

## Legal Issues in ‘Environmental-Protection Law’

### Issue: Do Animals Have Fundamental Rights?

## Introduction

- ❖ **World Organization for Animal Health** defines animal welfare as *‘the physical and mental state of an animal in relation to the conditions in which it lives and dies.’*

*An animal experiences good welfare if the animal is **healthy, comfortable, well nourished, safe**, is not suffering from **unpleasant states such as pain, fear and distress**, and is able to express behaviours that are important for its physical and mental state.’*

- ❖ According to the Organization, animals have 5 freedoms, namely -
  - Freedom from hunger, malnutrition and thirst;
  - Freedom from fear and distress;
  - Freedom from heat stress or physical discomfort;
  - Freedom from pain, injury and disease; and
  - Freedom to express normal patterns of behaviour.

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## Relevant Indian Statutes

### ❖ Prevention of Cruelty to Animals Act, 1960 (“PCA Act”)

- Aim – “.. to prevent the infliction of unnecessary pain or suffering on animals...” [Emphasis supplied]
- Section 3 – “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.” [Emphasis supplied]
- Section 11 deals with ‘treating animals with cruelty’. According to the Section, if any person causes any unnecessary pain or suffering to an animal, or commits acts such as employing an animal which is unfit to be employed, drugging an animal, unreasonably trapping an animal, being the owner failing to provide food, water and shelter, mutilating an animal, taking part in a shooting match involving animals, etc, will be punished with fine and imprisonment.

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## Relevant Indian Statutes (Contd.)

### ❖ **The Constitution of India, 1949 (“Constitution”)**

- Living Document
- Fundamental Rights are enshrined in Part III of the Constitution.
  - Article 21 states “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*” [Emphasis supplied]
- Directive Principles of State Policy are enshrined in Part IV of the Constitution
  - Article 48 states “*The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.*” [Emphasis supplied]
  - Article 48A states “*The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.*” [Emphasis supplied]

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## Relevant Indian Statutes (Contd.)

- Fundamental Duties are enshrined in Part IV-A of the Constitution.
- Article 51-A states - It shall be the duty of every citizen of India:
  - (g) to **protect and improve** the natural environment including forests, lakes, rivers and **wildlife**,  
**and to have compassion for living creatures**; [Emphasis supplied]

## Relevant Case Laws

- ❖ **Animal Welfare Board of India v. A. Nagaraja and Ors. [(2014)7 SCC 547]**
  - **Issue:** Whether events such as Jallikattu and other similar bull races were violative of the provisions of PCA Act?
  - The Plaintiff contended that such events cause unnecessary pain and suffering to bulls, which is evidenced by their flight response.
  - The Respondent's contended that these races have been taking place since 300 years and had historical, cultural and religious significance. Also, according to Tamil Nadu Regulation of Jallikattu Act [“TRNJ Act”], a complete prohibition was not imposed on Jallikattu, it was only regulated. Bulls taking part in the races are specifically trained, and these events do not cause unnecessary pain and suffering.
  - However, the Court observed that the bulls in these races were forced to participate, mutilated and tortured. It was not possible to organize these races without causing cruelty.

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## Relevant Case Laws (Contd.)

- Decision - *“Jallikattu as well as the Bullock-cart races etc., as an event, according to the Board, violate Sections 3 and 11(1)(a) & (m) of the PCA Act read with Article 51A(g) of the Constitution of India..... Rights guaranteed to the animals Under Sections 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 Sections 3 and 11 have to be read along with Article 51A(g)(h) of the Constitution, which is the magna carta of animal rights... 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 any 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.”* [Emphasis supplied]

## Relevant Case Laws (Contd.)

### ❖ **Narayan Dutt Bhatt v. Union of India & Ors. [2018 (3) RCR (Civil) 544]**

- The Petitioner sought restriction on movement of horse carts/tongas from Nepal to India and India to Nepal. The Petitioner further prayed for provisions for vaccination, medical check up for infections before allowing horses to enter the Indian territory.
- Petitioner pointed out that horses are forced to cover long distances which causes them pain and suffering, they don't have any sheds and carts are overweight.
- **Petitioner also prayed for grant of personhood to animals.**
- Court relied on *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others* [AIR 2000 SC 1421] wherein it was held that the concept 'Juristic Person' arose out of necessities in the human development. Recognition of an entity as juristic person- is for subserving the needs and faith of society.

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## Relevant Case Laws (Contd.)

- **Decision** - *“The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Uttarakhand are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.”* [Emphasis supplied]
- ❖ **Karnail Singh and Ors. v. State of Punjab [CRR-533-2013, Decided on May 10, 2019 by P&H HC]**
  - Decision- *“...Corporations, Hindu idols, holy scriptures, rivers have been declared legal entities and thus, **in order to protect and promote greater welfare of animals including avian and aquatic, animals are required to be conferred with the status of legal entity/ legal person.** The animals should be healthy, comfortable, well nourished, safe, able to express innate behavior without pain, fear and distress. **They are entitled to justice. The animals cannot be treated as objects or property....”*** [Emphasis supplied]

## Relevant Case Laws (Contd.)

- ❖ **People for Animals v. MD Mohazzim & Anr. [CRL. M.C. NO.2051/2015, Decided on May 15, 2015 by DHC]**
  - Decision- *“This Court is of the view that running the trade of birds is in violation of the rights of the birds. They deserve sympathy. 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 on the other hand, they are exported illegally in foreign countries without availability of proper food, water, medical aid and other basic amenities required as per law. **Birds have fundamental rights including the right to live with dignity and they cannot be subjected to cruelty by anyone including claim made by the respondent. Therefore, I am clear in mind 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.**” [Emphasis supplied]*

# THANK YOU!

## Questions?

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