

**EVOLVING THE CONCEPT OF LEGAL PERSONALITY IN
ECOLOGY AND ANIMALS' WELFARE LEGISLATIONS: AN
ALTERNATIVE APPROACH TO PROTECT THE
ENVIRONMENT**

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Abstract

The present paper is an attempt to discover equal rights between human beings and ecology. It is argued that the time has come when one has to revisit the present jurisprudence of equality of rights which needs expansion to cover the ecosystem which has been facing acute danger from human activities. Increasing air pollution such as smog, global temperature and water pollution caused by unmanaged waste disposed of by industries and households along with additional harmful substances have put human beings at a great risk of self-extinction in the near future if these situations continue without checks and balances. This man-made crisis is the biggest crisis of our modern civilization which must be resolved with an iron hand of the law. One of the approaches is to recognize the ecosystem as equal to human beings and to develop the jurisprudence of equality among human beings and non-human beings such as the environment, animals and birds. Recognizing the fundamental rights of ecology as equal to human beings can be an answer to save the ecology and humanity together. The paper, in the second part, argues to elevate some legal rights of animals to the status of fundamental rights as done by several Western countries. It examines the two judgments of the Supreme Court of India and holds that there is a ray of hope as some discourse on animal rights has taken place before the apex court. It points out that the Supreme Court judgment in 2014 was a great leap towards realizing this goal whereas the 2023 judgment has put a halt to this progressive march based on an outdated and discarded human-centric approach.

I Introduction

CORONAVIRUS DISEASE, a pandemic (also known as COVID-19) brought a halt in the fast-moving life of mankind in 2019. It reminds us of the ephemeral existence of mankind. Once again, the laws of nature proved the king of kings. Under these circumstances, we must rethink the positive laws (on the environment) which are essentially man-made. These laws have been drafted based on our little understanding

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of the vast nature and only cater for our narrow and selfish interests. Positivism puts man at the centre of the entire universe. In the acute age of positivism, a man is oblivious to the fact that the very existence of mankind depends upon the conducive environmental conditions. Our approach towards the environment is wrong because the environment governs us, not we who govern it. Poisoning the environment will punish us in retaliation (as it has been already doing in one form or another in the form of natural calamities). If one saves the environment, it will prove a boon for mankind. Thus, in both cases, it is the man to decide what to do. Therefore, the jurisprudence of environmental laws must undergo a sea change in which the ecosystem must be considered as an equal partner while making and shaping them.

While making and shaping the laws, we must remember that the laws can only govern human activities, not the environment or the ecosystem. However, our activities must have a direct bearing on the environment. The depletion of the ozone layer and COVID-19, both are man-made crises and the result of human activities. Therefore, the central argument of this paper is that the environmental laws must be redrafted keeping in mind that our ecosystem is also an equal partner which does not speak but, reacts according to our activities. For this purpose, imputing a legal personality on the various parts of our ecosystem is *sine quo non* as the very survival of the human race depends upon it. These are not the new arguments. They are part of our ethos and cultures based on the major religions of India.

The second part of the paper discusses the emerging trends in the area of animals' fundamental rights and welfare legislation throughout the world. Many European nations have elevated the legal rights of animals to fundamental rights whereas some nations have brought animal welfare legislation. The well-being of animals is essential for the survival and well-being of human beings. Besides, animals have their own separate existence which cannot be sacrificed at the altar of man's greed. The central argument of this part is that till now, animals' rights have been looked at from the human-centric approach. This approach has been discarded throughout the world because it presents a very narrow and selfish outlook centred around man. In this context, this paper deals chiefly with two judgments (popularly known as Jallikattu judgments 2014 and 2023) of the Supreme Court of India. The analysis of these judgments reveals that the court's 2014 judgment was a great champion of the animal rights movement in India. It discussed the emerging worldwide trends in the jurisprudence of animal rights. The judgment concluded that the Jallikattu and Bullock Cart Race was a violation of the Prevention of Cruelty to Animals Act, 1960 (PCA). However, the Supreme Court, in 2023 judgment reversed the march of this progressive judgment and declared that the Jallikattu and Bullock Cart Race could be performed under certain rules framed to prevent cruelty to bulls. While adopting anthropocentrism, the court justified the Jallikattu and Bullock Cart Race in the name

of culture and traditions. This paper argues that this judgment, with due respect, is bad and devoid of scientific data as presented in its 2014 judgment.

II Philosophical foundation of deep ecology

Ecology is a study of inter relationships between organisms, and their environment. Studying ecological principles is essential for understanding how best to manage and conserve our natural resources, both renewable and non-renewable, biotic-living organisms and abiotic–non–living components. The United States Council on Environmental Quality defines, “*Ecology is the science of the intricate web of relationships between living organisms and their non-living surroundings.*”¹ An organism must adapt itself to survive if some ecological succession takes place which will result in sudden changes in the environmental conditions. However, there are some rapid and drastic changes which have been causing the vast extinction of diverse organisms in the biosphere.²

According to supporters of the deep ecology movement, the environmental philosophy must recognize the values that inhere objectively in nature independently of human wants, needs or desires. The deep ecology represents the psychologization of environmental philosophy. The deep ecology in this sense refers to an egalitarian and holistic environmental philosophy founded on phenomenological methodology. By way of direct experience of non-human nature, one recognizes the equal intrinsic worth of all biota as well as one’s own ecological interconnectedness with the lifeworld in all its plenitude.³

The deep ecology movement was born in opposition to the shallow ecology movement which, according to Naess, is a result of the wrong premise of European and North American civilisation.⁴ The shallow ecology puts the human being at the centre and is merely an extension of European and North American anthropocentrism—its reasons for conserving wilderness and preserving biodiversity are invariably tied to human welfare, and it prizes non-humannature mainly for its use-value. The deep ecological worldview, in contrast, questions the fundamental assumptions of European and North American anthropocentrism—that is, it digs conceptually deeper.⁵

According to deep ecology philosophy, human and non-human life has certain intrinsic value and inherent worth. The richness and diversity of life forms contribute to the

1 First Annual Environmental Quality Report 6 (1970), *available at*: <https://www.slideshare.net/whitehouse/august-1970> (last visited on June 20, 2024).

2 Environmental Issues Caused by Human Activities in the Biosphere, *available at*: <https://owlcation.com> (last visited on July 1, 2024).

3 David R. Keller, Deep Ecology in *Encyclopaedia of Environmental Ethics and Philosophy*, J. Baird Callicott, and Robert Frodeman (eds.), 206 (Macmillan Reference USA, 1st edn., 2008).

4 *See*, Arne Naess, “The Shallow and the Deep, Long-Range Ecology Movement: A Summary” *Inquiry: An Interdisciplinary Journal of Philosophy and the Social Science*, 95-100 (1973).

5 *Ibid.*

realization of these values. Humans have no right to reduce this richness and diversity except to satisfy vital needs. The present human interference with the non-human world is excessive, and the situation is rapidly worsening. Therefore, the policies regarding basic economic, technological, and ideological structures must be changed.

The deep ecologists consider the ontological boundaries between living beings as illusory and bio-spherical interests are one's own. Harming nature means harming oneself. There are no boundaries and everything is interrelated.⁶ In the words of the environmental activist, John Seed, "I am protecting the rain forest" develops into "I am part of the rain forest protecting myself."⁷ Thus, deep ecologists see man as an emanation of nature. There is no duality between man and nature but a part of a single scheme (singularity) of the Universe. This logic can be built around extending the argument of equal rights between both, human beings and ecology.

Transpersonal ecology is another angle of the environment philosophy debate in which the process of self-realization is part of the wider ecological community with sufficient comprehensive maturity.⁸ "A transpersonal ecology cultivates an alternative consciousness rather than implying 'moral oughts' about how we should behave."⁹ The wider sense of self-cultivation through self-realization seeks to create a new consciousness, and more ecologically responsible actions will become a consequence of this outlook. When the self is expanded to include all aspects of life then any kind of destruction becomes a self-destruction: "...sense of self that includes my family and friends, other animals, physical objects, the region in which I live, and so on. When this happens, I experience physical or symbolic violations of the integrity of these entities as violations of myself."¹⁰ In order to bring this new consciousness, there is a need to work on people's general inclinations. "For transpersonal ecologists, given a deep (emphasis added) enough understanding of the way things are, the response of being inclined (emphasis added) to care for the unfolding of the world in all its aspects follows "naturally"- not as a logical consequence but as a psychological consequence: as an expression of the spontaneous unfolding (development, maturing) of the self."¹¹ Thus, this new consciousness of transpersonal ecology may prove a powerful tool for preserving and protecting the environment.

6 *Supra* note 4, 207.

7 Bill Devall and George Sessions, *Deep Ecology: Living as if Nature Mattered*, 199 (Salt Lake City, UT: Peregrine Smith 1985).

8 See, Arne Naess, "The Deep Ecological Movement" in *Deep Ecology for the 21st Century: Readings on the Philosophy and practice of the New Environmentalism*, George Sessions (ed) (Shambala Publication, Boston 1995).

9 Warwick Fox, *Toward a Transpersonal Ecology: Developing New Foundations for Environmentalism*, 217 (Shambala, Boston 1990).

10 *Ibid.*

11 *Supra* note 9 at 247.

The philosophy of deep ecology is based on these eight principles.

- i. The well-being and flourishing of human and non-human life on the Earth have values (intrinsic values or inherent worth) in themselves. These values are independent of the usefulness of the non-human world for human purposes.
- ii. The richness and diversity of life forms contribute to the realization of these values and are also values in themselves.
- iii. Humans have no right to reduce this richness and diversity except to satisfy their vital needs.
- iv. The flourishing of human life and cultures is incompatible with a substantially smaller human population. The flourishing of non-human life requires a smaller human population. (Thus, their main stress is on the reduction of human population.)
- v. Present human interference with the non-human world is excessive and the situation is rapidly worsening.
- vi. Policies on ecology must be changed. These policies affect basic economic, technological, and ideological structures. The resulting state of affairs will be deeply different from the present.
- vii. The ideological change will be mainly that of appreciating life quality (dwelling in situations of inherent value) rather than adhering to an increasingly higher standard of living. There will be a profound awareness of the difference between bigness and greatness.
- viii. Those who subscribe to the foregoing points have an obligation directly or indirectly to try to implement the necessary changes.¹²

However, many critics argue that it is not easy to bring new consciousness unless there is no change in our present 'cultural pathology' or in 'perception' stemming from an outdated worldwide view that necessitates a "profound cultural transformation."¹³ It also fails to address the fact that our consciousness is culturally and socially embedded, and fails to make an adequate critique of the current cultural paradigm so that a new consciousness might be accepted.¹⁴ Further, giving practical shape to these ideas is a herculean task. This requires a legal, social and cultural transformation to achieve the results of this philosophy. The deep ecology, despite having an noble philosophy, does not provide the solutions. Its main focus confines to

12 *Supra* note 3, 210.

13 David Watson, "The Distinction between Deep and Shallow Ecology; Does Deep Ecology have anything to offer?" 10, *Essex Graduate Journal of Sociology*, Colchester: University of Essex, 59 (2010).

14 *Id.*, 60.

highlight the problems and elucidation of profound philosophy of deep ecology. However, the beauty of this discourse is that it can be availed to strengthen the cause of environmental protection in the larger picture.

Religious basis for equal rights of ecology

Pawan Guru Paani Pita Maataa Dharat Mahat,¹⁵(Air, the Guru; Water, the Father; Earth, the great Mother) is a message of Guru Nanak Dev Ji (First Guru of Sikhs, in fact, of humanity as his teachings are universal not confined to any particular religion, in 14th Century India) who keeps on reminding us the importance of preservation of our ecosystem which has been bestowing great blessings upon us from the time immemorial. According to *Vedas*' vision of the world, consciousness pervades the universe and all within it and therefore, a human being, an elephant, a cow, birds, ants, trees, mountains, rivers, and the planet Earth itself are all part of the same consciousness. Their beauty is known as *Vana Vaibhava* (forest splendour) in Sanskrit and human beings are part of this forest splendour and they must love and respect it. During the Vedic period, planting trees such as mango, neem, and banyan and digging wells for travellers were regarded as two great acts of charity and piety by which anyone could earn merit and universal appreciation.¹⁶

According to the Christian religion, all of the earth's community is valuable to God, who continues to create, sustain, and redeem the whole.¹⁷ God relates directly to and cares for the well-being of other kinds, created to enjoy being in their own right and not only function as companions or helpers of humankind. Christians believe that God's spirit is immanent in creation as the power of life-giving breath (*ruah*), the wisdom (*logos*) continually working to transform and renew all life and the love that sustains it. Biblical images portray the Spirit as "a healing and subversive life-form—as water, light, dove, mother, fire, breath, . . . wind," and comforter of the suffering. There is also a complex relationship between cosmology, spirituality and morality. The cosmos bodies are an expression of power, wisdom and love of God. The human being must live in harmony with nature and must respect and care for the Earth as God's creation while seeking justice for biodiversity as well as humankind. The eco-justice includes solidarity with people and creatures, respect for creation, ecology sustainability and socially appropriate technology.¹⁸

Islamic doctrines of ecology can be traced from the Quran and the *Hadith* which talk about Almighty's grand design of creation and humanity's responsibility to preserve

15 Shri Guru Nanak Dev Ji, Japji Shaib.

16 The Vedic View of Ecology, *available at*: <https://yogainternational.com> (last visited on June 30, 2024).

17 Dieter T. Hessel, Christianity and Ecology: Wholeness, Respect, Justice, Sustainability, *available at*: <http://fore.yale.edu/religion/christianity/> (last visited on July 20, 2024).

18 *Ibid.*

it. These three doctrines such as *Tawhid* (unity), *Khilafa* (trusteeship) and *Akbarah* (accountability) are pillars of Islamic environmental ethics.¹⁹ Since the Almighty pervades the whole creation, therefore, man as a trustee must perform wisely, fully aware of human accountability to the Almighty. “Do no mischief on the earth after it hath been set in order, but call on him with fear and longing in your hearts: for the Mercy of God is always near to those who do good” (Q.7:56).²⁰ Humanity should behave in such a way that would maintain the balance that exists within the environment. Rather, to retrieve the balance that has existed before we have caused, collectively, many ecological disasters: “And the earth We have spread out; set thereon mountains firm and immovable; and produced therein all kinds of things in due balance.”²¹ (Koran 15:19) The end result of disbelief or immoral acts, when they become prevalent, is the total destruction of the environment.²²

The examination of these four major religions reveals that they have a common message for humanity that the ecosystem is an integral part of humanity and a grand design of its creator. Therefore, there must be a conducive balance between our ecology and human beings. The responsibility directly lies upon the human being to maintain such kind of balance. The disharmony between nature and mankind will be destructive and cause irreparable loss to humanity. Unfortunately, these religious teachings are accepted by all but followed very little in practice. Otherwise, there was no requirement to bring the laws for environmental protection!

III Ecology and legal personality

The core element of the deep ecology approach is the attribution of legal personality to non-human entities independent of human purpose.²³ The attribution of a legal personality is a well-known legal concept and has already been extended to cover many artificial entities. Legal personality is a fiction of law by which non-living entities are treated like living persons and hence, become capable of possessing certain rights and duties. Another legal consequence of attribution of legal personality is that the legal person (also called juristic person) is also capable of suing and can be sued. It is distinct from the natural person. Salmond defines a legal person as “any subject matter other than a human being to which law attributes personality.”²⁴ This may be any entity, living, inanimate object or thing. The Supreme Court of India, in various

19 Marjoire Hope and James Young, “Islam and Ecology” 44(2) *Cross Currents* 180-192 (Summer 1994).

20 *Ibid.*

21 *Ibid.*

22 Interfaith Center for Sustainable Development “Prof Abu Sway Short Article”, available at: <https://www.interfaithsustain.com/> (last visited on May 20, 2024).

23 *Supra* note 14.

24 P.J. Fitzgerald, *Salmond on Jurisprudence* 298 (N.M. Tripathi Private Limited, 12th edn, Bombay, 1999).

judgments, has attributed legal personality to many non-living things such as idols, masques, Shri Guru Granth Sahib, companies and associations etc.²⁵ Recently, the court held that Ram Lalla (deity) is a juristic person.²⁶ "To be a legal person is to be recognized by the law as a subject which embodies rights, entitlements, liabilities and duties. The law may directly regulate the behaviour of legal persons and their behaviour in relation to each other. Therefore, to be a legal person is to possess certain rights and duties under the law and to be capable of engaging in legally enforceable relationships with other legal persons."²⁷

The non-human entities cannot raise their voice or in other words, they are voiceless therefore, they are represented through their guardians, best friends or representatives in the court of law. In light of the above arguments, the jurisprudence of legal personality can be expanded to include ecology in its ambit. Such inclusion has many legal implications. First, every public-spirited person will have a right to sue those who destroy ecology. Therefore, the protection of ecology would not remain at the mercy of government or government officials who are legally, otherwise, duty-bound to take action under various laws. Second, the confirmation of the legal personality on the ecology will impute it with some rights too. These rights can be enforced by a court of law. Third, the imputation of legal personality is a 'must' if we want to see the human generations surviving in future too, as saving the ecology means saving humanity itself.

Already, the march towards the protection of ecology has begun. The Whanganui River in the North Island of New Zealand was declared a legal person in March 2017 under the Whanganui Treaty Settlement. Now, it has its own legal identity, with the rights, duties and liabilities just like a legal person. Labour's Te Tai Hauauru MP, Adrian Rurawhe said that the well-being of the River, Whanganui was directly linked to the well-being of the people. Therefore, the concept of treating a river as a person was not unusual for Maori. It was captured in the well-known Maori saying, "I am the river and the river is me".²⁸ Before this, in 2014, TeUrewera National Park in the Central North Island was also recognised as a legal entity under the TeUrewera Act,

25 See, *Pramatha Nath Nuskar v. Parydunn* (1925) L.R.52, Ind. App. 245., *Yogindra Nath Nuskar v. Commr. Of Income Tax: Calcutta*, 3 SCR. 742, 1969, *Masjid Shabid Ganj v. Shiromani Gurudwara Prabandhak Committee Lab.*, 369, A.I.R. 1938, *Shiromani Gurudwara Prabandhak Committee v. Somnath Das*, S.C. 4, 146 2000, and *Salmon v. Salomon and Co. Ltd.*, A.C. 22, 1897.

26 See, M Siddiq (D) *TbrLrs v. Mahant Suresh Das* Civil Appeal Nos 10866-10867 of 2010 available at: indiankancon.org/doc/43730139 (last visited on May 2024).

27 *Id.*, para 87.

28 Isaac Davison, "Whanganui River given legal status of a person under unique Treaty of Waitangi settlement", *NZ Herald online*, Mar. 16, 2017. *New Zealand River granted same legal rights as human being*, *The Guardian*, London, Mar. 16, 2017.

2014.²⁹ Nobody owns this land legally. The joint management of this land has been given to the Crown and TeUrewera Board. Subpart 3 of section 11 makes the provision for the legal identity of TeUrewera and the vesting of TeUrewera land with the Board. It provides:³⁰

“Section 11: TeUrewera declared to be [a] legal entity

- 1) TeUrewera is a legal entity and has all the rights, powers, duties, and liabilities of a legal person.
- (2) However,
 - (a) the rights, powers, and duties of TeUrewera must be exercised and performed on behalf of, and in the name of, TeUrewera—
 - (i) by TeUrewera Board; and
 - (ii) in the manner provided for in this Act; and
 - (b) the liabilities are the responsibility of TeUrewera Board, except as provided for in section 96.”

Like New Zealand, India can also pass legislation in which major lakes, rivers, forests, mountains and other natural resources can be declared as a legal person. Under the legislation, a board or a commission may be constituted to protect their rights, provided the people elected for the board or commission must be those who have impeccable characters with the highest integrity and commitment to the cause of their protection. Some hints have already been given by the High Court of Uttarakhand.

Rivers, Ganga and Yamuna as legal persons

In a landmark judgment, the High Court of Uttarakhand in *Mobid. Salim v. State of Uttarakhand*³¹ held, “Accordingly, while exercising the *parens patrie* jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, [and] every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna.”³²

The high court notices that the extraordinary situation has arisen since Rivers Ganga and Yamuna are losing their very existence on account of mining and pollution. Hence, to meet this extraordinary situation, extraordinary measures such as attributing the legal personality are necessary. The court quoted the judgment of the Supreme

29 See, TeUrewera Act 2014, available at: <http://www.legislation.govt.nz/> (last visited on May 20, 2024).

30 *Ibid.*

31 MANU/UC/0050/2017.

32 *Id.*, para 19.

Court in the case of *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass*³³ where the Supreme Court said that the concept 'Juristic Person' arose out of necessities in human development. Recognition of an entity as a juristic person is for subserving the needs and faith of society.³⁴

Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of the law.³⁵

The high court observes that Rivers, Ganga and Yamuna are required to be declared as legal persons/living persons for the protection and recognition of the faith of society. The rationale behind this is that "all the Hindus have deep Astha (faith) in Rivers, Ganga and Yamuna and are central to the existence of half of the Indian population and their health and well-being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers, Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and the health and well-being of the entire community. Rivers, Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea. There is utmost expediency to give legal status as a living person/legal entity to Rivers, Ganga and Yamuna read with articles 48-A and 51A(g) of the Constitution of India."³⁶ However, these arguments, at the very outset, are parochial in nature and human centric. Accordingly, the protection and preservation of rivers arouse not because of that Ganga and Yamuna have their legal separate identities but because of human necessity as lives of millions of people depend upon them.

The court declared that the Director NAMAMI Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand will be *loco parentis* as the human face to protect, conserve and preserve Rivers, Ganga and Yamuna and their tributaries. These officers are bound to uphold the status of Rivers Ganges and Yamuna and also to promote the health and well-being of these rivers.³⁷

33 AIR 2000 SC 1421.

34 *Id.*, para 14.

35 *Ibid.*

36 *Ibid.*

37 *Id.*, para 19.

However, the contrast between the high court judgement and deep ecology is that the high court lays down emphasis on people's religious, social, cultural and economic aspects and brings out the significant relationships between people and these entities whereas the philosophers of deep ecology consider human beings as an integral part of them. Thus, the rights of these entities and human beings are the same and their existence is independent from these parameters. Besides these fundamental differences, the goal of both is the same, the protection of ecology.

Glaciers, gangotri and yamunotrias legal persons and their fundamental rights

*Lalit Miglani v. State of Uttarakhand*³⁸ is another landmark judgment which has furthered the cause of environment protection. The issue involved in this case was the receding of two Glaciers, Gangotri and Yamunotri at an alarming rate due to pollution and climate change. While dealing with this sensitive issue, the high court referred to many scholarly works, judgments and international declarations on environmental protection. Wangari Muta Maathai³⁹ remarks that the communities can conserve their biodiversity and sources through the culture as the culture influences the lives of people. "Festivals, rituals and ceremonies are all a part of our culture as well, and can you imagine how much we conserved because we incorporated nature into our festivals, into our religions, into our dances, into our songs, into our symbols, into our stories? And they define who we are. When they are destroyed, our environment too is destroyed."⁴⁰

Another important article titled, "Nature Has Rights Too" written by *Vikram Soni* and *Sanjay Parikh*⁴¹ argues for the rights of nature while highlighting threats to the very existence of nature. "Whereas human rights occupy centre stage and deal with human conflict, loss of natural resources threatens human survival itself. We must understand that the fundamental human rights on which human survival depends are Nature's rights."⁴² While highlighting the weakness of principles such as 'the polluter pay', 'the precautionary principle' and 'sustainable development', the authors also argue to establish a "Nature's Rights Commission" in which public-spirited and concerned citizens and scientists whose integrity is above any political and monetary affiliation must be included."⁴³

38 Writ Petition (PIL) No 140 of 2015 (Order dated Mar. 30, 2017).

39 See, Sri Wangari Muta Maathai, "Foresters without Diplomas" in *The Secret Abode of Fireflies, Loving and Losing Spaces of Nature in the City* (Youthreach, New Delhi, India, 2010).

40 *Ibid.*

41 See, Vikram Soni and Sanjay Parikh, "Nature has Rights too" in *The Secret Abode of Fireflies, Loving and Losing Spaces of Nature in the City* (Youthreach, New Delhi, India, 2010).

42 *Ibid.*

43 *Ibid.*

Chipko Andolan⁴⁴ (Movement) led by Chandi Prasad Bhatt and Sunderlal Bahuguna also advocated for the protection of forests which have been the basis of cultural and economic life for centuries. The slogan of Chipko Andolan is, "protection of forests means protection of the country". The panchayats in Uttarakhand also called for the protection of forest rights on this ground. "Stop our exploitation by the contractor system! Daily-earnings from forest wealth – this is a right of forest dwellers."⁴⁵ The following are major directions given by the high court.

(i) National forest policies or legislations to protect ecosystem: The high court said that there is a need to have an appropriate mechanism to protect forests against harmful effects of pollution, including air-borne pollution, fires, pests and diseases, in order to maintain their full multiple values. For public understanding and informed decision-making, timely, reliable and accurate information on forests and forest ecosystems must be provided. For this purpose, the national policies and strategies should provide a framework for increased efforts, including the development and strengthening of institutions.⁴⁶ There is need to recognise the vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels. National forest policies should recognize and duly support the identity, culture and rights of indigenous people, their communities and other communities and forest dwellers. The full participation of women in all aspects of the management, conservation and sustainable development of forests should be actively promoted.⁴⁷ National policies and/or legislation aimed at the management, conservation and sustainable development of forests should include the protection of ecologically viable representative or unique examples of forests, including primary/or-growth forests, cultural, spiritual, historical, religious and other unique and valued forests of national importance. National policies should ensure that environmental impact assessments should be carried out where actions are likely to have significant adverse impacts on important forest resources. National policy should be formulated concerning all types of forests taking into account the pressures and demands imposed on forest ecosystems.⁴⁸

44 Hug the trees' movement: The essential of Chipko Movement is, Cling to the trees and don't let them be cut! Don't let the forest's wealth be plundered! Through the establishment of small forest-based industries benefit will come to the hill region, and through it fortune and prosperity to forest dwellers. Everywhere in the hills socialism will come and from village to village the sound of the conch will be heard.

45 Vanon ki raksha, desh ki Raksha, Uttarakhand ke yeh lalkar, panchayaton ko van adhikar, Van sampada se rozgar, vanvasiyon ka adhikar.

46 *Supra* note 39.

47 *Ibid.*

48 *Ibid.*

(ii) Fundamental rights of trees and wild animals: Trees and wild animals have natural fundamental rights to survive in their natural habitat and healthy environment. Thus, it is the fundamental duty of all citizens to preserve and conserve nature in its pristine glory. There is a grave threat to the very existence of Glaciers, Air, Rivers, rivulets, streams, and Water Bodies including Meadows and Dales. The rights of these legal entities shall be equivalent to the rights of human beings. Thus, the injury/harm caused to these bodies shall be treated as harm/injury caused to the human beings.⁴⁹

(iii) Intrinsic rights of rivers and lakes not to be polluted: Rivers and lakes have intrinsic rights not to be polluted. Polluting and damaging the rivers, forests, lakes, water bodies, air and glaciers will be legally equivalent to harming, hurting and causing injury to a person. Rivers, forests, lakes, water bodies, air, glaciers and springs have a right to exist, persist, maintain, sustain and regenerate their vital ecological system. The rivers are not just water bodies but also scientifically and biologically living bodies. The rivers, forests, lakes, water bodies, air, glaciers, and human life are unified and are indivisible whole. The integrity of the rivers is required to be maintained from glaciers to oceans.⁵⁰

(iv) Rights of local inhabitants: The court also observed that the local inhabitants living on the banks of rivers and lakes, and whose lives are linked with rivers and lakes must have their voice too. The rivers sustain the aquatic life. The flora and fauna are also dependent on the rivers. Rivers are grasping for breath. Therefore, the court must recognize and bestow the Constitutional legal rights to the “Mother Earth” along with local inhabitants.⁵¹

(v) Constitutional and moral responsibility to protect environment: All persons have a constitutional and moral responsibility to endeavour to avoid damage or injury to nature (in *damnovitendo*). Any person causing any injury and harm, intentionally or unintentionally to the Himalayas, Glaciers, rivers, streams, rivulets, lakes, air, meadows, dales, jungles and forests is liable to proceed against under the common law, penal laws, environmental laws and other statutory enactments governing the field.⁵²

(vi) *Parens patriae* jurisdiction of the court: The court invoked its *parens patriae* jurisdiction. The *parens patriae* is a Latin phrase which means “parent of the country or homeland.” Under this jurisdiction, a state or court has a paternal and protective role of its citizens or others subject to its jurisdiction. The court declared that the Glaciers including Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls, legal

49 *Ibid.*

50 *Ibid.*

51 *Ibid.*

52 *Ibid.*

entity/ legal person/juristic person/juridical person/ moral person/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 are also accorded the rights akin to fundamental rights/ legal rights.⁵³

(vii) Persons in loco parentis: Since the legal person cannot speak for himself, therefore the court declared the Chief Secretary and Advocate General of Uttarakhand state, Director and Legal Advisor of NAMAMI Gange Project, Director of NMCG, Director (Academics) of Chandigarh Judicial Academy and M.C. Mehta, Senior Advocate as the persons in loco parentis as the human face to protect, conserve and preserve all the Glaciers including Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls in the State of Uttarakhand. These officers are bound to uphold the status of these bodies and also to promote their health and well-being.⁵⁴

IV Supreme Court and eco-centrism

In *Centre for Environmental Law and WWF v. Union of India*,⁵⁵ (Asiatic Lions Judgment) the Supreme Court adopted the eco-centric approach while deciding the case regarding the “necessity of a second home for Asiatic Lions, an endangered species, for its long-term survival and to protect the species from extinction.” The court observes that sustainable development postulates an anthropocentric bias and is least concerned with the rights of other species which live on this earth. “Anthropocentrism is always human interest focussed thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-human are based benefits to humans. Eco-centrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. 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, nature-centred where nature includes both humans and non-humans.”⁵⁶ Eco-system approach to protecting endangered species emphasises recovery and complements and supports the eco-system-based conservation approach. Although, the Supreme Court has elucidated the concept of anthropocentrism, it has not gone beyond it. It is the High Court of Uttarakhand which must get the credit for the implementation of this concept in practice.

In *Bangalore Medical Trust v. B.S. Muddappa*,⁵⁷ the Supreme Court recognised the importance of the public park and “associated [it] with the growth of the concept of

53 *Ibid.*

54 *Ibid.*

55 (2013) 8 SCC 234.

56 *Id.*, para 39.

57 AIR 1991 (1902).

equality and recognition of the importance of common man. Earlier free and healthy air in beautiful surroundings was the privilege of few. But now it is a 'gift from people to themselves'. Its importance has multiplied with emphasis on the environment and pollution. In modern planning and development, it occupies an important place in social ecology.⁵⁸

Article 21 of the Constitution of India protects not only human rights but also casts an obligation on human beings to protect and preserve a species becoming extinct, conservation and protection of the environment is an inseparable part of the right to life. In *M. C. Mehta v. Kamal Nath*,⁵⁹ the Supreme Court enunciated the doctrine of "public trust". The thrust of this theory is that certain common properties such as rivers, seashores, forests and the air are held by the government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, water and forests have such great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of 'public trust' has to be addressed from that perspective.⁶⁰ The doctrine of public trust though a celebrative and thought-provoking innovation of the Supreme Court, however, it has failed to achieve the results due to built-in limitations. This doctrine shouldered the responsibility upon the governments without any penalty. In the majority of cases, the governments have failed to prevent environmental degradation and, in some cases, they are themselves accomplished. Thus, not only the governments but also the common citizens must share the responsibility to save ecology. By bestowing the legal personality on ecology will empower the common citizen to invoke the appropriate writ jurisdiction of the high courts and the Supreme Court. However, this approach may result in some abuses. For example, first, it may amount to opening the floodgate of writs petitions before the courts. The courts will be under an enormous burden to dispose of these cases on time. Second, some people having vested interests can unnecessarily burden the courts by filing false and frivolous cases. Third, the recent tendencies show that the execution of such decisions is not very easy as the governments do not feel comfortable while implementing unfavourable decisions.

Protection of wild life and the concept of the common heritage

No state, organisation or person can claim ownership or possession over wild animals in the forest. In India, a wild animal is defined under the Wild Life (Protection) Act, 1972 under Section 2(36) to mean any animal specified in schedules I to IV and found wild in nature. 'Wild Life' has been defined under section 2(37) to include any

58 *Ibid.*

59 (1997) 1 SCC 388.

60 *Id.*, para 41.

animal, bees, butterflies, crustaceans, fish and moths, and/or land vegetation which forms part of any habitat.⁶¹

Several migratory birds, mammals, and animals in the wild cross the nations and international borders. Every nation has a duty as well as an obligation to ensure their free movement and protection. No nation or organisation can claim ownership or possession over them. The Convention on the Conservation of Migratory Species of Wild Animals held at Bonn in 1979 supports this principle and recognises that wild animals in their innumerable forms are an irreplaceable part of the earth; a natural system and must be conserved for the good of mankind. It has recognised that the states are and must be the protectors of the migratory species of wild animals that live within or pass through their national jurisdictional boundaries. The Convention highlights that conservation and effective management of migratory species of wild animals require the concerted action of all states within the national jurisdictional boundaries of which such species spend any part of their life cycle. India is also a signatory to this convention.⁶² Thus, wild animals, migratory birds and mammals belong to the realm of the common heritage of mankind. It is the responsibility of entire humanity to protect them without any reservation. Being a part of a common heritage, they belong to all nations equally. Their right to live freely and fairly across the nations must be adhered to by all nations. Unfortunately, man has been encroaching on their boundaries resulting in more conflicts between man and them. Therefore, their spatial right must be protected by providing them with adequate space and protection to flourish.

Right to equality under the Constitution of India and animals welfare legislations

The problem of mankind is that man regards his importance more than ecology. This superiority complex is nothing but man's abysmal ignorance. This abysmal ignorance is often exposed when nature manifests its superpower in the form of tsunamis, hurricanes, droughts, floods and earthquakes etc. Then why does a man feel utter helplessness before these natural calamities if he is above all? Why he cannot control all these natural phenomena if he is superior to all? When we will learn a lesson that if this nature can shower abundant blessings upon us, it can also take them away in a moment. One of the ways to maintain the balance between man and ecology is to impute the right to equality to ecology. For this purpose, a wider interpretation of Article 14 of the Constitution may be adopted. Article 14 reads, "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*"⁶³ The word "person" under article 14 includes the legal person. Therefore, there is no embargo to extend this definition to include ecology under its ambit. It would also mean that equal protection under article 14 will also be extended to it. The

61 Wild Life (Protection) Act, 1972.

62 *Id.*, para 46.

63 The Constitution of India, 1950, art. 14.

Supreme Court, in the Asiatic Lions Judgment, also acknowledged the equal rights of these species. “We must focus our attention to safeguard the interest of species, as species has equal rights to exist on this earth.”⁶⁴ The court considered that it was a duty to “safeguard this endangered species because this species has a right to live on this earth, just like human beings.”⁶⁵ However, *Animal Welfare Board of India v. A. Nagaraja* (the Jallikattu case)⁶⁶ overruled its own judgment, *Animal Welfare Board of India v. A. Nagaraja*⁶⁷ and the judgement of the High Court of Bombay given in PIL titled *Ajay Marathe v. The State of Maharashtra* (2017). These judgements were concerned with the Jallikattu (name of bull sport) and Bullock Cart Race practised in the States of Tamil Nadu and Maharashtra. These three judgments were given from the trajectory of Sections 3, 11(1)(a) and (m) of the Prevention of Cruelty to Animals Act (PCA Act), 1960⁶⁸, Article 51-A (g) and (h)⁶⁹ r/w Articles 14 and 21⁷⁰ of the Constitution of India and Tamil Nadu Regulation of Jallikattu Act, 2009. The Division Bench of the Supreme Court, in the Welfare Board Case (2014) held that the State Act, 2009 was repugnant to the aforesaid provisions of the PCA Act, 1960. The court cited *Isha-Upanishads*, “*The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species.*”⁷¹ The court also held that the purpose of the PCA Act is to safeguard the welfare of the animals. It also cures some bad practices in order to bring necessary reform “based on eco-centric principles, recognizing the intrinsic value and worth of animals.”⁷²

64 *Supra* note 56, para 40.

65 *Id.*, para 40.

66 Case decided on May 18, 2023.

67 (2014) 7 SCC 547.

68 S. 3. Duties of persons having charge of animals. It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering. S. 11, Treating animals cruelly. (1) If any person— (a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or (m) solely with a view to providing entertainment— (i) confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal; or (ii) incites any animal to fight or bait any other animal.

69 Constitution of India art. 51A reads: Fundamental duties: It shall be the duty of every citizen of India—(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; (h) to develop the scientific temper, humanism and the spirit of inquiry and reform.

70 Constitution of India art 21 reads: Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

71 *Supra* note 68.

72 *Ibid.*

At the very outset, the court expressed its dismay with the lack of international agreement ensuring the ‘welfare and protection’ of animals. Even, the United Nations has remained confined to the protection of human rights since its inception while ignoring the rights of other species such as animals and birds.⁷³ The Supreme Court also discussed the progress of the environment in three stages. The first stage was concerned with the ‘human self-interest reason for environmental protection.’ The international instruments enacted at this stage were based on a human-centric approach and the “conservation of nature was in the common interest of all mankind.”⁷⁴ The second stage was concerned with ‘international equity’. Again, this stage reflects the concerns regarding the needs of future generations of mankind only (as it did not talk about equity between man and animals). However, the court noted that *‘this shift signalled a departure from the pure tenets of anthropocentrism’*.⁷⁵ It must be noted that at these two stages, animals and other species were missing from the human-centric international discourse. The third stage was concerned with ‘nature’s own right’. Under this, international instruments have recognised the ‘intrinsic value of nature’ and included the animals’ welfare as a part of it.⁷⁶ The court also dealt with international provisions regarding the welfare of animals where it cited the UNEP Biodiversity Convention (1992). The World Charter for Nature proclaims that “every form of life is unique, warranting respect regardless of its worth to man.”⁷⁷

In para 49, the Supreme Court highlighted that many countries such as Germany, Switzerland, Austria and Slovenia have recognised the rights of animals through their respective constitutions and animal welfare legislations keeping in mind eco-centric

73 *Ibid.*, International community should hang their head in shame, for not recognizing their rights all these ages, a species which served the humanity from the time of Adam and Eve. Of course, there has been a slow but observable shift from the anthropocentric approach to a more nature’s right centric approach in International Environment Law, Animal Welfare Laws etc.

74 *Ibid.*, Some the instruments executed during this time included the Declaration of the Protection of Birds Useful to Agriculture (1875), Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900), Convention for the Regulation of Whaling (1931) which had the objective of ensuring the health of the whaling industry rather than conserving or protecting the whale species.

75 *Ibid.*, For example, the 1946 Whaling Convention which built upon the 1931 treaty mentioned in the preamble that “it is in the interest of the nations of the world to safeguard for future generations the great natural resource represented by the whale stocks”. Similarly, the Stockholm Declaration of the UN embodied this shift in thinking, stating that “man bears a solemn responsibility to protect and improve the environment for present and future generations” and subsequently asserts that “the natural resources of the earth must be safeguarded for the benefit of present and future generations through careful planning and management”. Other documents expressed this shift in terms of sustainability and sustainable development.

76 *Ibid.*, UNEP Biodiversity Convention (1992), Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic values of biological diversity and its components.

77 *Ibid.*

principles.⁷⁸ England, Austria and Norway have also provided considerable rights to animals through animal protection and welfare legislation.⁷⁹

The Supreme Court also dealt with other international programmes and campaigns led by various international organisations advocating for animal welfare. They include the World Society for the Protection of Animals (WSPA) advocating for the Universal Declaration of Animal Welfare (UDAW)⁸⁰ and the World Organization for Animal Health (WOAH), acting as the international reference organisation for animal health and animal welfare.⁸¹ Food and Agricultural Organisation (FAO) in its “Legislative and Regulatory Options for Animal Welfare” also talked about the five freedoms as indicated by WOAHA.

The Supreme Court while dealing with the Indian legal scenario held that the legal position of animals throughout the world is that they are treated as “[private] property”

78 *Id.*, Para 49. Protection of animals has been guaranteed by the Constitution of Germany by way of an amendment in 2002 when the words “and the animals” were added to the constitutional clauses that obliges ‘state’ to respect ‘animal dignity’. Therefore, the dignity of the animals is constitutionally recognised in that country. German Animal Welfare Law, especially art. 3 provides far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners’ fundamental rights to property and the animals’ interest in freedom from unnecessary suffering or pain, damage and fear.

79 *Ibid.*, Animals Welfare Act of 2006 (U.K.) also confers considerable protection to the animals from pain and suffering. The Austrian Federal Animal Protection Act also recognises man’s responsibilities towards his fellow creatures and the subject “Federal Act” aims at the protection of life and well-being of the animals. The Animal Welfare Act, 2010 (Norway) states “animals have an intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain.

80 *Ibid.*, WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals.

81 *Ibid.*, The World Organisation for Animal Health (WOAH), formerly the *Office International des Epizooties* (OIE), is an intergovernmental organisation founded in 1924, coordinating, supporting and promoting animal disease control. OIE has been recognised as a reference organisation by the World Trade Organisation (WTO) and, in the year 2013, it has a total of 178 member countries including India. On animal welfare, OIE says that an animal is in good state of welfare if (as indicated by Scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress ch. 7.1.2 of the guidelines of OIE, recognizes five internationally recognized freedoms for animals, such as:

- i) freedom from hunger, thirst and malnutrition;
- ii) freedom from fear and distress;
- iii) freedom from physical and thermal discomfort;
- iv) freedom from pain, injury and disease; and
- v) freedom to express normal patterns of behaviour.

capable of possession by man. However, it must be noted that there is a need to make the distinction between domestic animals and wild animals as wild animals are part of the state's property and protection. Ironically, it reflects a human-centric approach as it is still based on human necessity arguments. The court asserts that since the 'right to property' is only legal right now under the Indian Constitution, therefore the Parliament has more freedom to pass laws protecting the rights of animals.⁸² It emphasised that some rights given under sections 3 and 11 of the PCA Act must be elevated to the status of fundamental rights as done by some countries. Article 51A(g)(h)⁸³ of the Constitution must be read together with sections 3 and 11 of the PCA Act for this purpose and thus, it would be a *magna carta* of animal rights.⁸⁴ Under article 51A (g), it is the duty of every citizen to have compassion for living creatures. The term compassion includes concern for suffering, sympathy and kindness towards animals.⁸⁵ Article 51A (h) provides that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. The expression "humanism" demands 'an inclusive sensibility' for species.⁸⁶ The court also interpreted Article 21 and held that the right to life can be given an expanded definition to include "all forms of life", including the animal life upon which human survival also depends. "*So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for [animals], but to lead a life with some intrinsic worth, honour and dignity.*"⁸⁷

82 *Ibid.*

83 *Ibid.*

84 Rights guaranteed to the animals under ss. 3, 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under ss. 3 and 11 have to be read along with art. 51A(g)(h) of the Constitution, which is the *magna carta* of animal rights.

85 *Supra* note 68.

86 *Ibid.*

87 Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under ss. 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-ridder, over-loading is also a right recognized by s. 11 read with s. 3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights is insignificant, since laws are made by humans. Punishment prescribed in s. 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act

The Supreme Court on the basis of the above logical arguments concluded that the Bullock-Cart Race and Jallikattu are non-essential human activities which cause lots of pain and suffering to animals. Such avoidable human activities violate rights guaranteed to them under sections 3 and 11 of the PCA Act.⁸⁸ It must be noted that this judgment given by the division bench of the Supreme Court, was a landmark and progressive judgment that stands for the great cause of animal rights. Through this judgment, the Supreme Court tried to build a balance between the rights of man and animal. It also asserted that there is a need to revisit the human-centric approach in which human beings are put at the centre of everything and the interests of others including animals and birds are ignored. There is one limitation of this judgment that it failed to elevate the rights of animals to fundamental rights. Thus, the eco-centric approach based on a fine balance between human beings and animals must be adopted in order to do justice to all stakeholders of the ecology.

However, this progressive and far-sighted judgement was overruled by the Supreme Court Constitutional Bench through a judgment titled, *Animal Welfare Board of India v. A. Nagaraja* in 2023. Interestingly, the *Animal Welfare Board* which argued for abolishing Jallikattu and Bullock Cart Race in the 2014 case on the basis of violation of the PCA Act changed its stance and supported the State and Central Government. The court upheld the Three States Amendment Acts.⁸⁹ Jallikattu and Bullock Cart Race were justified in the name of culture, heritage, tradition and the so-called survival and well-being of the native breeds of bulls thus, putting a halt on the progressive march to realise some fundamental rights of animals. The Constitutional Bench rejected the petitioners' stand that animals have fundamental rights while giving the instance of the 2014 case.⁹⁰ (The 2014 judgement of the Division Bench also failed to confer fundamental rights upon animals and held that animals had legal rights despite giving many examples of other countries where animals have been conferred with fundamental rights.) The Supreme Court asserted that the question of fundamental

88 *Ibid.*

89 The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, The Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017 and The Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017 were enacted by the respective State Legislatures and had received Presidential assent.

90 *Supra* note 67.

rights should be left to the appropriate body to consider.⁹¹ With due respect, this judgment is retrogressive peace of law and based on a human-centric approach which has been already declared outdated and discarded worldwide. However, the Constitutional Bench has rightly pointed out that the nature of the fundamental rights of animals might be different due to biological and intellectual differences based on the scheme of nature. Therefore, the appropriate body, like the Parliament of India may decide the ambit and scope of animals' fundamental rights and their feasibility. At the same time, the court must have accepted that it is itself a competent body to declare some rights as fundamental rights of animals in the absence of any legislation in this area. Hence, the Supreme Court lost an opportunity to develop a noble and benevolent animal rights jurisprudence which might have worldwide ramifications.

The Supreme Court (2023) upheld three states' amendments to the PCA Act on the basis of the fact that these states have suitably modified the PCA Act to remove unnecessary pain and suffering inflicted on bulls. But the court missed the point that in the 2014 judgment, the court declared that Bull is not suitable for sport as it is not a 'performing animal'.⁹² In support of this, the court stated several types of research. The 2023 judgment does not discuss this aspect of that judgment. Rather, in para 27, the court noted that there is a need to conduct trial and collect evidence to decide conclusively whether bovine sports (Jallikattu and Bullock Cart Race) are part of the culture and tradition of the respective States.⁹³ Yet, the court did not give direction to

91 On the question of conferring fundamental right on animals we do not have any precedent. The Division Bench in the case of A. Nagaraja (supra) also does not lay down that animals have Fundamental Rights. The only tool available for testing this proposition is interpreting the three Amendment Acts on the anvil of reasonableness in art. 14 of the Constitution of India. While the protection under Article 21 has been conferred on person as opposed to a citizen, which is the case in art. 19 of the Constitution, we do not think it will be prudent for us to venture into a judicial adventurism to bring bulls within the said protected mechanism. We have our doubt as to whether detaining a stray bull from the street against its wish could give rise to the constitutional writ of habeas corpus or not. In the judgment of A. Nagaraja (supra), the question of elevation of the statutory rights of animals to the realm of fundamental rights has been left at the advisory level or has been framed as a judicial suggestion. We do not want to venture beyond that and leave this exercise to be considered by the appropriate legislative body. We do not think art. 14 of the Constitution can also be invoked by any animal as a person. While we can test the provisions of an animal welfare legislation, that would be at the instance of a human being or a juridical person who may espouse the cause of animal welfare.

92 *Supra* note 68, Para 34. Bulls, therefore, in our view, cannot be a performing animal, anatomically not designed for that, but are forced to perform, inflicting pain and suffering, in total violation of ss. 3 and 11(1) of PCA Act.

93 *Ibid.* In Public Interest Litigations, this court has developed the practice of arriving at a conclusion on subjects of this nature without insisting on proper trial to appreciate certain social or economic conditions going by available reliable literature.

conduct such trials or collect the evidence to verify these claims. However, the 2014 judgment already presented enough evidence and was based on sound reasoning which was not considered logically in the 2023 judgment. The Constitutional Bench also failed to notice the worldwide developments that took place in animal jurisprudence. In fact, this judgment is a setback to advance the jurisprudence of ecology. It seems that the rights of animals were sacrificed to appease certain sections of society.

V Conclusion

Global temperature has already reached its optimal point. The European Nations which used to be colder during the summer season have been facing heat waves for the last few years. It is an alarming bell for the whole world to wake up and save our eco-system. A moment like deep ecology may have a very deep impact if the people are made to be sensitive towards its principles and realise that protecting ecology means protecting oneself. Our religions have been great champions for the cause of ecology since their inception. Unfortunately, the greater part of the religious teachings on ecology have been either ignored or taken for granted.

The current debate on the protection of the environment is based on the deep ecology philosophy which considers ecology and human beings as equal partners in the divine scheme of nature. It acknowledges the independent existence of ecology despite interdependence. Thus, the protection of ecology is directly related to the protection and survival of human generations.

The doctrine of imputing legal personality (rather in the Indian context divine personality) on non-living and voiceless entities has been followed in India since time immemorial. Rather, many trees like Tulsi, Peepal, Ashoka, Lotus, Coconut, Jasmine, Mango and Neem etc. and animals like cow, bull, snake, monkey and elephant *etc.* are considered sacred and worshipped in India. Therefore, the Uttarakhand High Court, out of religious, cultural, social and economic reasons, held Rivers, Ganga and Yamuna and Glaciers, Gangotri and Yamunotri as legal persons. This article concludes that in the Indian context, such a declaration was a great step towards the protection of the ecology. Yet, the major limitation of both judgments of the high court was that they were predominantly based on human necessity arguments as well as on anthropocentrism. However, it is New Zealand that took the lead by passing legislation by which legal personality was conferred on the Whanganui River and TeUrewera National Park.

The examination of animal rights, both, fundamental as well as legal reveals that many European countries took the initiative and passed many animal welfare legislations. Some countries even went beyond it and have conferred some fundamental rights on some animals. In India, the PCA Act of 1960 is a welfare legislation which confers many legal rights on animals. However, its implementation and light punishment provided therein are a major weakness of this legislation. Exceptions created in the

various provisions allow backdoor entries to those practices which have been prohibited in other provisions. Lack of awareness among the people regarding this Act is another drawback.

In Asiatic Lions judgment, the Supreme Court while emphasising the eco-centric approach, held that Asiatic Lions are part of an endangered species and they must be protected from extinction. This is also an obligation under Article 21 of the Constitution. In M.C. Mehta judgment, the court invoked the doctrine of public trust and held that certain common properties such as rivers, seashores, forests and the air are held by the government in trusteeship for the free and unimpeded use of the general public and could not be subject of private property.

The Convention on the Conservation of Migratory Species of Wild Animals wild animals, migratory birds and mammals belong to the realm of the common heritage of mankind. It is the responsibility of entire humanity to protect them without any reservation. Their right to live freely and fairly across the nations must be adhered to by all the nations. Unfortunately, man has been encroaching on their boundaries resulting in more conflicts between man and them. Therefore, their spatial right must be protected by providing them with adequate space and protection to flourish.

At present, animals do not have fundamental rights under the Constitution of India. The Supreme Court, in both Jallikattu judgments (2014 and 2023) failed to elevate certain rights of animals to fundamental rights despite referring to Articles 14 and 21 of the Constitution. Rather, both judgments have left this task to be performed by the appropriate body. However, it must be added here that the nature of the fundamental rights of animals will have different criteria as they are themselves voiceless and represented through human beings. It has also been contended that the Supreme Court 2023 judgment is rather retrogressive because it put a halt on the progressive march of animal jurisprudence propagated by the 2014 judgment. At least, one must note that these judgments have failed to yield results, yet, they have contributed a lot to the advancement of cause of animal jurisprudence. Ray of hope also lies in the emerging global consciousness that animals who have contributed a lot to the well-being of humanity and development must be given due respect by way of conferring some rights upon them. They have remained an integral part of the society. Therefore, appropriate steps need to be taken to prevent encroachments of their boundaries. Thus, human beings, animals and ecology are integral parts of the grand scheme of mother nature. The well-being of all these equal partners is necessary to save the planet Earth.