

## ANIMAL AS A LEGAL PERSON

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### INTRODUCTION

In the era of globalization, the law keeps changing itself to facilitate the needs and situation of the time to make this world a better place and give us all a better tomorrow. This brings us to the question that to whom these laws are applicable, well the obvious answer could be to a legal person which can be a human being. Though, the law even recognizes non-humans as legal persons too. This is a distinctive and imaginary creation of the law known as judicial personality or legal personality. Examining the legal personhood of animals is a key component of this paper. In this paper, the author will analyse how many nations throughout the world recognize the legal status of animals and draw attention to the dilemma of animals in today's society, which is that they are treated as property rather than as living creatures. The author will also analyse the evolution of the legal system in recognizing the animal as a legal personality.

### WHAT CONSTITUTES A LIVING BEING AS A LEGAL PERSON?

The current status of an animal that is considered as a mere property has some inherent problems with it. The first issue is society forgetting to develop an animal status as a legal personality with the advancement of science technology and modern physiological knowledge. As humans, we believe that we only have the dominant rule on the entire earth's planet, and we keep dominating other species in the ecosystem. The main reason given by humans to treat the animal as they are is because of the animal's lack of rationality and also humans, which their limited perspective believe that animals do not have moral standing as we humans possess. Though now in the modern era the new philosophers, Like Peter Singer in his book *Animal Liberation* quoted that "there are important differences between humans and other animals, and these differences must give rise to some differences in the rights that each has."

In his work, he also argues that though both people and animals have the potential to feel pain, enjoy pleasure, and suffer, the interests of humans and animals do not have or get equal moral

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priority. Since Darwin's theory of evolution was published, we humans accept that we are evolved from animals. And relying on this theory various experiments have been conducted which talk about that animal and human have almost the same sentiment and emotion in common. Another issue with animal status is that they are kept in the category of the property. As we easily can differentiate the inanimate objects with an animal because they have the ability of independent action, unlike like a ship, building, land, etc., moreover animals also can experience suffering in materials and intellectual level. Thus, Law has done injustice to animals by keeping them in the category of property. Once it was established that animals also can react, observe and feel or suffer pain on a mental as well as an intellectual level, it becomes unjustifiable to treat animals against human as an object in society.

As humans always treated animals as objects it becomes difficult for jurisprudence to develop on the topic concerning the status of the animal as a legal personality because object/property cannot become the bearer of rights. To develop the concept of rights to the animal, first, we have to bring the animal in the category where they are considered equal to the other living species of the planet. Further, if we do not have any rights and strict adherence to that right the human can easily outweigh that right by asserting his position superior to that of the animal. Moreover, in today's era no such animal welfare rights exist instead countries are having guidelines to regulate the prohibition and exploitation of the animal. E.g., the cow slaughtering and beef ban in certain parts of India depend on the region specifically. Further, these guidelines do not apply to all the species of the animal kingdom. For example, in certain regions of India, you can easily butcher buffaloes and cows and consume them. Whereas in a different region you can invite a lot of legal implications and consequences for the same act. Another example of cruelty is anyone can slay the chicken without attracting any legal penalties for the act. These examples show that these guidelines regulated by the state are for humans only to fulfill their sense urges and to satisfy themselves but in a regulated manner. whereas guidelines do not justify the cruelty and inhumane behavior of humans towards animals neither does it talk about any rights of the animal. Although in India organizations like PETA are working in the direction to curb the inhumane behavior of humans towards animals and following some legislation that was passed by the legislature. But the funding of PETA is only by charity thus it takes action on the choice of the donor due to this there are limitations on Peta too. Thus, we can see the problem is with the legislation as they only provide guidelines but not in actual interest to act on it, Hence the problem lies in the root or we can say the fault lies in the system.

## LEGAL PERSONALITY LIMITATIONS

The term legal personality itself limited to fewer subjects such as humans, though it does not mean that it cannot extend its meaning, rather it can easily break the notion and can redefine itself to broader sense which can also include other subjects such as animals, river, etc. it can only be done by the will of the nation and come out as redefined legal personality which is not equivalent with, nor limited to human only. As we already discussed that the term itself is a distinctive and imaginary creation of the law thus to justify that animal can also be considered as legal personality is merely a work of changing the current perspective of human being and we can reason to it that animal to fall in the list of biological species of human-provided humans cannot exist in this world alone without animal as we are interdependent to each other.

## GLOBAL DEVELOPMENTS

In the past few decades, developed countries like Germany, Austria, England and Switzerland worked in directions not to treat animals as mere property or as objects. Also, these countries amended their respective legislature to change the constitutional status of their country animal, countries declared that animals cannot be treated as property nor as to the subject of the law relating to their objects. Further various other countries around the globe have channelized their efforts to change the constitutional position of animals merely as property. For example, In the United States of America, the status of chimpanzees is now considered as a legal person by which now for their liberty now people can file habeas Corpus Writ.

## COUNTRIES THAT DO NOT CONSIDER ANIMALS AS OBJECTS/PROPERTY

Various countries in European Union have specific provisions regarding animal welfare and about the status of the animal. Likewise, Austria in Article 285 of the country civil code that was enforced in 1988, provides “Animals are not things; they are protected by special laws. The provisions in force for the things apply to animals only if no contrary regulation exists.” In a similar context, other countries in European Union such as Swiss and German civil code consist of the same laws for animal welfare and legal status. Though these provisions appear to have amended the current position of animals in their respective countries. But the mere declaration that animals aren’t now considered as objects or property or things and the animal in-country is protected by the special legislation and not subject to the general code of the countries, thus not lead towards or that animal status and attitude of humans will change. This

is a false assumption of lawmakers, as they have given animals the status of not being treated as subject to the legal objects, but they have failed to put them in the categories of human species, which again leads humans to treat them as someone different.

## ROMANIA

A bill was introduced back in 2014 by an independent MP named Mr. Remeus, he intended to provide legal status to all the dolphins of the roman. In the proposed bill, Article 1 provides that all dolphin-like species, in the country of Romania, will enjoy special legal protection and each alike special has been given equivalent status like human legal status. Further Article of the same proposed law defines non-human it provides that any living being except human being and which does not fall in the same categories of species of human but have equally developed intelligence i.e., the species ability to form or come in the complex human social alike relation can hold the same right as human beings such as the right to life, right to bodily integrity and to right against any exploitation. And will include other rights such as the right to freedom of movement in their natural environment and the right to be protected in their habitat. If the proposed law passes it will have significant repercussions for how dolphins are handled by humans in the future. They will be kept out of reach for human experimentation and amusement. This proposed rule might create a precedent for granting non-human status to other animals, particularly those acknowledged by scientists for their intellect and ability to develop social relationships, such as dogs and cats.

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## UNITED STATES OF AMERICA

In 2013 a writ application of habeas corpus was filed by the non-human right Project in New York city Court on the behalf of a chimpanzee named Tommy, as Tommy was held in captivity, The mentioned, writ can be useful to free the unlawfully detained person, as the term habeas corpus means (we, a Court, command) that you have the body (of the detainee brought before us). In the case at hand, the necessary condition to apply the writ applicability is to prove the personhood of the animal. Thus, many affidavits were filed and few animal experts gave statements in the court asserting that the chimpanzee possesses the same complex cognitive ability which humans possess and thus this proves that chimpanzees can be kept in the same categories as humans for the concept of personhood in the common law. Though the bench refused the appeal on the ground that the right to liberty cannot be given to any entity unless it is recognized by the law of the nation and who is yet not capable of assuming responsibility

granted. The judgment shows that the court is willing to grant right only if the legislature means the will of the country is ready to accept the same.

## INDIA

In the case of India, we do not have any specific legislation or other legislations which provide legal status to animals apart from Article 48 of (Directive Principles of State Policy) DPSP in the Indian constitution which only talks about animal welfare and regarding the protection of animals from cruelty. Further are few cases that provide guidelines for animal protection and welfare. The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines, and shall, in particular, take steps to preserve and improve the breeds, and prohibit the slaughter of cows and calves and other milch and draught cattle, as stated in Article 48 of the Indian Constitution. In India, most of the activist and Animal Welfare Organization who work for the betterment of the animal has decided to protest if not in true sense, but at least some efforts provided them with some legal recognition that they deserve in the society, recently there few examples in Indian judiciary which have entrusted legal status to some 'non-human' but still due to lack legislature will it not implemented yet in its true spirit.

In the *Karnail Singh & Ors v. State of Haryana*<sup>1</sup> case when two or nine cows were heaped and stacked in one truck while shifting from Uttar Pradesh to Haryana. The bench while deciding on this case backed their reasoning on the statement "to live and let live" and stated that being humans we are only the possible tool in the society which can voice for the protection and welfare of animal throughout the state., Thus court stated "all the citizens throughout the State of Haryana are hereby declared persons in loco parentis as the human face for the welfare/protection of animals,"

In this landmark judgment, Punjab and Haryana Court entrusted legal personality to every creature of the animal kingdom including both aquatic and avian. Further, the court stated in the judgment that their rights, duties, and liabilities are equivalent to that of all living beings. Also stated: "All animals have honor and dignity. Every species has an inherent right to live and is required to be protected by law. The privacy and the rights of animals are to be respected and protected from unlawful attacks," the judge said. The judgment relies on jurisprudence from India's Supreme Court, which had ruled in *Animal Welfare Board of India v. A. Nagaraja*

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<sup>1</sup> 2019 SCC Online P&H 704

& Ors.<sup>2</sup> that the right to dignity and fair treatment as enshrined in and arising out of Article 21 of India's Constitution is "not confined to human beings alone, but animals as well."

The Court issued various mandatory guidelines for the welfare of animals in Haryana. And directed the state government to ensure that any individual who uses animals as means of carriage, should not carry more than the prescribed person or animal and adhere to the regulations given in Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules. In Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules it is given that any person who carries an animal by using a vehicle is/are not allowed to carry not more than 4 persons, which will exclude a child below 6 year and driver at the time of carriage or transit. Further court in the judgment passed the order that in extreme/bad weather conditions, that is exceeding 37 degrees Celsius in the daytime and below 5 degrees in winter, no animal should be forced into vehicles. Also provided guidelines in case of elephant that person using elephant in the festival should also have to adhere to the same guidelines.

Apart from this, some case laws have paved the way in the direction of animal welfare namely: In N.R. Nair and Ors. vs. Union of India and Ors.<sup>3</sup> case, Hon'ble Kerala High Court held that monkeys, bears, monkeys, panthers, lions and panthers should not be trained or exhibited as performing animals. In PETA vs. Union of India<sup>4</sup> case, Hon'ble Bombay High Court held that if any film wishing to use animals in the shoot, then the filmmakers have to obtain a No Objection Certificate from the Animal Welfare Board of India as a prerequisite for certification from the Central Board for Film Certification.

## CONCLUSION

Providing full personhood to non-human in the present situation to the animal itself became a topic of debate in society, as because only for the sake of their protection from cruelty we cannot give them a tag of personhood and grant them legal status, to support people have a reason that if we give legal status to animal this will create huge havoc and chaos to those who sustain only by eating flesh(non-vegetarian) regarding their eating habits. As because we provide them legal status to animals and then any person killed to eat this will count as the person violating the animal right to life that means the person taking away animal right to live

<sup>2</sup> 2014 SCC Online SC 433

<sup>3</sup> Civil Appeal Nos. 3609-3620 of 2001

<sup>4</sup> Writ Petition (PIL) (Lodging) No. 2490 of 2004.

their life as they want. And further, there are other consequences if we provide personhood to non-humans (animals) which will create complications in society. Instead of complete personhood, this author argues that animals should be provided some fundamental legal rights to protect them from harm. Which will suffice the conflict and humans and animals together can peacefully live ever after. As Mahatma Gandhi once said "The greatness of a nation is judged by the way it treats its animals."

