

# CONSTITUTIONAL RIGHTS OF ANIMAL: AN EXEGESIS FROM THE SUPREME COURT OF INDIA

Atul Kumar Dubey<sup>1</sup>

---

## ABSTRACT

*The rich culture and heritage, where kindness and compassion were the foundation of the Indian tradition, animals had a respect and special place in society. But time has changed; they are the soft target for humans. They are the easy prey for human greed and prime candidate for exploitation. Animal welfare in India has taken a new meaning and has been in news recently for all wrong reasons. The article tries to explain how the animal-protection laws are weak and most neglected area under Indian jurisprudence. This is followed by discussing how judiciary has moved a step ahead in protecting rights and providing 'species friendly environment' through constitutional status. The article aims to discuss whether animals are right-holder under Constitution of India. The paper concludes with the need for acknowledging animals as "beings" rather than "thing."*

**Keywords-** *Animal rights, Constitutional status*

---

## INTRODUCTION

*"Animal has also honour and dignity which can't be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attack."*— Supreme Court<sup>2</sup>

Animal rights and welfare have been an important issue commanding global interest unfortunately victories in the animal rights movement are few and far between. The increasing case of cruelty in India against these "non-living" species of nature has been a cause for great concern these days especially in India. The abuse that animals suffer at human hands is heartbreaking, sickening, and infuriating. And in one of the most high-profile cases, a police horse named Shaktimaan died after his leg was broken while he was surrounded by an angry mob during a political rally in Dehradun. Before his eventual death, Shaktiman suffered from immense pain. Reacting to this Union Minister

---

<sup>1</sup>. 2<sup>nd</sup> Year, B.A.L.L.B (Honrs), School of Law, Galgotias University, E-mail – [dube.akd@gmail.com](mailto:dube.akd@gmail.com)

<sup>2</sup>. Animal Welfare Board of India v. A. Nagaraja & Ors, (2014) 7 SCC 547 at ¶ 51

Ms Maneka Gandhi stated that the horse was a police officer on duty and that person responsible for his death must be arrested and punished. The other side of this statement can be seen as broader definition of personhood and holding the rights. The governance and management of a country's natural and biological resources is deeply integrated with and influenced by political, social, cultural and economic factors that impact on overall development. We Indians as, '*Religious Believers*' have lived out our faith in ways that have been fully in defense of nonhuman lives. This more positive view has, across place and time, been common and this is giving the moral, legal, social strength to those voices who wants the animal rights and human rights must be read together. And yet despite all this, the number of animals exploited and killed has skyrocketed during the past quarter-century. If we are to work effectively on behalf of animals, we must encourage everyone to boycott cruelty. We can't do this by fostering the impression that "It's too hard to be a strict vegetarian – animal products are in everything." We can't act as if we're following a religion, with adherence to a certain dogma the sole issue. We can't preach that harvesting honey is a holocaust. We can't imply that every farm – from the largest mega factory to the smallest free-range organic farm – is equally cruel. There is a rise to a new social movement, which seeks to attain increased legal protections, and even the recognition of actual "rights", for nonhuman animals. Not surprisingly, this push has met with a considerable amount of criticism and ridicule from those who believe that the cost of animal rights specially, and increased protections more generally, is a corresponding reduction in human freedom. There is discussion going on must not be an end to the road and the issue must be addressed with deliberations and cogitation.

## **JUDICIAL PERSPECTIVE**

The Constitution of India is detailed sets of human rights which ensure autonomy and well-being to citizens and non-citizens. Right holder carries constitutionally guaranteed right which prevent others, including the state, to act contrary to the inalienable interest. The Constitution guaranteed seven basic rights, in 1950: these rights were placed in a separate chapter of the constitution under the heading of 'Fundamental Rights'. Among all Article 21 is the most celebrated provisions of the Constitution. A new dimension has been added to the interpretation of 'right to life and personal liberty' by introducing 'negative' as well as 'positive' obligation on the state which covers not only

‘duty to restraint’ but also of ‘duty to facilitate entitlements’.<sup>3</sup> Judiciary from time to time has shown concerns regarding the welfare and rights of animal. In *Animal Welfare Board of India case*, an issue of seminal importance with regards to rights of animals under the Indian Constitution, with reference to the Prevention of Cruelty to Animals Act, 1960, in connection with Jallikattu has been raised. The court has refused permission to inflict pain and suffering to the animals in the name of religious or traditional practices. The idea of ‘*species best interest*’ underlying in the Act guided the court to provide complete protection to the animals from torturous practices employed by human beings.<sup>4</sup> Supreme Court while penning down the law of land 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. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, and overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering.”<sup>5</sup>

Justice Radhakrishnan stressed that the time has come that the animal rights to be elevated to the status of fundamental rights in the Constitution. All the animals have the following rights<sup>6</sup> –

1. Freedom from hunger, thirst and malnutrition;
2. Freedom from fear and distress;
3. Freedom from physical and thermal discomfort;
4. Freedom from pain, injury and disease; and
5. Freedom to express normal patterns of behavior.

---

<sup>3</sup>. TR Andhyarujina, *THE EVOLUTION OF DUE PROCESS OF LAW BY THE SUPREME COURT IN SUPREME BUT NOT INFLIBLIBLE*, (BN Kripal, Oxford University Press, 2011)

<sup>4</sup>. Section 3 and Section 11(1) (a) and (m) of The Prevention of Cruelty to Animals Act, 1960 read with Article 51A (g) and Article 21 of the Constitution.

<sup>5</sup>. *supra* note 2, at 2 ¶ 62

<sup>6</sup>. *Id.* at ¶ 54; *See also* [http://web.oie.int/eng/normes/mcode/en\\_chapitre\\_1.7.1.htm](http://web.oie.int/eng/normes/mcode/en_chapitre_1.7.1.htm)

The friction to constitutionally recognize animal rights developed over a series of judgments. Delhi High Court in *People for Animals v. Md Mohazzim*<sup>7</sup> held that –

“Birds have the fundamental rights including right to live with dignity and they can’t be subjected to any cruelty by anyone. Birds have the fundamental right to fly in the sky and human beings have no right to keep them in the small cages for the purpose of their business or otherwise”<sup>8</sup>

Supreme Court even held that trapping or caging a bird comes under the preview of hunting and thus should not be allowed and is prohibited under Section 9 of The Wildlife Protection Act, 1972.<sup>9</sup> Thus the impliedly view of the learned judge can be seen as bringing the animal under the ambit of ‘right to life’. Gujarat High Court in the year 2011 held that birds have the fundamental rights to fly and keeping birds in cages was tantamount to “illegal confinement”<sup>10</sup>

## HUMAN V/S NON-HUMAN

The critics to this approach put a question on the legal capacity to possess constitutional rights and it will be conflict to *Rights of Human v. Rights of Non-Human*. According to Joseph Raz, rights can only be accorded to beings which have an “ultimate, non-derivative value” rather than an “instrumental value”. The value of non-human animals to humans is merely instrumental in nature.<sup>11</sup> The incapacity to hold a right and lack of mental development can’t be the sole criteria to strip off the rights of animals against the cruelty faced by them at the hands of human. If going by this reasoning, mentally unsound mind also lacks the mental development to hold their right or simply they can’t exercise their legal capacity to enjoy or hold their basic rights as per the laws and statutes. But there is a paradigm shift from this sympathetic and non-human approach and they have been granted equal rights under the proposed bill.

Jeremy Bentham once stated that deciding on the being’s right; the question is not ‘Can they reason?’ nor ‘Can they talk?’ but ‘Can they suffer?’” Bentham points to the capacity for suffering as

---

7. *People for Animals v. Md Mohazzim*, CrI. M.C. No. 2051/2015, May 15, 2015 (Manmohan Singh, J) (Delhi High Court)

8. *Id.* at ¶ 5

9. *Chief Conservator Forest (Wildlife) v. Nisar Khan*, (2003) 4 SCC 595

10. *Id.*

11. Joseph Raz, ON THE NATURE OF RIGHTS, 93 (370) *Mind* 194, 204 (1984) *See also* [http://nujlawreview.org/wp-content/uploads/2016/05/07\\_jessamine\\_\\_ira.pdf](http://nujlawreview.org/wp-content/uploads/2016/05/07_jessamine__ira.pdf)

the vital characteristic that gives a being the right to equal consideration.<sup>12</sup> All animals have the ability to suffer in the same way and to the same degree that humans do. They feel pain, pleasure, fear, frustration, loneliness, and motherly love. Whenever we consider doing something that would interfere with their needs, their basic rights are violated. In general a human being has ‘right to life’ so animals too have inherited the right to life and enjoy free space and it can’t be scraped just because they lack a mental development to hold and exercise those rights. Now the question arises whether animals can be placed under the category of ‘legal person.’ There are many writing where it was stressed to ally animals with the idea of person for their security and welfare.<sup>13</sup> The author further states,

“I think the question about whether any animals are persons is a harmful distraction for animal advocacy, and one which many people have a very hard time dealing with often for bad reasons but occasionally for good ones so I think very little, if any animal advocacy, should be done in terms of whether animals are persons or not. I think a wiser move it to stick with Bentham’s motto that whether they can suffer and be harmed is the relevant, and far simpler, question, not whether they are persons, under nearly anyone’s definition.”

The most obvious qualifiers for legal personhood can be found in a Hohfeldian analysis of jural relations.<sup>14</sup> The critics of this theory to provide constitutional status to animal rights take this defence that right and duty must be read together and both must be satisfied. The natural thesis that is followed is that every person who seeks to claim a right must also be able to perform the corresponding duty that a right entails. Further, the claimant of a right must also be able to have rights claimed against them, i.e., rights must be able to be enforced against a person for them to truly be entitled to them.<sup>15</sup> This means that the non-performance of a duty by a person may be punishable if it violates the right of another person. It is obvious that no non-human animal will ever satisfy or be expected to satisfy this requirement. In the same way a person with disability and child don’t participate in the matter of public, social life and can’t decide the what is right or wrong still has given inherited with ‘right to life and personal liberty’ read with Article 10 of UNCRPD. If the

---

<sup>12</sup>. People for the Ethical Treatment of Animals (PETA) *available at* <http://www.peta.org/about-peta/why-peta/why-animal-rights/> (Last visited on Oct 06, 2016)

<sup>13</sup>. Nathan Nobis, ON THE QUESTION OF PERSONHOOD BEYOND HOMO SAPIENS *available at* [http://www.morehouse.edu/facstaff/nnobis/papers/DeGrazia\\_comments.htm](http://www.morehouse.edu/facstaff/nnobis/papers/DeGrazia_comments.htm) (Last visited on Oct 06, 2016)

<sup>14</sup>. Anand C. Paranjpe, SELF AND IDENTITY IN MODERN PSYCHOLOGY AND INDIAN THOUGHT(PATH IN PSYCHOLOGY) (2002)

<sup>15</sup>. *Id.*

ability to perform duties or the level of rationality is what qualifies an entity to be a person, persons with disabilities and infants or children would also be excluded from the purview of personhood.

## **CONCLUSION**

*“The greatness of a nation and its moral progress can be judged by the way its animals are treated”*- Mahatma Gandhi

The lines of one of the greatest preacher of non-violence must be engulfed so that we move a step further towards moral progress. Because of human need, greed, ignorance, and vanity; untold numbers of animals throughout the world suffer and die on a daily basis. Rather than simply avoiding something because they can't have or hold the legal capacity to exercise those rights or how can it be enforced against them if they violate the rights of human; if provided can't be valid ground whatsoever. The debates must be explored through the domain of religion and animal to defend wildlife, ensure that food animals are not mistreated, and minimize harm to research animals, or honor the special place of companion (nonhuman) animals in humans' lives. Supreme Court while interpreting has missed some areas which must be dealt with legislature. The judgment in must be incorporated systematically under the Constitution of India. The point to be made, however, is that the animal protection question is a global one not localized to any state and more importantly, changes made by one country to its animal laws will likely affect the well-being of animals in other countries. At present animal protection laws have recognised animals and made laws in the manner in which human use them. The language of rights must be in the nature which will evoke the feeling of moral and legal responsibility. The argument that there might be a conflict between animal rights and human rights is vague as the much talked rights in the landmark case has nothing to do with the exiting right regime. How can the fundamental rights of bird to fly conflicts with the human rights and animal rights? The right based approach must be followed while enshrining those letters of judgment as right is granted to those who suffer at the hands of superior. It's time to move forward in our endeavors to form welfare state which must be based on species friendly and the first three letters of our Constitution: “We the People...” must be read with “kindness and compassion for all life” and finally has some meaning.

