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ANIMAL VOICES: DEEP DIVE INTO ANIMAL WELFARE JURISPRUDENCE

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ABSTRACT

The evolving relationship between humans and animals has prompted an urgent re-evaluation of the legal and moral obligations owed to non-human life forms. The dissertation undertakes comprehensive and interdisciplinary exploration of animal welfare within legal systems, focusing on the transformation of jurisprudential thought, legislative frameworks and judicial interpretations, both in India and globally. It interrogates the adequacy of existing laws and policies in addressing the sentience, suffering and inherent dignity of animals.

At its core, the research explores the dichotomy between animal welfare and animal rights, mapping the philosophical underpinnings of each. Particular emphasis is placed on concept of animal sentience and the moral standing of animals, which are increasingly being recognized in legal frameworks across jurisdictions and serves as the foundational basis for extending moral and legal consideration to animals.

The dissertation delves deep into the religious perspectives, evolution of the welfare laws and the overall debate of legal personhood. In the Indian context, the dissertation critically evaluates statutes examining their legislative histories, institutional mechanisms and judicial interpretations. Landmark judgements such as *Animal Welfare Board of India v. Nagaraja* and *Karnail Singh v. State of Haryana* are analysed for their jurisprudential advancements, particularly in recognizing animals as sentient beings and even granting them legal personhood. Simultaneously, the dissertation highlights the shortcoming of these laws and progressive approach of the judiciary in paving way for advanced animal rights theory.

Keywords: animal welfare, animal rights, legal personhood, jurisprudence, cruelty

I. INTRODUCTION

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

Mahatma Gandhi

Animals are the essence of God’s gift to nature. They provide resources, aid in services and are important for a balanced ecosystem. Animals are of different kinds and entail special characteristics within them that help in providing varied services. They create harmony between human beings and plants because of

their interdependence among each other and prove to be the most useful organism.⁸⁶¹ The symbiotic relationship among humans, plant and animals is one of the most remarkable partnerships that create a balanced environment.⁸⁶² Thus, as animals are imperative for the environment, their protection becomes a necessary action by the government. As human

⁸⁶¹ Natural Resources Conservation Service available at <https://www.nrcs.usda.gov/conservation-basics/natural-resourceconcerns/animals#:~:text=Both%20domestic%20and%20wild%20animals,while%20wildlife%20support%20healthy%20ecosystems>. (last visited on April 6, 2025).

⁸⁶² Relationship between organisms available at: <https://www.mymap.ai/blog/interdependence-humans-plants-animals-ecosystem> (last visited on April 6, 2025).

beings cannot live under oppression due to the presence of certain human rights that exist because of the inherent virtue of being a human, similarly animal rights must exist in a legal framework wherein morally wrong acts are not committed towards animals.⁸⁶³ Animal rights in the context of present legal system would be the core area of research on the topic.

Animal rights in ancient times, was a relatively alien concept as the traditional legal systems were largely anthropocentric, but in contemporary times, there has been growing discussion on granting legal protection and recognition to non-human animals.⁸⁶⁴ The concept of animal rights is an ever-evolving concept worldwide which gained momentum in current times due to growing awareness of environmental and ethical implications on inhumane treatment of animals.⁸⁶⁵ Recently, the courts in Argentina granted *habeas corpus* to apes and a bear.⁸⁶⁶ As we delve deep into the concept of animals and their rights, we will understand that animal welfare and rights are diverse concepts, the former deals with overall well-being of an animal, particularly the physical and emotional state⁸⁶⁷ while the latter, depends on certain principles and philosophy that animals have inherent moral worth and right to be free from exploitation.⁸⁶⁸ Later in the study we will focus on rights of sentinel animals that are right to life, right to be free from torture and physical liberty.

Animal welfare, on the other hand is a concept of social justice and entails not only the socialist movement led by Indian organizations namely, PETA and PFA, but also relative legal action in the course of animal protection and welfare. According to WOA, “*animal welfare means the physical and mental state of an*

animal in relation to the conditions in which it lives and dies”. Animal welfare covers scientific, cultural and ethical dimensions within a state and therefore, a judicious instrument can deal with the issue with emphasis and power. The spirit of this study is to delve into the animal welfare jurisprudence particularly in India and state the paradox that exists in the definition of such limitation in the welfare of animals. Since animals largely share similar traits like sentience, morality and ethics with humans, the argument that there should be legal recognition of their rights is a long-awaited row. In India, the constitutional duty of all citizens is to promote welfare of animals as is encouraged by the Animal Welfare Board of India (AWBI), established after the enactment of the first legislation preventing cruelty on animals but it is a narrowed version and requires urgent scrutiny. Animal welfare jurisprudence is a dynamic and growing field intersecting with ethics, law, science and public policy.⁸⁶⁹ The struggle for animal personhood has been a debatable issue which is the main concern of the animal rights advocates as they desire a definitive legal hood given to animals much their human counterparts.

The study focuses on animal welfare jurisprudence and inculcates historical development of the laws in India. The cornerstone legislation dealing with animal protection is the Prevention of Cruelty to Animals Act, 1960 which is focused on preventing unnecessary suffering to the animal kind. The definition of cruelty and establishment of Animal Welfare Board of India are under the purview of this act. The Act is the landmark legislation on animal rights and is the first of its kind to give recognition to animal's suffering due to the ancient custom of using animals as property and trading them for resources or services under the barter system as a medium of exchange.⁸⁷⁰ Another reason for bringing animal welfare into limelight was the colonial

⁸⁶³ BBC available at: https://www.bbc.co.uk/ethics/animals/rights/rights_1.shtml#:~:text=Animal%20and%20human%20rights%20boil,means%20to%20achieve%20their%20ends. (last visited on April 8, 2025).

⁸⁶⁴ Anne Peters, “Rights of Human and Nonhuman Animals: Complementing the Universal Declaration of Human Rights” *AJIL Unbound* (2018)

⁸⁶⁵ Blog, “What is Animal Welfare” IFAW, July 2, 2024.

⁸⁶⁶ *AFADA Respecto del Chimpance “Cecilia” – Sujeto no Humano, Tercer Juzgado de Garantías Mendoza Case No. P-72.254/15* (Nov. 3, 2016) (Arg.).

⁸⁶⁷ *Supra* note 5

⁸⁶⁸ Steven M. Wise, “Animal Rights” *Britannica*, March 3, 2025.

⁸⁶⁹ *Animal Law 101* at ALDF available at: <https://aldf.org/article/animal-law-101/> (last visited on April 10, 2025).

⁸⁷⁰ Frans B. M. de Waal, “How animals do business” *The Royal Society Publishing* (2021)

influence on the laws in India regarding protection of animals. In India, the custom provides for revering animals like cows and the elephants but after colonial rule, this changed into their abuse and oppression. With independence, the Indian government granted importance to prevention of abuse to animal and mandated the prevention of cruelty by way of a legislation, following which various laws like the Wildlife Protection Act, 1972 wherein animal species were given special status for protection. The imperative section of the study works on current legal framework in India pertaining to the above-mentioned acts, constitutional guarantee and other objective laws in place for animal welfare in the country, including judicial interpretation of important terms like animal welfare, animal rights, legal personhood and legal protection.⁸⁷¹ The role of statutory bodies like AWBI and CPCSEA are marginally greater than the remaining agencies in collaboration with non-governmental organisations like PETA and PFA. The viewpoint of the entire chapter would be ensuring social justice especially for the victimized animals and the overall focus would be on the existing literature on animal welfare jurisprudence and emphasis on their shortcomings.

II. REVIEW OF LITERATURE

1. Bhavya Johari, "The Palpable Dichotomy Between Animal Cruelty Laws and Implementation-Is There a Way Forward for Indian Jurisprudence?" *JOUR. OF ANI. LAW, ETH. And ONE HEA. (LEOH)* (2024)

The article is a critical analysis of the dichotomy that exists between current laws in India and their practical implementation. According to the author, there is a lack of animal-centric laws, and the entire focus is on anthropocentric legislation and jurisprudence. She begins the article by stating India's religious and cultural inclination towards animals due to

which we praised and embraced all forms of animals as god's own kinds, but as the society progressed the treatment to animals became worse. She carefully uses judicial rulings for validating her claim that though animal welfare is affirmed by court decisions, there is a lack of legal framework due to poor implementation. The judiciary is also criticized in the forthcoming section, wherein she mentions about progressive stance of the judiciary which has vague narratives causing decline of the already established premise. The concluding sections include critique of the judicial and legislative intent while enacting the Act of 1960, overall, the piece is a well-written critique and can be referred while making notes about inadequacies in animal welfare legislation in India.

2. Sanchit Sharma, "The Understanding of Animal Rights: Advancing a New Approach" (5) *SML. L. REV.* 63 (2022)

The author critiques the existing understanding of animal rights on tenets of morality and terms it as a 'claim' within Hohfeld's framework. He proposed two points that pre-existing comprehension of animal's rights is a mere claim and if a situation arises when an animal deserves protection, the rights will be granted in the strict sense. Hohfeld's understanding of right has been elucidated to include right correlative with duty which is conducted towards the achievement of some end. Sharma lists down certain rights that are granted to the animals inclusive of right against suffering, right of protection which are umbrella provisions and need to be explained. He takes a jurisprudential view of the entire premise and provide Hohfeld's critique thereby proposing need for rights when necessary. The entire piece is a satire-form written in a negative tone with descriptive features listing imperative jurisprudential terms like morality,

⁸⁷¹ Saskia Stucki, "Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights" (40) *Oxf. Journ. of Leg. Stud.* 538 (2020)

normative, etc. He proposes seeing animal rights in a new light with the existing literature and a claim-duty relationship exists between human and animal understanding of rights. Thus, he ends the document with an open-ended question to the reader leaving the ground open to interpretation. This piece though relevant is extremely jurisprudent-centric with no focus on real-time conversations, therefore, it is not the most suitable piece for reading about animal welfare in practical world.

3. Anne Peters, “Rights of Human and Nonhuman Animals: Complementing the Universal Declaration of Human Rights” AJIL Unbound (2018)

The author begins by mentioning American condition of human rights and the origination of the UDHR which gave birth to the idea of human rights after the callousness of World War II. Her stance remains on the area that animal rights must be recognized as against animal welfare that is entirely present in domestic laws and prevalent for protecting non-human animals. The piece is a well-written document with arguments for both sides being present by the author regarding animal rights. She has equated human rights with animal rights to give a fresh perspective on the issue of animal cruelty and freedoms that must be given to them. In her second part, she mentions about the trend towards animal rights in domestic laws and even mentions Indian constitution as party to the recognize the fundamental animal rights by way of Supreme Court judgements. She explains without hesitation, why animals require subjective rights along with objective laws to protect their individual well-being without being ruled out as animal kept for food, kept as pets and used in scientific experiments. She emphasized on the need for an international human

right mandate to include all states much like the UDHR with the characteristics. As domestic laws are not sufficient to ensure creation of animal rights, an international body must take action to preserve the animals and their rights. She uses an analogy between the traditional and present outlook of legal personhood to humans and urges the same conditions to present animals as legal persons capable to having certain essential rights on account of being sentient and sarcastically states that only humans have benefitted from revolution of rights in international law. The overall idea presented is that animals, as non-humans should be given certain rights that can be kept in equal footing as human rights.

4. Sue Donaldson and Will Kymlicka, “Zoopolis: A Political Theory of Animal Rights” (Oxford University Press, New York, USA, 2011)

The book is a classic representation of good literature and is a cornerstone in the field of animal rights theory, proposing a new political model that provides a shift from moral obligation to citizenship-based intervention. The book is based on liberal dynamic theory with democratic inferences thereby reorganizing the legal standing of animals in the sphere of justice and rights. There is an aggressive stance taken by both authors regarding stance of animals as political subjects capable of becoming members of a country and hence, deserving protection. The categories are domestic animals and wild animals who are co-citizens and sovereign communities respectively. This book provide an insightful outlook towards animal welfare and animal rights views. The critics argue that in the book, an anthropocentric viewpoint is given to animals and feasibility of

animal citizenship is impractical. The overview of the book is that it reinvigorates animal rights theory and provides a novel solution to the existing issue of animal cruelty.

III. EVOLUTION OF ANIMAL WELFARE JURISPRUDENCE

The dynamic and evolving field that intersects law, ethics and public policy addresses legal status, rights and protection afforded to non-human animals, reflecting society's growing recognition of animals as sentient beings deserving of moral and legal consideration.⁸⁷² In the earlier times, animals were treated as commodities and used for the benefit of humans focusing on ownership and liability rather than rights and welfare, which consequently led to the laws being made with animals being defined as property used for human satisfaction and to procure services. Since the early times there was use of animals for exchange of commodity or used as a medium of exchange in place of money, the trajectory of these laws reflects gradual but significant shift in the human-animal relationship.⁸⁷³ In the *Bhagvad Gita* and *Manusmriti*, animals were regarded as compassionate beings worthy of love and respect from each and every individual. There was significant importance given to animals and they were even revered for their direct connection to the deities, especially in Hinduism. Jainism and Buddhism also supported strict compassion towards animal and abstained from harming or violating animals. The *Upanishads* and *Vedas* emphasized on a non-violence (*ahimsa*) and ethical treatment of animals, for example during the reign of Asoka the Great, in the 3rd century BCE, he was popular for enacting various animal welfare policies and

encouraging their well-being.⁸⁷⁴ In Greek and Roman empires the animals were largely treated as properties and Pythagoras, Plutarch advocated for ethical treatment based on animals' sentience. The early norms of animal welfare were only moral and customary in nature as against being codified as legal protections for animals.

The first formal animal welfare laws emerged during the Industrial eras, when concerns about cruelty in urban and industrial settings grew. In England, the Cruel Treatment of Cattle Act protected animals against exploitation and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) was founded in 1824, which was the first organization to promote welfare of animals.⁸⁷⁵ These early regulations helped in establishing ground for animal welfare legislations throughout the world after cruelty and exploitation was done to animals. In the 20th century, formalization of the welfare laws took place across the globe with increasing scientific evidence of animal sentience. The Universal Declaration on Animal Welfare proposed by the World Animal Protection organization to affirm global standards. The United States also enacted the U.S. Animal Welfare Act (1966) which regulated treatment of animals in research, exhibition and transport.⁸⁷⁶ The global outlook towards animal welfare changed after the revolutions and movements of different important legal rights.

The colonial rule in India focused on animal experimentation in the 1860s when protestors of such violent acts were persecuted and sent behind bars. With the advent of new technology and drugs, the experimenting of animals also began forcing animals to provide their body for research and greed of British. Colesworthey Grant, an English activist against cruelty to animals in India disheartened by the suffering of strays and animals, founded the first Indian Society for the Prevention of Cruelty to

⁸⁷² Animal Rights and Welfare Laws: A Comprehensive Overview at Bhatt & Joshi Associates available at: <https://bhattachandjoshiassociates.com/animal-rights-and-welfare-laws-a-comprehensive-overview/> (last visited on April 16, 2025).

⁸⁷³ The History of Animal Welfare Laws in India at SAFI available at: <https://strayanimalfoundationindia.org/the-complete-history-of-animal-welfare-laws-in-india/> (last visited on April 16, 2025).

⁸⁷⁴ Madhvi Sudan and Prof. (Dr.) Savita Nayyar, "The Evolution and Impact of Animal Welfare Laws in India: A Legal and Ethical Analysis" (12) Jour. Emer. Tech. Inn. Res. (2025)

⁸⁷⁵ Bernd Ladwig, "Do Animals Have Rights?" National Library of Medicine

⁸⁷⁶ Supra note 58

Animals in 1861 in Calcutta.⁸⁷⁷ Anti-cruelty legislation in the 1860s were successfully lobbied for by the Indian SPCAs. The proposal to introduce the British Cruelty to Animals Act of 1876 which provided for regulations on animal experimentation in India, was opposed by the British officials when the anti-vivisection movement grew in Britain. The British administration laid the groundwork for animal welfare laws that were enacted in 1890 titled Prevention of Cruelty to Animals Act, although in limited enforcement and scope, it was the first step towards instrumental legislative framework in India.

Post-independence, India gradually witnessed a significant shift towards stringent animal protection measures and after the landmark legislation, Prevention of Cruelty to Animals Act of 1960 was enforced establishing demarcated rules and punishable offence if unnecessary exploitation was done on animals. The Animal Welfare Board of India was also formulated in 1962 as part of the Act of 1960 in order to oversee the implementation of the act. After which several acts emerged, amongst which the Wildlife Protection Act, 1972 became the most powerful law designed for protection of wild animals and their dwellings. In recent times, there has been widespread awareness of the animal welfare movement and hence, imperative steps have been undertaken by judiciary and the legislature that will be discussed in the forthcoming chapter.

IV. CONCEPT OF ANIMAL SENTIENCE

The concept of animal sentience is the capacity of non-human animals to feel pain, pleasure, joy and fear which forms the basis of contemporary legal foundations in animal welfare jurisprudence. Sentience loosely entails the ability to perceive and feel things and humans are sentient beings, capable of maintain emotions and relationships due to this ability.⁸⁷⁸ Animals are aware about their

surroundings and of the sensations felt throughout their body, including hunger, heat or cold. For instance, we can prove this statement by observing a dog who if kept outside in 50-degree temperature would probably feel the heat and run towards a shaded area, as against a cow who although shares the same virtues with the dog but has a less advanced sense of feeling and reacts to the outer circumstances gradually. We can assess the feelings of animals by various physiological and mental behaviour like facial expressions, frustration of natural behaviour and complex social lives involving communication, organized groups and family bonds. According to WAP, “animal sentience means that animal are sentient beings with feelings, thoughts and individual personalities.”⁸⁷⁹ The scientific research provided by the WAP organization proved the existence of sentient capabilities in animals as was proved by an international group of neuroscientists in the Cambridge Declaration on Consciousness which was a celebrated deduction and garnered love from across the scientific field.⁸⁸⁰ The declaration which was signed confirmed that many animals, possess the “neurological substrates that generate consciousness”. The animals enjoy a pain-free and positive experience of living as opposed to cruelty and torture caused to them.

Animals have been classified as conscious beings competent of feelings like pain, pleasure and joy. The concern for animal suffering has been found in texts of ancient Roman and Greek philosophers. Archaic philosopher like Pythagoras advocated fair treatment of animals and even stated, “*humans must regard all living things as kindred and bestowed on them equal moral consideration*”.⁸⁸¹ He has been an ethical vegetarian and advocate for

⁸⁷⁷ Animal Welfare Legislation in India – Its History at STRAW INDIA available at: <https://www.strawindia.org/blogs/1031/animal-welfare-legislation-in-india-its-history.aspx> (last visited on April 16, 2025).

⁸⁷⁸ Sanjay Choudhary, Prasanna Pal and Rohit Kumar, “Animal Sentience and Welfare: An Overview” INT. JOUR. OF CUR. MIC. And APP. SCI. (2019)

⁸⁷⁹ Animal Sentience at World Animal Protection available at: <https://www.worldanimalprotection.org/our-campaigns/sentience/#:~:text=Animal%20sentience%20means%20that%20animals,always%20know%20what%20they%20are.> (last visited on April 14, 2025).

⁸⁸⁰ The Cambridge Declaration on Consciousness (July, 2012)

⁸⁸¹ The Animal Sentience Debate: From BCE to the 21st Century at IAPWA available at: <https://iapwa.org/the-animal-sentience-debate/> (last visited on April 14, 2025).

animal rights, even when concepts like sentience and welfare were not associated with animal breed and even gained negative attention for his stance on animals. Jeremy Bentham, known for propounding utilitarianism in modern philosophy is the first philosopher who recorded that animals are sentient beings, capable of feelings that is enough to spare them from unnecessary suffering.⁸⁸² He believed, that logic and rationale had no relevance to their sentient nature, and they must be treated with equal dignity and respect much like non-animal humans. The jurisprudential understanding of animal sentience has been propagated even before the term “sentience” was closely used with animals, and it is imperative to understand this concept in order to identify the needs of animals and assess their welfare in different circumstances.⁸⁸³ The recognition of animal sentience has profound implications for animal welfare jurisprudence and policy, as the grounds of moral status of animals, emphasizing that welfare protections ensure animals can live free from unnecessary suffering and experience positive circumstances is combined with sentient nature of these beings.

The understanding of animal sentience has influences legislation in various countries and regions—for instance, the European Union’s Treaty on the Functioning of the European Union explicitly recognizes animal sentience and mandates consideration of animal welfare in policymaking.⁸⁸⁴ In Mexico, the proposal by Mexican Senator Ángel García Yáñez in September 2023 to introduce a constitutional reform in Mexico, recognizing animals as “sentient beings” in the Mexican Constitution is a pivotal step towards development of animal welfare.⁸⁸⁵ Historically, sentience has been overlooked which facilitated the exploitation of

animals as mere commodities or properties, yet increasing scientific evidence and substantial ethical awareness has shifter societal attitude, leading to a stronger call for legal recognition and better welfare standards for animals.⁸⁸⁶ In the Indian context, sentience has not been explicitly legislated in the form of a definition but has been acknowledged through cultural values and philosophy including Hinduism, Jainism and Buddhism all of which emphasized on *ahimsa* (non-violence) and compassion towards all living beings.⁸⁸⁷ In addition to religious perspective, the legal recognition from legislation has been given in the form of the Act of 1960 wherein prohibition of inflicting unnecessary pain and suffering on animals is plead. The constitutional mandates under Article 51A(g) directs citizens to show compassion to all living creatures, reflecting a societal value rooted in ancient traditions.⁸⁸⁸ Despite legislations and constitutional guarantees, the concept of animal sentience has not been formally defined or considered by the Indian legislation, unlike other states. The concept of animal sentience is a transformative tool in animal welfare jurisprudence and must be dealt with in the most correct and benevolent manner for the animals.

V. ANIMAL RIGHTS V. ANIMAL WELFARE

The debate between Animal Rights v. Animal Welfare is the logical next sub-head after the concept of sentience has been explained due to the coherence in understanding of the topic. Animal rights principle which is already elucidated in the introduction part of the study, but to reiterate for the sake of context, it denotes animals, especially sentient beings who possess intrinsic rights, such as the right to life, bodily integrity and freedom from exploitation regardless of its utility to humans.⁸⁸⁹ The moral grounding of animals heavily influenced by Tom Regan

⁸⁸² Supra note 36

⁸⁸³ What is animal sentience and why is it important? At RSPCA available at: <https://kb.rspca.org.au/knowledge-base/what-is-animal-sentience-and-why-is-it-important/> (last visited on April 14, 2025).

⁸⁸⁴ Supra note 38

⁸⁸⁵ Editorial, “Empowering animals: Recognizing sentience in law”, The Pioneer, October 8, 2023.

⁸⁸⁶ Heather Browning and Walter Veit, “The sentience shift in animal research” Nat. Lib. Of Med. (2022)

⁸⁸⁷ Recognising animal protection at WAP available at: <https://web.archive.org/web/20141128000409/https://api.worldanimalprotection.org/country/india> (last visited on April 14, 2025).

⁸⁸⁸ Supra note 40

⁸⁸⁹ Supra note 36

rejects the instrumentalization of animals in any form, whether as commodity or exchange of money. Animal rights philosophy according to the book titled *Encyclopedia of Animal Rights and Animal Welfare* calls for an abolition movement and reforms to end factory farming, animal testing and zoos rather they propose regulation of these institutes for welfare of animals.⁸⁹⁰ Animal rights mean that like humans, animals have interests that cannot be sacrificed because of benefit to the others. The rights though present cannot be of a similar nature and are not absolute.⁸⁹¹ Animal rights as propounded by philosophers have been in an “ought” position as opposed to what it should presently entail, meaning by Hohfeld’s analysis, rights is equaled with claim and a claim-duty relationship has been used to provide basis of rights of animals. Thus, a philosophy that asserts animals as sentient beings, having rights that overpower human interest in the context of their protection. The use of animals as property or resources is shunned by its philosophers who advocate for their autonomy and preservation from all forms of exploitation.⁸⁹²

Animal welfare is the philosophy wherein animals are to be treated humanely, and their suffering minimized, but their use by humans are allowed if welfare standards are met. The welfare concept of animals is based on occupation of the basic needs of animals such as food, shelter and good health, and the opportunity to express natural behaviour.⁸⁹³ The continued use of animal for human purposes in an added advantage pertaining to the existing difficulties in the process of animal cruelty that should be minimized. The Indian Act of 1960 is also based on this model of animal welfare that

is aimed at providing humane treatment to animals and minimize their discomfort while continuously using them for human utilities like services, as resources or otherwise. The idea of animal welfare is an outdated and less acceptable kind of welfare according to me as the general meaning of the term, welfare is to overlook the overall well-being including physical, mental and emotional state. The Act of 1960 though, aimed at providing a welfare law for animals, is based on a bad principle that is only partially true and holds a narrow view of the welfare concept. There are believed to be different human cultures and traditions pertaining to animal welfare across the globe which needs to be studied and well-founded. Animal welfare is a science-based and pragmatic approach focused on well-being and humane treatment of the animals.⁸⁹⁴ The importance of such concept is that it fits within already established frameworks to improve standard of animal well-being but ultimately does not revolt if they are being used, thereby animal rights activists are against such a hypocritic premise.

The difference between both the concepts are pretty clear as animal rights activists do not support the animal welfare theory because of the partial monotony that it shares with them. Animal rights activists promote the idea of inherent rights of animals mostly equating them with human rights whereas the animal welfare pronouncers have accepted the legal vitalization of animals and choose to stay within regulated standards.⁸⁹⁵ The basis of animal welfare has been inherently anthropocentric, giving human needs a higher rank as opposed to animal suffering. Animal rights are based on the views of Tom Regan and Peter singer who advocated for the cause of their rights and proved that being sentient and moral is enough for them to expect certain believable rights, where animal welfare advocates like lawyers and scholars provide that since they are

⁸⁹⁰ Marc Bekoff, Carron A. Meaney (eds.), *Encyclopedia of Animal Rights and Animal Welfare* (Routledge, New York, 1st edn, 2013)

⁸⁹¹ What is the difference between “animal rights” and “animal welfare”? at Peta Organisation available at: <https://www.peta.org/faq/what-is-the-difference-between-animal-rights-and-animal-welfare/> (last visited on April 15, 2025).

⁸⁹² What’s the Difference between Animal Rights and Animal Welfare? At The Call to Conserve available at: <https://www.thecalltoconserve.com/blog/animal-rights-vs-welfare> (last visited on April 15, 2025).

⁸⁹³ Supra note 45

⁸⁹⁴ Dr, RS Khilare and Dr. Muskan Kaushal, “Animal Welfare and its Importance” (11) *Agri. Lett.* (2021)

⁸⁹⁵ Supra note 11

basically lesser in intelligence than human, their welfare must be given priority over intrinsic rights.⁸⁹⁶ The Indian model of animal welfare largely permits use of animals in food, transport and entertainment, subject to regulation which is a bad theory. Where the true and genuine meaning of welfare as defined by organisations for protection of animals provides that wholesome mental and physical well-being in the natural environment without any discomfort is the true welfare for animals. Although India is largely following the welfare model with partial view of animal interests, there is a shift in rights-based manner via judicial and ethical evolution. The court along with international norms and public discourse have focused attention on the new and improved need for animal rights even in a limited sense due to their intrinsic features. With the new awakening towards sentience and moral standing of animal rights in India, there is a gradual shift in legislative and implementation approach.

VI. LEGAL PERSONHOOD DEBATES

Personhood is a complex concept, and the relevance of the concept is heavily discussed. The simplest form is the treatment of animals by keeping them at par with humans in every aspect of being including keeping an open mind regarding the obligations and rights conferred on them.⁸⁹⁷ A lot of intangible forms have been granted the status of “personhood” like the rivers and the deities but there is a controversy involved with providing legal personhood to the animals. The advocates of the premise propagate the need to provide legal recognition to their being as done in many courts of Columbia and New Zealand⁸⁹⁸ where legal recognition is given to the sentient nature of animals thereby proving that they exist as a cause of legal personhood for them. Legal personhood refers to the status of being a subject of rights and duties under law. While

traditionally granted to human beings, it has been extended to corporations, river and in some cases, animals based on evolving jurisprudence.

The various theories of jurisprudence underpin the existence of legal personhood and important views of the theories are given below: The Natural Law Theory in its core believe that rights and personhood stem from moral order and inherent dignity as propounded by its propagators, Regan and Singer. Animals, have been given the status of being sentient and capable of suffering, therefore they possess intrinsic values and moral standing thus, both propagators among the advocates of natural law support the cause of animal and state that they qualify as legal persons due to their moral worth.⁸⁹⁹ The case of legal positivists like Hart opine that law is a system of rules defined by social facts, not moral claims and thereby, legal personhood is what the law says it is and can be extended to corporations, idols or animals if the courts an statues allow. John **Salmond** states that:

“a legal person is any subject of legal rights and duties”

Thus, legal personhood is a legal fiction, and animals can be within these rules if the law explicitly states the idea. In *Karnail Singh* High Court of Punjab and Haryana granted legal personhood to animals based on judicial discretion despite no specific legal framework.

The Realist School believes that law is what courts do in practice, not merely the theoretical part but practical application of those laws. Hence, rights evolve through judicial interpretation and if the courts are pragmatic to reflect social values by granting legal personhood to animals, it is the best bet. Courts have the most important role to play in shaping personhood of anything material or immaterial, therefore, recognition of animal rights is a product of judicial response to public sentiment

⁸⁹⁶ The Animal Sentience Debate: From BCE to the 21st Century at IAPWA available at: <https://iapwa.org/-animal-sentience-debate/> (last visited on April 15, 2025).

⁸⁹⁷ Anand Grover, “The Legal Status of Animals in India” Nat. Jud. Aca. Bho. (2017)

⁸⁹⁸ Supra note 20

⁸⁹⁹ Harsh Vardhan Bhati & Kavia Ahuja, “Bridging Science, Ethics and Law: Animal Personhood in India” IACL (2024)

and discourse.⁹⁰⁰ As in the case of *Narayan Dutt Bhatt v. Union of India*⁹⁰¹ Uttarakhand High Court ruled animals as legal persons with duties and liabilities, showing judicially created status without legislative backing. The utilitarian school is of the opinion that right action (or law) is that which maximizes overall well-being. If legal personhood for animals reduces suffering and increases overall welfare, it is morally justified, sentience and not rationality should determine moral status of animals. Personhood is perceived as a means to prevent animal suffering under this school. Thus, the schools of jurisprudence provide overall support the idea of animal welfare and base the entirety on distinct factors depending on the core values of each school.

In a comparative setting, we can understand that India is a state which has granted legal personhood via judicial activism in the area of animal welfare jurisprudence. The important case laws that affirm this stand of Indian courts is *Nagaraja and Karnail Singh*, both of which are celebrated judgements of the Apex Court laying foundation for the implementation of animal rights laws. As opposed to India, United States of America has a positivist or restrictive stand due to its inclination towards meat-eating and other animal-centric activities. Legal personhood has not been recognized in US and there lack a sense of judicial activism or even state intervention in the matter, though their laws are comprehensive and relevant to need of animals, there is a narrow scope taken while interpreting the legislations.⁹⁰² In New Zealand, a treaty-based recognition is given which is indirect in approach because legal recognition has been given to river along with certain specific rights, but no legal framework has been drawn for the same.⁹⁰³ The ecocentric constitutionalism followed in Ecuador

recognizes legal personhood of animals and rights of nature allowing wild animals to have individual rights, expanding the constitutional⁹⁰⁴ vision and reforming animal welfare situation to a more animal right centric point. Thus, the legal personhood debate entails an overall positive note from distinct countries as animals, being sentient creatures need certain rights and freedoms to protect their well-being and welfare.

VII. ROLE OF JUDICIARY: LANDMARK JUDGEMENTS

In the landmark verdict of *Animal Welfare Board of India*⁹⁰⁵ the Supreme Court was vigilante in upholding the ban on jallikattu, an ancient bull-taming sport in the state of Tamil Nadu. The ruling proves that jallikattu violated the provisions of the act of 1960 causing unnecessary suffering to the bulls, thereby court pulled a ban on the sporting event upholding Article 48A, 21 and 51A(g) of the Constitution. In *Gauri Maulekhi v. Union of India*⁹⁰⁶ the Apex Court banned the import of animals to Nepal for religious purposes and practice of animal sacrifice. The court provided for governments to use enforcement techniques to implement the animal welfare laws in a more stringent and standardized manner.

In *Mahisagar Mataji Samaj Seva Trust v. State of Gujarat*⁹⁰⁷ the Gujarat High Court stated that animals too, like human beings, possess a life and have the right to assert that their liberty cannot be taken away by any human except according to law. In the case of *Karnail Singh & Ors.*⁹⁰⁸ Justice Sharma of the P&H High Court concluded that all living creatures including avian and aquatic species are legal entities. The status of *loco parentis* was granted to every resident of Haryana providing them the duty to serve as guardians of the animals. The court also emphasized that the concept of legal personhood should transcend beyond humans and not limit animals to be included.

⁹⁰⁰ “Animals as a Legal Entity: The Recognition that is the need of the Hour” Jus. Cor. Law. Jour. (2023)

⁹⁰¹ 2020 SCC OnLine Utt 276

⁹⁰² Taylor Gulatsi, “legal Personality for Animals in India and Pakistan” Lib. Cong. (2023)

⁹⁰³ Gary Francione, *Animals, Property, and the Law*, 1995

⁹⁰⁴ Ecuador Constitutional Court, Ruling No. 253—20-JH/22

⁹⁰⁵ Supra note 79

⁹⁰⁶ 2015 SCC OnLine SC 1924

⁹⁰⁷ W.P.(P.I.L.) No. 173, 2011

⁹⁰⁸ (2019) SCC OnLine P&H 704

In the case of *Mohd. Hanif Qureshi v. State of Bihar*⁹⁰⁹ the Supreme Court held that a “complete ban on cattle slaughter” was not permissible due to the economic interests of the citizens and those involved in earning livelihood from that slaughter of cow. This position was overruled in the infamous case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*⁹¹⁰ the Supreme Court held that Article 48 envisions a complete prohibition of cow slaughter therefore, it must be upheld.

*Compassion Unlimited Plus Action v. Union of India*⁹¹¹ is a case involving the issue of legality of a notification which was stayed by the Apex Court stating that jallikattu and other forms of animal racing cause trouble and stress to the bulls therefore under the act of 1960, it was stayed as it was violative of various provisions. In the case of *Indian Handicrafts Emporium v. Union of India*⁹¹² the Supreme Court observed that animals are key components in maintaining ecological balance, therefore saving the species from exploitation is essential.

In *People for Ethical Treatment of Animals (PETA) v. Union of India*⁹¹³ the issue was regarding use of animals in circuses and the court held that such use amounts to cruelty and entertainment for humans cannot be a justification for such animal abuse. The Court directed the rescue and rehabilitation of animals while making such a landmark ruling. In the case of *AWBI v. People for Elimination of Stray Troubles (PEST)*⁹¹⁴ the issue was regarding killing of stray dogs by municipal authorities which was directed by the court that certain Animal Birth Control (ABC) Rules must exist for non-lethal and humane population control methods.

The role of judiciary in laying the foundation for animal welfare laws with reference to animal rights and the concept of legal personhood are all imperative points that

are developed only because of the instrumental and active role of judiciary. The current judiciary is not only active but also progressive in its approach and methods of providing justice to all beings.

VIII. CONCLUSION AND SUGGESTIONS

The jurisprudence of animal welfare represents an evolving domain within the texts of legal philosophy and environmental ethics. The human rights discourse was once an imperative topic of discussion, but times have changed, and human rights are far-fetched to humans, it is now a time to provide essential rights and liberties to our fellow sentient beings, animals. By making this dissertation I came across various texts and numerous literature that reflected on the need for animal rights, but rarely did I come across an article or blog focusing on the development of animal welfare jurisprudence, with the gap in literature, I chose this topic to enhance the worldview on animal welfare and essentially chose to put forth my opinions and views on the topic. The multidimensional framework of animal welfare laws was examined during the making of this study exploring their historical origins, philosophical foundations, statutory developments and judicial interpretations.

The suggestions to be made in the final part of the dissertation are basically to state that a comprehensive legal reform must be made in order to enact an “Animal Welfare Act” like US and UK that would entail a stronger base with animal sentience, rights of animals and a stricter penal offence proportionate to the harm inflicted thereby acting as deterrents to the use of force against animals. Additionally, there must specific inclusion of a sub-part or annexure stating Article 21 applies to non-human life and a constitutional amendment for the same must be made along with extending the scope of other relevant articles. The scope of Article 25 should, thereby be reduced to remove the use of animals for religious practice thereby ensuring safety and welfare. Further, there must be awareness campaigns not merely by NGOs but by official

⁹⁰⁹ AIR 1958 SC 731; 1959 SCR 629

⁹¹⁰ AIR 2006 SC 212; (2005) 8 SCC 534

⁹¹¹ (2016) 3 SCC

⁹¹² AIR 2003 SC 3240, 3255

⁹¹³ WP (C) No. 891/2013

⁹¹⁴ (2004) 6 SCC 361

statutory bodies who should promote the welfare of animals as the motto of the event. Accordingly, the institutional strengthening must also take place wherein the AWBI must be given excess powers for the benefit of the animal welfare and establishment of specialized animal welfare courts or tribunals like the National Green Tribunal must take place for a streamlined judicial process. By promoting animal welfare and encouraging public participation a global harmonization movement will take place and alignment of India's legal standards with the World Organisation for Animal Health is the next goal to be fulfilled before 2050. The international treaties and global participation pave way for a balanced and healthy ecological system and judicial dialogue by way of encouragement to the masses.

Animal welfare jurisprudence stands at the intersection of law, morality and science. To truly give voice to the voiceless, the law must evolve from a welfare-based mode to a dignity-and rights-based model, rooted in compassion, constitutional morality and interspecies justice. The time has come for legal systems not just to protect animals from cruelty but to affirm their intrinsic value and their right to flourish in a shared planetary ecosystem.

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