indian is based on the teachings of Islamic religion. This taught that Allah has given power to the human over animals. Therefore, they kill animal out of necessity. However, it is wrong to hunt animals merely for pleasure, to cause animals to fight each other, them to act unnaturally, or to molest them unnecessarily.

Animals Rights during the British India:

Between the 1870s-1880s, municipal laws were enacted across British India, which introduced a new practice and advocated catching and killing any unowned street dogs that could be found and un-claimed by anyone for 24 to 48 hours. This was the first "fatal" distinction between owned and unowned dogs and concept of property in dealing of non-human animals. The method used for killing was inhuman under which dogs' killing occurred specially designed chairs by electrocution. Moreover, puppies killed in gas chambers by use of chloroform.

According to a chronicle of the imperial visit to India of George V, the shooting ring formed on December 25, 1911, for hunting of animals that began with the shoot of a tiger and by the close of the day, there were 39 tigers, 18 rhinoceroses, four bears and a leopard killed during that hunt. General William Mitchell, regarded as the 'Father of the US Air Force' narrated his visit as a guest of the viceroy in 1924. He reminisced, "We had killed so many animals during our last three days; that their pelts were not sufficiently dry to pack, so we had to spread them on top of the truck that was to carry our baggage south, allowing them to dry *en route*"¹³.

The British hunted tigers, cheetahs and leopards with high-velocity rifles, speared bears and conducted khedda -catching of elephants for ivory. They conceived the logic that hunting was good for the advance of 'character', and that it trained young men to be good soldiers, while keeping them away from more harmful chases like gambling and opium. Britishers used legislative means to exploit forest includes timbers and forest produce to a large extent. And also introduced drugs and cosmetic testing on animals¹⁴.

Constitutional and statutory provisions on Animal Rights:

The Indian Constitution recognizes the animal rights by laying down provisions conferring duties on the state and Indian citizens. Apart from that Article 21 talks about right to life and personal liberty. Earlier this provision was meant to include life and dignity of human being but the Indian judiciary in a landmark

¹¹ Sacred Hindu Animals, available at <http://www.allcreation.org/home/sacred-animals>, last visited on 19/10/2021.

¹² E. Szűcs,^{*} R. Geers,¹ T. Jezierski,² E. N. Sossidou,³ and D. M. Broom Animal Welfare in Different Human Cultures, Traditions and Religious Faiths, Asian-Australas J Anim Sci. 2012 Nov; 25(11): 1499–1506.

¹³ <https://www.nationalgeographic.com/animals/article/140803-tiger-hunt-1924-india-maharaja-safari#:~:text=In%20November%201924%2C%20Brigadier%20General,Surguja%2C%20a%20legendary%20tiger%20hunter.>

¹⁴ Reparation for destruction of wildlife: That will be 15 bn pounds, your highness, available at <https://economictimes.indiatimes.com/blogs/et-commentary/reparation-for-destruction-of-wildlife-thatll-be-15-bn-pounds-your-highness/> last visited on 21-10-2021.

judgment, *Animal Welfare Board of India v. A. Nagaraj and others*¹⁵, popularly known as Jallikattu case. The Supreme Court upheld the ban imposed by the Ministry of Environment and Forest on the Jallikattu, traditional sport practices in the state of Tamil Nadu. The interpretation of the constitution added a new dimension in the animal rights' jurisprudence. The Supreme Court has brought some animal rights under the ambit of the right to life through an expansive interpretation of Article 21, which it states that available to all living beings. In addition, held that Article 51 A (g) of the Constitution is the '*Magna Carta*' of animal rights. The Article 48 of the constitution envisages an obligation on the state to organize agriculture and animal husbandry on modern and scientific lines and shall take steps for preserving and improving the breeds, and prohibiting the slaughter of cows, calves and other draught animals.

In the case of *Abdul Hakim Qureshi v. State of Bihar*¹⁶, the issue was constitutionality of law on ban of cow slaughter in Bihar. The Petitioner contended that the laws breached their fundamental right to freedom of religion under Article 25 by preventing them from freely practicing traditions of their religion such as sacrificing cows on Bakr-Id Day. The Supreme Court of India upheld the law on the ground that none of the Islamic texts like the Hidayah or the Quran mandated cow slaughter and they allowed for a goat or camel to be sacrificed instead. Therefore, according to the Court a total ban on cow slaughter did not invade on the religious freedom of Muslims. In the context of Article 48, the Court held that the directive only applied to cows, calves and other animals, which have the potential of yielding milk or have the capacity to work as draught animals. Therefore, Article 48 does not envisage a prohibition on the slaughter of all cows or cattle. A similar stand was taken in the case of **Mohd. Hanif Qureshi v. State of Bihar**¹⁷ where the Supreme Court held that "A total ban on cattle slaughter was not permissible if, under economic conditions, keeping useless bull or bullock be a burden on the society and therefore not in the public interest."

However, this precedent was overruled in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*¹⁸ where the Supreme Court held that Article 48 envisions a total ban on the slaughter of cows and their progeny. It held that cattle which has served the human species must be treated with empathy in its old age even though it is economically useless. The Court also ruled that "it was evident from the combined reading of Articles 48 and 51- A(g) of the Indian Constitution that citizens must show compassion to the animal kingdom. The animals have their own fundamental rights. Article 48 specifically lays down that the state shall endeavour to prohibit the slaughter of cows and calves, other milch and draught cattle".

Article 48 A is another significant provision added by 42nd Constitutional Amendment Act to give constitutional undertaking in pursuance of international norms. It places an obligation on the state to protect and improve the environment and to safeguard the wildlife and forest. In *Sachidanand Pandey & Ors. v. The State of West Bengal & Ors*¹⁹, the Supreme Court held that Article 48A must be kept in mind whenever a matter regarding maintenance of the ecology is in consideration.

Indian constitution imposed similar obligation on the citizens by virtue of Article 51A. This article imposes an obligation on the citizens of the country to protect and improve the natural environment and have compassion for all living creatures. As interpreted in *Animal Welfare Board of India v. A. Nagaraja & Ors*²⁰, compassion for all living creatures includes concern for their suffering and well-being. In the case, the Supreme Court observed 51A (g) alongside the duty to develop scientific temperament under 51A (h) as the Magna Carta of animal rights' jurisprudence in India.

The Supreme Court in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors*²¹, held that by enacting article 51A(g) and giving it the status of a fundamental duty, the parliament wanted to warrant that the spirit and message of articles 48 and 48 A are honored as a fundamental duty by every citizen. Article 51A(g)²² has to be read along with sections 3 (Duties of persons having charge of animals), section 11(1)(a) and (m) (Treating

¹⁵ (2014) 7 SCC 547

¹⁶ 1961) 1 Cri. LJ 573

¹⁷ 1958 AIR 731.

¹⁸ (2005) 8 SCC 534

¹⁹ 1987 (2) SCC 295, 331

²⁰ (2014) 7 SCC 547

²¹ (2005) 8 SCC 534

²² it is a fundamental duty of every citizen —to have compassion for living creatures||, which means concern for suffering, sympathy, kindness etc

animals cruelly), and section 22 (Restriction on exhibition and training of performing animals) etc. of the PCA Act.

The Gujarat High Court in *Muhammadbhai Jalalabhai Serasiya v. State of Gujarat*²³, held that to keep birds in cages would be equivalent to illegal confinement of the birds which is in violation of right of the birds to live in free air / sky. Thus, the High Court directed to release such illegally confined birds in the open sky/air. Gujarat High Court in *Abdulkadar MohamadAzam Sheikh v. State of Gujarat*, have taken the similar view by observing that —it is the duty of every citizen to see that there is no unnecessary pain or suffering to any animal or bird.

Likewise the Delhi High Court in the case of *People for Animals v. M D Mohazzim & Anr*²⁴, held that: birds have fundamental rights including the right to live with dignity, they cannot be exposed to cruelty by anyone, and human beings have no right to keep them in small cages for the determinations of their business or otherwise.

After independence, plenty of legislations have been enacted to prevent cruelty toward animals and specific institutions have been established to ensure the compliance of the Act. Indian legislative efforts have taken a sharp turn after 1972 Stockholm Declaration. Although prevention of cruelty towards animals and Wildlife Protection Act is India's indigenous concerns towards animal. However, post Stockholm the intensity of these efforts has been increased. The Prevention of Cruelty to Animals Act, 1960 (PCA Act') has been enacted with the objective of prevention of unnecessary pain or suffering on animals and lays down responsibilities of the persons in charge of the animals to take all reasonable measures to ensure their well-being. It provides for setting up of the Animal Welfare Board of India to make rules under the PCA Act to ensure that the welfare standards are met and that the animals are not exploited. This Act precisely defines that what kinds of conduct would amount to cruelty against animals and make provisions to penalize those conducts.

In exercise of the rule making power conferred under this Act, the central government notified Transport of Animals Rules, 1978. This rule laid down the detailed norms to be adhered to for transportation of Dog, Cat, cattle, Sheep, Goat, Monkey, and Equines. The Breeding and Experiments on Animals (Control and Supervision) Rules, 1998 formulated general requirements for breeding and using animals for research. In 2017, the Central Government formulated two rules: The Prevention of Cruelty to Animals (Regulation of Live Stock, Markets) Rules, 2017 and the Prevention of Cruelty to Animals (Care Maintenance of Case Property Animals) Rules, 2017.

The Wildlife Protection Act, 1972 envisaged to provide protection to the wildlife animals. This Act has been amended six times; last amendment was in 2006. This Act prohibits the hunting of animals. Hunting of animals in exceptional situations are allowed. It also laid down the rules to be followed for conducting scientific research on animals. For the protection of animals in their natural habitats, Act laid down the provisions for the declaration of sanctuaries, national parks, closed area to prohibit certain activities and set certain norms to be followed. This Act also makes the provisions for the recognition of Zoo and medical and other facilities to the animals in zoo. It has put restriction on the trading of wildlife animals and animals' articles etc. To execute the provisions of this Act, Chief wildlife warden, wildlife authorities etc. have been constituted. The Wildlife Crime Control Bureau, the Central Zoo Authority and the National Tiger Conservation Authority have been constituted under this Act.

The Food Safety and Standards (Licensing and Registration of Food Business) Regulation, 2011 has been enacted. This regulation has been framed under section 92(2)(o) read with section 31 of the Food Safety and Standards Act, 2006. This Act has laid down a precise requirement surrounding the welfare of animals during slaughter process. As per the mandate of this Act, stunning before slaughter is mandatory. These rules also laid down certain guidelines to be followed for transportation of poultry.

The Drugs and Cosmetics Act 1945 and subsequent Rules

This act was aimed to ensure drugs and cosmetics sold in India- safe, effective and conforming to the set quality standards. In order to check the safety of the drugs for human consumption, animals have been used for testing. However, on the initiative of the various voluntary organisation, the Drugs and Cosmetics Rules 1954 has been amended. Effect of this amendment is that no person shall use any animal for the testing of

²³ <https://www.casemine.com/judgement/in/5ac5e3db4a93261a672c27d6>. Last visited on 21-10-2021.

²⁴ 252 (2018) DLT 351

cosmetics. Now animal test has been removed from cosmetic testing standards by the PCD 19 cosmetics Sectional Committee of the Bureau of Indian Standard. (Note: Please expand PCD)

In order to set the norms to be followed during transportation while carrying animals, the Ministry of Road Transport and Highways, added Rule 125E in the Central Motor Vehicles (Eleventh Amendment) Rules, 2015. This rule provides that the motor vehicles used for carrying animals shall be necessarily having permanent partitions in the body of the vehicle to carry animal individually in the partition. However, the size of the said partition prescribed is still not as per the international standards.

Indian Penal Code, 1860 (IPC)

The Section 428 of the IPC states the punishment for killing, maiming (to wound or injure an animal so that part of the body is permanently damaged) or rendering useless any animal or animals of the value of ten rupees or upward. Likewise, Section 429 states the punishment for the similar kind of offence against animals of the value of rupees fifty or upward. The punishment provided for these offences are inadequate and no revision has been introduced in it even after long years of independence.

In India there are plenty of legislations dealing with animal concerns. As per Animal protection index 2020, conducted by the World Animal Protection, an animal rights and non-profit organization, India ranks second. This index considered legislative and policy measures for the protection of animals' interest for ranking. However, this index highlighted that it is required to issue guidelines for the protection of animals used in scientific researches.

Conclusion:

How we treat animals is very important both for animals and for human morality²⁵. Here Gandhian philosophy is relevant to mention that is "The Greatness of a nation and its moral progress can be judged by the way it animals are treated"²⁶. After recognition of importance of non-human animals how to change the exploitative practices and set a new norm for the survival and growth of animals is very challenging.

The classic argument in favour of moral duties towards animals has been that prohibiting cruelty on animals suppresses callousness in men. This consideration has traditionally motivated animal welfare laws. Some domestic jurisdictions have begun to acknowledge animal rights. The Courts in Argentina and Colombia have granted *habeas corpus* to Apes and Bears. The Indian Supreme Court recognized fundamental animal rights under the Indian constitution. In a criminal trial against animal activists for trespassing, a German lower court accepted self-defence in favour of farmed animals which could be creatively read as implying that these are 'persons' within the meaning of the law. The pattern has not been one of unambiguous progresses towards recognition of animal rights, however, in US American lower courts; judges have been hesitant to endorse animal rights. Rather, they have denied *habeas corpus* to Chimpanzees and the standing of a Macaque in a copyright suit.

An Argentinian trial court granted a writ of *habeas corpus* to a Chimpanzee named Cecilia designating her a "non-human legal person" with "nonhuman rights," and ordering her release from the Mendoza Zoo and subsequent transfer to a sanctuary. In this case the court recognized that "societies evolve in their moral conducts, thoughts, and values" and concluded that classifying autonomous "animals as things is not a correct standard. In 2018, the Colombia Supreme Court designated the Colombian part of the Amazon rainforest "as an entity subject of rights," in other words, a person. In 2017, the New Zealand Parliament designated New Zealand's Whanganui River Iwi as a person that owns its riverbed. In 2014, New Zealand's Te Urewera park was designated a "legal entity, having all the rights, powers, duties, and liabilities of a person." In 1996, New York enacted the Estate Powers and Trust Laws 7-8, The New York Pet Trust Statutes, which grants pet and domestic animals the rights of trust beneficiary. Steven

M. Wise in his famous book, 'Rattling the Cage: Toward Legal Rights for Animals' asserts the personhood to the intelligent animals like Elephant, Chimpanzee, Dogs etc. These initiatives worldwide are good steps towards

²⁵ Richard L. Cupp Jr., Focusing on Human Responsibility rather than Legal Personhood for Nonhuman Animals, 33 PACE ENVTL. L. REV. 517 (2016).

²⁶ <https://www.peta.org/features/gandhi/#:~:text=In%20his%20total%20commitment%20to,way%20its%20animals%20are%20treated.%E2%80%9D>, Last visited on 17/10/2021.

protection of animal rights but there are no uniform norms.

Therefore, There is an urgent need to universalization of animal rights. It should be developed with the same spirit as human rights jurisprudence has been developed for the protection of humans. This would only be possible when each state unanimously agrees to formulate and follow the norms that believe in rights of animals instead of limited welfare of animals. Meat, dairy pet production is a billion dollar global market in a loosely connected global world. With the advancement of science now, cloning of animals and application of biotechnology to improve the economically viable traits in animals is also in debate considering the principles of bodily autonomy and morality.

In India, plenty of legislation and constitutional mandate envisages co-existence of animals and humans. However, illegal trading of animal production and violence against animals is very common. This substantiates that there is a requirement of some holistic mechanism to bring that transformation where animals being a living creature could lead their life and contribute to the planet what they have been gifted by nature.

In this context, awareness is very important to protect the rights of the animals, therefore education related to animal rights and welfare and corresponding duties of the individual should necessarily be included in syllabus. This will help in making people sensitive towards animals from their childhoods. This is a precondition for deciding the success of advanced legislative and policy measures for improving the conditions of animals in real sense.