



**The Chanakya Law Review (CLR)**  
Vol. II Issue I, Jan - June 2021, Pp 17-30



**ANIMAL LAWS: RIGHTS BASED OR DUTY BASED APPROACH?**

Anukriti Poddar<sup>1</sup> &  
Nandini Sureka<sup>2</sup>

**ABSTRACT**

*In recent times our eyes have caught plenty of news related to animal cruelty, be it feeding animal crackers or tying them behind the vehicle and dragging them. Humans have continued to show cruel and inhuman treatment towards animals in every possible way. In this regard, there are several judgments delivered by the courts that state that animals should be recognized as legal persons under Article 21 of the Constitution and be granted equivalent rights. They argue that animals being a living part of the habitat should have constitutional recognition as a human. This paper stands on the argument that this 'right-based approach' would not be a viable option. It first explains the court's stand on this topic by discussing the case of A. Nagaraja<sup>3</sup> and then examines in detail both the right-based and duty-based approach. It tries to use the concept provided by Martha Nussbaum<sup>4</sup> to explain the duty-based approach and talks about the 'capabilities approach' and 'concept of dignified existence'. It then compares them to reach the conclusion that the duty-based approach will be a more reasonable and successful approach to reach the goal of animal welfare.*

**KEYWORDS:** Animals, Right-based, Duty-based, Welfare, Cruelty

<sup>1</sup> 2<sup>nd</sup> year Students, KIIT School of Law.

<sup>2</sup> 2<sup>nd</sup> year Students, KIIT School of Law.

<sup>3</sup> Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.

<sup>4</sup> Professor Martha C. Nussbaum is a well-known humanist and philosopher who is focusing her efforts on the animal kingdom as a whole. Her capabilities approach provides a strong and intuitively sound foundation for analysing animals in terms of justice ideals.

## INTRODUCTION

The desire to regulate the ruler's authoritarianism, arbitrariness and dictatorship leads to the concept of having a Constitution. The ruler has to be committed for ensuring the welfare, interest and protection of its subjects. But, this protection not only extends to humans but also to all non-human creatures. Switzerland, in 1992 became the first nation to include animals in its constitution, with a clause guaranteeing the preservation of "the dignity of the creature".<sup>5</sup> Likewise, many other countries like Germany also constitutionally granted protection to the animals.<sup>6</sup> Animal rights is based on the principle that any conscious creature having interests must be protected and respected. No conscious being shall be belittled to a thing. They have a right to life and a right to fulfil their fundamental needs- out of which one is avoiding pain.

Animals' rights for a long time have been a subject of a lot of debates. Long back, Aristotle had stated that all non-human creatures, that is, animals have "natural good" in respect of their efficiency or productivity in the habitat they live and this 'good' should be directed exclusively towards human benefit. It was later, through the influence of the theory of Darwin that the resemblance between animals and humans was drawn, and the concept of 'moral rights' came into the picture.<sup>7</sup> It was further supported by Bentham who said that animals' magnitude for hardships formed the foundation for giving them rights. It is the hardships that the law must deter and prevent.<sup>8</sup>

The principle of sentience and misery emerged to be the framework for defending the rights of animals because it elicited sympathy in humans for the non-human creatures. It can therefore be branched out as- a ground for granting rights to non-human beings on one hand and as a justification to legislate for their well-being by a duty on the other.

The right based-approach for animals involves recognising animals as legal persons in some extent and granting them entitlements which they can enforce against State and also the Non-

---

<sup>5</sup> Meenu Katariya, 8 Countries with The Strictest Animal Welfare Laws in The World That India Can Take Cues, SCOOPWHOOP (Apr. 2, 2021, 6:08 PM), available at: <https://www.scoopwhoop.com/countries-with-strict-animal-welfare-laws-in-the-world/>.

<sup>6</sup> Ibid.

<sup>7</sup> Christophe Traïni, The Animal Rights Struggle: An Essay in Historical Sociology, 1 HAL 5, 48 (2016), available at: <https://halshs.archives-ouvertes.fr/halshs-02864005/document>.

<sup>8</sup> Johannes Kniess, Bentham on Animal Welfare, CORE (Apr. 6, 2021, 6:40 PM), <https://core.ac.uk/download/pdf/327373664.pdf>.

State bodies if their rights are violated by them. The duty based approach on the other hand, creates a direct and positive duty on the State as well as private persons.

The most important statute for animal welfare in India is The Prevention of Cruelty to Animals Act, 1960, which recognizes that animals have the ability to suffer both mentally and physically, implying that all creatures have the capability to be sentient. Its primary purpose is to safeguard animals from undue suffering and pain. This underlying acknowledgment of animal sensibility is also repeated in India's Constitution, which embodies the notion of Ahimsa and requires people to "have compassion for living creatures".

There are many other current legislations in place in India that seek to protect and ameliorate the existing situation of animal welfare in the country- The Wildlife (Protection) Act, 1972 makes it illegal to kill, poach, trap, poison, or injure any bird or wild animal in any manner. It also mandates the formation of Wildlife Advisory Boards in each State; The Performing Animals (Registration) Act 2001 also states that without statutory approvals no animals can be showcased, exhibited or exploited for performances. This was done principally to keep a track on the treatment given to animals in the zoos and circuses all around the country. There are 149 zoos (including 14 rescue centres and 1 circus) currently (31.03.2020) as defined by § 38H (1) of Wild Life (Protection) Act of 1972.<sup>9</sup>; The Performing Animal Rules, 1973 prohibits the utilisation of animals for entertainment purposes unless registered; The Prevention of Cruelty to Draught and Pack Animals Rules, 1965 also divides animals into 3 categories of "large", "medium" and "small" with maximum load limits for each and allows the Animal Welfare Board or the concerned authority to take custody of the animals in the event of any suspected crime.

However, despite all these legislations there is an opportunity for improvement in a variety of animal welfare related areas. The PCA Act for example, exempts animals involved in scientific research from cruelty concerns. Religious slaughter can also be carried out in India without the need for pre-stunning.<sup>10</sup> Moreover, there is a dearth of rules governing rearing and breeding of farm animals, most notably the uncontrolled dairy systems in urban areas that are rapidly emerging with extremely low welfare levels. The Indian law also permits hunting of the endangered animals for a variety of objectives. Fur cultivation is also not prohibited in our country. Additionally, the lack of enforcement measures linked with animal cruelty reflects on

---

<sup>9</sup> CENTRAL ZOO AUTHORITY, available at: <https://cza.nic.in/uploads/documents/reports/english/ar%202019-20.pdf> (last visited Dec. 11, 2021).

<sup>10</sup> WORLD ANIMAL PROTECTION, <https://api.worldanimalprotection.org/sites/default/files/2020-India-UPLOADED.pdf> (last visited Dec. 11, 2021).

the government's unwillingness to take such cruelty sternly. Another structural hurdle to improving animal welfare is the lack of significant penalties for animal cruelty violators. All these areas require improvements so that India can edge nearer to the goal of animal welfare.<sup>11</sup>

The Indian Judiciary has been slowly but steadily incorporating effective changes. Though the clash between right and duty based approach still remains the thing which is sure is that, non-human animals cannot be treated as property and they are entitled to humane and dignified existence. The question remains that which approach would be better.

### **A BRIEF SUMMARY OF ANIMAL WELFARE BOARD OF INDIA V. A. NAGARAJA & ORS ON 7TH MAY, 2014<sup>12</sup>**

Every animal is worthy enough to enjoy a good life and obtain the benefits of their five domains, i.e., nutrition, environment, health, behaviour and mental state.<sup>13</sup> Keeping this in mind, the apex court professed a breakthrough judgement of Animal Welfare Board of India v. A. Nagaraja & others on 7<sup>th</sup> of May, 2014 by banning the practice of jallikattu and bullock cart racing.<sup>14</sup>

#### **FACTS OF THE CASE**

This case deals with two separate cases of similar nature. First, which challenged the decision of the Madras High Court, where it questioned the rationality of the Tamil Nadu Registration of Jallikattu Act and some writ petitions. Secondly, it challenged the judgement of the Bombay High Court which upheld the Ministry of Environment and Forests notification of 11.07.2011.

The Supreme Court prohibited the practice of jallikattu bull fights and bullock cart racing, which were traditionally carried out in the states of Tamil Nadu and its neighbouring places. This was done in order to preserve the animal rights and to ensure welfare of the bulls that participated in these events and were subjected to brutality.

---

<sup>11</sup> Ibid.

<sup>12</sup> Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.

<sup>13</sup> WORLD ANIMAL PROTECTION, <https://www.worldanimalprotection.org.nz> (last visited Apr. 2, 2021).

<sup>14</sup> Prachi Bhardwaj, Jallikattu: Constitution Bench to decide the constitutionality of the TN Amendments to Prevention of Cruelty to Animals Act, 1960, THE SCC ONLINE BLOG (Feb. 3, 2018), available at: <https://www.scconline.com>.

In 2006, a petition was filed at the Madras HC in order to seek permission for conducting jallikattu. The court didn't grant permission, but through an appeal the division bench allowed its practice with some conditions.

The Animal Welfare Board of India (AWBI) issued a notice prohibiting use of bulls as performing animals. So, they approached the apex court against the order of the division bench of Madras and also to enforce their notice.

Hence, it was held that an interim order should be passed by validating the AWBI's notification and also the rights which were guaranteed to the bulls under the Prevention of Animal Cruelty Act.

But many instances are coming up in order to continue the practice of jallikattu, but all are going to vain when the matter comes to the court. In 2016, a case came up in order to strike down the notice issued by the AWBI, but it was held that this notice is absolutely valid on the grounds of brutality towards the bull and the need of the hour is animal welfare rather than claimed customs and tradition.<sup>15</sup>

### **ISSUES RAISED**

The main issue of this case is that whether the activities carried out in the states of Tamil Nadu and Maharashtra violate § s 3, 11(1)(a) and (m), 21 and 22 of the Prevention of Cruelty to Animals Act, including articles 51A(g) & (h) of the Indian Constitution and the notice issued by the AWBI.<sup>16</sup>

### **ARGUMENTS ADVANCED**

It is argued by the people who want the continuance of jallikattu that it is their tradition and custom to carry out this activity and conducting this event does not cause harm to any individual or an animal. But in reality, it is not true.

In the name of tradition, a lot of social evils like sati, dowry, poaching, etc. are carried out, which harm the society in a diverse way. But this does not act as a defence for the continuance of its practice.

---

<sup>15</sup> Compassion Unlimited Plus Action & Ors. V. Union of India & Ors., Writ Petition (Civil) No.24 of 2016, the Supreme Court of India, Dated 12/01/2016.

<sup>16</sup> SUPREME COURT OF INDIA, available at: <https://main.sci.gov.in> (last visited Apr. 7, 2021).

On the other hand, AWBI has presented stats that show that about 40 persons lost their lives to this event from 2008 to 2014. The bulls are brutally treated where they are chained, hit by a stick, applied burning powder on their body, etc., which causes them contusion.

The constitutional stand on this point is that in many occasions it is concluded that animals have a fundamental right against administering pain. It should be the responsibility of the government and the animal welfare organisations to protect the various freedoms of animals, i.e., freedom from starvation and dehydration, freedom from pain, freedom from agony, injury and illness, freedom from fright and freedom to showcase regular behaviour.<sup>17</sup>

### **HELD**

The Supreme Court of India held that the practice of jallikattu, bullock-cart racing and similar events violate § s 3, 11(1) (a) & (m) of the Prevention of Cruelty to Animals Act and affirmed the notice issued by the AWBI and hence these activities are prohibited throughout the country.

The court manifested the following directions<sup>18</sup>:

1. The court mentioned that the bulls are guaranteed certain rights under the PCA Act, i.e., § s 3 and 11, also Article 51A (g) and (h), which cannot be taken away.
2. The five freedoms given to animals must be secured and guarded by the governments and animal welfare organisations.
3. The responsible authority should set up a body and employ an in charge to look after whether the welfare of animals is being taken care of or not.
4. The authority's duty is to ensure that no harm or pain is inflicted on the animal.
5. The government and the welfare organizations should take necessary measures to impart awareness and education in matters of humane treatment of animals.
6. In case of violation of any provisions of the PCA Act, fines, penalties and punishments should be imposed.
7. The Tamil Nadu Registration of Jallikattu Act was found to be constitutionally void as it infringed article 254(1) of the Indian constitution, as it was repulsive to the PCA Act.

---

<sup>17</sup> INDIAN KANOON, <https://indiankanoon.org/doc/39696860/> (last visited Apr. 7, 2021).

<sup>18</sup> Aparajita Balaji, *Animal Welfare Board of India vs A. Nagaraja & Ors*, LAW TIMES JOURNAL (Mar. 25, 2019), available at: <https://lawtimesjournal.in/animal-welfare-board-of-india-vs-a-nagaraja-ors>.

## THE RIGHTS-BASED APPROACH

The Indian Constitution is the principal law of the land which includes the elementary political laws, rights and duties of the people, DPSPs, methods, policies and powers of the governmental institutions. This “living document” acknowledges the sanctity of animal existence and inculcates as a fundamental duty of the citizens to protect and treat these animals with dignity.

In our country, despite of having local laws and rules preventing animal brutality, further identification is given to animal rights under the constitution itself. The constitutional validity and framework for animal protection in our country is vested in the following parts of the constitution<sup>19</sup>:

1. **FUNDAMENTAL RIGHTS-** Part III of the Constitution deals with the fundamental rights, inculcating articles 12- 35 within it. They lay down general rights which are necessary for mental, moral and religious development of the people. When dealing with animal welfare, Article 21 i.e., Right to life and Personal liberty has vast relevance. The mentioned article states that no person shall be deprived of his life and personal liberty except through a proper procedure established by law. The jallikattu case has resulted in imposing some animal rights which fall under the ambit of article 21. It states that every genus has a right to life and safety and it has been given a wide interpretation that ‘life’ includes all the forms of life which are basic to the environment that should be preserved and protected with dignity and honour. The court held that article 51A (g) of the Indian constitution is the “magna carta of animal rights”.<sup>20</sup> In a case<sup>21</sup>, it was held that animals should also be granted with some legal rights as compared to humans as they also have inherent value and moral worth. Similarly, in another case<sup>22</sup>, the high court mentioned about the fundamental rights of birds to fly in the sky as opposed to keep them in a cage.
2. **DIRECTIVE PRINCIPLES OF STATE POLICY-** Part IV of the Constitution deals with the directive principles of state policy, inculcating articles 36-51 within it. These are just basic guidelines, which the state may use as a basis for forming laws and policies. They are not enforceable in

---

<sup>19</sup> Taruni Kavuri, The Constitutional Scheme of Animal Rights in India, ANIMAL LEGAL & HISTORICAL CENTER, MICHIGAN STATE UNIVERSITY (2020), available at: <https://www.animallaw.info/article/constitutional-scheme-animal-rights-india>.

<sup>20</sup> Abha Nadkarni & Adrija Ghosh, Broadening the scope of liabilities for cruelty against animals: gauging the legal adequacy of penal sanctions imposed, 10 NUJS L. REV.1, 12-13 (2017), available at: <https://nujlawreview.org/2017/08/16/broadening-the-scope-of-liabilities-for-cruelty-against-animals-gauging-the-legal-adequacy-of-penal-sanctions-imposed/>.

<sup>21</sup> N.R. Nair and Ors. V. Union of India, AIR 2000.

<sup>22</sup> People for Animals v. Md. Mohazzim, 2015 SCC Online Del 9508.

the court of law. When dealing with animal welfare, the DPSPs which assist the state and devising laws and policies are articles 48 and 48A. The former mentions that the state must protect and improve the species and forbid the killing of cows, calves, dairy and bovine cattle's. Whereas, the latter aims at directing the states to preserve and conserve the environment and wild life of our country. The matter regarding cow slaughter was a very controversial issue due to the sacredness of the animal in Hindu culture.

In a 1961 case<sup>23</sup>, a petition was filed in the apex court on the grounds of constitutional validity of laws on banning cow slaughter in Bihar. The petitioner argued that his fundamental right of right to freedom of religion<sup>24</sup> was getting infringed as they celebrate the festival of Bakr-Id by sacrificing a cow. On the other hand, the court mandated that no Muslim texts allowed cow slaughter. Hence, it held that no rights of the Muslims are being violated.

3. **FUNDAMENTAL DUTIES-** Part IV A of the constitution deals with the fundamental duties and are included in article 51A. This article was inculcated in the constitution through the 42<sup>nd</sup> Constitutional Amendment Act, 1976 in order to incline itself with the UDHR. Just like the DPSPs, even the fundamental duties are not enforceable in the court of law, but are taken up for understanding various constitutional and judicial interpretations. In matters relating to animal rights, clauses g and h of article 51A is of paramount importance. The former imposes a duty on the people of India to preserve, secure and boost the natural environment and have empathy for all living creatures.

In a 2005 case<sup>25</sup>, it was held by the Supreme Court that the purpose of the parliament in validating article 51A was to sync and incline it with articles 48 and 48A, in order to guarantee that the essence of all provisions are appreciated.

4. **ALLOCATION OF POWERS BETWEEN THE CENTRE AND STATES-** The ability of the parliament and the state legislatures to propound laws are mentioned in article 246 of the constitution. The matters on which they can make the laws are divided into three lists i.e., union list, state list and concurrent list, which is mentioned in the seventh schedule. When dealing with animal welfare and their rights, there are some items mentioned in the aforesaid lists on which laws are made. In the state list, item 14 empowers the state to conserve, safeguard and enhance stock, ward off any kind of animal diseases and spread awareness about animal welfare and how to ensure their well-being. Whereas, items 17 and 17B empowers both the centre and state to

---

<sup>23</sup> Abdul Hakim Quraishi and Ors. V. State of Bihar, 1961 AIR 448, 1961 SCR (2) 610.

<sup>24</sup> INDIA CONST. art. 25.

<sup>25</sup> State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors. 2005.



make laws regarding preventing any kind of brutality against animals and safeguarding wild species of animals and birds.<sup>26</sup>

## THE DUTY-BASED APPROACH

Gandhi has endorsed for the “lower animal world” and he had encouraged people to be compassionate towards them.<sup>27</sup> He laid emphasis on the fact that “the more impotent is a life, the more pity we should have for them”.<sup>28</sup> From this, it is implied that giving animals parallel rights to that of humans was not what he advocated for.

Duty-based approach rests on the principle that human beings have a duty and responsibility to protect and ensure a non-human’s welfare. Animals do not have the competence to express their feelings and hardships and thus, humans should be duty-bound to them as they are a part of the word “species”. The Prevention of Cruelty to Animals Act 1960, has been the primary law against any form of cruelty that is inflicted towards animals and it is favourable to the principle of necessity which means that any ‘unnecessary harm and suffering’ should not be inflicted.<sup>29</sup>

Martha Nussbaum, a philosopher gave the capabilities approach where she argued that compassion should not be thought about as an emotion but it should be a duty.<sup>30</sup> Thus, if a suffering caused by an animal is a result of a human action, then the person should be punished because of the direct duty stemming from the compassion. This duty of compassion means not causing any suffering and hardships on the animals and hence, it is a form of right for the animals whose violation, will lead to be a matter of justice.

---

<sup>26</sup> Taruni Kavuri, Overview of Animal Laws in India, ANIMAL LEGAL & HISTORICAL CENTER, MICHIGAN STATE UNIVERSITY (2020), <https://www.animallaw.info/article/overview-animal-laws-india>.

<sup>27</sup> Dr. Sonali Mahapatra, Evolution of Animal Rights in India: From Property to Person (Analysis), FRIENDS BEYOND SPECIES (Last visited on Feb. 28, 2020 at 02:14 p.m.), Available at: <https://saaewnluo.in/2020/02/28/evolution-of-animal-rights-in-india-from-property-to-person/>.

<sup>28</sup> *Ibid.*

<sup>29</sup> Animal legal & historical center the prevention of Cruelty to animals act, 1960 (59 of 1960), as amended by central act 26 of 1982. The prevention of cruelty to animals act, 1960 (59 of 1960), as amended by central act 26 of 1982, available at: <https://www.animallaw.info/statute/cruelty-prevention-cruelty-animals-act-1960> (last visited Apr. 7, 2020 at 02:30 p.m.).

<sup>30</sup> Jonna Wiblom et al., Self-examination, compassion and narrative imagination in students' Learning Culture and Social Interactions, Vol. 29, June 2021, ELSEVIER LTD. 1, 4 (2021), available at: <https://reader.elsevier.com/reader/sd/pii/S2210656121000271?token=E6AEBE1C91B223298C4DA57F54E69CF20CE40B8490EFF20B3BF3C126BD04ABDE5391BF1D1AE59F0250FD030DC496A15F&originRegion=eu-west-1&originCreation=20210407075859>.

She also gives the concept of “dignified existence” for animals, which would comprise of having sufficient and proper nutrition and physical activities, liberty from any kind of cruelty or suffering, liberty to adopt to their characteristics, liberty from all kinds of fear and freedom to be at peace.<sup>31</sup> Hence, the duty which humans have to non-human animals are not because of any kind of charity but it is because they have an inherent quality that gives them a right to dignified existence and to flourish and strive. This similar thought was also given in the N.R Nair judgement.

There is a need for a positive and direct duties rather than negative and indirect ones. It is so because human beings possess control of some animals directly and hence, the responsibility of their dignified existence vests on them. Also, with the development of the society, humans are disturbing and taking away the habitat of the animals. The “balance of nature’ can only be maintained by enforcing positive and direct duties.

This concept of duty of compassion is also found in the Indian Constitution. Article 51A (g) (which is a part of Fundamental Duties) states the humans should have compassion for all the living creatures. The various judgements also aim for welfare of the animals (but with the exception of doctrine of necessity).<sup>32</sup> The legal system of India classifies two categories- one of property and the other of juristic person.<sup>33</sup> Animals can be placed in the category of property but is animate object. So, a duty-based approach can be helpful to protect the animals. The main problem is not of giving rights to the non-humans but it is, that of implementation of the positive and direct duties.

## **PARENS PATRIAE AND THE PUBLIC TRUST DOCTRINE**

In literal words, this doctrine means ‘parents of the country’. It symbolises the state as a parent and imposes on it an obligation to protect those who are helpless and need protection. The doctrine came into light in the landmark case of *A. Nagaraja*, where it was used by the Supreme Court to impose duty on the state to safeguard and protect the animals as they were speechless creatures who did not possess the ability think logically as humans do.

---

<sup>31</sup> Maratha Nussabaum, Justice For All Shortcomings and potentials of the capabilities Approach for protecting animals, *Frontiers of justice*, University of Virginia, available at: [https://www.law.virginia.edu/system/files/news/f17/Bob\\_Barker\\_Prize\\_Jennifer%20Davidson.pdf](https://www.law.virginia.edu/system/files/news/f17/Bob_Barker_Prize_Jennifer%20Davidson.pdf) (last visited Apr. 7, 2020).

<sup>32</sup> Gilles Tarabout, Compassion for Living Creatures in Indian Law Courts, 10 *RELIGIONS* 1: MDPI, 18 (2019), available at: <https://www.mdpi.com/2077-1444/10/6/383>.

<sup>33</sup> *Id.* at 13.

The Public Trust Doctrine enables the state to act as the trustee and preserve and oversee the natural resources. In terms of animal welfare, it means that government has a right to safeguard the animals and also have the duty to ensure their well-being. In a case<sup>34</sup>, the High Court of Bombay invoked the fundamental duty enshrined in Article 51A(g) in addition to the doctrine of public trust and ordered that the elephant should be removed from the possession of the temple and be kept at a sanctuary because of the cruelty which it was subjected to.

Therefore, the state has the following duties-

- (1) To weigh all the probable consequences of any organised activity;
- (2) Only the activities which does no significant harm to the wildlife resources should be permitted;
- (3) The activities allowed should be continuously monitored so as to preserve the trust;
- (4) File a law suit in lieu of parens patriae doctrine, to prohibit activities that would cause harm to the animals and recover the damages.<sup>35</sup>

## **COMPARATIVE ANALYSIS BETWEEN RIGHTS BASED APPROACH AND DUTY BASED APPROACH**

Animal welfare and their rights have been a persistent issue in India. Many judicial judgements have decided to bring these species under the domain of Article 21 of the Indian Constitution where the right to life and personal liberty could apply to animals as well. But after a lot of deliberations, the result is that the rights based approach of animal welfare is not a viable option because they are inconsistent with the concept of jurisprudential rights and there may be difficulties in differentiating between human and animals, if same rights are conferred upon them. In order to cover up these lacunas, some of the jurists have suggested a shift to a duty based approach, where responsibility is imposed on the governments and the people to protect and safeguard the wildlife and the forests.

When determining whether animals possess legal rights or not, the main focus lies on their claim rights, i.e., right to be treated equally, right not to be harmed, right to be protected against cruelty, etc. Generally, it is considered that animals are not legal subjects because they cannot

---

<sup>34</sup> M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.

<sup>35</sup> Deborah G. Musiker, The Public Trust and Parens Patriae Doctrines: Protecting Wildlife in Uncertain Political Times, 16 PUB. LAND L. REV. 87, 115 (1995), available at: <https://core.ac.uk/download/pdf/232674198.pdf>.

obtain a legal right without performing a legal duty. We also know that since they are not in the position to understand their legal relationship with others, they cannot perform a legal duty. Also, in the jallikattu case<sup>36</sup>, the maxim of *Parens Patriae* was emphasized, which meant that the state is responsible or is under a duty of securing and protecting the rights of the animals, since the animals are unable to take care of themselves.

The duty of the state to take care of the animals can be compared to that of the will theory, where even if we assume that animals have rights, they can also be represented by someone else, who has authority over them. For example, a parent is under the authority to exercise the rights of its child, similarly the legal holder of the animal can exercise the animal's right on its behalf.<sup>37</sup> But, this is not possible in the case of animals as practically speaking, for an animal to have a 'legal representative', the animal firstly should be qualified to be a 'right-holder' which is not possible.

Though, both the approaches ultimately have the common goal of protecting animals, but the debate arises on the fact that which is better suited to its achievement. It is important to adopt an approach that is more practical and will aim at the well-being and security of the animals. Time and again, it has been proved that bending towards the duty based approach is a much more viable and feasible idea. The proponents of the duty based approach advocate the harsh truth about animals being property of the humans and this idea is highly disregarded by many jurists. Also, the courts have given a wrong interpretation by including animals under the ambit of Article 21 of the constitution. Hence, it is time we put an end on the rights based approach and help increase the role of the humans in preserving and safeguarding wildlife in our country.

## CONCLUSION

Granting the non-human animals legal rights will only lead to inconsistency. With the rising cases of animal cruelty, a method needs to be brought that would make a visible change. Human beings have to change their outlook and see the animals as dignified creatures who deserve to be protected and cared. Animals should not be harmed and be subjected to unnecessary suffering.

---

<sup>36</sup> Animal Welfare Board of India v. A. Nagaraja and Ors, CIVIL APPEAL NO. 5387 OF 2014 (@ Special Leave Petition (Civil) No.11686 of 2007) (2014).

<sup>37</sup> Torben Spaak, Animal Law: Human Duties or Animal Rights, RESEARCH GATE (Oct., 2020), available at: [https://www.researchgate.net/publication/344445577\\_Animal\\_Law\\_Human\\_Duties\\_or\\_Animal\\_Rights](https://www.researchgate.net/publication/344445577_Animal_Law_Human_Duties_or_Animal_Rights).

In India, the judicial development has also come a long way and in many judgements, the courts have granted “legal personhood” to animals.<sup>38</sup> The Delhi High Court in its recent decision ruled that animals have a legal right to be regarded with dignity, compassion and respect. It went on to state that the community/street dogs have “right to food” and the residents have a “right to feed” the dogs. The ruling though well-intended presents several critical problems- first is the implementation issue and second, is of judicial overreach, particularly in situations concerning legal status of the animals.<sup>39</sup>

In the another recent landmark judgment of *Narayan Dutt Bhatt v. Union of India*<sup>40</sup>, the Uttarakhand High Court declared that the whole animal kingdom is bestowed with privileges, responsibilities and liabilities just like a natural living person and it has a separate legal identity of its own. This decision was a result of a Public Interest Litigation which was filed by the petitioner in 2014 regarding the well-being and physical condition of animals which were being used as a mode of transport (for example-donkeys, horses, etc.) for carrying persons and goods from the area of Uttarakhand to Nepal. The verdict was supported with the provisions of the Constitution through Article 21 as the interpretation of the term ‘life’ was also extended to animal life. This judgement provided for a crucial development in the aspect of animal welfare and protection as they were conferred with legal rights and even be represented in the court of law by their guardian.

In India the legislations for animal welfare (like the PCA Act) rests on the notion of ownership of the animals. Even the Constitution is tilted towards the welfare or duty based approach rather than a rights based one. These judicial developments do not itself guarantee animal well-being as these decisions are not binding in nature. Giving animal rights without any sought of legislative basis leads to a system in which these judgements are the only source of such rights.<sup>41</sup> Therefore, the first initiative towards changing the status of animals has to be taken by the legislature and no one else so that maximum security is provided to the animal kingdom, keeping in mind the importance of the legal personality of human beings.

A PIL was filed to grant ‘legal personhood’ to the non-human animals. Though it is not this part that is supported in the article yet, it addressed the possible steps that could be taken to

---

<sup>38</sup> Pranjal Pranshu, A Study of Animals as Legal Persons, 1 ILR 1, 3-4 (2020), available at: <https://indraprasthalawreview.in/wp-content/uploads/2020/10/Paper-9-converted.pdf>.

<sup>39</sup> Apporva, Though Well-Intentioned, Courts' Recognition of Rights for Animals Is Legally Problematic, THE WIRE, available at: <https://thewire.in/law/courts-animal-rights-legal-problems> (last visited Dec. 11, 2021).

<sup>40</sup> *Narayan Dutt Bhatt v. Union of India and Ors*, 2018 SCC Online Utt 645.

<sup>41</sup> Ibid.

improve the current situation of animal cruelty- It requests that the court orders the National Crime Records Bureau to publish and report figures and cases concerning animal cruelty; It also asserts that provisions of the PCA Act is falling short of protecting the animals and hence, it should be amended accordingly; It also urges on the need to create emergency units for animal care, online portals for reporting any violence and autonomous committees to review allegations; Lastly, it also asks the court to order states to ban animal fights, set up funds for animal well-being, slowly phase out animal testing and in case of subordinates' inability to administer and implement the laws, the superior should be made liable.<sup>42</sup>

\*\*\*\*\*

---

<sup>42</sup> Dr. Rajesh K. Reddy, Groundbreaking Litigation Seeks to Extend Formal Personhood Status to India's Animal Kingdom, LEWIS & CLARK (Sept. 8, 2020), available at: <https://law.lclark.edu/live/news/44234-groundbreaking-litigation-seeks-to-extend-formal>.