

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS (ISSN 2582 - 6433)

VOLUME 2 ISSUE 4  
(October 2021)

---

Email –

[editor@ijlra.com](mailto:editor@ijlra.com)

Website – [www.ijlra.com](http://www.ijlra.com)



**IJLRA**

INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH & ANALYSIS

## DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 4 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA  
INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH & ANALYSIS

## EDITORIAL TEAM

### **EDITORS**

*Ms. Ezhiloviya S.P.*

Nalsar Passout

*Ms. Priya Singh*

West Bengal National University of Juridical Science

*Mr. Ritesh Kumar*

Nalsar Passout

*Mrs. Pooja Kothari*

Practicing Advocate

*Dr. Shweta Dhand*

Assistant Professor

INTERNATIONAL JOURNAL  
FOR LEGAL RESEARCH & ANALYSIS

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench.

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

## **Checking the status of Animal Rights Welfare through the Constitutional Lenses**

**By : Rahul Saini**

### **INTRODUCTION**

Present trend of Indian judiciary has been to ultra-widening the scope of the Constitutional rights as well as Article 21 not for citizen or person only but also for animals and birds. According to the Supreme Court of India, every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity.

Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and an disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution.<sup>1</sup> Afterwards, High Courts in various states are following the same ratio in developing the animal rights in India.

The High Court of Tripura<sup>2</sup> banned the animal sacrifice as the word ‘life’ in Article 21 of the Indian Constitution is wide enough to include every living organism be it humans, animals, insects or bird and taking away of their life also has to be in accordance with due process of law. The right of offering an animal for sacrifice is not an integral and essential part of the religion, protected under Article 25(1) of the Constitution.

The High Court of Punjab & Haryana has declared that the entire animal kingdom including avian and aquatic are as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person.<sup>3</sup>

The High Court of Delhi<sup>4</sup> held that all the birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages for the purposes of their business or otherwise. The High Court of Uttarakhand<sup>5</sup> decided that the abandoning of the animals by owners, including cows, oxen, Bulls and buffaloes would also amount to cruelty.

### **JUDICIAL ACTIVISM ON LEGAL STATUS OF ANIMALS**

Our Constitution professes for collective life and collective responsibility on one hand and individual rights and responsibilities on the other hand. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and an disturbance from the basic environment which includes all forms of

---

<sup>1</sup> Animal Welfare Board of India vs. A. Nagaraja, Civil Appeal No. 5387 of 2014, Civil Appellate Jurisdiction, In the Supreme Court of India, Para 62

<sup>2</sup> Subhas Bhattacharjee vs. State of Tripura, Writ Petition(C)(PIL) No.2/2018, High Court of Tripura, judgment dated 27th September, 2019

<sup>3</sup> Karnail Singh vs. State of Haryana, In the High Court of Punjab & Haryana at Chandigarh, CRR-533-2013, Date of decision: 31.05.2019

<sup>4</sup> People for Animals vs. Mohazzim, CrI. M.C. No. 2051 of 2015, In the High Court of Delhi, Decided On: 15.05.2015 : 2015(3)RCR (Criminal) 94

<sup>5</sup> Alim vs. State of Uttarakhand, Writ Petition (PIL) No. 112 of 2017, In the High Court of Uttarakhand at Nainital, Judgment dated 10.08.2018

life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution.<sup>6</sup>

Recently the Supreme Court of India has accepted and has applied the eco-centric principles in *T. N. Godavarman Thirumulpad vs. Union of India*<sup>7</sup> cases. Anthropocentrism is always human interest focused thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to nonhuman 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 nonhumans independently of human interest. Eco-centrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans.<sup>8</sup>

In *Sachidanand Pandey vs. State of West Bengal*<sup>9</sup>, Supreme Court very nicely interpreted the importance of migratory birds for better ecology and in *Tarun Bharat Sangh vs. Union of India*<sup>10</sup> the Court restrained mining licenses granted for lime and dolomite stones in the Sariska Tiger Park for protection of wild animals. The Supreme Court after quoting from a decree of the third century BC issued by Emperor Asoka, appealed for preservation of wild life and environment.<sup>11</sup> Even for safety and well-being of wildlife in zoos, in *Navin M. Raheja vs. Union of India*<sup>12</sup> case the Court considered Article 48A of the Constitution, the Wildlife (Protection) Act, 1972, the Forest Act, 1927 for protection of wild animals. Judiciary also took action for wildlife administration and in *Centre for Environmental Law, WWF vs. Union of India*<sup>13</sup> case issued directions to the Central and State Governments to equip the forest guards with modern arms and communication facilities immediately to cope with present wildlife crimes.

### **APPLICATION OF ARTICLE 21 TO NON HUMAN BEINGS**

Indian judiciary has been widening the scope of the Constitution as well as Article 21 not for citizen or person only but for non-human beings also. Article 21 of the Constitution, according to the Supreme Court while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and an disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution.<sup>14</sup>

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.

---

<sup>6</sup> Animal Welfare Board of India vs. A. Nagaraja, Civil Appeal No. 5387 of 2014, Civil Appellate Jurisdiction, In the Supreme Court of India, Para 62

<sup>7</sup> (2012) 3 SCC 277 : (2012) 4 SCC 362

<sup>8</sup> Centre for Environment Law, WWF-I vs. Union of India, (2013) 8 SC C 234

<sup>9</sup> AIR 1987 SC1109

<sup>10</sup> AIR 1992 SC 514

<sup>11</sup> State of Bihar vs. Murad Ali Khan, AIR 1989 SC 1

<sup>12</sup> (2001) 9 SCC 762

<sup>13</sup> AIR 1999 SC 354

<sup>14</sup> Animal Welfare Board of India vs. A. Nagaraja, Civil Appeal No. 5387 of 2014, Civil Appellate Jurisdiction, In the Supreme Court of India, Para 62

The High Court of Delhi held that running the trade of birds was in violation of the rights of the birds. Nobody is caring as to whether they have been inflicting cruelty or not despite of settled law that birds have a fundamental right to fly and cannot be caged and will have to be set free in the sky. Actually, they are meant for the same. But they are exported illegally in foreign countries without availability of proper food, water, medical aid and other basic amenities required as per law.<sup>15</sup>

In a petition filed by PETA India<sup>16</sup>, 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. It is used during festivals, across the length and breadth of the country. Thousands of birds have been killed by use of such thread made out of nylon or synthetic and rare endangered birds, like the Indian White Rumped Vulture, are frequently injured or killed.

In Narahari Jagadish Kumar vs. State of Andhra Pradesh<sup>17</sup> case was related to prevent organizing cock fights with betting during Sankranthi festival in Krishna, West Godavari and East Godavari Districts of Andhra Pradesh. The High Court issued directions to State Government as well as District authorities to take stringent steps to stop such bloody and gruesome throughout the year.

In a public interest petition the High Court of Uttarakhand<sup>18</sup> by invoking the ‘Doctrine of parents patriae’ has issued nearly 30 mandatory directions for the welfare of the cows and other stray cattle especially for prohibition of illegal slaughtering of cows and selling of their meat, protection of stray cattle and their shelter and also prevention of illegal transportation of cattle.

---

<sup>15</sup> People for Animals vs. Mohazzim, CrI. M.C. No. 2051 of 2015, In the High Court of Delhi, Decided On: 15.05.2015 : 2015(3)RCR (Criminal) 94

<sup>16</sup> Khalid Ashraf vs. Union of India and People for the Ethical Treatment of Animals (PETA) India vs. Union of India, Original Application No. 384 of 2016 and 442 of 2016, National Green Tribunal, Principal Bench, New Delhi

<sup>17</sup> W.P.(PIL) No.320 of 2014 in the Andhra Pradesh High Court Judgment, Dated 26-11-2016

<sup>18</sup> Alim vs. State of Uttarakhand, Writ Petition (PIL) No. 112 of 2017, In the High Court of Uttarakhand at Nainital, Judgment dated 10.08.2018

### **DOCTRINE OF PARENS PATRIAE FOR ANIMALS**

In the landmark *A. Nagaraja*<sup>19</sup> case, the Supreme Court held that the Court has also a duty under the doctrine of *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

In the same line, the High Court of Himachal Pradesh<sup>20</sup> has invoked the doctrine of *parens patriae* along with other constitutional provisions to protect the basic rights of animals. The High Court has prohibited sacrifice any animal or bird in any place of religious worship, adoration or precincts or any congregation or procession connected with religious worship, on any public street, way or place and also the State Government was directed 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. The Courts are duty bound to protect the environmental ecology under the 'New Environment Justice Jurisprudence' and also under the principles of *parens patriae*.<sup>21</sup>

The concept of *parens patriae* recognizes the State as protector of its citizens as parent particularly when citizens are not in a position to protect themselves. The Preamble to the Constitution, read with directive principles, under Articles 38, 39 and 39-A enjoins the State to take all protective measures to which a social welfare State is committed.

### **DIFFERENT STEPS TAKEN BY THE JUDICIARY**

#### ***JUDICIAL MANDATE ON CRUELTY TO ANIMAL***

In *Narahari Jagadish Kumar vs. State of Andhra Pradesh*<sup>22</sup> case, three writ petitions filed to declare the inaction of the respondents to implement the provisions of the Prevention of Cruelty to Animal Act, 1960 and the A.P. Gaming Act, 1974 against anti- social elements organizing cock- fights with betting, selling illicit liquor, gambling, and subjecting animals and birds to cruelty during *Sankranthi* festival in Krishna, West Godavari and East Godavari Districts of Andhra Pradesh and not forming Societies for Prevention of Cruelty to Animals (SPCA) for each district. According to petitioners Cock fight was a cruel sport where cocks and roosters were forced to fight each other or sometimes to death and knives, blades and iron claws were attached to the rooster's legs to make the fight bloody and gruesome throughout the year. Such cock-fights inflicted on cocks or roosters unnecessary pain and suffering in violation of Sections 3 and 11(1) m (ii) and (n) of the Prevention of Cruelty to Animal Act, 1960. Those events used to have political patronage and District Collectors and District Superintendent of Police used to turn a blind eye to those events. It was also submitted that cockfight events were organized where two roosters were specially bred and were trained to fight and were given steroids to make them more aggressive. Cockfights glorified violence and such a bloody sport used to make spectators immune to the pain and suffering of animals such event encourage people not

<sup>19</sup> Animal Welfare Board of India vs. A. Nagaraja, Civil Appeal No. 5387 of 2014, In the Supreme Court of India, Para 26

<sup>20</sup> Ramesh Sharma vs. State of Himachal Pradesh, CWP No. 9257/2011 along with CWP No.4499/2012 and CWP No. 5076/2012, In the High Court of Himachal Pradesh, decided on 26.9.2014

<sup>21</sup> Lalit Miglani vs. State Of Uttarakhand, Writ Petition (PIL) No.140 of 2015, Uttaranchal High Court, Dated March 30, 2017

<sup>22</sup> W.P.(PIL) No.320 of 2014 in the Andhra Pradesh High Court Judgment, Dated 26-11-2016

to discharge their fundamental duty under Article 51A (g) of the Constitution, to have compassion for living creatures. The High Court issued directions that (1) the Government of A.P. should constitute SPCAs in all Districts strictly in accordance with the 2001 Rules at the earliest and in any event not later than 31.01.2017 in line of orders of the Supreme Court in *Geeta Seshamani vs. Union of India*<sup>23</sup> and *Gauri Maulekhi vs. Union of India*.<sup>24</sup> The District Collectors of all the Districts, more particularly of West Godavari, East Godavari, Krishna and Guntur, shall constitute joint inspection teams, for each Mandal in their respective Districts, consisting of a police officer not below the rank of Sub-Inspector of Police, the *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. The District Collector or the Commissioners of Police or Superintendent of Police of the District, on being informed about playgrounds and cockpits, should take immediate action to ensure for not conducting cock- fights and may impose Section 144 Cr.P.C. if needed. The Joint inspection team should be entitled to enter any premises to seize cocks or roosters which were intended to be set up for cock- fights and should also be entitled to seize instruments used or intended to be used for the cock fights and any money collected towards betting at such events. All the District Collectors or the Commissioners of Police and the Superintendent of Police, more particularly from those four Districts, should ensure effective implementation of the provisions of the Prevention of Cruelty to Animal Act, 1960 and the A.P. Gaming Act, 1974 and they should be personally responsible for lapses.

In *Wildlife Rescue and Rehabilitation Centre vs. Union of India*<sup>25</sup>, the Writ Petition was related to the cruelties to the number of elephants owned by private individuals in the State of Kerala. Section 40 of the Wild Life (Protection) Act, 1972 requires 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. Here, Indian elephants (*Elephas maximus*) are 'captive animal' as has been defined under Section 2(5) of the Act. Whereas State argued there was no justification for registration of the elephants unless they were covered under Section 21 or 22 of the Prevention of cruelty to Animals Act, 1960. But it was also urged that unless an animal is performing, it need not be registered under the 1960 Act. According to the Court, the Kerala Captive Elephants (Management and Maintenance) Rules, 2012 was framed by the State Government where under Rule 8(13) every owner shall maintain an Elephant Data Book as specified by the Chief Wildlife Warden for each captive elephant. The Court also decided that the District Committee constituted under the Rule of 2012 would take necessary measures to ensure that the festival committee constituted for smooth conduct of the festivals or the persons organizing such functions in which elephants are exposed are required to adhere to many a measure. The 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.

#### **INDIAN JUDICIARY 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 whereas Rule 2 (h) of the Performing Animals (Registration) Rules, 2001 defined performing animal as 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.

In 1991, MoEF issued a notification under Section 22 of Prevention of Cruelty to Animals Act, 1960 banning training and exhibition of bears, monkeys, tigers, panthers and dogs, which was challenged

<sup>23</sup> W.P. (Civil) No.440 of 2000 in the Supreme Court of India, Dated 06.08.2008

<sup>24</sup> W.P. (Civil) No.881 of 2014 in the Supreme Court of India, Dated 13.07.2015

<sup>25</sup> Writ Petition(s)(Civil) No(s) 743/2014, the Supreme Court of India, Dated 18/08/2015

by the *Indian Circus Federation vs. Union of India*<sup>26</sup> before the Delhi High Court but, later, a corrigendum was issued, whereby dogs were excluded from the notification.

Later, MoEF issued a fresh notification dated 11.7.2011 and “Bulls” was banned from exhibition or training as performing animals. Finally, **A.Nagaraja** case decided the position of performing animals in India.

Recently in landmark case *Animal Welfare Board of India vs. A. Nagaraja*<sup>27</sup>, the Supreme Court vibrated the rights of animals under our Constitution, laws, culture, tradition, religion and ethology among Indian citizen and generated a nationwide awareness about animal law. In this case, the *Tamil Nadu Regulation of Jallikattu Act, 2009* was found repugnant to the Prevention of Cruelty to Animals Act, 1960, which is a welfare legislation, hence held constitutionally void, being violative of Article 254(1) of the Constitution of India. PCA Act, welfare legislation, in our view, overshadows or overrides the so-called tradition and culture. Jallikattu and Bullock cart races, the manner in which they are conducted, have no support of Tamil 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.

On review petition against the decision of *Animal Welfare Board of India v. A. Nagaraja*,<sup>28</sup> as per the Supreme Court, there were head on collision between the two statutes and the Prevention of Cruelty to Animals Act, 1960 covered the entire field. The Tamil Nadu Regulation of Jallikattu Act, 2009 on the contrary, permitted taming of bulls. Thus, both could not co- exist, because they were inconsistent. The judgment in *A. Nagaraja* had adverted to the all aspects and after dismissing the review petition, the court did not perceive any explicit error in the said analysis which would invite exercise of power of review.

#### **JUDICIARY ON ANIMAL TRANSPORTATION**

In *Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi*<sup>58</sup> case, the Supreme Court held that animals filled in trucks in a cruel manner and being transported, seized by police on complainant's report and sent to pinjrapole and the owner of animals claiming custody of animals. In these circumstances, normal cost of maintenance and treatment of animals under Section 35(4) would be payable by the persons claiming custody and not by the complainant. Normally, cost of maintenance and treatment of the animals in such cases would be payable by one who claims custody or who are the owners of the livestock but not by the complainant.

#### **JUDICIARY ON PROTECTION OF STRAY ANIMALS**

In *Milkmen Colony Vikash Samity vs. State of Rajasthan*<sup>29</sup> case, the High Court had issued directions including relocation of dairies outside the city as stray animals were roaming freely in public places including corridors of High Court also and subsequently the Supreme Court also directed to the Municipal Corporations to restrict wandering stray cattle roaming out of dairies and to remove unattended stray animals including cattle, bulls, dogs and pigs from the city expeditiously.

In *Animal Welfare Board of India vs. People for Elimination of Stray Troubles*<sup>30</sup> case was regarding balance between cruelty to dogs and 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. In 2006, the Kerala High Court had passed a judgment dismissing the writ petition, which was filed for protection of the stray dogs. But another Division

<sup>26</sup> 1999 (48) DRJ 171 Delhi High Court

<sup>27</sup> Animal Welfare Board of India vs. A. Nagaraja, Civil Appeal No. 5387 of 2014, Civil Appellate Jurisdiction, In the Supreme Court of India

<sup>28</sup> 2014 AIR SCW 3327

<sup>29</sup> AIR 2007 SC 1046

<sup>30</sup> Special Leave to Appeal (C) No.691/2009, Supreme Court of India, Dated 18th November, 2015

Bench passed a judgment on 4th November, 2015, taking the view that the Animal Birth Control Rules, 2001 should prevail over the provisions contained in Kerala Municipality Act, 1994 and the Kerala Panchayat Act, 1994. According to the Court, there can be no trace of doubt 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. One side argued that the dogs had various uses for human society and had served the society for centuries and also had constitutional protection under Article 51A of the Constitution of India and legal protection under the Prevention of Cruelty to Animals Act. But according to other side, a bite by a stray dog creates menace in the society and in the name of compassion for dogs, the lives of human beings cannot be sacrificed. The Court disposed the matter recognizing that a balance between compassion to dogs and the lives of human being, which was appositely called a glorious gift of nature, may harmoniously co-exist. Also held that all the municipal corporations had a duty to provide infrastructure as mandated in the statute and the rules.

In the line of the Supreme Court of India, 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, that apart, 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; one driver and two trained dog catchers for each dog van; an ambulance-cum-clinical van as mobile centre for sterilisation and immunisation; incinerators for disposal of carcasses and periodic repair of shelter or pound.<sup>31</sup>

#### **JUDICIARY ON ANIMAL AND BIRD TRADE**

In *Chief Forest Conservator (Wild Life) vs. Nisar Khan*<sup>32</sup> case, an appeal directed against a judgment by a Division Bench of the Allahabad High Court for issuance of a writ in the nature of mandamus directing the appellants herein to grant a license for carrying on business as a dealer in birds, was allowed. After justifying the refusal to grant license Supreme Court held when hunting of the birds specified is prohibited, so no person can be granted a license to deal in birds in captivity which is procured by hunting. Moreover the appellants served a notice directing the respondent to dispose of all the birds in his possession before 31<sup>st</sup> December 1991. The term 'hunting' includes 'trapping' of birds after the Amendment made in S.9 of The Wildlife (Protection) Act, 1972 and no license for dealing in them can be lawfully granted.

#### **WILD ANIMAL CONSERVATION**

In *Narmada Bachao Andolan*<sup>33</sup> case 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. Court did not appreciate the impact of reservoir on the flora and fauna of related area. But American judgment on *Tennessee Valley*<sup>34</sup> case in 1978 was not applied in *Narmada Bachao Andolan* case where US Supreme Court restrained further responding of reservoir on the ground that it would violate the provision of 'Endangers Species Act, 1973' by causing the extinct of 'snail darter'. The US Endangered Species Act, 1973 requires all government agencies to ensure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of an endangered or threatened wild species. Though Tennessee Valley Authority had begun construction and during this period 'Endangers Species Act, 1973' was enacted where 'Snail darter' was declared as an

<sup>31</sup> Animal Welfare Board of India vs. People for Elimination of Stray Troubles, Special Leave to Appeal (C) No.691/2009, the Supreme Court of India, Order Dated 18/11/2015

<sup>32</sup> AIR 2003 SWC 1333

<sup>33</sup> Narmada Bachao Andolan vs. Union of India, AIR 1999 SC 3345

<sup>34</sup> Tennessee Valley Authority vs. Hiram G Hill, 437, US153(1978)

endangered species.

Most important part in *Narmada Bachao Andolan* case there was no existence of any endangered species in the area of construction and there was no such legislation like Endangers Species Act in India.

According to the Supreme Court, Wildlife nurtures a sense of wonder. It is integral to maintain the balance of nature. Ultimately, by protecting these species, we save this beautiful, vulnerable and utterly irreplaceable planet we call home. By protecting species, we also protect the essential goods and services that make our lives possible and contribute enormously to human health and wellbeing — breathable air, clean water, food, fibers, building materials, medicines, energy, fertile soils, climate regulation, transport, and recreational and spiritual values. We are on mission to find solutions that save the marvelous array of life on our planet.<sup>35</sup>

### **JUDICIAL ACTION FOR ELEPHANTS AND IVORY TRADE**

Indian judiciary has taken many actions to save captive elephants and wild elephants also. It has also taken preventive actions for ivory trade or killing of elephants for ivory tusks.

In *Indian Handicraft Emporium vs. Union of India*<sup>36</sup> case the appellants were engaged in the business of manufacture and sale of articles made of ivory and they had imported ivory from Africa during 1971 to 1986. But the Amendment Act 44 of 1991, Section 49C was inserted imposing a total ban on the trade of imported ivory and six months time was provided for the disposal of all stocks of ivory held. 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.

In *Balram Kumawat vs. Union of India*<sup>37</sup> case in Supreme Court, it was held that a ban on import of mammoth ivory which looks like ivory is also a reasonable restriction on the right of the dealers. Complete prohibition of trade in ivory is a reasonable restriction and so does not also 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.

But in *P.V.Mathew*<sup>38</sup> case, the defence was taken by respondent that the vehicle of the respondents which was used for illegally transporting ivory collected from the forest cannot be confiscated invoking power under Section 61A of the Kerala Forest Act, 1961 because ivory is not a “forest produce” as defined in Section 2(f) after the Amendment Act (23 of 1974) and no ‘forest offence’ as defined in Section 2(e) of the Act can be said to have been done in respect of the “ivory”. Ultimately the Supreme Court held that the definition of “forest produce” in Section 2(f) does not include any part of living or dead wild animals which is being taken care of by the Wild Life (Protection) Act, 1972. Recently a similar nature case was decided by the Supreme Court of India.

### **PROTECTION OF ANIMALS IN ZOOS**

According to the Supreme Court, keeping the Preamble and Section 24 of the Prevention of Cruelty to Animals Act in view it is clear that it is the welfare of the animals which is of

---

<sup>35</sup> Regional Deputy Director vs. Zavaray S. Poonawala, Civil Appeal No. 7130 OF 2003, Supreme Court of India, Dated 26.3.2015, Para 16

<sup>36</sup> AIR 2003 SC 3240

<sup>37</sup> AIR 2003 SC 3268

<sup>38</sup> State of Kerala vs. P.V.Mathew, Civil Appeal No. 337 of 2012, Civil Appellate Jurisdiction, the Supreme Court of India, Judgment dated April 2, 2012

paramount consideration.<sup>39</sup>

The Supreme Court favoured tourism business but disagreed with the argument that the lease for a snack bar and restaurant was necessary for visiting tourists in the reserved forest in *Union of India vs. Kamth Holiday Resorts Pvt. Ltd.*<sup>40</sup> case where a Central Government officer of the leased out for the snack bar in the forest. The Court was not against the business or commercial development but Sanctuaries and national parks are meant for the protection of wildlife and preservation of the ecological is important for that area. To ensure all these aspects the policy as per court in *Forest Friendly Camps Pvt. Ltd.*<sup>41</sup> case, tourism should be such where the tourists are not put to inconvenience. It should be helpful for the local communities, strengths the local economy, employees also.

### **OWNERSHIP OF WILD ANIMALS**

According to the Supreme Court of India, No state, organisation or person can claim ownership or possession over wild animals in the forest.

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 animal, bees, butterflies, crustacean, fish and moths, and or land vegetation which forms part of any habitat. Section 9 prohibits hunting of wild animals, specified in Schedule I, II, III and IV except as provided under Section 11 and Section 12.

Section 40 of the Act obliges a person to make a declaration and Section 41 enables the Chief Wild Life Warden to make an enquiry and preparation of inventories and Section 42 deals with the issue of certificates and confers, no ownership of the wild animals to a particular state or others. Animals in the wild are properties of the nation for which no state can claim ownership and the state's duty is to protect the wild life and conserve it, for ensuring the ecological and environmental security of the country.<sup>42</sup>

### **ANTHROPOCENTRIC TO ECO-CENTRIC APPROACH**

Recently the Supreme Court of India has applied the Eco-centric principles in *T. N. Godavarman Thirumulpad vs. Union of India* cases.<sup>43</sup>

Anthropocentrism is always human interest focused thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to nonhuman 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 nonhumans independently of human interest. Eco-centrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans.<sup>44</sup>

In *Jumbo Circus vs. Union of India*<sup>45</sup> case, the Kerala High Court observed that the law, which denies rights to animals, is an anachronism, which must be changed and Legal rights shall not be the exclusive preserve of the humans which has to be extended beyond people thereby dismantling the thick legal wall with humans all on one side and all non-human animals on the other side.

While the law currently protects wild life and endangered species from extinction, animals are denied

<sup>39</sup> N.R.Nair vs. Union of India, AIR 2001SC 2337

<sup>40</sup> (1996) 1 SCC 774

<sup>41</sup> Forest Friendly Camps Pvt. Ltd. vs. State of Rajasthan, AIR 2002 Raj 214

<sup>42</sup> Centre for Environment Law, WWF-I vs. Union of India, (2013) 8 SC C 234

<sup>43</sup> (2012) 3 SCC 277 : (2012) 4 SCC 362

<sup>44</sup> Centre for Environment Law, WWF-I vs. Union of India, (2013) 8 SC C 234

<sup>45</sup> (2000) 2 Ker LT 625

rights, an anachronism which must necessarily change.

American Professor *David Favre* has raised an interesting point about status of wild animals in international treaties and agreements. According to him, when wildlife are 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. For example, the International Convention for the Regulation of Whaling was created to manage the commercial exploitation of whales. However, the nations did such a poor job of managing whale stocks that a commercial moratorium had to be adopted.

The purpose of the Convention on International Trade in Endangered Species is to regulate commercial trade of wildlife if a particular species is at risk of extinction. Another international treaty that impacts wildlife is the Convention on Biological Diversity, yet the focus is primarily on habitat protection and the term wildlife is absent from the treaty. Concern for individual animals seldom exists in the international realm.

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. There is no international anticruelty treaty.

According to V.R. Krishna Iyer, Government must be pressurized to do the right thing lest India's image and cultural heritage suffer severe damage. Let us not betray the generations from the Buddha to Gandhi. Our trust with destiny, made when India awoke to Independence, included an imperative that the nation will wipe every tear from every eye. This applies to our animal brethren, parrots, doves and other birds with broken wings to be sold as pets or for delicate dish, lions and tigers cramped and 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.

## CONCLUSION

The Supreme Court of India constantly performing for protection of natural resources since independence of the country. Again on the backdrop of international awareness during 1970s the court took massive initiative for conservation of ecology and wild animals in the nature. But latest trend of the Supreme Court developed to protect wild animals not for human beings but for nature itself. In this regard *Centre for Environmental Law, WWF vs. Union of India*<sup>46</sup> and more recent *T. N. Godavarman Thirumulpad vs. Union of India*<sup>47</sup> cases are important which have a paradigm shift been from anthropocentric environmentalism to eco-centric environmentalism in India. Even more recently *Animal Welfare Board of India vs. A. Nagaraja*<sup>48</sup> case the Supreme Court has established a new dimension of animal jurisprudence in this country and subsequently the trend is being followed by the judiciary especially High Courts of the states to protect animals from slaughter, experiments, entertainments, trade and other inhumane activities.

Unfortunately, the law of 1960 on preventing cruelty against animals has not been amended even once in last around fifty years. The presence of numerous weak and ineffective legislative provisions in favour animals is continuously leading to violation of their rights in various forms. It is interesting to note that the ways in which the lives of animals are compromised can be often seen, much abuse goes unnoticed. The negative trends can be observed as addition of Endangered Species in IUCN Red List; two anti- animal notifications issued by MoEFCC in 2015-16; deaths of companion animals; liberal attitude of judiciary etc. There certainly exists gap between legislative policies and the practical situation as far as rights of animals are concerned. Furthermore, it becomes clear that general acceptance of rights of animals is still not prevalent in India.

## SUGGESTIONS

The most compelling ideas about evolving relationship with animals need the realization that each living being feels pain and suffering. It is time to realize that the interaction of human beings and animals are as much a part of evolution and as worthy of study as the extinction of the dinosaurs or the behavior of chimpanzee. The legislations should aim at prevention of animal cruelty and abuse as well as establishing responsibility and the principle of care towards the animal. Though the law has an important role to play in protecting animals from exploitation and cruelty, but people cannot be made by law more humanitarian. In the light of above discussions and conclusions drawn, following suggestions are being made to address deteriorating state of animal rights in India-

- Future studies should investigate the factors responsible for encroachment by men over the nature.
- A comprehensive law should come into force. The legal regime to protect them needs to be more proactive. It would be an achievement for the animal rights activists and organizations if both of Animal Welfare Bills get clearance by the Parliament. The Bill in Parliament for increasing penalties for violation of animal abuses must be passed as soon as possible. Regarding abandonment of pet animals, stricter legal penalties must exist. The scheme of

---

<sup>46</sup> AIR 1999 SC 354

<sup>47</sup> (2012) 3 SCC 277 : (2012) 4 SCC 362

<sup>48</sup> Animal Welfare Board of India vs. A. Nagaraja, Civil Appeal No. 5387 of 2014, Civil Appellate Jurisdiction, In the Supreme Court of India

marking the animals so as trace the owner as introduced for various animals must be effectively extended to all. The recommendations of the Law Commission of India vide its Report No. 261 submitted in August 2015 also deserve immediate attention by the Parliament.

- Against the rising incidents of animal abuse, comprehensive study should be made of the contemporary state of tendencies of development of the natural environment and its individual components (plants, animals and human beings). The government must initiate debates and discussions on the subject and come up with concrete plans to stop animal abuse.
- The enforcement mechanism must be made stronger in India. The enactment of the law to prevent cruelty to the animals is not an end in itself. What is more important is the implementation of various animal protection statutes and to see to it that the activities which are prohibited under them do not take place in the State & in case of infringement of the provisions of, to take strict action against the offenders.

Animals are not objects or things. This underlines the necessity to acknowledge each individual animal's intrinsic value, and the fact that every single animal is worthy of respect and care, deserves to live a life that is meaningful without unnecessary human exploitation or interference. The point is to spread awareness that animal rights is an issue, a serious issue worthy of public discourse. It is hoped that soon the rights of innocent animals would gain larger acceptance in the society. The complementary existence of strong legal provisions and sensitive approach towards all living beings is envisaged to emerge among the future Indian generations.