

PROPERTY STATUS OF FERAL ANIMALS IN INDIA

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ABSTRACT

The Animal is a nice creation of nature or God and it a beauty of the earth as well as part of the environment. Here the first question is whether an animal can be considered as a person. According to Salmond animals are not persons since they are incapable to hold rights and duties. But it is not true no doubt persons are two types into natural and legal persons. A natural person is a real human being with having rights and duties by birth and protected by law and State. Juristic persons are created and formulated by the law and having some rights recognized by State. An animal is a legal person when anyone has created cruelty towards animals. The term Animal is very wide and defined under the Wild Life law 1972, only living organisms like vertebrate animals, birds reptiles, amphibians, fish, other chordates, and invertebrates and also includes their youngsters and eggs, etc. mentioned in term animals. Our Indian constitution also protected the rights of animals through Article 21. In the A. Nagaraja¹ case, the Indian Apex Court explained the status of animals in our legal system is very dignified. The animals are also a crucial part of human mankind as well as the goddess part of the environment. The Indian Constitutional scheme has incorporated the concept of welfare of animals like freedoms and protection of animals, provide better care and treatment for the animal. It is a utility for the development of nations and economies. The decision has played a greater role in the protection of the rights of animals and developed animal jurisprudence in India. So we can say the animal is not only the property of a person as well as prohibited cruelty towards animals. I consider this paper, rights of Animals in the Indian legal system as well as where that a treated a property.

Key Words: Rights of Animals, Constitutional Provision, Judicial Response, Policies.

I. INTRODUCTION

Immanuel Kant was a very famous German Philosopher who nicely explained if we are want to check the nature of human beings than considered their behaviours to animals. The animal is an innocent living organism that part of mercy and justice in society². The theory of sociology is talk about the relationship and dharma of human being that indicates social relation with biology. The animal is a nice creation of God and our responsibility to protect and love it, because of the whole humankind known as a sea of compassion and respect. A wild animal does not only property as well as a living property for society. The welfare of animals is not a new thing it was prevailing in Roman law as well as Hindu Philosophy like respect for Nandi and Kamdhanu. No doubt, an animal is treated as property in many legal systems but it has the right to protection under the law when cruelty against it. However, it has a legal personality under jurisprudence. The legal

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¹ (2014) 7 SCC 547.

² Brainy Quote https://www.brainyquote.com/quotes/immanuel_kant_390204 (June 15, 2020, 4:00 PM)

personality also having and bear a right like a human in some situation. Animal as a resource like productive capital.

The animal right is also connected with the welfare of an animal. The variance between animal welfare & rights of wildlife in this context animal's welfare means provides good health care, happiness, and protection for hunting the innocent animal. The animal rights mean access to justice and dignified life. The Indian Constitution provides a mandatory duty to all citizens to protect wildlife and the environment. Part IV A is talked about the basic duty of the Citizen and mention that every citizen has a mandatory duty or obligation to secure the natural resources like forests, lakes, rivers, and wildlife as well as protect living creatures. Article 21 is also given rights to a clean environment and it can be possible through respect to all aspects of nature. Article 48A declared the duty of State in mandatory to provide safeguards forest and wildlife. A feral animal has not been defined under the Indian legal system only wildlife and wild animal word defined in the WPA. The conservation of wildlife is basic for the development and imprudent of the ecosystem. In a legal sense, wildlife means any animal, floating, or land vegetation which forms part of any habitat. Saying wildlife is a very heart and integral part of nature. I have adopted a doctrinal methodology for the analysis of this paper, used legal documents, books, and case laws.

II. JURISPRUDENTIAL STATUS OF ANIMAL

Rene Descartes was a natural philosopher, who declared animals to be no more than mere biological machines³. Aristotle was an eminent jurist and philosopher about distributive and corrective justice. He was believed animals like human beings having greatly valued in the economic development of farmers and supported farm animal ethics. Immanuel Kant has also not concerned cruelty against animals and said protection of animals our obligation in society⁴. Jeremy Bentham as well knew English philosopher and founder of the utilitarianism principle. Jeremy Bentham has enlightened a dynamic anticruelty movement as well as assists in the formulation of legal reforms aimed at enhancing welfare. For this reason, he called the "first patron saint of animal rights"⁵. In 1823 Jeremy Bentham has evaluated the protection of animals for the development and justice in the country⁶. Jeremy Bentham was a utilitarian with a reformist. He has accepted the utility of animals for human life and insists that not used unwanted hurt, i.e. cruelty, should be eliminated. Jeremy Bentham has stated that every activity by which, without the expectation of prevalent good, pain is deliberately and intentionally produced in any being whatsoever is an act of cruelty. Under Ancient jurisprudence, the animal was a part of worship and respect that having ideal status⁷. He was the champion of the suffering of Animal & Animal resistance. Animals were a property of owner that protected and cared in the ancient period. In this sense animals as treated living property. M. Wise Steven has rightly said animals in terms of autonomy values⁸ for business and domestic purposes. He has said animals are very intelligent and connected very strongly with the internal feeling of human beings. Carl Cohen has nicely explained animals have not a juristic person because that can't be having any rights. He has supported Salmond's view. According to Salmond animals is property because they not having a right like human beings⁹. Pre

³ Rene Descartes, Stanford Encyclopedia of Philosophy, available at: <https://plato.stanford.edu/entries/descartes/> (June 19, 2020, 2:00 PM).

⁴ Should a Chimp Be Able to Sue Its Owner? https://www.nytimes.com/2014/04/27/magazine/the-rights-of-man-and-beast.html?ref=magazine&_r=1 (June 18, 2020, 20:00 PM).

⁵ Jonathan Benthall, Animal Liberation and Rights'23 (2) (Anthropology, 2007).

⁶ Jeremy Bentham, Introduction to the Principles of Morals and Legislation, (2004).

⁷ David S. Favre, Wildlife Jurisprudence, 459 Mich. State University College of Law, (2010).

⁸ Steven M. Wise, Drawing The Line: Science And The Case For Animal Rights 238 (2002).

⁹ Carl Cohen & Tom Regan, The Animal Rights Debate, 30 (2001).

independent era, in India, no special legal protection has been provided in favour of animals. In 1927 the British Indian government has passed the Indian Forest Act, 1927 for the protection of cattle in India. It is a welcome sign for the welfare of the wild animal as well as fauna and supported by F. W. Champion's appeal in the Journal of the Bombay Natural History Society which was related to natural history¹⁰ and started the protection of animal rights and its welfare through the law.

III. INTERNATIONAL SCENARIO

The United Nations Environment Program has organized after the Stockholm conference which was a milestone decision on the global for the protection of the environment with the conservation of the wild animal. It has worked jointly with other UN agencies, Member States, international institutions, and the free enterprise for the development of the ecosystem as well as protection of wild animal its growth. It is also an organized program-related awareness of the welfare of animals¹¹.

The OIE World Organization for Animal Health is mission is to ensure transparency in the field of welfare of animals and the protection of its rights. The organization is also worked to enhance knowledge about species and the health care of animals on the international level. India is also a member of the OIE organization. The Earth Conference was a unique step held in 1992 and known as Rio forest principles. It has also favoured the protection of wildlife and forests. Principle 1 of the Earth conference on Environment and Development, 1992 provides that nature is a basic part of human beings for sustainable development. The wild animals are authorized to a healthy environment as well as dignified and caring life¹².

It is also concern with the protection and care of animals because harmony with a nature word is indicated protection of wildlife very crucial part of the ecology. Nature and its vital role to people, which together embody wildlife and ecosystem is a very important part of survival. Report on Identification of Principles of International Law for Sustainable Development, 1995 is talked about wildlife as a part of the ecosystem. Principle 15 of MSDGs of the UN/GA Resolution 2030 has adopted in 2015 mentioned for the protection of forest as well as a wild animal. United Nations Social Educational Cultural Organization is also working on the protection and dignity of the wild animal. The resolution is taken a significant position for the maintained condition of wildlife and forest. Global Animal law has needed and supported interaction between humans and animals¹³.

IV. ANIMAL'S RIGHT: CONSTITUTIONAL OBLIGATION

The Indian Constitution promises to dignified places to all mankind with living organisms like feral or wildlife. The animals have linked to human life for the reason the Indian constitution has protected animals from human abuse and violation. Article 21 and Article 48A has concerned Animal jurisprudence as well as the welfare of the animal as a sentient being. The sustainable development concept has adopted by the Indian

¹⁰ Nature February 2, 1935 available at: <https://www.nature.com/articles/135178d0.pdf> (June21,2020,3:00PM)

¹¹ Three Ways the United Nations Environment Programme works to address illegal trade in Wildlife, available at: <https://www.unenvironment.org/news-and-stories/story/three-ways-united-nations-environment-programme-works-address-illegal-trade> (June 21, 2020, 4:PM)

¹² A/CONF.151/26 (Vol. I) Report of The United Nations Conference On Environment And Development https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.

¹³ Anne Peters, Studies in Global Animal Law, Springer,(2020)

judiciary under Article 21. Article 48 A provides human civilization with the significance of animal rights. Government policies have played a vital role in better animal husbandry in a rural area and improving the economic condition of villagers. Under Article 48A the government has the power to make legislation and launch a scheme for the welfare of animals. The Indian government has taken various initiatives about protection and improvement of wildlife like project tiger, project elephant, UNDP Sea turtle project, and conservation of crocodile's project, etc. under entry 17, 17A, and 17B of the Concurrent List of the Seventh Schedule has also empowered to Union and State government to make a law about the prevention of cruelty to animals, forests as well as protection of wild animals and birds¹⁴. Our constitutional maker was aware of the rights of animals and mentioned provisions related to protection from cruelty to animals:

V. SEPARATE ENACTMENT ON THE PROTECTION OF ANIMAL

Indian legal system has adopted social justice with economic justice. The welfare of animals is basic for social justice and cruelty to animals against social justice because the animal has fulfilled the needs of human beings. For the reason effective protection of animals the Parliament passed *the prevention of cruelty to Animal Act, 1960*, and the *Wildlife Protection Act, 1972*¹⁵. It's played a significant role in improving and the conservation of wildlife. Under the Act, the animal was treated as a living property of the government, and there applied public trust doctrine for the welfare of animals. Both Act has considered animal as a legal person and have some right. The main objectives of the Act to promote the safety of wild animals, birds, and plants and matters concerned therewith as well as incidental thereto. Another aim of the Act is to ensure the ecosystem with the environmental security of the country¹⁵. Section 2 of the Act has given many definitions concerning wildlife in thirty-nine clauses like Animal, Animal Article, Captive Animal, Zoo, Hunting, etc. Section 50 of WPA is given the power of an officer who is functioning for the security-related wildlife. Such officer can enter any place suspected, search, arrest, and detention, etc. in respect of offence committed against the animal as well as provisions of the Act, and section 51 concerning redress with penalties anyone shall be committed an offence connected wildlife and under this legislation. Such kinds of an offense shall be punishable with imprisonment for three years with a fine twenty-five thousand rupees¹⁶. National parks and sanctuaries have also been protected and decided under this legislation.

The three effective mechanisms have functioned under this Act, firstly, National Wildlife Crime Control Bureau related provisions mentioned Section 38Z of WPA, secondly, the Central Zoo Authority concerned Sections 38A-38J, and third body National Tiger Conservation Authority has mentioned Section 38O of the *Wildlife Protection Act, 1972*¹⁶. Like WPA the Prevention of Cruelty to Animal legislation has functioned very effectively for the maintaining rights of wild animals. It is a sole enactment for the manage condition and dignity of the animal. It is provided to prevent cruelty or unethical behaviour against animals. The Act was concerned to ensure the welfare & reasonable care of the animal. The legislation is elaborated on words animals, owners, and their liability and obligations. The Act also provides to establish Board for the care and protection of Animal, the Board Known as the Animal Welfare Board of India. The main functions of the Board namely, to the promotion of the welfare of wildlife, and secure unwanted pain and hurt. Section 3 is talked about the duty of humans to reasonable care for animals. Section 11 is mentioned any activity that created cruelty with an offence like kicking overriding, beating, unnecessary load on the animal, used unfit animals as well as given harmful drugs, not provides proper food, and killed the animal. Section 31 of the Act

¹⁴ Prof. M.P. Jain, Indian Constitutional Law, 1517, LexisNexis (2013).

¹⁵ Wild Life (Protection) Act, 1972, available at: http://legislative.gov.in/sites/default/files/A1972-53_0.pdf (September 17, 2020 3:00)

¹⁶ Ibid.

declared any offence done in section 11 is cognizable in nature. The punishment declared under section 11 for the cruelty a maximum fine a Rupees one Hundred with imprisonment extended three months. The Act has based on the benefit of the animals and given the responsibility to the human being to protect and care for them. Section 15(1) provides the establishment of CPCSEA, the main function of the Committee to make regulation welfare of the animal and inspect and enter any institution where animal experimental and carry out. If any found guilty an offence will be punishable under section 20 of the Act. Exactly, the PCA enactment is a holistic form for the reason performance on the flooring has been a failure. The gaps between Animal and human beings have enlarged in the present scenario that result, some petrified matter of abuse to the wild animals have been noted whole India. We know recently matter in the Kerala Elephant incident; she has died by cruel human activity. The National Green Tribunal has taken a Suo Muto action against such activity. Another enactment for the animal is the Transport of Animal Rule, 1978. It has provided rules concerning the transport of Monkeys, Cattle, Sheep, Goats, etc¹⁷.

The criminal law also provides protection and welfare of animals. Section 47 IPC is defined as Animal words. It is only mentioned any living creature but not a human being. The criminal law has treated an animal as property¹⁸ and protected by it. Section 428 & Section 429 of the Indian Penal Code, 1860 is cleared talk about the animal as a valuable property. Section 428 provides two-year punishment as well as a fine if whoever commits mischief by killing or maiming an animal. This section prevents unwanted pain to animals and consequent loss to the owner. The maiming words indicate damage to the body permanently. Section 429 declared punishment five years with a fine if the animal is of greater value like Elephant, Camel, Horse, etc. the rights of an animal protected by the substantive law of crime and mentioned or provides penalties for the abuse or violence against animals

VI. JUDICIAL RESPONSE TOWARDS THE PROTECTION OF WILDLIFE

The Indian judiciary is played a crucial role in access to justice for wildlife through many magnitude cases. In *Consumer Education and Research Society v. Union of India*,¹⁹ the judiciary has observed if any decision and step of government unfavorable the wildlife and the environment, which is declared invalid. Judicial activism is given an active platform to lawyers, NGOs as well as judiciary for the protection and welfare of animals. In the *State of Bihar v. Murad Ali Khan*,²⁰ the Supreme Court was quite aware that the laws on wildlife were needed to change according to time and circumstance as well as a balance between nature and human beings. Ecosystem concerned with sustainable development that talked about the preservation of wildlife, it is a necessity for the survival of humanity. In *Gauri Maulekhi v. Union of India*²¹ Indian judiciary has declared the wild animals have not subject to abuse or violence in any form. In this context made a big responsibility of the state to prevent cruelty against non-human.

The new dimension has made about the animal is an only property or living property and what having rights after *the Animal Welfare Board of India v. A. Nagaraja*²² case. The Apex Court has cleared the animal having some rights as well as having rights related dignity. Section 3 and Section 11 PCA are proper included respect to animals and decided punishment when commit abuse against them. The cruelty is not defined under this Act but some words are indicating cruelty like beating and overloading on animals. Such kind of provision is

¹⁷ The Transport of Animal Rule, 1978

¹⁸ Surya Narayan Mishra, *The Indian Penal Code*, 132(19th ed., 2013)

¹⁹ AIR 2000 SC, 975.

²⁰ (1988)4 SCC655.

²¹ W.P.(C).No.881/2014

²² (2014) 7 SCC 547.

the expansion of constitutional scheme about animal welfare under Article 51A (g). The Apex Court has observed that the traditional racing by a bull against the interest of the animal is not acceptable by constitutional spirit. Article 21 talked about the right to life so dignified animal life also including under it. On the matter of the animal is a juristic person or not High Court of Punjab Haryana has concerned with A. Nagaraja's case and said the animal has had dignity and right to live under the Indian legal system.

In *Chief Forest Conservator (Wildlife) and Others v. Nisan Khan*,²³ the Apex Court has held that any estimation and formulation in the WPA legislation has regulated to reasonable care of feral animals in India. So the legislation must be strictly complied and implemented. The schedule four of the WPA has prohibited hunting specified birds so no anyone has a no right against it. The words hunting would also include trapping. Indian judiciary has adopted a beneficial interpretation on the matter of protection of wildlife.

*Indian Handicrafts Emporium and others v. Union of India*²⁴ it was held that Constitution has provided freedom of business, occupation, and trade but it is not absolute and under the reasonable restriction mentioned Article 19(6) applied on the trade of animals. A trade that is harmful to the ecosystem, as well as the environment, is prohibited. Further in *Moti Lal v. Central Bureau of Investigation*²⁵ the Court has explained the limits and jurisdiction of the WPA legislation. Section 50 is provided wider jurisdiction of the authority of the Act. Therefore, other authorities like CBI would have no authorization about the investigation under this Act. In *T.N. Godavarman Thirumulpad v. Union of India*²⁶, the protection of wild animals a very significant for economic growth, needs environmental stability in the country. Justice B.L. Hansaria in *Pradeep Krishan v. Union of India*²⁷ the Apex Court has held that law relating wildlife has empowered the Central Government to decide any matter concerning ecological appropriate, geomorphologies, natural or geological requisite, a Sanctuary and without a licence prohibited hunting in such Sanctuaries as well as public entry is barred. Any violation of provisions of the Act may be imposed penalties imprisonment and fine. The above leading judgments are showing the feral animal protected by the law and also the responsibility of a human being to secure and respect it. Natural ethics is learned to love all creatures of God. Thus, the Animal as a constructed through human intentionality.

VII. CONCLUSION & SUGGESTIONS

Today, the changing traditional perspectives about the animal as a property, animal as treated living property, and having legal personality in some situations like when it is facing cruelty by a human being. Environmental Ethics also imposed responsibility on human society to protect and care about the feral animal. Our legal system is favour and aware of the protection of the animal as well as other living organisms like fauna and flora. Biodiversity is a crucial component of ecology. I suggest that wildlife beauty of nature as well as a vision of the forest. It is our duty, liability, and obligation to protect them. Indian constitution is also promised to provide safeguards for the wildlife. Every person must be taken responsibility for the protection of the animal's rights. The ethics of the environment is also prompting to prevent abuse against feral animals. Ethical theory is also concerned with the interest of animals. John Austin has rightly said duty about animal protection is an absolute duty that not corresponding rights. The legal philosophy has advocated the security of animals a significant for the development of the civilized society. Law-related wildlife is sufficient in the country's only need for effective implementation. The legal welfare concept has also supported animal as property protected by Law.

²³ AIR 2003SC1867

²⁴ AIR 2003 SC 3240

²⁵ 2002 SCC (Cr.) 889

²⁶ (2006) 1 SCC 1

²⁷ AIR 1996 SC 2040

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