

ROLE OF THE SUPREME COURT IN DEVELOPING 'ANIMAL RIGHTS' JURISPRUDENCE IN INDIA: A STUDY

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Abstract

The 2014 landmark judgment of *Animal Welfare Board of India v. A. Nagaraj* settled a new dimension of animal rights in Indian legal system. The judgment in fact established a *ratio* for the future development of the animal jurisprudence in India. While examining the impact of the judgment, it was found that in order to protect animals, birds, lakes, river *etc.*, various high courts have carved a proactive role of state to conserve nature as a whole. The present trend suggests that Indian judiciary is expanding the meaning of life and protection covered under article 21 and in doing so has even extended it to non-human entities as well. The courts applied eco-centric principles and rejected the anthropocentric approach to protect ecology. Further, the courts have emphasized on the duties of the state to protect animals (wild or domestic) and birds (migratory or exotic) within its territory under the doctrine of *parens patriae*. In this backdrop, the paper carefully studies the impact of the Supreme Court's pronouncements on various high courts in strengthening animal jurisprudence. The paper also revisits the judicial views about formation of "animal law" as a separated branch of law.

I Introduction

THE PRESENT trend in the Indian judiciary is to widen the scope of the constitutional rights. It is argued that the term 'life' has wider meaning and includes all forms of life, including animal life. It is further argued that that wildlife existence is necessary for human existence, not because they remain a property of human beings but as an equal partner who can avail constitutional protection as legal persons.¹ The apex court opined that animal life could be included within the ambit of the right to life under article 21 of the Indian Constitution subject to the extent that human rights were not harmed. The trend elsewhere rejects such an idea and treats 'wildlife' beyond direct human dominion and control.² There the focus is upon the animals as equal partners who coexist with humans on the planet. The approach rejects the erstwhile idea of legal

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1 *Animal Welfare Board of India v. A. Nagaraja* (2014) 7 SCC 547, para 62.

2 David Favre, "Living Property: A New Status for Animals within the Legal System" 93(3) *Marquette Law Review* 1021-1070 (2010) (The author proposes for the creation of a fourth category of property, "living property;" and the allocation of legal rights for animals in this group). See also, Partha Pratim Mitra, *Wild Animal Protection Laws in India* (Lexis Nexis, Gurgaon, 2016).

system that presumes that wildlife is available for use and consumption by humans, and argues for their independent standing within the legal system.³ In fact there is another thought that suggests for obligation to both protect and actively restore the ecosystems where wildlife live.⁴

Animal law is a relatively new development where the legal, social, and biological nature of non-human animals is important factor and societal perceptions towards them have changed over time.⁵ Some 50 years ago, the term ‘animal rights’ was virtually unknown or was given less importance within the Indian legal diaspora. However, in the last few decades, the term has begun to appear often in the courts; law schools *etc.*, and accordingly so do the interest.⁶ The increasing frequency, with which it was used, however, did not correlate with any increase in the clarity of its meaning. Analyzing the phrase as it appears in law, and the culture at large, raises more questions than answers. In the words of Elizabeth L. DeCoux, the term leaves enough “doubt as to whether the term has any value as a tool for communicating meaning”.⁷ Nevertheless, animal laws have a passage from economic purposes to ecological objects to ethical reasons. It is in the course of these passages, animals have established their rights (through legislature), besides the scope of law has been changed from conservation to protection to welfare.

Having said this, in order to better understand the presence of legal rights to wildlife, it is necessary to consider the judicial pronouncements that consider the interests of wildlife and gives weightage to their modest presence in the legal system. This would require balancing conflicting human interests. The Indian Supreme Court in this regard has held that every species has a right to life and security, subject only to the law of the

3 *Id.* at 1070. Professor Favre opines, “They have interests of their own that deserve to be nurtured and protected from human harm, both in the consideration of ethical acts and the laws that we humans implement on their behalf”.

4 *See generally* David De Grazia, *Taking Animals Seriously. Mental Life and Moral Status* (Cambridge University Press, Cambridge, 1996); Gary L. Francione, “Animals—Property or Persons?” in Cass R. Sunstein and Martha C. Nussbaum (eds.), *Animal Rights: Current Debates and New Directions* 108, 134 (Oxford University Press, New York, 2005). *See also* Martha C. Nussbaum, *Animal Rights: The Need for a Theoretical Basis*, 114 *Harvard Law Review* 1506 (2001); Clare Palmer (ed.), *Animal Rights* (Routledge Publication, New York, 2008).

5 *See* Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* 144 (1789) (Jeremy Bentham argued for the rights of non-human animals by emphatically stating, “the question is not can they reason? Nor, can they talk? But, can they suffer?”). *See also* Joseph Raz, “On the Nature of Rights” 93(370) *Mind* 194-214 (1984). (Professor Raz in his analysis, refers to the idea of granting animals rights).

6 *See* P.P. Mitra, *An Introduction to Animal Laws in India* (Thomson Reuters, Greater Noida, 2019) [An Introduction to Animal Law]. *See also* P.P. Mitra, *Birds, Wetlands and the Law: Indian and International Perspectives* (Thomson Reuters, Greater Noida, 2019).

7 *See* Elizabeth L. DeCoux, “Speaking for the Modern Prometheus: The Significance of Animal Suffering to the Abolition Movement” 16(1) *Animal Law Review* 9-64 (2009).

land, which could even include depriving animal life for human necessity.⁸ This *ratio* was followed in various high courts pronouncements which, after taking the judgment of the apex court as a yardstick, have developed the animal rights jurisprudence in India. For example, the High Court of Tripura has banned the animal sacrifice by giving wider meaning to the word 'life' under article 21 of the Constitution.⁹ The court opined that article 21 is wide enough to include every living organism be it humans, animals, insects or bird and therefore, taking life has to be in accordance with due process of law. The court rejected the argument of extending any protection to sacrifices that are made under the garb of religion as practices "not integral and essential to the religion".¹⁰ Similarly, the High Court of Punjab and Haryana has declared that the entire animal kingdom including avian and aquatic are legal entities and have a distinct persona with corresponding rights, duties and liabilities of a living person.¹¹ In this regards, the high court of Delhi held that all the birds have fundamental rights to fly in the sky and human beings have no right to keep them in small cages for the purposes of their business or otherwise.¹² Also, the high court of Uttarakhand decided that the abandoning of the animals by owners, including cows, oxen, bulls and buffaloes would also amount to cruelty.¹³

This basically reveals the premise of this article; however, the idea is to trace the development first and thereby on careful examination report the direction in which animal rights jurisprudence in India is heading towards. This text in its Part I provides the essence of judicial activism *vis-à-vis* legal status of animals within the Indian legal system. The Part II examines the policy of '*parens patriae*' for categorizing legal duties of states to animals. Part III discusses the nature and characteristics of the rights extended on wildlife and measures thereafter to protect them. The Part IV traces the movement from 'anthropocentric' to 'eco-centric' approach followed by a succinct conclusion. All of these parts have the potential to fill a book, but for this article, the conceptual development is the primary task.

II Judicial activism on legal status of animals

In *Ramlila Maidan*¹⁴ case the Supreme Court held that the Constitution does not merely speaks for human right protection; besides humans it also speaks of preservation and

8 However, in so doing the ordains of "compassion for living creatures" must be kept in mind, see *Laxmi Narain Modi v. Union of India* (2014) 2 SCC 417. Also see *Mobd. Habib v. State of Uttar Pradesh* 1998 (1) AWC 48.

9 *Subhas Bhattacharjee v. State of Tripura*, MANU/TR/0215/2019.

10 *Id.*, para 123.

11 *Karnail Singh v. State of Haryana*, 2019 (3) RCR (Cri.) 396.

12 *People for Animals v. Mohazjim*, 2015 (3) RCR (Cri.) 94.

13 *Alim v. State of Uttarakhand*, MANU/UC/0567/2018.

14 *Ramlila Maidan Incident v. Home Secretary, Union of India* (2012) 5 SCC 1, para 18.

protection of man as well as animals, and includes all creatures, plants, rivers, hills and environment. Perhaps, the basis for such elaborative description of protection emanates from the basic document *i.e.*, the Constitution. Our Constitution professes for collective life and collective responsibility on one hand and individual rights and responsibilities on the other hand. Could this mean every species has a right to life and security, but are subject to the law of the land, which includes depriving its life, out of human necessity? To answer this concern, one has to carefully study the role of courts.¹⁵ They evaluate it on the standards of balancing the interests of competing individuals interests in a public policy context—of course on the touchstone of the ethical consideration.

Also, to this point, it is pertinent to understand the origin and development of public interest litigation (PIL). The significance of PILs can be broadly divided in three phases. In Phase-I such cases were dealt wherein directions and orders were passed primarily to protect fundamental rights under article 21 of the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach constitutional courts. Phase-II saw cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments *etc.* And lastly, Phase-III that deals with the directions issued by the courts in maintaining the probity, transparency and integrity in governance.¹⁶

Article 21 of the Indian Constitution safeguards the rights of humans. It protects life and the word “life” has been given an expanded definition. In fact, the emergence of animal rights jurisprudence in India, owes much to the expansive interpretation that brings all forms of life, including animal life.¹⁷ The Supreme Court of India has even accepted and has applied the eco-centric principles in *T.N. Godavarman Thirumulpad v. Union of India*.¹⁸ The court while reflecting upon the society’s acknowledgment that animals have interests in being free from pain and suffering, opines:¹⁹

Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles.

15 See David S. Favre, “Judicial Recognition of the Interests of Animals—A New Tort” *Michigan State Law Review* 333, 348 (2005), available at: https://www.animallaw.info/sites/default/files/favre_animal_interest.pdf (last visited on Jan., 23, 2020).

16 *State of Uttarakhand v. Balwant Singh Chauhan* 2010 (3) SCC 402.

17 See Jessamine Therese Mathew and Ira Chadha-Sridhar, “Granting Animals Rights under the Constitution: A Misplaced Approach? An Analysis in Light of *Animal Welfare Board of India v. A. Nagaraja*” 7 *NUJS Law Review* 350 (2014).

18 (2012) 3 SCC 277.

19 *Id.*, para 14.

In *Sachidanand Pandey v. State of West Bengal*,²⁰ the apex court argued for the importance of migratory birds for better ecology, and in *Tarun Bharat Sangh v. Union of India*²¹ the apex court even restrained mining licenses granted for lime and dolomite stones in the Sariska Tiger Park for protection of wild animals. In this regard, the apex court quotes a decree of the 3rd Century B.C. issued by Emperor Asoka that appealed for preservation of wild life and environment.²² Even for safety and well-being of wildlife in zoos, the apex court in *Navin M. Rabeja v. Union of India*²³ considered article 48A of the Constitution, and the provisions of Wildlife (Protection) Act, 1972, and Forest Act, 1927 for protection of wild animals. Judiciary has also acted for wildlife administration. In *Centre for Environmental Law, WWF v. Union of India*²⁴ the court issued directions to the central and state governments respectively, to equip the forest guards with modern arms and communication facilities immediately to cope with present wildlife crimes.

From the perusal of the cases one could safely assume that the courts while reflecting their dissension to the concept of anthropocentrism, which is always human-interest and focused primarily upon the thought that non-human has only instrumental value to humans, have recently argued for adoption of eco-centrism.²⁵ It is opined that human's precedence and human responsibilities as against non-human are based on benefits, whereas eco-centrism is nature-centred, which places both humans as well as non-humans coequal. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Eco-centrism is, therefore, life-centred (or nature-centred) where nature includes both humans and non-humans. A more detailed analysis for the same is done in later part of the chapter.

Animal law and Indian Constitution

The whole matrix of animal laws in India is three dimensional. *Firstly*, is the protection of animals for the betterment of agriculture and development of animal husbandry. Being an agrarian society, animals have been treated as resource for both private individual as well as the State (who is under an obligation to protect and preserve them as properties).²⁶ *Secondly*, animal rights are protected for ecological purposes or environmental utility—derived from international conventions and treaties since 1940s

20 AIR 1987 SC1109.

21 AIR 1992 SC 514.

22 *State of Bihar v. Murad Ali Khan*, AIR 1989 SC 1.

23 (2001) 9 SCC 762.

24 AIR 1999 SC 354.

25 *Centre for Environment Law, WWF-I v. Union of India* (2013) 8 SCC 234.

26 Constitution of India, 1950, Art. 48 and Entry 15, State List, Sch. VII.

to 1970s.²⁷ And *thirdly*, animal laws in India based on ethics or morality and this is the oldest form of animal rights or could be termed as the pure animal law.²⁸

Application of article 21 to non-human being

As discussed, while the Indian Supreme Court has been widening the scope of the Constitution as well as article 21, the high courts too have also continued similar approach. The pronouncements have ensured that while safeguarding the rights of humans, importance must be attached to the rights of non-humans. Herein it is suffice to put forth that the approach appears to be inconsistent and in certain cases even selective.

The High Court of Gujarat while interpreting the Cattle Trespass Act, 1871, realized that cattle like human beings possess life in them. According to the court even an animal has a right to say that its liberty cannot be deprived except in accordance with law. To this extent, one could also refer to many enactments, which have recognized rights of the animals.²⁹ In fact, the High Court of Delhi held that running the trade of birds was in violation of the rights of the birds.³⁰ The court opined that nobody is caring enough to the fact that birds have a fundamental right to fly and cannot be caged. In *Muhammadbhai Jalalbai Serasiya v. State of Gujarat*,³¹ the High Court of Gujarat opined that keeping birds in cages amounts to illegal confinement of the birds, which is violation of right of the birds to live in free air and sky. In this regard, the court even directed to release such illegally confined birds in the open sky. These decisions convey that birds have fundamental rights, including the right to live with dignity and they cannot be subjected to cruelty by anyone. Therefore, all the birds have fundamental rights to fly in the sky and human beings have no right to keep them in small cages for the purposes of their business or otherwise. How far will these decisions protect the interests of birds who are transported from one region to another, without proper food and care is matter for detailed study.

The High Court Madras of in *S. Kannan v. Commissioner of Police*³² held that protection shall be granted to all kind of birds including poultry against cruelty in any manner.

27 *Id.*, art. 48A, 51A (g) and Entry 17B, Concurrent List, Sch. VII. Though not part of the initial constitutional scheme, both art. 48A and 51A(g) have imposed a sense of duties upon the citizens [Ins. by the Constitution (42nd Amendment) Act, 1976, ss. 10 and 11 respectively (*m.e.f.*, Jan 3, 1977)]. One deals with the protection and safeguarding of wildlife, whereas the other confers duty on individuals to protect and improve the natural environment. These provisions draw inspiration from the international developments in the field of environment, ecology and wild animals.

28 Constitution of India, 1950 Entry 17, Concurrent List, Schedule VII.

29 *Mahisagar Mataji Samaj Seva Trust v. State of Gujarat* (2012) 2 GLR 1300.

30 *People for Animals v. Md. Mobazzim* 252 (2018) DLT 351.

31 MANU/GJ/1492/2014.

32 (2014) 5 MLJ 440.

The court observed that the birds and animals are entitled to co-exist along with human beings. The court also issued orders prohibiting cockfight and any other bird or animal fight for the sake of enjoyment of spectators. In a petition filed by People for the Ethical Treatment of Animals (PETA) India, the National Green Tribunal, Principal Bench, New Delhi took active step and directed all the state governments to prohibit the manufacture, sale, store, purchase and use of synthetic ‘*manjha*’ or nylon thread and all other similar synthetic threads, used for kite flying and also directed to the respondents to ban import of any synthetic *manjha* or nylon thread in any part of the country.³³ Basically the thread is used during festivals, across the length and breadth of the country and affects the life of thousands of birds. The concern is significant more so for the endangered birds, like the Indian White Rumped Vulture, who are frequently injured or killed by such usage.

In *Narahari Jagadish Kumar v. State of Andhra Pradesh*³⁴ the court issued directions to the state government and district authorities to prevent organizing cock fights with betting during *sankranti* festival in Krishna, West Godavari and East Godavari Districts of Andhra Pradesh. The directions called for stringent steps to stop such bloody and gruesome practice. While referring *A. Nagaraja* case the court held that the right to dignity and fair treatment was not confined to human beings alone but to animals as well. The court opined that animals have right against torture by human beings, and from being inflicted with unnecessary pain or suffering.

Another interesting trend followed by the courts is the adoption of the policy of *parens patriae*. In *Lalit Miglani v. State of Uttarakhand*,³⁵ the court while invoking *parens patriae*, declared that the court has jurisdiction over “glaciers including *Gangotri* and *Yamunotri*, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls”.³⁶ They extended upon them the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them. Besides they were also accorded with the rights akin to fundamental rights or legal rights. On another occasion, in a PIL, the High Court of Uttarakhand, while invoking the policy of *parens patriae*, issued 30 mandatory directions for the welfare of the cows and other stray cattle.³⁷ These directions include prohibition of illegal slaughtering of cows and selling of their meat, protection and shelter for stray cattle, and prevention of illegal transportation of cattle. These recent developments demand detailed analysis.

33 *Khalid Ashraf v. Union of India*, MANU/GT/0069/2017.

34 2018 (2) ALD 756.

35 2017(2) UC 1564.

36 *Id.*, para 65.

37 *Supra* note 5.

III Policy of *Parens Patriae* for animals

The *parens patriae* action has its roots in the common law concept of the royal prerogative, both as the right and a responsibility to take care of persons who are legally unable, on account of mental incapacity, whether it proceed from nonage or idiocy or lunacy, to take proper care of themselves and their property.³⁸ Historically, the policy of *parens patriae* jurisdiction begins in the reign of King Edward-I (from 1272 to 1307), under the institution of a system of wardship, whereby the King possessed the prerogative power to exercise various legal rights on behalf of those who were deemed unable to properly manage their own affairs, termed ‘wards’.³⁹ Assuming such powers, the sovereign in public interest, is assumes (for self) a duty to protect persons under disability (who have no rightful protector). Therefore, the policy reflects the element of sovereignty, where authority acts as a guardian “over various classes of persons, who, from their legal disability, stand in need of protection, such as infants, idiots and lunatics”,⁴⁰ or a doctrine by which “a government has a standing to prosecute a lawsuit on behalf of a citizen especially someone who is under a legal disability to prosecute the suit”.⁴¹ Later the courts, who acted as a wing of the sovereign state, inherited the *parens patriae* jurisdiction which formerly belonged to the King.⁴² In present times the connotation of the term *parens patriae* differs from country to country, in England it is ‘the Crown’, in America it is ‘the people’.

The policy of *parens patriae* was used against public nuisance (for water and air pollution) in several interstate environmental lawsuits in the early twentieth century. By the turn of the 20th Century, states were suing other states using their *parens patriae* powers to protect natural resources and territory.⁴³ With the emergence of new environmental jurisprudence, the Indian courts too have assumed the duty to protect the ecology under the principles of *parens patriae*.⁴⁴ It is argued that the concept of *parens patriae*

38 *Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592 (1982).

39 Lawrence B. Custer, “The Origins of the Doctrine of *Parens Patriae*” 27 *Emory Law Journal*, 195-208 (1978).

40 John Jane Smith Wharton and John Mounteney Lely, *Law Lexicon or Dictionary of Jurisprudence* 531 (Spettigue and Farrance, London, 1889).

41 Bryan A. Garner, *Black’s Law Dictionary* (Thomson Reuters, New York, 2004).

42 *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 SCC 454.

43 *Trail Smelter Arbitration (United States v. Canada)* 3 R.I.A.A. 1905 (1941).

44 Partha Pratim Mitra, “Introduction of Animal Law in Continuing Legal Education” 46(4) *Indian Bar Review* 240, 241 (2019). In order to read more on continuing legal education, its relevance see Prakash Sharma, “Continuing Legal Education: Rethinking Professional Ethics and Responsibility in India” 5(2) *Asian Journal of Legal Education*, 152-168 (2018); Prakash Sharma, “Continuing Legal Education: Idea, Need, and Relevance” 46(4) *Indian Bar Review* 399-407 (2019); Shuvro Prosun Sarker and Prakash Sharma, “Bridging the Gap: Understanding the Trends in Indian Legal Education from Recent Developments” 7(1) *Asian Journal of Legal Education* 57-72 (2020).

recognizes for the state (or its instruments), the role of protector of its citizens as parent particularly when citizens are not in a position to protect themselves. The Law Commission of India in its 186th Report opined that “the petitioner’s personality to sue on behalf of the succeeding generations can only be based on the concept of intergenerational responsibility”.⁴⁵ Tracing its presence in the Indian Constitution, particularly the ‘Preamble’ read with ‘Directive Principles of State Policies’ (DPSP), enjoins upon the state to take all protective measures.⁴⁶ Interestingly, it is argued that the policy of *parens patriae* jurisdiction has been recognized in India even before the Constitution came into force.⁴⁷

Nevertheless, in the landmark decision *A. Nagaraja*, the apex court held that they have a duty under the policy of *parens patriae* to take care of the rights of animals, particularly when they are unable to take care of themselves as against human beings.⁴⁸ In the same line, the High Court of Himachal Pradesh invoked the policy of *parens patriae* along with other constitutional provisions to protect the basic rights of animals.⁴⁹ The court prohibited sacrifice of animal or bird in the place of “religious worship, adoration or precincts or any congregation or procession connected with religious worship”, on “public street, way or place”.⁵⁰ For this, the court directed the State Government to publish and circulate pamphlets henceforth to create “awareness among the people, to exhibit boards, placards in and around places of worship banning the sacrifice of animals and birds”.⁵¹

There are numerous occasions where the Indian Supreme Court has emphasized the duty of the State as *parens patriae*.⁵² The High Court of Uttarakhand has gone a step ahead and have declared that non-living things like rivers, their tributaries, streams, are juristic entities (under the policy of *parens patriae* jurisdiction) and it is the duty of state to preserve and conserve such juristic entities.⁵³ This principle was followed in *Lalit Miglani*,⁵⁴ wherein the non-living entities were accorded rights akin to fundamental rights or legal rights. On another occasion, the High Court Uttarakhand declared that, “the entire animal kingdom including avian and aquatic as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person”. The court

45 Law Commission of India, 186th ‘Report on Proposal to Constitute Environment Courts’ 140 (Sep. 2003).

46 *Charan Lal Sabu v. Union of India* (1990) 1 SCC 613.

47 *Gaurav Kumar Bansal v. Union of India* (2015) 2 SCC 130.

48 *Supra* note 1 at para 26.

49 *Ramesh Sharma v. State of Himachal Pradesh*, MANU/HP/0934/2014.

50 *Id.*, para 85.

51 *Ibid.*

52 *Supra* note 46; *A. Nagaraja*, *supra* note 1.

53 *Mohd. Salim v. State of Uttarakhand*, 2017(2) RCR (Civil) 636.

54 *Supra* note 35.

further declared that all the citizens throughout the State of Uttarakhand act as *loco parentis*, meaning they act as a human face for the welfare and protection of animals.⁵⁵

Judicial mandate against cruelty to animals

In *Moti Lal v. Central Bureau of Investigation*,⁵⁶ the appellant was arrested in connection with the offence punishable under various acts.⁵⁷ In this case, on the basis of notification issued by the Central Government, the investigation was transferred to the force *i.e.*, Central Bureau of Investigation (CBI) established under Delhi Special Police Establishment Act, 1946 (Act, 1946). The order of transferring the investigation by the Central Government was challenged by writ petition before the High Court of Allahabad which was rejected subsequently, and an appeal came before the Supreme Court of India. The appellant submitted that the Wild Life (Protection) Act, 1972 (Act, 1972) is a special law as understood under section 5 of the Indian Penal Code, 1860. It contains comprehensive provisions for investigation, inquiry, search, seizure, compounding of offences, trial and punishment, therefore, the police force established under the Act, 1946 was (a) not empowered to investigate the case and (b) has limited jurisdiction in relation to the investigation of offences within the Union Territories as specified in the Notification issued under section 3 of the Act, 1946. The apex court while in agreement with the order passed by the high court opined that the notifications issued on behalf of the Central Government under section 5 read with section 6 of the Act, 1946 to empower CBI for investigation of the case was correct. In this regard, the apex court referred to the scheme of section 50 of the Act, 1972 which makes it abundantly clear that police officer is also empowered to investigate the offences and accordingly search and seize the offending articles.

In another case,⁵⁸ three writ petitions were filed to declare the inaction of the authorities to implement the provisions of the Prevention of Cruelty to Animal Act, 1960 (Act, 1960) and the Andhra Pradesh Gaming Act, 1974 (Act, 1974) against anti-social elements organizing cock-fights with betting, selling illicit liquor, gambling, and subjecting animals and birds to cruelty during festival in Andhra Pradesh and not forming appropriate societies for prevention of cruelty to animals (SPCA) for each district. Being cruel in nature, cock-fights are treated at par with sports, which is both immoral and unethical, especially when such events inflict unnecessary pain and suffering to the roosters.⁵⁹

55 *Narayan Dutt Bhatt v. Union of India*, 2018(3) RCR(Civil)544 2018.

56 (2002) 4 SCC 713.

57 The Wild Life (Protection) Act, 1972 under ss. 9, 39(3), 44, 49, 50, 51, 57 and 58 read with ss. 429, 379, 411 of Indian Penal Code, 1860 and ss. 10 and 15 of the Prevention of Cruelty to Animal Act, 1960.

58 *Supra* note 34.

59 This prohibited on the reading of ss. 3, 11(1) m (ii) and (n), Prevention of Cruelty to Animal Act, 1960.

Shockingly, events like these have political patronage and district collectors as well as district superintendent of police, turn a blind eye to such events. It was submitted on behalf of petitioners that cockfight events glorify violence and such a bloody event makes spectators immune to the pain and suffering of animals.

Such event even violates constitutional mandates for not discharging their fundamental duty under article 51A(g) of the Constitution, to have compassion for living creatures. The high court issued directions that the Government of Andhra Pradesh should constitute Society for Protection of Animals (SPCAs) in all districts strictly in accordance with the already formulated rules at the earliest on line with the orders of the Supreme Court.⁶⁰ Thereafter, the court gave necessary directions to the district collectors of all the districts, more particularly of West Godavari, East Godavari, Krishna and Guntur, to constitute joint inspection teams, for each *mandal* in their respective districts for effective implementation of the Act, 1960 and Act, 1974.⁶¹ The court further made directions to the concerned authorities of the district that on being informed about playgrounds and cockpits, they should take immediate action to stop such events and if need arises impose section 144 Code of Criminal Procedure, 1973.

In *Wildlife Rescue and Rehabilitation Centre v. Union of India*,⁶² the writ petition was related to the cruelties to the number of elephants owned by private individuals in the State of Kerala. As per the law, it is required that every person having the control, custody or possession of any captive animal shall declare to the Chief Wild Life Warden or the authorized officer the number and description of the animal, or article of the foregoing description under his control, custody or possession and the place where such animal or article is kept.⁶³ Indian elephants (*Elephas maximus*) are captive animal.⁶⁴ The apex court opined that as per the Kerala Captive Elephants (Management and Maintenance) Rules, 2012 every owner shall maintain an elephant data book as specified by the Chief Wildlife Warden for each captive elephant.⁶⁵ In this regard the district committee should take necessary measures to inform the festival committee to adhere to such measures. The apex court also directed that the temples or the *Devaswom* should get themselves registered with the district committee so that there would be effective and proper control.

60 *Geeta Seshamani v. Union of India* (2008) 17 SCC 55 and *Gauri Maulekhi v. Union of India* MANU/SCOR/17410/2015.

61 The inspection team shall consist of a police officer (not below the rank of sub-inspector of police), a *tahsildar* and a representative of either the Animal Welfare Board of India or a member of a non-governmental organization espousing the cause of animals or persons involved in the prevention of cruelty to animals.

62 (2016)1 SCC 716.

63 Wild Life (Protection) Act, 1972, s. 40

64 Prevention of Cruelty to Animals Act, 1960, s. 2(5).

65 Kerala Captive Elephants () Rules, 2012, r. 8 (13).

Judicial opinion on performing animals

Performing animal means any animal which is used at or for the purpose of any entertainment to which the public are admitted through sale of tickets.⁶⁶ At another place whereas a performing animal is an animal which is used at or for the purpose of any entertainment including a film or an equine event to which the public are admitted.⁶⁷ In 1991, the Ministry of Environment and Forest (MoEF) issued a notification banning training and exhibition of bears, monkeys, tigers, panthers and dogs, which was challenged by the *Indian Circus Federation v. Union of India*⁶⁸ before the High Court Delhi of but, later, a corrigendum was issued, whereby dogs were excluded from the notification. On the direction by the High Court Delhi, a committee was constituted and based on its report a notification was issued which excludes dogs from its purview. Later, the legality of the notification was challenged before the Supreme Court but the said notification was upheld.⁶⁹ These notifications are common and MoEF continue to issue fresh notification on performing animals, for example in an earlier notification, 'bulls' were banned from exhibition or training as performing animals.

In *N.R. Nair* case the main challenge was about the validity of notification under section 22 of the Prevention of Cruelty to Animals Act, 1960 (Act, 1960) to the effect that no person should train or exhibit any animals specified therein, namely, bears, monkeys, tigers, panthers and lions. After the issuance of the notification, a corrigendum was issued whereby dogs were excluded from the said notification. The notification was challenged by the Indian Circus Federation before the High Court of Delhi, which ordered for the constitution of a committee. The committee gave a detailed report and in pursuance thereto another notification was issued, whereby exhibition and training of bears, monkeys, tigers, panthers and lions was prohibited. The notification was challenged in the High Court of Kerala which upheld the validity of the notification. A civil appeal was filed before the Supreme Court of India. It was argued that no direction could be issued depriving the appellants of the ownership of the animals. The court did not go into this question but the circus owners were prohibited from either training or exhibiting any of the five animals referred to in the notification. The Supreme Court agreed with the decision of the high court that in exercise of judicial review neither the high court nor this court could go into the correctness of the decision of the government in issuing the justified and authorized notifications.

This aspect got settled in *A. Nagaraja*,⁷⁰ which decided the position of performing animals in India. The Supreme Court referred to the rights of animals under

66 Performing Animals Rules, 1973, r. 2(b)

67 Performing Animals (Registration) Rules, 2001, r. 2 (h),

68 1999 (48) DRJ 171.

69 *N.R. Nair v. Union of India* (2001) 6 SCC 84.

70 *Supra* note 1.

Constitution, animal specific laws, culture, tradition, religion and ethology, and argued for a nationwide awareness about animal laws.⁷¹ The court held that the manner in which *jallikattu* and bullock cart races are conducted, have no support of local tradition or culture. This judgment has become milestone for all cases relating to performing animals and the ratio has been used by several cases afterwards.

In *Compassion Unlimited Plus Action v. Union of India*⁷² case, several writ petitions under Article 32 was made as against the notification published by the Union of India on January 7, 2016, specifying bears, monkeys, tigers, panthers, lions and bulls as not to be exhibited or trained as performing animal. However, in the proviso it was mentioned that bulls might continue to be exhibited or trained as a performing animal at events such as *jallikattu* in Tamil Nadu and bullock cart races in Maharashtra, Karnataka, Punjab, Haryana, Kerala and Gujarat in the manner and by the customs of any community or practiced traditionally. The notification also mandates that such event must take permission from the district collector or the district magistrate, including the specifics of track, involvement of animal husbandry and veterinary department and district society for prevention of cruelty to animals and state animal welfare board. The notification also covered the five freedoms declared *A. Nagaraja* case. It was argued by petitioners that though the Central Government added conditions but treating of bulls in such a manner would not be justifiable regard to the compassion enshrined under the provisions of the Constitution and the Act, 1960. Also, it was argued that such sports deserved to be prohibited because sports with articles and sports with living beings are different. The apex court on careful analysis directed stay on the notification. Interestingly, in *A. Nagaraja* case, the apex court did not totally prohibit the participation of bulls in the *jallikattu* but desired that care should be taken so that the bulls were not meted with cruelty.

On a review petition⁷³ against the decision of *A. Nagaraja*, the Supreme Court opined that there is head on collision between the two statutes *i.e.*, the Tamil Nadu Regulation of Jallikattu Act, 2009 (Act, 2009) and the Prevention of Cruelty to Animals Act, 1960. While the former is restrictive in scope the later do covers the entire field. In fact, on the contrary, the Act, 2009 permits taming of bulls. Therefore, the apex court opined that both could not co-exist (because they are inconsistent). The judgment in *A. Nagaraja* had adverted to the all aspects and after dismissing the review petition, the apex court did not perceive any explicit error in the said analysis which would invite exercise of power of review.

71 In this case, the Tamil Nadu Regulation of Jallikattu Act, 2009 was found repugnant to the Prevention of Cruelty to Animals Act, 1960.

72 (2016) 3 SCC 85.

73 *Chief Secretary, Tamil Nadu v. Animal Welfare Board* (2017) 2 SCC 144.

Judicial views on animal transportation

The cost of maintenance and treatment of the animals in cases where on complaint it is revealed that the manner of transportation of animals is cruel, is payable by one who claims custody or who are the owners of the livestock.⁷⁴ This cannot be attributed upon the complainant. In *Bharat Amratlal Kotbari v. Dosukhan Samadkhan Sindhi*,⁷⁵ the apex court held that animals filled in trucks, in a cruel manner (where in the process of transporting food and water is denied) results in unnecessary pain and suffering.

In *Multani Hanifbhai Kalubhai v. State of Gujarat*,⁷⁶ the vehicle of the appellant was seized by the police, which was found to be transporting twenty-eight buffalo calves. The first information report (FIR) was registered.⁷⁷ The appellant filed an application for the release of his truck before the judicial magistrate, but the said application was rejected. The appellant filed an application before the district and sessions judge, which was also rejected. Thereafter, the appellant preferred special criminal application (SCA) before the high court, which was dismissed. Thereafter, the appellant filed appeal by way of special leave before the Supreme Court. It was submitted that the provisions of the Gujarat Animal Preservation Act, 1954 (Act, 1954) clearly mentioned the applicability of section 6B (3) to the class of animals as given in section 5(1A) of the Act, 1954 *viz.*, cow, the calf of a cow, bull and bullock. The apex court opined that on the reading of section 5(1) of the Act, 1954 without a certificate in writing from the competent authority no animal can be slaughtered, however such power to grant certificate is subject to the section 5(1A), which mandates that no certificate under sub-section (1) shall be granted in respect of animals mentioned in the list (to which buffalo calves were nowhere mentioned).⁷⁸ Therefore, the apex court on a careful examination of relevant provisions of the laws opined that the orders passed through lower courts were incorrect.

Judicial direction for protection of stray animals

In *Milkmen Colony Vikash Samity v. State of Rajasthan*,⁷⁹ the high court issued directions including relocation of dairies outside the city as stray animals were roaming freely in public places including corridors of high court. Subsequently, the Supreme Court directed the municipal corporations to restrict wandering of stray cattle roaming out

74 S. 35(4).

75 2010 (1) SCC 234.

76 (2013) 3 SCC 240.

77 Indian Penal Code, 1860, s. 279, 114; Motor Vehicles Act, 1988 ss. 184, 177 and 192; Gujarat Animal Preservation Act, 1954 ss. 5, 6, 8 and 10 and Prevention of Cruelty to Animals Act, 1960, s. 11.

78 Gujarat Animal Preservation Act, 1954, s. 5(1A).

79 (2007) 2 SCC 413.

of dairies and to remove unattended stray animals including cattle, bulls, dogs and pigs from the city expeditiously.

The local authorities have a sacrosanct duty to provide sufficient number of dog pounds, including animal kennels and shelters, which may be managed by the animal welfare organizations. It is also incumbent upon the local authorities to provide requisite number of dog vans with ramps for the capture and transportation of street dogs, and includes related concerned authorities. In *Animal Welfare Board of India v. People for Elimination of Stray Troubles*,⁸⁰ two main concerns were to be answered, firstly, cruelty to dogs, and secondly, elimination of dogs for creating menace as per mandates of different municipal bodies. A special leave to appeal was filed, out of orders passed by the High Courts of Bombay, Kerala and Karnataka. The apex court held that there has to be compassion for dogs and they should not be killed in an indiscriminate manner, but indubitably the lives of the human beings are to be saved and one should not suffer due to dog bite because of administrative lapse. Therefore, the apex court while disposing off the matter recognized that a balance between compassion to dogs and the lives of human being has to be obtained, and in this regard, all the municipal corporations are dutybound to provide infrastructure.⁸¹

Judicial scrutiny on animal and bird trade

The Act, 1972 seeks to protect wild animals and any provision contained in the Act aiming protection of wild animals, must necessarily be strictly complied with. In *Chief Forest Conservator, Wild Life v. Nisar Khan*,⁸² an appeal was directed against a judgment by a division bench of the High Court of Allahabad for the issuance of mandamus writ, directing the appellants to grant a license for carrying on business as a dealer in birds. After justifying the refusal to grant license, the apex court held that when hunting of the birds specified is prohibited, no person can be granted a license to deal in birds in captivity. The court opined that the term 'hunting' includes 'trapping' of birds,⁸³ therefore, no license for dealing in them can be lawfully granted.

In response to the international obligation, particularly CITES, has resulted in amendments, which prohibits import and export of animal products (for example ivory, snake venom, sale of foreign birds *etc.*) for commercial or related purpose. Because the trade in wild animals and plants crosses borders between countries, the effort to

80 2016 (8) SCJ 314.

81 *Id.*, para 16.

82 (2003) 4 SCC 595.

83 Wildlife (Protection) Act, 1972, s. 9. Interestingly, the Wildlife (Protection) (Amendment) Act, 1991 made amendments to various provisions, particularly to s. 9. These amendments were made mainly to give effect of an international obligation of Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES).

regulate it requires international cooperation to safeguard certain species from over-exploitation. CITES was conceived in the spirit of such cooperation.⁸⁴

IV Wild animal conservation

Wildlife is integral to maintain the balance of nature. By protecting species, the chances to save beautiful, vulnerable and utterly irreplaceable planet that living beings call home escalates manifold. This also ensures higher chances for protecting the essential goods and services that make lives possible and contribute enormously to the health and wellness of living beings. Such an approach also ensures availability of common resources namely breathable air, clean water, food, fibers, building materials, medicines, energy, fertile soils, climate regulation, transport, and recreational and spiritual values. In fact, the world collectively argues for a supportive and protected environment. The common mission is to find solutions that save the marvelous array of life on the planet.

In so far, the intent of Indian environmental laws is concerned, the purpose is to safeguard natural habitat from imperial and feudal interests of the state.⁸⁵ According to the Supreme Court, “wildlife nurtures a sense of wonder”.⁸⁶ However, a careful analysis of case laws uncovers how in practice courts in India have tailored the needs of changing times into strategies that support human-centric demand for rehabilitation. In so doing the courts have neglected the equally important interests of non-humans. In fact, our legal system has shown little or no flexibility for the protection of interests that goes beyond or in addition to human interests. A prime example would be the case of *Narmada Bachao Andolan*,⁸⁷ wherein the Supreme Court granted permission to raise the height of Sardar Sarovar Dam without taking into consideration the effect of high dam over the local people and ecology. The court did not appreciate the impact of reservoir on the flora and fauna of related area. Holding against the opinion of *Tennessee Valley*⁸⁸ wherein the United States Supreme Court in order to protect the endangered species of ‘snail darter’, restrained further exploration of the reservoir on the ground that it would violate the provision of Endangered Species Act, 1973.⁸⁹ Interestingly, in *Narmada Bachao Andolan* the court could not find a case on existence of any endangered species in the area of construction, besides there was no similar legislation like Endangered Species Act in India.

84 *Regional Deputy Director v. Zavaray S. Poonawala* (2015) 7 SCC 347, para 25.

85 P. Leelakrishnan, *Environmental Law in India* 71 (Lexis Nexis, Gurgaon, 2019).

86 *Zavaray S. Poonawala*, *supra* note 84 at para 16.

87 *Narmada Bachao Andolan v. Union of India* (1999) 8 SCC 308.

88 *Tennessee Valley Authority v. Hiram G Hill*, 437 US153(1978).

89 Under the Endangered Species Act, 1973 all government agencies are required to ensure that any action they authorize, fund or carry out must not jeopardize the continued existence of an endangered or threatened wild species. *Id.* s. 2(b).

In this regard, the CITES too have an obligation to regulate the export and import of species as set out in Appendix-I of the CITES. Being an international treaty, CITES was made at Washington in the year 1973 with a view to regulate the international trade in specimen of selected species subject to certain control set out therein.⁹⁰ The clear intention behind this international convention was that all the consenting countries should come together and make joint efforts to save animal species from going extinct. The effort requires regulation of cross border trade in wild animals and plants between countries and includes adoption of safeguards that ensures protection of species from over-exploitation.

In *Zavaray S. Poonawala*,⁹¹ the respondent wanted to import into India a trophy of one stuffed leopard which he hunted in Zambia. However, leopard being a protected and prohibited specie under Schedule-I of the Act, 1972 and also under the CITES. The respondent made his first application to the Regional Deputy Director, Wild Life, which was rejected as respondent had to obtain clearance and certificate from both Director General Foreign Trade (DGFT) and CITES. In the absence of any such permission no approval could be granted by the Deputy Inspector General, Wild Life. Later, permission was granted by the Joint Director, DGFT in the form of a license. After the permission, CITES wrote a letter raising concern against such permission. Thereafter, DGFT sprang into action and issued the show-cause notice to the respondent. In his defense the respondent argued that the Chief Wildlife Warden under the Act, 1972 is a competent authority to grant the permission. The respondent filed the writ petition in the high court under article 226 of the Constitution, challenging the validity of both CITES letter as well as show cause notice issued by the customs authorities.⁹² The high court allowed the writ petition on two counts, firstly, the competent authorities to grant the permissions were DGFT and the Chief Wildlife Warden. The respondent had obtained the requisite permissions from both authorities. Secondly, CITES had no role to play and did not have any locus to examine the issue of permission and as per the high court, the only role of the CITES was to see that the imported item not used for commercial purposes. While setting aside the judgment of the high court, the Supreme Court opined that the permissions of DGFT and Chief Wildlife Warden were conditional which were not met by respondent.

Judicial action for elephants and ivory trade

Indian judiciary has taken many actions to save captive and wild elephants. It has taken preventive actions for ivory trade or killing of elephants for ivory tusks. In *State of Bihar v. Murad Ali Khan*,⁹³ the State of Bihar moved a Special Leave Petition (SLP)

90 An Introduction to Animal Laws, *supra* note 6 at 35, 36.

91 *Zavaray S. Poonawala*, *supra* note 84.

92 Customs Act, 1962, s. 124,

93 (1988) 4 SCC 655.

under article 136 of the Indian Constitution against the order of the High Court Patna, wherein the court quashed the order of the magistrate for taking cognizance of an offence under the Act, 1972.⁹⁴ The accusation against the respondents was that they along with two others shot and killed an elephant in *Kundurugutu* range forest and removed the ivory tusks of the elephant. The range officer of forest lodged a written complaint with the magistrate. The high court quashed the proceedings against the respondents on two grounds. Firstly, that the magistrate acted contrary to the provisions of 210(1) of Code of Criminal Procedure, 1973, and secondly, that the merits of the complaint as FIR did not constitute the offence and petitioner was never named in the report. The Supreme Court after interpretation of several case laws, set aside the orders of the high court. The apex court opined that the ingredients of an offence under section 9(1) read with sec. 50(1) of the Act, 1972 require for the establishment of certain ingredients and the order of the magistrate for taking cognizance of the offence and ordering issue of summons to the respondents were correct in law.

In *Indian Handicraft Emporium v. Union of India*,⁹⁵ the appellants were engaged in the business of manufacture and sale of articles made of ivory. However, section 49C was inserted by the amendment (Act 44 of 1991), which imposes a complete ban on the trade of imported ivory. The amended Act also provide for a six month-time for the disposal of all stocks of ivory. The Supreme Court clarified those traders who imported ivory legally after Amendment Act of 2003 cannot possess animal article and should be handed over to competent authority. The court held that the appellants have no right to possess the articles on ivory and compensating the appellants would not arise. The court further opined that complete prohibition of trade in ivory is a reasonable restriction and therefore do not attract the wrath of article 14 of the Indian Constitution. In 1977 the Indian elephant was brought within the purview of Schedule I of the Act and export of ivory was also banned in the same year. By the amending Act 28 of 1986, trade or commerce in wild animals, animal articles and trophies were restricted. In *Balram Kumawat v. Union of India*,⁹⁶ it was held that a ban on import of mammoth ivory which looks like ivory is a reasonable restriction on the right of the dealers.

In *State of Kerala v. P.V. Mathem*,⁹⁷ the respondent took the defense that the vehicle of the used for illegally transporting ivory collected from the forest cannot be confiscated by the state government.⁹⁸ It was contented that ivory could not be covered as per the

94 Under ss. 447, 429 and 379 Indian Penal Code, 1860, ss. 447, 429, 379 r/w s. 9(1) and s. 51 of the Wild Life Protection Act, 1972.

95 AIR 2003 SC 3240.

96 AIR 2003 SC 3268.

97 AIR 2012 SC 1502.

98 Kerala Forest Act, 1961, s. 61A.

definition of “forest produce”,⁹⁹ therefore no “forest offence”¹⁰⁰ could be made as against the respondent. Interestingly, the court opined that on the reading of the definition of “forest produce” does not include any part of living or dead wild animals. The same is taken care by the provisions of the Act, 1972.

In another case of similar nature,¹⁰¹ it was alleged that the respondent had collected and stored elephant tusks and unlicensed gun including other accessories. Thereafter, a car belonging to the respondent was seized by the Assistant Wild Life Warden. A case was registered and a criminal proceeding was initiated against the respondent under the Kerala Forest Act, 1961. This was challenged before the district judge who came to hold that the elephant tusk was not a forest produce. This was challenged before the high court, and the court agreed with the decision of the district court. The matter thereafter was placed before the Supreme Court. The apex court opined that on the reading of the provision of the Act, 1972,¹⁰² elephant tusk is the property of the government. The apex court further declared that whether ivory is a forest produce or not under any other state law is immaterial.¹⁰³

Protection of animals in zoos

According to the Supreme Court, in the light of the Preamble and section 24 of the Prevention of Cruelty to Animals Act it is clear that it is the welfare of the animals which is of “paramount consideration”.¹⁰⁴ The Supreme Court favoured tourism business but disagreed with the argument that the lease for a snack bar restaurant was necessary for visiting tourists in the reserved forest. In *Union of India v. Kamath Holiday Resorts Pvt. Ltd.*,¹⁰⁵ where a Central Government officer of the leased out for the snack bar restaurant in the forest. The apex court opined that any business or commercial development in sanctuaries and national parks must ensure the protection of wildlife and preservation of the ecological balance for that area. To ensure these aspects the policy adopted in the *Forest Friendly Camps Pvt. Ltd.*¹⁰⁶ case was treated as the guiding

99 Kerala Forest Act, 1961, s. 2(f),

100 Kerala Forest Act, 1961, s. 2(e).

101 *Wild Life Warden v. Komarikkal Elias* AIR 2018 SC 3269.

102 Wild Life (Protection) Act, 1972, s. 39(1)(c) . It runs thus:

An ivory imported into India and an article made from such ivory in respect of which any offence against the Act, 1972 or any rule or order made thereunder has been committed, shall be deemed to be the property of the State Government, and where such animal is hunted in a sanctuary or national park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal shall be the property of the Central Government.

103 *Supra* note at 101 at para 9.

104 *Supra* note 69 at para 11.

105 (1996) 1 SCC 774.

106 *Forest Friendly Camps Pvt. Ltd. v. State of Rajasthan*, AIR 2002 Raj 214.

source. The case argued that it would be just and fair to maintain a careful balance between the preservation of wildlife in forest and sustainable development on eco-tourism. Here perhaps, one has to revisit the notion of wildlife protection. Wildlife exists in different matrix and tourism activities in no way could support its ecology; rather it causes adverse effects upon the wildlife and the environment. Generation of funds is one aspect, while maintaining ecological balance the other. And with all due respect to human intention, wild animals are capable of full existence without the aid of humans. However, over the years a new thought has been developed which calls for benefits to local people and communities. The thought argues that tourism could be environmentally, economically, socially and culturally sustainable.

Ownership of wild animals

According to the Supreme Court of India, no state organization or person can claim ownership or possession over wild animals in the forest.¹⁰⁷ According to the apex court, the collective readings of the definitions of “wild animal”¹⁰⁸ and “wild life”¹⁰⁹ is wide enough and would include any animal, which forms part of any habitat. Besides on the reading of other provisions of the Act, 1972,¹¹⁰ animals in the wild are “properties of the nation” for which no state can claim ownership and it becomes imperative upon the state to both protect and conserve it—all for ensuring the ecological and environmental security of the country. Similarly, the United States prohibits commerce or purchase of wildlife species and confers ownership over illegal wildlife resources on the government.¹¹¹

V Anthropocentric to eco-centric approach

The Supreme Court of India has applied the eco-centric principles in *T.N. Godavarman* and thus rejected the anthropocentric approach to protect environment. It is argued that the concept of anthropocentrism is “human-interest focused” and proceeds on the rationale that non-human has only instrumental value to humans.¹¹² In *Jumbo Circus v. Union of India*, the High Court of Kerala observed that the law, which denies rights to animals, is an anachronism, which must be changed.¹¹³ The court rightly opined that

107 *WWF-I*, *Supra* note 25 at para 45.

108 Wildlife Protection Act, 1972, s. 2(36).

109 Wildlife Protection Act, 1972, s. 2(37).

110 Wildlife Protection Act, 1972, s. 9. However, here s. 9 is subject to the s. 11 and 12 of the Act, 1972.

111 Captive Wildlife Safety Act, 2003. This legislation does not apply to any licensed, registered, and federally inspected exhibitor (zoos, circuses, etc.) or research facility. The Act also exempts sanctuaries, humane societies, animal shelters, or societies for the prevention of cruelty to animals that meet specified criteria.

112 *Supra* note 18 at para 14.

113 2000 (2) KLT 625.

legal rights shall not be the exclusive preserve of the humans and has to be extended beyond humans. Such an approach dismantles the thick legal wall of humans on one side and all non-human on the other. While the law currently protects wildlife and endangered species from extinction, animals are denied rights—an anachronism which must necessarily change.¹¹⁴ Another suggestion would be to include within the ambit of animal life, essentials of ‘life’ *i.e.*, dignity, worth and honour.

The chapter, however do also reveals that the intent of Indian courts is not argue much from the perspective (or the arguments) of the need and relevance, or legal status, or the problem with right or duty-based approach *etc.* Nevertheless, the trends assure us of advancements towards ethical dimensions based on capabilities and the welfare of non-humans.¹¹⁵ This marks a movement which goes beyond obligations (that humans owe to non-humans) and tests the viability of locating non-human within the idea of justice. The demand for justice (rather benevolence) has for years convinced humans to continue their struggle until it is obtained as a matter of ‘right’.¹¹⁶ Animals to this extent saw limited support and whatsoever they have received is in the nature of sympathy or a thought developed from moral concern. This has resulted in the adoption of laws which to a great extent are indifferent.

In this regard, Professor Favre has raised an interesting point about status of wild animals in international treaties and agreements.¹¹⁷ According to him, when wildlife is

114 *Supra* note 69 at para 13 (The apex court held that “...what is done to the animals is not within the domain of these proceedings and we refrain from passing any order in respect thereto.”).

115 Amartya Sen, *The Idea of Justice* 94-108 (Harvard University Press, Cambridge, 2009). (Explaining the meaning of capabilities, Sen opines that capabilities approach focuses on the existence individuals’ ability to perform activities they have reason to value. *Id.* at 244). *See also* Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* 327 (Harvard University Press, Cambridge, 2009) (The author locates human duty towards non-human animals within a theory of justice. Interestingly, animals claim for entitlement revolves around ten capabilities, namely: Life, Bodily Health, Bodily Integrity, Senses, Imagination and Thought, Emotions, Practical Reason, Affiliation, Association with other Species, Play and Control over one’s Environment. *Id.* at 392-400).

116 Reflecting on the present status of downtrodden humans (have-nots), Amartya Sen opines thus:

In a memorable observation in the *Leviathan*, Thomas Hobbes noted that the lives of people were ‘nasty, brutish and short’. That was a good starting point for a theory of justice in 1651, and I am afraid it is a still good starting point for a theory of justice today, since the lives of so many people across the world have exactly those dire features, despite the substantial material progress of others. *Id.* at 412.

See also Andreas Follesdal and Thomas Pogge (eds.), *Real World Justice* (Springer, Berlin, 2005); Thomas Pogge and Sanjay Reddy, *How Not to Count the Poor* (Columbia University Press, New York, 2005).

117 David S. Favre, “Wildlife Jurisprudence” 25(2) *Journal of Environmental Law and Litigation* 468 (2010).

mentioned within international treaties, it is almost always in the context of preserving or using them as a natural resource, not as individuals with needs of their own.¹¹⁸ Take for example, when the International Convention for the Regulation of Whaling, 1946 was created, it was made with an intent to manage the commercial exploitation of whales.¹¹⁹ Later with no proper management or understanding a situation came wherein nations have to agree for a commercial moratorium.¹²⁰

CITES is another international treaty that regulates commercial trade of wildlife, particularly when a particular species is at risk of extinction. Likewise, the Convention on Biological Diversity, though impacts wildlife, yet the focus is primarily on habitat protection and the term wildlife is absent from it. Concern for individual animals seldom exists under the realm of international laws.¹²¹ Explaining the reason behind such an approach, Professor Favre opines “when there are limitations on methods of killing, capture, or transportation, it is usually out of concern that the natural resource should not be wasted rather than concern for the pain and suffering of individual animals”.¹²² Having said this, international law has witnessed massive advancements over the years. Initially it focused on resolving disputes *via* establishing the norm of customary international law, thereafter to the codification of customary norms of international environmental law, and recently to the development of new treaties that imposed new duties and standards on states and other actors.¹²³ Unlike international trend, domestically there are some developments made for the protection of individual animals and their needs.¹²⁴ In India the perspective is from the environment *in general* and not animal interests *per se*.¹²⁵ On a careful analysis it appears that Indian approach in early years was towards the protection of individual animal and later it developed

118 *Id.* at 469.

119 See International Convention for the Regulation of Whaling, Dec. 2, 1946, *available at:* file:///Users/prakashsharma/Desktop/RS3607_convention.pdf (last visited on 29 Jan., 2020).

120 *Supra* note 117.

121 See John B. Heppes and Eric J. McFadden, “Convention on International Trade in Endangered Species of Wild Fauna and Flora: Improving the Prospects for Preserving Our Biological Heritage” 5 *Boston University International Law Journal* 229, 232–41 (1987).

122 *Supra* note 117 at 475.

123 Peter H. Huang, “International Environmental Law and Emotional Rational Choice” 31 *Journal of Legal Studies* 238 (2002). (The author argues that the developments in international environmental law witnessed formation of soft law in the form of aspirations, goals, hortatory rhetoric, or vague guidelines).

124 In United States of America: Chimpanzee Health Improvement, Maintenance, and Protection Act, 2000; In United Kingdom: Fish Protection Act, 1997.

125 See Elephants Preservation Act, 1879; Tamil Nadu Preservation of Wild Elephants Act, 1878; Bombay Wild Animals and Birds Protection Act, 1951; Assam Rhinoceros Preservation Act, 1954.

into a general law.¹²⁶ This is marred with the concern for strict implementation, particularly with the weaker compliance mechanism.

The present chapter argues that laws must be interpreted or prepared in such a manner that allows for the protection of interests beyond or in addition to human interests.¹²⁷ Perhaps, this is where the idea of anthropocentric to eco-centric approach assumes greater significance. India has the good fortune of binding recognition towards protection of ecological and environmental protection.¹²⁸ At the same time while the existing laws at one place denounce cruelty to animals (as an offence) does not abolish experimentation on animals. Meaning thereby, the prevailing thought still treats animals as under the direct dominion and control of humans. Michael J. Manfredo opines that:¹²⁹

People worldwide have different reasons for caring about wildlife: Wildlife are a source of attraction and fear, they have utilitarian value and symbolic meaning, they have religious or spiritual significance, and they are a barometer measuring people's concern for environmental sustainability.

Provisions of must not remain some decorative piece in the statute books, they must be presented with some life. Their silence must not contribute as a source of despair for others. The times are tough, especially with the advent globalized, liberalized, marketized, privatized, consumeristic world. Today we have either complicated situations, or are on the verge of destroying the existing one. Now when rights are for both humans and non-humans, preferences of one over the other has become the norm; one is sorely undervalued when balanced against others. According to Judge V.R. Krishna Iyer, government must be pressurized to do the right thing "lest India's image and cultural heritage suffer severe damage".¹³⁰ He opines:¹³¹

Let us not betray the generations from the Buddha to Gandhi. Our tryst with destiny, made when India awoke to Independence, included an imperative that the nation will wipe every tear from every eye. This applies to the animal brethren, parrots, doves and other birds with broken wings to be sold as pets or for delicate dish, lions and tigers cramped and

126 At present three major laws are directly related to animals in India namely, Prevention of Cruelty to Animals Act, 1960, Wildlife (Protection) Act, 1972, and Biological Diversity Act, 2002.

127 *Supra* note 1 at 77.

128 Constitution of India, 1950, art. 48A and 51A,

129 Michael J. Manfredo (ed.), *Who Cares About Wildlife? Social Science Concepts for Exploring Human-Wildlife Relationships and Conservation Issues 2* (Springer, New York, 2008).

130 Justice V.R. Krishna Iyer, "The Rights of Our Animal Brethren" *Lawyers Update* (July 2005), available at: http://animalcrusaders.org/ex_focus.html (last visited on Jan. 28, 2020).

131 *Ibid.*

doped in small cages and even elephants and bears brutally treated to perform impossible feats. Let us begin the crusade for compassion and we must win because our case is just.

VI Conclusion

On the perusal of cases emanating from the Supreme Court of India and other high courts it would be safe to assume that: (a) Issues concerning wildlife have long been part of the legal system, and (b) Increased visibility of wildlife interests has been a recent development. Indian judiciary has (though occasionally) sought various measures for protection of natural resources in the country. Perhaps, this has come on the backdrop of international awareness that emerge post 1970s. Courts have taken massive initiatives for conservation of ecology and wild animals in the nature. It has acknowledged the ethical obligation to “allow wildlife to live their lives independent of humans”, besides resolving the wildlife-versus-human conflicts. In interpreting provisions of legislative acts, it is important for courts to maintain ideals that correspond to the foundations. In this regard *Centre for Environmental Law*, *Centre for Environmental Law*, *WWF-I* and *T.N. Godavarman* cases are important which have brought a paradigm shift. This is further reflected in the pronouncements of the Supreme Court, particularly in the *A. Nagaraja* case, wherein the apex court has come up with new jurisprudence. They have presented a case *to protect wild animals, not for human beings but for nature itself*. These approaches from anthropocentric environmentalism to eco-centric environmentalism in India has in way resulted in the protection of animals from slaughter, experiments, entertainments, trade and other inhumane activities. The approach in fact caters to the reality; that mother nature is the home for many species, therefore all efforts must be made in the direction that takes care the interests of the mute voices within our legal system. Perhaps the words of greatest scientist, Albert Einstein could be helpful here, he quotes “the indifference, callousness and contempt that so many people exhibit towards animals is evil first because it results in great sufferings in animals, and second because it results in an incalculably great impoverishment of the human spirit”.