BOOK REVIEWS

AN INTRODUCTION TO ANIMAL LAWS IN INDIA (2019). By P.P. Mitra (Delhi, Thompson Reuters, xii-xxxi, +319, Rs. 650, 1999).

THE AUTHOR has recently contributed valuably to the sparse juristic literature by his works — 'An Introduction to Animal Laws in India[1], 'Wild Animal Protection Laws in India',[2] and ' Birds, Wetlands and the Law'.[3] This is a huge contribution to the fledgling discourse on law and jurisprudence not just in these specific areas but also to the allied, and some would even call, 'paramount' discourses on just sustainability models of sustainable development[4] and anthropogenic harm approached from the perspectives of theories of justice and human rights.[5] In general, it can be justly said that Mitra assails the inherent 'speciesism' [6] of the Indian and global law and jurisprudence, although he prefers to set the stage [239, see also 240-257] by recourse to the wider setting of "eco-centric" (nature matters) in place of an "anthropomorphic" (human centered).

I concentrate here on the first work on"animal" law.[7] Mitra, of course, addresses in the main Indian law and jurisprudence but this, and related works, should be of considerable interest and importance for comparative theory of law in many areas

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1 Delhi, Thomson Reuters, Legal, 2019. This book will be hereafter referred to in the text by page numbers.

2 Delhi, LexisNexis, 2016.

3 Delhi, Thompson Press

4 See, for example, Julian R. Agyeman, John R. Bullard, and Bob Evans, (ed), *Just Sustainabilites: Development in an Unequal World* (MIT Press, 2003).

5 See, Upendra Baxi, "Towards a Climate Change Justice Theory*" J. Hum. Rts. & Env't*., 7 :7-32(2016).

6 See, Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, (Harvard University Press, 2007) Jeroen Hoopster, 'The Speciesism Debate: Intuition, Method, and Empirical Advances', *Animal*s, 9:12, 1054; published online Dec 1, 2019. doi: 10.3390/ani9121054.

7 This work carries brief forward by K.S.P. Radhakrishnan J., who led the Supreme Court Bench, in delivering a monumental decision on the rights of 'animals; and co-related it all with the fundamental duty of all citizensto develop "compassion for all lining creatures" in Part IV-A of the Constitution., It is this form of compassion that His Lordship extolled on the High Bench and what he highlights the most in Professor Mira's book.

I place the term 'animals' here in single quotes throughout because I distinguish between HAP (human animal persons') and NHAP(non- human animal persons'). I name both as 'persons' to draw attention to the fact that both categories of beings are sentient entities, rather than things or objects, or phenomena in nature. The difference between 'humas' and 'animals' is at best not a distinction of *kind* but of d*egree*. All this is adequatelyanalyzed in my yet to be published 19th IP Desai Memorial Lecture, Centre for Social Studies, Veer Narmad South Gujarat University, Surat (Aug. 12, 2000) entitled as "Animal Rights as Companion Human Rights".

such as constitutionalism and public law, health law, scientific experimentation with, 'animals', trade and conservation, and consumer protection and welfare.

The most general aspect that strikes us is the cooperative activism of legislation and judicial interpretation (divisible, in my view,among the theories – or tyrannies—about legisprudence, jurisprudence and demosprudence)[8] in protecting 'animals'. Students of law and judicial interpretation will here find a valuable corrective to the view that the habits and styles of judicial review conflict with the executive and legislative powers; rather, they display all too often patterns of creative constitutional cooperation with both. There is inevidence a co-production of juristic and social meanings of protecting the 'animals' from, and beyond, the excess of ill-treatment or wanton cruelty. I tend to generalize this insight, across the board, as co-governance and suggest that adjudicative interpretation ought to be looked at as a democratic asset rather than a liability (as the senseless, though sensational, allegations of 'judicial overreach'[9] may often suggest).

There are very clear constitutional normative resources offering scope and limitations for 'animal' protection in India. These are well laid out in chapter 4 of the book. Mitra further illustrates, in Chapters 7 and 8, this aspect rather well by a slew of judicial directions concerning slaughter and sacrifice of 'animals. The author helps us understand the profusion of legislations, and executive notifications, as well as authorities established for the welfare of animals and to grasp how enduringly the approach has shifted from 'animal' welfare and protection to the core rights of dignity, life, and liberty of non-human persons. He also addresses, though rather briefly, the directions issued by the Supreme Court of India for the prevention of human victimage, and to ameliorate the rightlessnes thus caused, by what has come to be known as "cow vigilantism" [130-133].

As concerns sacrifice, the High Court of Uttarakhand as late as 2014 reiterated that: "Animal sacrifice is not a form of worship but is a social evil that is based on superstition and violence against the helpless that goes against the spirit of Hinduism which preaches

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8 Upendra Baxi,' Demosprudence or Judicial Overreach and Usurpation?', in Sudha Pai Sudha Pai (Ed.), *Constitutional and Democratic Institutions in India: A Critical Analysis* (Hyderabad: Orient Blackswann, 2020; Upendra Baxi, "Demosprudence v Jurisprudence?: The Indian Judicial Experience in the Context of Comparative Constitutional Studies", *Macquarie L. J.* 14:1-13 (2015); *Id.* "Demosprudence and Socially Responsible/ Response-able Criticism: The NJAC Decision and Beyond, the 9th Durga Das Basu Memorial Lecture, West Bengal Academy of Juristic Sciences (Feb. 26, 2016); now revised and published in the *NUJS National Law Review,* 9:153-172 (2016). See also the insights in Rajeev Dhavan, *The Constitution of India: Miracle, Surrender, Hope,* (Delhi, Universal Law Publishing, 2017).

9 On the latter, see Clade Alvares and Rahul Basu, *The Supreme Court and Integrational Equity (The Goa Mining Case)*, (The Goa Foundation, Feira Alta, Mapusa 403 507 ,Goa, India), and my longish 'Preface' to that volume.

the spirit of "Ahimsa" and believes that God resides in every living being. No deity and *devta* would ever ask for the blood. All *devtas* and deities are kind-hearted and bless the humanity to prosper and live in harmony with each other. The practice of animal or bird sacrifice is abhorrent and dastardly" [134-135] .But how the embargo may survive a full constitutional scrutiny under article 25 doctrine of essentiality of the practices of religion? This doctrine was developed before Part IV-A duty of all citizens to develop compassion for all 'living creatures'; how may this doctrine continue to flourish in ways that may still beagainst a modicum of core rights of 'animals'?

Chapter 15 reveals a wealth of detail concerning the activist role of high courts and the Supreme Court in the sphere of animal law and human rights. First. the Indian judiciary has extended the right life in article 21 of the Constitutionto for "non-human beings also". The "Ramlila Maidan…case held that the Constitution did not merely speak for human right protection. The catena of judgments also speaks of preservation and protection of man as well as animals, all creatures, plants, rivers, hills,and environment'.[243]. Non-human animals have right to life with dignity, the High Court of Gujarat said, "even an animal has a right to say that its liberty cannot be deprived except in accordance with law'[243], Second, species differentiated rights are also promoted as a dimension of article 21. The High Court of Delhi held in 2015 that all the birds have fundamental right 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"[243]. Third, the vexed question of contemporary 'animal' rights v traditional culture is well explored by the Supreme Court in the landmark *Jallikattu* case in 2014. The court ruled that the 'manner in which they [bull races] are conducted, have no support of Tamil tradition or culture', securing thusthe basic rights of all performing animals"[245].

It is unnecessary here to multiply the instances of progressive rulings that insist that all sentient beings have access at least to core fundamental rights because they possess 'personhood'. Judicial decisions rely on an extended idea of a 'person' and it would be rank speciesism to say that while corporations, and even idols, can be right-bearers, non -human animal persons cannot be so regarded!

We must note here that the doctrine of parens patriae has been pertinently invoked by the Supreme Court of India, and the high courts. Thus, the former held, in the famed Jallikattu decision that the Court"has … a duty under the doctrine'to take care of the rights of animals since they are unable to take care of themselves as against human beings' [154-155]. In *Lalit Miglani*, the High Court Uttarakhand declared that 'the Glaciers including Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests, wetlands, grasslands, springs and waterfalls, legal entity or legal person or juristic person or juridical person or moral person or artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them." They were also

"accorded the rights akin to fundamental rights or legal rights" [356]. Surely, this is a far-reaching decision not just in terms of the scope but also the underlying doctrines both of *parens patriae* and intergenerational justice.[10]

The author's praise for this jurisprudence must be welcomed and sustained.But, we shold recall that the *parens patriae* doctrine is a double-edged sword as the Bhopal catastrophe experience shows. On the one hand, it led to $3 billion damages suit for loss of life and environmental harm before Judge Keenan of the Second Circuit Court in New York and the etching of a new principle of absolute liability of an ultra-hazardous multinational corporations; and on the other, an unwholesome premature settlement of all claims against a mighty multinational and the revictimization of victims, redeemed only by partial judicial review. [11]

Each stands presented, explicitly or implicitly, as the just performance of the State in discharge of the *parens patriae* functions. Are both the performances necessarily just, or only one of these? If you regard the doctrine merely as conferring or recognizing sovereign power or prowess of the state, the answer is easy: the State has no duties but (in a strict Hohfeld sense) only power and privileges to act as it may please. But if the subrogation of claims of victims entails duties to the violated peoples my favoured substitution for 'victims') than certain obligations of justice attach to the exercise of this power; these were most precisely and poignantly argued in review petition and are still before the court by way of curative petition.[12]

I believe this doctrine needs to be subject to duties of justice to the violated and to the basic structure and essential features of the Indian Constitution. The rights of

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10 See, Upendra Baxi, "Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?" *Business and Human Rights Journal*, 1: 21-40 (2015).

11 As Krishnadas Rajagopal writes; "The fate of the Bhopal gas tragedy case is perched precariously on the edge of a precipice in the Supreme Court". On September 20, 2022 "the government's law officers sounded unsure if the Centre would want to pursue a curative plea to enhance the compensation awarded to victims. They sought time till Oct. 11 to get "instructions". The lack of a clear stand by the Union before a Bench led by Justice S.K. Kaul conveys a sea change in the attitude of the government." And despite the court's earlier enunciations, it "also seemed not too appreciative about the prolonged litigation regarding the tragedy. On Sept. 20, it said that though the incident was "unfortunate" there could not be "perpetual uncertainty". And responding to a submission by senior advocate Sanjay Parikh, (for the Bhopal Gas Peedith Mahila Udyog Sangathan and Bhopal Gas Peedith Sahayog Samiti) that "the intensity of the tragedy had increased "fivefold" in the number of injuries and deaths over the period, the. Court "even wondered whether the compensation could be changed time and again, citing developments that happened "five years, 10 years later". See *The Hindu,* Sept. 25, 2022. One wonders if the doctrine of *parens patriae* should be monitored by the court as due diligence discharge of justice obligations. Equally, if not more, pertinent is the argument that the doctrine itself extends to the court by virtue of the settlement it ordered in the case.

'animal' persons should be placed on the same pedestal as contemporary human rights and the doctrine of *parens patriae* should never provide a carte blanche to the executive and legislative powers to reinforce and aggravate the conditions and circumstances of injustice.

Only when that is accomplished, will the motto of Martin Luther King Jr., with which this valuable work begins, will be fully realized. He memorably said: ". . . It may be true that the law cannot change the heart, but it can restrain the heartless."However, the struggle for justice for 'animals' (and rights) is both for restraining the heartless and to become the path for changing the very habits of the heart.

Upendra Baxi[*]

* Emeritus Professor of Law, University of Warwick and Delhi.