



# WHO IS AN ANIMAL?

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# WHO IS AN ANIMAL?

“creature that is not a bird, a fish, a reptile, an insect or a human”

“any living thing that is not a plant or a human”

“any living creature, including humans”

“a person who behaves in a cruel or unpleasant way, or who is very dirty”

“a particular type of person, thing, organization, etc.”

# CATEGORIES



CAPTIVE



DOMESTIC



FARMED

# CAPTIVE ANIMALS

- ▶ Aquariums, circuses, theme parks and zoos, others live caged at private homes.
- ▶ Concerns for the wellbeing of wild animals in captivity have stemmed from investigators exposing the inadequate conditions of zoos and other facilities.
- ▶ One perspective - existence of zoos on the traditional grounds of conservation and education.
- ▶ National Zoo Policy 1998 – Preamble states ‘conservation as one of the main objectives of management of zoos’.
- ▶ “Supporting the conservation of endangered species by giving species, which have no chance of survival in wild, a last chance of survival.”

# CAPTIVE ANIMALS

- ▶ Deficient in terms of food, drinking water, housing, veterinary care, environmental enrichment, safety and security.
- ▶ Cages are so small that the animals can barely move.
- ▶ Prey animals are kept in close proximity to predators in several facilities, causing extreme stress to both types of animals.
- ▶ Some facilities have few or no staff members
- ▶ Captive elephants were subjected to cruel practices at circus and tourist spots, and during festivals.

# DOMESTIC ANIMALS

- ▶ Companion animals are those animals who share our homes and lives.
- ▶ Section 2(j) – Pet Shop Rules 2018 - “pet animal” includes dog, cat, rabbit, guinea pig, hamster, rodents of the rat or mice category, pet birds and such other type of animals, the ownership of, and trade in which, is not prohibited by any other law, rules or regulations.

# FARMED ANIMALS

- ▶ Factory farming is the largest source of animal cruelty in the world. Factory farming or intensive animal farming is the intense and confined farming of animals such as pigs, cows, and birds. The majority of animals farmed for food live in conditions that cause suffering and stress.
- ▶ Poultry, dairy, livestock, agriculture
- ▶ Fisheries and Aquaculture - majority of producers in India do not conform to the Aquatic Animal Health Code, which provides standards for the improvement of aquatic animal health worldwide.

# EVOLUTION OF ANIMALS: FROM PROPERTY TO PERSON

- ▶ The perception of humans towards animals has its genesis in many factors, such as religion, customs, culture, personal experience, etc. These factors and more have shaped the jurisprudence of animal law since ancient times and consequently shaped the laws and status of animals as we witness today.
- ▶ Animal jurisprudence can broadly be categorized into a **rights-based approach** and a **welfare approach**.
- ▶ **India**, through its legislation, Prevention of Cruelty to Animals Act 1960 (PCA Act), **follows a welfare-based approach**. However, in recent times, there has been a rather reformist shift from a purely welfare based approach to a moderately rights-based approach.

# KAUTILYA'S ARTHASHASTRA

- ▶ One of the ancient texts offering a viewpoint on animals, *Arthashastra* is principally an exhaustive literature on economic policies, military strategies and political artifice of running a kingdom.
- ▶ The reference to animals is neither from a welfare-based approach nor from a rights-based approach, but more in the context of **objects or property**.
- ▶ Under the chapter for Division of Land, Kautilya talks about demarcating forest land for the purpose of **royal sports**. Such land should be full of 'harmless animals', and others such as tigers, elephants and bison.
- ▶ Animals are also included under **property for inheritance**, where specific animals, such as goats, are considered as 'special shares' during division of property for inheritance.

# INDIAN SCENARIO

- ▶ Law of tort – Animals as ‘means’ by which one person can be held liable for injury or damages caused to another person
- ▶ Indian Penal Code – ‘Offences Against Property’
- ▶ Section 378 – Theft – Moveable property – Explanation 4
- ▶ Sections 426, 428, 429 – not intended to protect animals from cruelty
- ▶ Lack of ownership makes the provisions inapplicable on strays
- ▶ Animal destroyed must be ‘subject of property’

# BENEFITS OF ANIMALS AS PROPERTY

- ▶ Owner or keeper of animal has duty of care
- ▶ Owners are responsible for bodily injuries or property damage caused by the animals they own
- ▶ Property allows humans to realise the different values that domestic animals represent to them, thus creating the incentive to support a next generation of animals

# JUSTICE KRISHNA IYER'S ANIMAL CITIZENS

- ▶ Justice V.R. Krishna Iyer, a visionary of modern Indian legal jurisprudence, has addressed the issue of animals in his work 'Towards a Natural World'.
- ▶ Justice Iyer propounds a new school of thought by referring to animals as '**Animal Citizens**'.
- ▶ He explicitly states that a duty has been cast on the State and human citizens through Articles 48A and 51A of the Constitution, which makes "***justice to animal citizens is as fundamental as social justice is to exploited people.***"

# JUSTICE KRISHNA IYER'S ANIMAL CITIZENS

- ▶ Iyer's idea is to focus on a **symbiotic relationship** between humans and non-human animals.
- ▶ He asserts a “*new pluralism of human and animal mutuality*”, which can be achieved through mass awakening and consciousness.
- ▶ **Article 51A(g), is the foundation for animal welfare and recognition of animal citizenship.**
- ▶ However, he has not delved into the legal nuances that can actually extend Article 51A(g) to animals in order to grant them a citizenship status.

# 'PERSONHOOD' THROUGH JUDICIAL DISCOURSE

- ▶ Opening a new dimension of animal law jurisprudence in India – ***Animal Welfare Board of India v. A. Nagaraja and ors.***
- ▶ The Court emphasizes that any regulation or guideline, which dilutes or defeats the welfare legislation, can be rightly struck down by the Court to achieve the object of the Act.
- ▶ Furthermore, since animals are incapable of taking care of their rights against humans themselves, it is **“the duty of the Court” under *parens patriae*** to ensure the same. This is also reflective of Gandhi's philosophy of humans being 'elder brethren' of animals.

# 'PERSONHOOD' THROUGH JUDICIAL DISCOURSE

- ▶ **Duty imposed**, under Section 3 of PCA Act, on persons in charge of animals being mandatory in nature assumes the nature of a **corresponding right of animals**. The duty enshrined therein is twofold – to ensure well-being of the animal as well as “prevent infliction of unnecessary pain and suffering.”
- ▶ Being penal in nature, Section 11 simultaneously confers rights upon animals not to be inflicted with unnecessary pain and suffering, as well as obligation upon others, whether the AWBI, persons in charge, or others to secure their well-being and welfare. Thus, both the provisions have been given a broad interpretation by the Court to have a dual effect – right on the animal and a corresponding duty on the humans.

# 'PERSONHOOD' THROUGH JUDICIAL DISCOURSE

- ▶ Right of all living creatures, including animals, to have a peaceful life with dignity and right to well-being by being protected against cruelty.
- ▶ Reiterated the approach of the World Organization for Animal Health (OIE), and recognized the Five Freedoms to be fundamental principles of animal welfare. It extends the ambit of **Section 3 and 11 of PCA Act 1960** to having imbibed the Five Freedoms, therefore making the Sections **analogous to Part III of the Constitution**. Thus, for the first time, the highest Court of the land recognized and upheld **'fundamental rights' of animals**.
- ▶ For the first time the Court recognizes and elaborates upon the concept of 'speciesism' and condemns discrimination against animals on the basis of superiority of species.

# 'PERSONHOOD' THROUGH JUDICIAL DISCOURSE

- ▶ The Court in the *A.Nagaraja* judgment has also repeatedly used words like 'stress', 'humiliation', etc. which are indicators of mental agony and not just physical distress. Thus, it may be implied that animals undergo mental pain and suffering as well, and thereby requisite protection against **mental cruelty** is necessary as well.
- ▶ Court amplifies the Right to Life as enshrined under **Article 21**.
- ▶ It may be criticized by some that the Court has incorrectly digressed in extending "right to life under Article 21" to animals because it clearly uses the words "No person shall be denied of his right to life and personal liberty". Thus, it is applicable only to 'person' and not otherwise.

# 'PERSON'

- ▶ The Constitution does not define the word '**person**' anywhere. Under Article 367, it has been expressly provided that unless that context otherwise requires, for interpretation of the Constitution, the General Clauses Act 1897 shall be referred to.
- ▶ The word 'person' used in the Constitution has to be therefore understood as per Section 3(42) of the General Clauses Act 1897. The definition given states that "**person shall include company, association and body of individuals, incorporated or not.**" The definition of 'person' under the "General Clauses Act is illustrative and not exhaustive.
- ▶ 'Person' is not restricted only to human beings alone, and if it may be extended to non-human entities like corporations, there is no reason to deny the same to non-human animals as well.

# 'PERSONHOOD' THROUGH JUDICIAL DISCOURSE

- ▶ In 2018, the Uttarakhand High Court in ***Narayan Dutt Bhatt v. Union of India and ors.*** widened the ambit of '**personhood**' beyond human beings to non-human animals.
- ▶ The High Court recognizes that rights can be enjoyed only by 'persons'; however, **the meaning of 'person' is not confined to human beings alone and extends to other juristic persons as well.** Hence, rights cannot become the exclusive domain of humans.
- ▶ The **essence of personhood in itself is flexible** and there is sufficient scope for a trustee-trusted relation to exist – Corporations, Companies, Hindu idols

# 'PERSONHOOD' THROUGH JUDICIAL DISCOURSE

- ▶ The court further recognizes that as opposed to natural persons, legal and juristic persons act through an **external agent, who is designated to act on their behalf for their benefit**. Whether it is Gandhi's 'elder brethren' ideal or doctrine of *parens patriae*, or the idea of humans being entrusted as managers, all find their genesis in the idea of humans or State being caretakers for those who cannot take care of themselves.
- ▶ Rights do not belong only to natural persons, such as humans, but can be enjoyed by any entity having a legal personality as recognized under the law.

# 'PERSONHOOD' THROUGH JUDICIAL DISCOURSE

- ▶ The one flaw in the two-judge bench decision is its basis of granting legal personality. The Court's reasoning for granting legal personality is based upon the '**emotional valuation**' of the entity in question.
- ▶ Therefore, the status of animals hinges on the level of importance man accords them with. This essentially might defeat the purpose of what the judgment intends to achieve, making legal personhood of animals a subjective concept. Hence, it leaves a possibility for 'emotional valuation' going either in favour of animals or otherwise.
- ▶ In the end the **Court grants the entire animal kingdom with legal entity with rights, duties and liabilities corresponding to that of living persons**. It further emphasizes on the doctrine of "*persons in loco parentis*", making State the guardian of animals and animal welfare.

# FINAL THOUGHTS

- ▶ Even though there are no statutory provisions expressly granting 'rights' per se to animals, this interpretation of Article 21 by the Court increases chances for higher accountability of people in how they treat animals and, hopefully, opens the door for improved status of animals in this country.
- ▶ There has been a marked **shift from a master-servant relation between human-animal to a guardian-ward relation.**
- ▶ An emergence of a new area of jurisprudence between rights and welfare, perhaps, is gradually developing - grey area - '**rightful welfare**', wherein animals are granted welfare as a right.
- ▶ The endorsement of rights to animals by courts with a corresponding duty on humans to ensure their welfare, perhaps, is the connotation of 'rightful welfare', which seems to be a more pragmatic approach.
- ▶ The gravity of human's duty to ensure the welfare of animals, in order to protect their rights, covers all elements to uplift the status of animals. Propelling this theory further, along with the likes of Animal Citizens, will render the opening of new avenues for animals as right-holders.