

Evolution of Animal Cruelty law in India

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ABSTRACT: *Businesses and occupations must remain consistent with social ethics or risk losing their freedom. An important social ethical issue that has arisen over the past four decades is animal welfare in various areas of human use. The ethical interest of the society has outgrown the conventional morality of animal cruelty, which originated in biblical times and is embodied in the laws of all civilized societies. There are five major reasons, most notably the substitution of husbandry-based agriculture with industrial agriculture, for this new social concern. This loss of husbandry to industry has threatened the traditional fair contract between humans and animals, leading to significant animal suffering on four different fronts. Because such suffering is not caused by cruelty, it was necessary to express social concerns with a new ethic for animals. Since ethics is based on pre-existing ethics rather than ex nihilo, society has looked for its properly modified ethics for humans to find moral categories that apply to animals. This concept of legally encoded rights for animals has emerged as a plausible vehicle for reform.*

KEYWORDS: *Animal Rights, Animal Husbandry, Anti-cruelty ethic, Social Ethic.*

INTRODUCTION

India began its efforts to promote animal welfare and ensure animal health with the passage in 1960 of the Prohibition of Cruelty to Animals Act. Since then, a strong animal welfare trend was already taking place in the world. This is shown by the creation in 1962 of the Animal Welfare Board and now the rising importance of organisations for animal welfare. As a result of these incidents, significant advances have been made in implementing new laws and regulations, such as those relating to the care of animals and the ban on testing of cosmetic animals. With the expansion and advancement of the discourse, the intervention of the judiciary however has increased in terms of animal care and security. In general, Indian courts have taken pragmatic and welfare-oriented approaches to such issues. In 2000, the Kerala High Court, in *N.R. Nair v. Union of India* ('N.R. Nair'), considered the issue of extending basic rights to animals and emphasised that legal rights should not be "the exclusive preservation of humans, which must be extended beyond humans, thereby dismantling the dense legal wall with humans on one side and all non-human animals on the other." The Supreme Court, in *Animal Welfare Board of India v. A., Nagaraja*, further established this view. ('A. Nagaraja')

India's Supreme Court created history by banning jallikattu (a bullfighting festival held in Tamil Nadu) and bullock-cart races in Maharashtra and Punjab in what was regarded as a landmark judgement. And Ghose J. held that, in accordance with Article 21 of the Indian Constitution, animal life should be included even within framework of the right to life (although not harming human rights). It further claimed that the provisions of the PCA Act were representative of the rights of animals to "live in a clean and healthy environment" or "not to be beaten, kicked." The judgement also briefly pondered the notion of the legislature granting fundamental rights to animals so as to protect their "dignity and honour" and recommended that Parliament make an amendment to that effect. "In the context of the habeas corpus petition of an orangutan, this approach to animal protection was also adopted outside Indian jurisprudence, with the Court in Argentina stating that it is "appropriate to consider the animal as a matter of rights." Although the Court further stated that it had adopted a "dynamic" rather than a static interpretation of the law, "it did not substantiate this approximation.

DISCUSSION

Animal welfare board of india v. A. Nagaraja: a brief summary

Dispatched May 7, 2014, A. The judgement was specifically in terms of the 'jallikattu' bull-taming sport, that are "animal rights under the Indian Constitution as well as with Indian laws, history, tradition, religion and ethology." in Tamil Nadu, as well as the bullock-cart racing practise in Maharashtra. Nagaraja deals with "played" Together with the 2009 Jallikattu Tamil Nadu Regulation (the TNRJ Act'), the case was primarily analysed with comparison to the 1960 PCA Act.¹ The AWBI, legally established under the PCA Act to

¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 : AIR 1978 SC 597

promote animal welfare, called for the abolition of the activities referred to above on the ground that it had violated various provisions of the PCA Act, including § 3, 14 § 11 (1). (a) and (m) 15 and Section 22, respectively. It further claimed that neither of the two practises had any historical, cultural or religious significance in the two states where it was carried out. Welfare legislation such as the PCA Act would enforce the same as legislative legislation due to its lack of importance. 2 It contended, however, that the TNRJ Act was repugnant to the provisions of the PCA Act and that, pursuant to Article 254 of the Constitution of India, without the approval of the President, the State could not give effect. That action explicitly contravened § 3, § 11(a) and (m), read in accordance with Article 51A (g) and Article 21 of the Constitution, because bulls were made to suffer great pain and suffering.³

In reaction to these claims, a group of bull race organisers argued that these sports had been 'played' for the past three centuries and was thus an integral part of the practise and religious practice of the culture. In their pleadings, they argued that extreme care and safety were often monitored to avoid that no anguish or harm was caused to the animals participating in the event. In the assertion that this activity was a good resource of revenue to the Government, as it attracted a large number of fans who were inclined to pay to watch, a demand in the country was also raised. 18 Finally, they poured forward the point that baseball games can only really be controlled by government and not exempted. That objective is clearly covered by the TNRJ Act, which serves that purpose and clarifies the issues arising from this situation. Tamil Nadu State also put forward arguments in this case and argued that any attempt would be made to ensure that the bulls chosen for jallikattu were not subjected to cruelty. It also claimed that section 22 of the PCA Act would not apply because tickets are not sold for the events. No representations were made by the state of Maharashtra and this was interpreted by the Court to mean that it favoured a ban on such practises. Therefore, the main issues that arose for consideration were: first, whether jallikattu and bullock-cart racing are harmful and infringing on the bulls. The provisions of the PCA Act; second, whether the action was rational, cultural or historical; third, whether, pursuant to Article 21, the bulls were entitled to life. The Court held that jallikattu and other sports involving bulls were indeed harmful to their existence. It carefully studied the nature of the initial response of a bull to external stimuli or danger and found that the natural reaction of bulls is that of 'run' rather than 'fight'.

As regards the question of the historical importance of these practises, the Court endorsed the argument of AWBI and held that the PCA Act overrules this culture or tradition. The Court noted that, although it had been a cultural practise, it now had to give way to the provisions of the PCA Act. Finally, the Court has systematically explored the "rights" of animals under Article 21. Correspondingly, the Court argued that it was necessary to protect animal dignity and, to that effect, the TNRJ Act was invalid so such sports were illegal. It also stressed the absence of an organisational convention for the prevention of animal rights and argued that it is necessary to ban practises that harm animals.

The legal capacity to possess rights

In A. Nagaraja, the Court put non-human animals within the paradigm of rights. That dimension of the decision will be discussed in this paper section. It is evident from the extension of rights to state institutions that they are not uniformly applicable to any current object or individual, but are exclusive to those with certain characteristics. The existence of these qualities is the foundation of the definition of 'capacity for rights' by Joseph Raz. In his research, he specifically refers to the principle of granting animal rights. According to him, only beings that have a 'ultimate, non-derivative value' rather than a 'instrumental value' should be given privileges. The relevance of non-human animals to humans is strictly utilitarian, since they are normally brought through human society primarily for their use and not for their intrinsic value. He goes on to argue that there are no individual "interests" mostly in way that humans do as animals, i.e. interests that have an ultimate, quasi value in themselves. They seem unable to form interests that would then form the foundation of rights, due to their lack of mental development relative to humans. An individual's intent will be "instrumental" only (meaning it exists only for the benefit of humans) and not "absolute." However, it may be unfair to say that animals have no value at all simply because they do not have a degree of mental maturity that is considered to have by individuals. Through ensuring their food and sleep, many animals, especially mammals, show some interest in preserving their basic welfare. This value-oriented evaluation of the right ability is also insufficient because it does not really answer why non-human animals are unable to have rights. To evaluate the same matter, other indicators pointing to the inability or inability of animals to hold rights need to be looked at. These tests should not focus on the "intrinsic value" of animals, but should instead

² State of A.P. v. Challa Ramakrishna Reddy, (2000) 5 SCC 712

³ The Jane Goodall Institute, UK. 2016. <http://www.janegoodall.org/>. Last accessed 19 Oct 2016.

concentrate on certain qualifying criteria for the possession of rights and, therefore, on the ability of non-human animals to satisfy them. The often-sung anthem of the animal rights movement is a quote from Jeremy Bentham in which he argues for the rights of non-human animals by emphatically stating that the question is not reasonable. Can't we talk, either? But, are they capable of suffering? This emphatic assertion has been selected by most animal welfare groups and campaigns as the core theme, i.e. the desire to suffer, as a justification to grant animal protection through rights.⁴

However, the idea that the freedom to experience pain and discomfort inherently demands integration in the sense of the rights debate is misplaced because the basic meaning of a right is not recognised. Although it is definitely true that the capacity to suffer is a commonality between human beings and some non-human species, this single definition of pain and its relief are not the basis for rights. It is important to remember, when trying to extend animal rights, whether the common features between living creatures are also consistent with the acceptance of individual rights in a society.

The relation between legal personhood and rights

When attributing civil or moral rights to non-human animals, whether they should be considered legal persons is the core question that arises. This principle of linking animals to individualhood was largely unchanged, with some even writing off the need to pair animals with the idea of a human for their welfare protection. However, this view is controversial because it fails to acknowledge an important aspect of the veganism and welfare debate: whether or not animals have rights at the theoretical but ethical level.

The need for a direct and positive duty

It does not imply that the current animal protection laws are effective or even sufficient in subscribing to an approach that negates the necessity of giving 'rights' to animals based on their capacity. Austin first proposed the notion of an absolute responsibility as a duty that exists within the human race, without providing a correlative right, in his positivist analysis of rights and duties. The establishment of a correlative right was seen as a condition for the judgment of a legal individual. There are some cases in which persons owe absolute duties to unquantifiable legal bodies or entities that are unable to hold rights. Direct or indirect may be positive or negative tasks.⁵ The codification of derogatory and sometimes tacit responsibilities we owe to non-human animals is some animal welfare laws across jurisdictions. That the need for, however, is the codification of, and implementation of, direct and constructive duties into legal provisions. The disparity between positive and negative roles is measured as the difference between what a person should refrain from doing and what a person should do. Nussbaum herself claims that "traditional morality" argues that it is unethical to injure someone just by violence or fraud, but it is not morally problematic to let people die of starvation or disease. As a result, we have a strong obligation not to carry out bad deeds, but no reciprocal duty to act to avoid them.⁶

The benefits of a duty-based approach over a rights-based approach

Although acknowledging that a duty and a right are co-related terms, the corresponding rights are not synonymous with a set of duties. There are different regulatory frameworks for a right and an obligation, on the other hand, and legislation frequently emphasises one over the other. Although acknowledging that a duty and a right are co-related terms, the corresponding rights are not synonymous with a set of duties. There are different regulatory frameworks for a right and an obligation, on the other hand, and legislation frequently emphasises one over the other.

The basic principle of the rights-based approach is to establish a sense of privilege that can be affected by individuals or the state against the state or other entities that breach their rights. Nonetheless, as has been described, this view can even be upheld in the context of animal rights or security, as it is inefficient and unlikely to give excellent results, in particular because of the difficulty of actually implementing the approach toward aggressors.

At about the same time, a duty-based approach would place on humans and the state a positive and transparent obligation for the welfare of non-human animals and would, as such, be a more humane way of protecting

⁴ Fischer, Louise. *The Life of Mahatma Gandhi*. London; 1951.

⁵ Jens David Ohlin, *Is the Concept of a Person Necessary for Human Rights?*, 105 (1) *Columbia Law Rev.* 209, 222 (2005).

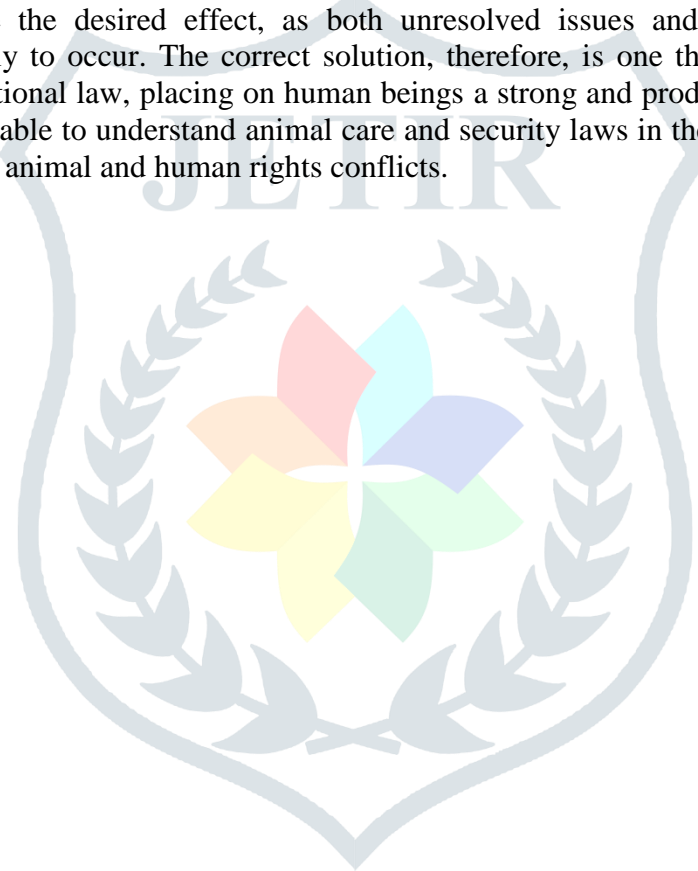
⁶ *Animal sacrifice in India*. 2016. <http://www.occupyforanimals.net/animal-sacrifice-inindia.html>.

animals. A duty-based approach does not have such a provision, unlike the right-based methodology, which relies on the willingness of the owners to ask for their rights and hold various state and non-state actors liable.

In addition, the absence of a rights-based entitlement framework might cause the standing principle to be more diluted and allow humans to ask, in a less controversial sense of practise, on behalf of non-humans about the performance of duties. This may take the form of litigation in the public interest in India, as seen in the case law on animal protection, which disputes the Court's own view that animals should be treated for their inherent value with 'dignity.' Such uncertainty in the decision leads to a lack of clarity which could have been easily avoided by understanding the need for consistent and substantive roles with regard to the treatment of non-human animals.⁷

CONCLUSION

In interpreting provisions of statutory acts and rules, it is necessary enough for courts to uphold principles that conform to the basis of what constitutes the philosophy of jurisprudence. For this reason, the decision in A. Clearly, Nagaraj's findings erred. In addition to being synonymous with simple conceptions of who the rights holders are, the introduction of a rights-based approach to animal care is also an impractical way of approaching the issue at hand, i.e. the protection of animals under the law. It is doubtful that the granting of animal rights might have the desired effect, as both unresolved issues and conflicts with legitimate humanitarian law are likely to occur. The correct solution, therefore, is one that already exists in Indian jurisprudence and constitutional law, placing on human beings a strong and productive duty. This approach ensures that the courts are able to understand animal care and security laws in the language of empathy and dignity, as well as to avoid animal and human rights conflicts.



⁷ Animal Protection Laws for the Guidance of Police, HAWOs, NGOs AND AWOs. 2016.
<http://www.caretrust.in/Animal%20laws%20of%20india.pdf>