ANIMAL LAW IN INDIA: A JURISPRUDENTIAL ANALYSIS

A Thesis submitted to the
UPES

For the Award of
Doctor of Philosophy
In
Law

By

Udit Raj Sharma

October 2024

SUPERVISOR

Prof. Dr. Shikha Dimri

School of Law

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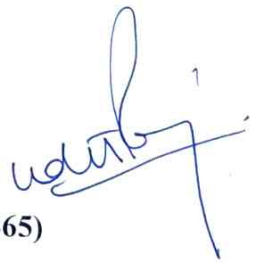
DECLARATION

I **Udit Raj Sharma** hereby declare that the thesis entitled **Animal Law in India: A Jurisprudential Analysis** has been prepared by me based on original research under the guidance of Dr. Shikha Dimri, Professor of School of Law, UPES, Dehradun. I further declare that No part of this thesis has formed the basis for the award of any degree or fellowship previously.



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CERTIFICATE

I certify that **Mr. Udit Raj Sharma** has prepared his thesis entitled, ***Animal Law in India: A Jurisprudential Analysis*** for the award of a Ph.D. degree from the UPES, under my guidance. He has carried out work at the Department of School of Law, UPES.

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ABSTRACT

The world is as it is. There are humans (homo sapiens) and there are lot of non-humans (which includes plants, trees, mountains, rivers, animals etc.), which jointly make this world as it is. There have been a lot of approaches and perspectives to look at the relationship of humans with non-humans. This research explores the relationship of humans with the non-human animals manifested in law. The research tries to ponder upon the theoretical framework for animal law and the consideration of animals within the moral and legal spectrum. A lot of ink has flown in deciphering whether animals are to be treated as subjects of moral consideration and thereafter legal consideration and a lot of views with a diversity of factors and yardsticks have been proposed in this regard. Having settled that animals are subject of moral and legal consideration, the next question that faces law and policy is whether humans owe merely duties towards animals or animals are also entitled to certain 'rights' (essentially asking whether animals are subjects of rights). The research is titled as *Animal Law in India: A Jurisprudential Analysis* since it tries to understand the basis of animal law and also what approaches have been preferred by the law to shape the animal law. The Introductory part of the research includes the foundational details pertaining to the research such as research questions, hypothesis, limitations, literature review and chapterization of the thesis. Through this introductory part, the research has tried to lay down the several aspects which are necessary to be determined before furthering or advancing in the merits of the research theme. This part mentioned about the motivation behind selection of the research theme, the statement of problem, the research objectives, the research questions, the research methodology, the hypothesis, the literature review, and the summarized description of chapters along with the aspects covered in each of the chapters. The research further discusses the philosophical foundations of animal law which discusses the leading philosophical and jurisprudential contributions and contributors which have shaped the discussion on animal law and animal related jurisprudence. The discussion which has shaped the position of animals as 'subjects of law' is also attempted to be explained here. It also discusses the leading approaches and theories which have impacted the growth and evolution of the domain of animal law, namely, Eco-centricism, Deep Ecology Approach, Parens Pateria, the shift from anthropocene to eco-centric approach. The question of legal personhood of animals is also attempted to be discussed here. Further, the research goes on to discuss the most 'jurisprudentially controversial' ongoing subject within the framework of animal law facing the world, especially India, which is the 'duty-based approach' and 'rights-based approach' or 'welfarism and abolitionism'. In

contemporary discussion on animal law, there are two dominant approaches which define the legal relationship of humans with non-human animals. One of them is the animal welfare approach (which is also the duty-based approach) which has been in practice from long time, and which asserts that humans have duties towards animals (direct and indirect). The research discusses in detail what is proposed by the animal welfare approach, and it also tries to explain the evolution of animal welfare approach in the legal sphere through a heading 'from Bentham to Singer: the journey of animal welfare approach" wherein it mentions the impact of two prominent philosophers in development of this approach, Jeremy Bentham, and Peter Singer. The research also discusses the other prominent approach, which is a relatively recent development, Animal Rights approach, which propounds that humans just don't have duties towards animals to ensure 'humane care and treatment of animals' but animals (especially some higher animals) have rights which restrict the humans to make use of animals for their whims and wishes. The research also discusses the leading contributor behind this approach of animal rights, Tom Regan, and his work in development of this approach so as to become a significant approach in the theoretical framework of animal law. The research further discusses the contemporary developments in the domain of animal law (in specific) and environmental law (in general) which have furthered the rights-based approach. The research discusses the Indian law and attempts to understand the legal developments in India concerning animals have come from which approach, the rights based, or the duty based. It looks into the Constitution of India, the Prevention of Cruelty to Animal Act, 1960 to deduce that the legislative interventions in India towards animal law have been towards the duty/welfare-based approach. However, the recent development that has happened through the judicial interventions are more towards the rights-based approach. This makes the animal law in India an interesting case where the legislature and judiciary are both moving in different ways towards animal welfare. And with global developments towards the *rights of nature*, it would be interesting to witness when the legislature in India heads towards the rights-based approach (as suggested by the Indian judiciary also). Further, the research undertakes the critical analysis of animal law in India using doctrinal approach to critically analyze the animal law in India in pursuit of a suitable, futuristic and ecocentric framework for animal law in India. To do that, the research does a comparative study of several jurisdictions, through the reference of secondary data. Also, the research makes a critical analysis of the recent amendments proposed to the Prevention of Cruelty to Animals Act, 1960 through the Bill of 2022. Since, animal law in India is too wide in itself (encompassing the wildlife protection laws, the other overarching disciplines of law such as tort law etc. and also the vast amount of delegated legislation made under the primary

parent law for preventing cruelty against animals in India), the research here confines itself to the aspect of law preventing animal cruelty/animal welfare law for comparative purposes and through that attempts to analyze the effectiveness of animal law in India. The attempt which research makes is to deduce a legal mechanism which is futuristic and eco-centric. The research further studies the positioning of animals in the disciplines of criminology and victimology as 'victims of crime'. There has been much research under ethics and pertaining to cruelty of animals or finding philosophical basis for ethical treatment of animals but very limited ones on assessing the status of animals as victims of crime. The domains of criminology and victimology have also been affected by speciesist tendencies wherein the positioning of animals and the themes of animal abuse or animal cruelty have seldom found their place in criminological and victimological literature. The research discusses this aspect of invisibilized victimhood of animals in criminal law and inquires the status of animals as stakeholders in criminal justice in capacity of the victims. The research also provides for the recent developments through judicial interventions in the state of Oregon (in the matters of Nix and Fessenden), which have paved way for new perspectives of recognizing the victimhood of animals, despite the technical obstacles of legal personhood or other such like challenges. The research also discusses the scope of restorative justice and community service sentences as effective measures in matters pertaining to animal cruelty/animal abuse to bring the animals into the mainstream of criminal justice. This part of the research makes observations from the critical criminal law perspective. In the concluding part of the research, the research answers the research questions and tests the hypothesis. Conclusions and suggestions from the research are set out with further area of future research. The research has come up with six set of suggestions/recommendations vis-à-vis Animal Law in India (which have been elaborately explained in the thesis with necessary benchmarking) and in a nutshell put here as follows:

- Express Recognition of Sentience of animals within the Part III of the Indian Constitution or alternatively through a statute in lines of UK Animal (Sentience) Act 2022.
- Recognition of Victimhood of Animals
- Education and Awareness about Animal Welfare/Animal Rights
- A call for 'Judicial Activism'
- Employment of 'Restorative Justice' and 'Community Service Sentences' in cases of animal cruelty/animal abuse.
- Pragmatic Steps from mere 'prevention of cruelty' to 'animal welfare' approach

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I am profoundly grateful for the constant support, motivation, understanding, guidance, and encouragement of my Supervisor Prof. Dr. Shikha Dimri. My research would have been impossible without her guidance to sail through the difficult phases of the work, instilling confidence, and strength to pass each stage of the research program. I also thank Prof. (Dr.) Abhishek Sinha (Dean SOL) for his constructive interventions at various stages of the research. I am thankful to Prof. Dr. PP Mitra for sharing his insights and expertise over the subject with me and for his constant help at various stages of the research. I also thank Dr. Afkar Ahmad who was my first supervisor for the subject. I convey thanks to Dr. Ashish Verma, my parents, my wife for their constant motivation to push me towards accomplishment with my research. I thank my colleague Mr. Rajesh and many others for their support. I also thank all the key officials at my university, for allowing me the time and support to complete this thesis. My sincere thanks to the Dean R & D, UPES Ph.D. program staff, UPES library Staff, IT staff, and office staff. My heartfelt thanks to my family, friends, students and colleagues for their help and support. I am grateful to the non-human animals, especially Ms. Byju and Mr. Buzo, who have always been at the back of my mind as motivations for creating a better world for non-human animals, in which direction this research is a small step.

Udit Raj Sharma

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LIST OF ABBREVIATIONS

S.No.	Abbreviation	Word/Phrase
1	Act of 1960	The Prevention of Cruelty to Animals Act, 1960
2	AIR	All India Reporter
3	AWBI	Animal Welfare Board of India
4	AWA 1966	Animal Welfare Act 1966 (USA)
5	AWA 2005	Animal Welfare Act 2005 (Switzerland)
6	AWA 2006	Animal Welfare Act 2006 (UK)
7	BNS	Bhartiya Nyaya Sanhita, 2024
8	Bill of 2022	Draft Prevention of Cruelty to Animal (Amendment) Bill, 2022
9	DPSP	Directive Principles of State Policy
10	Hon'ble	Honorable
11	Indian Constitution	The Constitution of India 1950
12	IPC	Indian Penal Code, 1860
13	Nagaraja/A Nagaraja Case	Animal welfare board of India v. A Nagaraja
14	OHCHR, 1985	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
15	OIE	World Organization for Animal Health
16	PETA	People for Ethical Treatment of Animals
17	PCA/PCA 1960	The Prevention of Cruelty to Animals Act, 1960
18	Regan	Tom Regan
19	Singer	Peter Singer
20	SC	Supreme Court of India
21	SCC	Supreme Court Cases
22	TN	Tamil Nadu
23	UK	United Kingdom
24	USA	United States of America
25	UNO/UN	United Nations Organization
26	WSPA	World Society for the Protection of Animals

LIST OF CASES

32. State of Oregon v. Nix (2015).
33. State Tr . P . S . Lodhi Colony , New Delhi vs Sanjeev Nanda (2013).
34. T.N. Godavarman Thirumulpad Vs Union of India & Ors. (2006).
35. Tennessee Valley Auth. v. Hill (July 15, 1978).
36. Urvashi Vashist & Ors . vs Residents Welfare Association & Ors (2021).
37. Vishaka & Ors vs State Of Rajasthan & Ors, Supreme Court of India - 1 (1997).

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1. Animal Welfare (Sentience) Act 2022 (UK).
2. Animal Welfare Act, 1966 (USA).
3. Animal Welfare Act, UK Government (2006)
4. Animal Welfare Act, Switzerland (2005).
5. Andhra Pradesh Community Service of Offenders Bill, 2010.
6. Animals Protection Act (71 of 1962), South Africa
7. Basic Law for the Federal Republic of Germany.
8. Bihar Preservation and Improvement of Animals Act, 1956.
9. C.P. and Berar Animal Preservation Act, 1949 , Pub. L. No. Act 52 of 1949 (1949).
10. The Constitution of India, (1950).
11. The Constitution of the State of Oregon (1858).
12. Draft - The Animal Welfare Act , 2011 (India).
13. Draft Prevention of Cruelty to Animal (Amendment) Bill, 2022.
14. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power *OHCHR* United Nations General Assembly (1985).
15. The Child Marriage Restriant Act, 1929.
16. The Commission of Sati (Prevention) Act, 1987
17. The Constitution of India, 1950.
18. The Constitution of United States, 1789.
19. The Dowry Prohibition Act, 1961.
20. The German Animal Protection Act, 2006.
21. The Gujarat Animals And Birds Sacrifices Act 1972.
22. The Bharatiya Nyaya Sanhita 2023.
23. The Indian Penal Code,1860.
24. The Karnataka Prevention of Animal Sacrifices Act (1959).
25. Uttar Pradesh Prevention of Cow Slaughter Act, 1955
26. The Prevention of Cruelty To Animals Act (1960).
27. The Prohibition of Child Marriage Act, 2006.
28. The Tamil Nadu Animals and Birds Sacrifices Prohibition Act (1950).
29. The Tamil Nadu Devadasis (Prevention of Dedication) Act (1947)

CHAPTER 1

Introduction

"The day may come when the rest of the animal creation may acquire those rights which never could have been with-holden from them but by the hand of tyranny. The French have already discovered that the blackness of skin is no reason why a human being should be abandoned without reason to the caprice of the tormentor. It may one day come to be recognized that the number of legs, the villosity of the skin, or the termination of the os sacrum are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or perhaps the faculty of the discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as more conversable animal, that an infant of a day or a week or even a month, old. But suppose they were, otherwise, what would it avail? ***The question is not, can they reason? Nor can they talk? But, can they suffer?*** *(Singer, 2009)"*

(Sir Geremy Bentham)

Animal law as a discipline is slowly coming to the forefront and making its way to mainstream 'law'. With various issues concerning animals (abuse, cruelty, human-animal conflict etc.) knocking the doors of various courts in India, particularly the Supreme Court of India, the domain of animal law is growing by leaps and bounds.

India, currently, stands at the first stage of animal law where the level of consideration achieved through law is 'prevention of cruelty'. From preventing cruelty and abuse, the next stage to be reached is 'animal welfare', which would be the second stage and a positive obligation, not just to prevent cruelty but also to do positive welfare for animals. The further stage from there is a shift towards 'animal rights', which would perhaps be named as 'third stage' and which is a paradigm shift from the 'duty-based approach' to 'rights-based approach'. Interestingly, India has been moving in varied directions when it comes to development and practice of animal law. Legislatively, India is towards the duty-based approach (welfarist approach) where 'prevention of cruelty' to animals is the prime consideration. Though efforts have been made to shift towards 'animal welfare' approach, it is largely oriented towards 'prevention of cruelty' only. However, Indian judiciary has made such interventions, which have taken the direction and orientation of animal law towards the 'animal rights' approach (including the reading of animal rights within the Indian Constitution or holding them as legal persons). This has made the Indian law vis-à-vis animals stand on an interesting juncture wherein the researcher inquires that whether India is heading towards the 'duty-based approach' or the 'rights-based approach' or both. This calls for an introspection of the jurisprudential foundations of animal law and how have they manifested in the form of 'Indian Animal Law'. The research is attempting to engage with the understanding of animal law, the jurisprudential foundations of animal law, and analyses the 'Animal Law in India'. It is titled as *Animal Law in India: A Jurisprudential Analysis.*

Animal abuse/animal cruelty has yet not been able to be part of the mainstream discussion within the criminological and victimological discourse, which is problematic given the fact that though capable of feeling pain and suffering, the law doesn't regard them as 'victims'. The difficulty of legal systems in recognizing animals as persons under the law (and treating them as property) became a tremendous impediment for their recognition as victims of crime under criminal law. Is capacity to suffer not enough to hold someone as victim, is capacity to feel pain, suffering and harm not enough & should victimhood be jeopardized in the technical jurisprudential discussion of personhood and the

one pained be kept in abeyance to be further victimized by the hands of process of law, are questions, inter alia, research attempts to explore. Further, there are issues with the criminal justice system in treating the animals as 'victims of crime' and there are numerous questions, which would require attention for a meaningful discourse on status of animals as victims of crime. This would include exploring innovative ways to incorporate criminal justice reforms into animal law (for e.g.- alternate sentencing, community service sentencing, and restorative justice). Pursuit of a process which not only deters someone from hurting or injuring animals but also teaches empathy towards animals, attempts to target the root causes of animal cruelty, provides due acknowledgment to non-human sufferers of crime as victims and attempts to restore and rehabilitate them, are all important considerations for this discourse to be made meaningful.

1.1 Statement of Problem -

The discourse on 'animal welfare' is gathering great attention among legal and policy developments at the national and international fora. The phrases 'animal rights', 'animal welfare', 'eco-centricism' and 'animal law' have also been gaining attention. Human dependence on 'Animals' is ancient as human civilization itself. However, with the changes in development standards across the globe, human choices/preferences and incumbent behavior have ignored the impact it has on the environment and its dependent beings. The unperturbed anthropocentric approach has made it imperative to introduce, expose and sensitize the generation about animal laws. A holistic approach towards existence would give us a perspective that all species or life forms other than human beings are not just matters of utility for human race or meant to serve human race. The Lt. Justice Krishna Iyer opined that "*God (or call Him by whatever name you like) and in relation to god mentions that the god sleeps in the mineral, and wakes in the vegetable, and walks in the animal, and thinks in man and reaches the state of realization when the human ascent and the divine descent meet"* (Iyer, 2014). In these times where the anthropocentric model of governance and policy making is gradually replaced by 'eco-centric' model of

governance and policy making, it is presenting the legislators, the bar, the bench, the academia and the society in general with several questions and challenges. The conventional jurisprudential theories, by far, excludes 'animals' as entities capable of holding rights(Mathew & Chadha-Sridhar, 2014). The concept of 'animal welfare' and 'animal rights' are, most often, understood very differently considering the jurisprudential debate over conferring 'rights' to animals who are excluded from the ambit of 'persons' or 'possessors of rights'(Peters, 2016). The 'duty-based approach' is suggested as an alternative mechanism for achieving the larger objective of 'animal welfare'. Whereas legislative interventions are more inclined towards duty-based approach, the judicial developments are more inclined towards the rights-based approach, which has raised certain fundamental questions with regard to the jurisprudential foundations or theoretical framework regarding the animal welfare law. This offers a large scope of research potential vis-à-vis national as well as international perspectives.

The doctrine of '*Parens patriae'* may be one of the significant philosophical foundations for the 'animal welfare law'. '*Parens patriae'* literally means parent of the country, and is essentially, the government's power and responsibility, beyond its police power over all citizens, to protect, care for, and be considerate to citizens who cannot take care of themselves, traditionally which included infants, idiots, and lunatics, and who have no other protector(Clark, 2000). The Hon'ble Supreme Court in *Aruna Ramachandra Shaunbaug* v. *Union of India* (*Aruna Ramachandra Shaunbaug v. Union of India*, 2011) held that *the State is the most competent to assume the role of a parent if a citizen is in need of protection.* However, does this maxim apply to animals also? The Hon'ble Supreme Court in the landmark judgement of Charan Lal Sahu v. Union of India (*Charan Lal Sahu v. Union of India*, 1990) held that "*The doctrine of parens patriae cannot be confined to only quasi- sovereign right of the state independent of and behind the title of the citizen. The concept of parens patriae can also be varied to enable the government to represent the victims effectively in domestic forum if the situations so warrant. The jurisdiction of the State's power cannot be circumscribed by the limitations of the traditional concept of parens patriae jurisprudentially, it could be well utilized to suit or alter or adapt*

itself in the changed circumstances". By this we can say that is not a rule, it is an evolution, an evolutionary process which needs to be implemented to the highest level. Animals form part of our ecosystem, and it is the duty of our State to protect our ecosystem. Although the protection and welfare of animals is well covered under the article 21, thanks to Animal welfare board of India v. A Nagaraja and others(*AWBI v A Nagaraja & Ors.*, 2014) which redefined the scope of animals under Article 21 and how this particular protection is the primary duty of State. The Apex Court held that the *Court has also a duty under the doctrine of parents patriae to take care of the rights of animals, since animals are unable to take care of their interests themselves unlike human beings*.

Further, the status of animals as victims of crime is also an enquiry this research intends to undertake. Victims are *persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member States, including those laws proscribing criminal abuse of power* (*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power | OHCHR*, 1985). The research at hand raises a question of victim justice with regard to 'animals' as 'victims of crime' and attempts to explore that whether the legal system in India (which involves the lawmakers, the Courts and the prosecution) consider 'animals' as entitled or recognized 'victims of crime' and whether it confers due dignity to 'animals' as stakeholders in victim justice. The two-fold primary role of criminal justice system is to bring the perpetrator to account for his/her wrongs as well as to ensure justice to the victims of crime. As agencies of criminal justice system, the courts as well as the prosecution have the onus to work towards these aims. However, when the criminal justice system focuses more on conducting trials mechanically and focuses less on justice to victims, it becomes slightly unfair in its working. This research also aspires to study the positioning of 'animals' as victims of the crime.

1.2 Research Objectives

The objectives of the research are:

1. To understand the jurisprudential basis/theoretical framework for 'Animal Law' at national as well as global fora.
2. To understand the historical evolution of animal welfare legislations/policies in India and deduce the jurisprudential basis.
3. To analyze the shift in approach of law from 'anthropocentric' to 'eco-centric' and the extent it has affected animal welfare laws.
4. To undertake a comparative study of animal welfare laws among several jurisdictions to deduce a futuristic and eco-centric approach for animal welfare laws.
5. To suggest a suitable, practical, futuristic, eco-centric and humane approach/theoretical framework for animal law (both nationally and globally) which addresses the larger objective of 'animal welfare'.
6. To understand the positioning of animals as 'victims of crime' in criminology and victimology.

1.3 Significance/Need of the Research –

i. ***Uncertainty/Gap/Grey Area of Law*** – Various jurisdictions of the world have started legislating with regard to 'animal welfare' and discourse regarding 'Global Animal Law' has also begun. The conventional jurisprudential theories exclude 'animals' as entities capable of holding rights. The concept of 'animal welfare' and 'animal rights' are, most often, understood very differently considering the jurisprudential debate over conferring 'rights' to animals who are excluded from the ambit of 'persons' or 'possessors of rights'. The 'duty-based approach' is suggested as an alternative mechanism for achieving the larger objective of 'animal welfare'. Whereas legislative interventions are more inclined towards duty-based approach, the judicial developments are more inclined towards the 'rights-based approach', which has raised certain fundamental questions with regard to the jurisprudential foundations or theoretical framework regarding the animal welfare law. This offers a large scope of research potential vis-à-vis national as well as international perspectives.

ii. ***Futuristic/Scope of research*** – The Animal Welfare Law/Animal Law is emerging as a branch of law in itself at the national as well as international level.

Legal and policy framework is developing in several jurisdictions regarding the same. Therefore, it presents the legislators, the bar, the bench, the academia and society in general with several questions and challenges. It has a great scope of research.

iii. ***Passion and Interest*** - The research scholar has avid interest and curiosity to explore and read about animal welfare. The researcher is passionate about protecting and preserving the dignified existence of animals.

1.4 Research Questions

1. Whether there exists a theoretical framework for animal welfare law?
2. To what extent the principles of governance protect the non-human species based on the 'rights-based approach' and 'duty-based approach'?
3. Whether existing legislations are progressive enough or requires improvement to cater need of non-human species?
4. Whether the legal and policy mechanism in India (which involves the lawmakers, the Courts and the prosecution) consider 'animals' as entitled or recognized 'victims of crime' and whether it confers due dignity to 'animals' as stakeholders in victim justice?

1.5 Hypothesis

A lack of coherence and clarity in the theoretical framework with regard to 'animal law' results in an inconsistency in the legal framework for animal law.

1.6 Research Methodology

The research methodology is ***doctrinal*** since the major inquiry is about the theoretical framework regarding the law on animal welfare. It would involve various approaches such as ***historical*** (since in deducing the theoretical framework the jurisprudential approaches suggested or used in the past for securing the interest of animals is required to be keenly analyzed. Additionally, this would provide lessons to learn for the futuristic legal and policy framework), ***comparative*** (since the modern legal & policy foundations and perspectives have to be understood, analyzed and compared in order to suggest a feasible and just framework for animal welfare law). The research shall follow

interdisciplinary approach considering that the aspect of 'animal welfare' touches several disciplines such as religion, law (in both civil and criminal aspects), literature, spirituality, medicine, economy, science etc.

1.7 Literature Review

'Animals' are an integral part of existence and co-sharers of the world with the human race. The association of humans with animals is from the time immemorial and therefore, the presence of animals and discourse about animals has influenced almost all dimensions of human life. From influencing so many dimensions of life, *inter alia,* religion (For eg- the incarnations of god in the form of animals has been common in Hinduism, the Elephant headed Ganesha, the monkey form Hanuman, the Narasingha (half human half lion) incarnation of Lord Vishnu etc.), spirituality, trade, commerce, use of animals, science and research, medicine, fashion, food, entertainment and adventure, warfare etc., the discourse about animals has also permeated the sphere of law and justice. Contrary to the popular belief, in history, the animals were not totally excluded from the rights discourse and that violence against them was not always regarded as legitimate(Brett, 2020). Even laws preventing cruelty to animals or causing them unnecessary pain from human hands have not been a new phenomenon. The British Government in India enacted the law named 'Prevention of Cruelty to Animals Act', as early as in 1890. 'Animal welfare' has been a matter of discourse for various disciplines i.e. theology, science (medical science), ethics, environmental studies, philosophy. From traditional Jurists, namely, Bentham, Austin, Salmond, Hugo Grotius, Samuel Pufendorf, Jacques Cujas, Alberico Gentilti, Thomas Hobbes; to contemporary jurists such as Martha Nussbaum, Anne Peters, David Favre etc. have all made opined about 'animals' as subjects of law, though, obviously with difference of opinions and difference of perspectives(Brett, 2020).

Apart from the opinions of jurists aforementioned, a few notable literatures that the research has focused upon to understand and frame the research problem are as follows-

Books-

1. **P.P. Mitra , An Introduction to Animal Laws in India** (Mitra, 2019)

The author has attempted to cover the subject of 'animal laws in India' comprehensively with the mention of all legislative and judicial interventions over the concerned subject matter involving the recent developments in the same. The author has attempted to cover diverse aspects related with the subject , namely, the positioning in International law, Constitutional law, law regarding prevention of cruelty to animals, slaughter of animals, sacrifice of animals, experimentation on animals, performing animals, transportation of animals, treatment of animals, trade of animals and birds, conservation of wild animals, role of judiciary in animal protection in India, the authorities for protection of animals in India, Consumer protection and animal welfare. The book certainly constitutes a notable literature on the subject matter.

2. Steven M. Wise , Rattling the Cage: Towards Legal Rights for Animals (Wise, 2000)**.**

Rattling the Cage is a significant literary work to follow after what was already put forth by Peter Singer and Tom Regan. Though it was not the first scholarly literature contesting for the interests of animals, and also certainly not the last of those, but an important one to be viewed, reviewed, cited, and remembered as an important contribution in the field. It attempts and analysis takes so many disciplines within its sweep, philosophy, science, law, history etc. to present a strong case for bringing to the forefront the issue of just and humane treatment of animals generally (towards legal rights) and chimpanzees and bonobos particularly.

The book makes an important case for 'dignity rights' and introspects beyond the horizons of 'human rights', a phrase which for the longest of times kept extending it limits and remained inclusive is appearing exclusive to the interests of non-human animals although the rationale for extending the moral consideration is logically compelling. This transition from 'human rights' to 'dignity rights' would make the interests of non-human animals be positioned within the largely human-centric legalism and would make the shift from anthropocentricism to ecocentrism a little more realistic.

3. Dr. Sohini Mohapatra, Non-Humans, and the Law- An Analysis of Animal Welfare and Animal Rights within the Indian Legal Discourse (Mohapatra, 2020)

The book offers itself as rich literature for anyone attempting to understand animal law and its contemporary issues and challenges. The Book explores the core differences between the two approaches -animal rights and animal welfare as two independent philosophies. It focuses on different issues at hand in the Indian context, especially the understanding where India stands with respect to non-human animals. The book makes a case against undervaluing of the non-human animals in human lives, and a makes a reminder to give them the importance that they deserve.

4. Peter Singer, *Animal Liberation* (Singer, 2009)**.**

As the name suggests, perhaps, the most revolutionary book written on the concern for animals, which changed the way humans think about animals and also exposes our hidden biases and 'speciesism' that has slowly permeated into the law and policy also. The book exposes different facets of speciesism- our systematic disregard of nonhuman animals with a vision to eliminate the cruelty we humans inflict on animals.

In Animal Liberation, Peter Singer points towards the disturbing realities of today's 'factory farms' and product testing procedures- destroying the spurious justifications behind them and offering alternatives to what has gained the place of a profound environmental and social as well as moral issue. The book makes an appeal to conscience, fairness, and to justice. An indispensable contribution to the theoretical framework of animal law and ethics, which made Peter Singer a pioneer voice in the animal welfare theory.

5. Tom Regan, The Case for Animal Rights (Regan, 1983)

The most significant contribution in the theoretical framework of the Rights Theory comes from an American Philosopher Mr. Tom Regan, through his book *The Case for Animal Rights (1983)* and his other contributions thereafter. To defend his position, Tom Regan argues that the animal rights provision is more important from a welfarist perspective because, at its core, rights impose an obligation on the other party to accept them as virtually inalienable and untouchable. will be. While we accept that animals have certain rights, we

cannot treat them in a way that would infringe or violate those rights. Regan's main concern is that humans violate the rights of animals to be treated with dignity and respect when we use them as a simple means of meeting our needs.

6. EP Evans, The Criminal Prosecution and Punishment for Animals, (E. P. Evans, 2009)

A unique and one of its kind literatures, which gives you a version of history, hardly discussed or mentioned. An instance so rare that many would find it difficult to believe. As the title of the book suggests, it details the cases where animals were put on trial in the courts of law for committing crimes and were awarded punishments also. The book states that according to the ancient Greeks, killing anyone – a human being, an animal, or an inanimate object – would provoke anger and bring plagues to the region if it was not duly atoned for. The medieval church propagated a similar notion, but it replaced the demons of Christian theology with the wrath of classical mythology. Animals working for humans had the same rights as any other member of the household, including the ability to be detained, prosecuted, found guilty, and sentenced to death. Because they could not be captured and imprisoned by civil authorities and were not under human control, the insects and rodents insisted that the Church intervene and use its supernatural powers to force them to stop their destruction. This book is invaluable literature and a result of a great effort of compiling such instances and cases and further translating them in understandable language and taking a comprehensive picture from the scattered events. Bull sent to gallows for killing a child, horse condemned to death for homicide as punishment, criminal prosecution of fieldmice, a cock burned at the stake for the unnatural crime of laying an egg, inter alia, are the kind of cases discussed in the book and the rationale behind such positioning of animals within 'criminal justice system'.

7. Ian A. Robertson, Animals, Welfare, and the Law – Fundamental Principles for Critical Assessment (Robertson, 2015)

The book is a valuable addition to the literature of animal law as it very minutely analyses the theoretical framework leading to normative developments of the discipline of animal law. The book deal with the fundamental principles of the human-animal relationship and how it drove the evolution of animal law. The

book attempts to inquire into the criteria by which the lawful use of the animals is determined, and how these criteria impact evolving standards of animal protection and define the responsibilities of humans in their interactions with non-human animals. The book also tries to cover the journey of notable contributions (or interventions, since they have been both progressive and regressive for animal law) that shaped the discourse of animal law and placing of animals within the arena of moral consideration.

8. Surendra Malik & Sudeep Malik, Supreme Court on Environmental Law (Malik & Malik, 2015)

The book does a through compilation of the rulings of the Hon'ble Supreme Court of India, in the arena of Environmental law in India since 1950 to 2014, covering wide range of aspects such as general principles of environmental law, regulatory framework, forests, wildlife etc, among others. The book makes a topic wise compilation of judgements, which enables easy accessibility for easing research. Since judiciary in India has a major role to play behind the growth and evolution of environmental law as well as animal law (particularly in developing the jurisprudence), the book is of immense value to the researcher.

9. Roderick Nash, The Rights of Nature A History of Environmental Ethics, (Nash, 1989).

The book examines the development of modern philosophical and religious views on nature, based on the idea that nature has rights and that American liberalism, in fact, extended to the non-human world. The author's main area of interest is how American attitudes toward nature are evolving.

10. Raffael N Fasel & Sean C Butler, Animal Rights Law (Fasel & Butler, 2023)**.**

A classic literature in the form of a book making case for animal rights and most recent and contemporary analysis of the scholarship on the subject and the encapsulating most prominent works on the theoretical framework. The book engages with the issues such as current legal status for animals, the debate/dichotomy on the aspects of animal welfare i.e. welfarism v abolitionism, philosophical foundations for animal law, the legal theory for animal rights, and an analysis of cases from across the globe, which have made animal rights be contested in the Courts. Also, the approach of having animal

rights as a social justice movement is an important contention that this book makes.

11. Anne Peters, Studies in Global Animal Law, (Peters, 2020)

This book constitutes notable literature on the subject matter of animal law. It attempts to float an idea about 'global animal law' which is reflective of the jurisprudential and theoretical framework of animal law having certain fundamental principles universally accepted and regarded (much like the Global Human Rights Law). It will therefore become the basis of legal and policy framework in national jurisdictions, and this would also ensure a harmony of principles at the global and municipal framework for animal welfare.

12. Martha C Nussbaum, **Justice for Animals: Our Collective Responsibility**

One of the renowned philosophers, Martha C. Nussbaum presents a new dimension or framework for ethical treatment of animals on the basis of *Capabilities Approach* which focuses on the importance of animals to lead flourishing lives. The book comes at a critical time when animal law and animal rights are gradually taking a mainstream approach and therefore acts as a call to society and policy makers to reevaluate their responsibility towards animals.

13. Gary L. Francione and Robert Garner, **The Animal Rights Debate: Abolition or Regulation?**

The book presents interesting and insightful discussion for animal law scholarship where Francione and Garner engage in a debate over the most effective approach to animal rights. Francione advocates for the abolition of animal use, while Garner supports regulatory reforms to improve animal welfare. The book presents both perspectives in a thought-provoking manner.

14. Gary L. Francione, **Animals, Property, and the Law**

Francione stands as an important contributor in the scholarship of animal law since he proposes the rights-based approach and argues against the property status of animals since he considers that this problematic status of animals is at the root of their exploitation. He makes a case for animal rights.

15. David S. Favre, **Animal Law: Welfare, Interests, and Rights.**

David Favre attempts to comprehensively cover the various aspects of animal law and manners of protecting animal interests. Favre provides a detailed

examination of animal law in the United States, discussing welfare laws, animal rights, and the interests of animals. The book includes case studies and legal analyses, making it a valuable resource for students and practitioners of animal law.

16. Vipin Dayal, Animal Laws of India

Written in Indian context, the book caters to a layperson who wishes to engage with fundamental aspects of animal protection, animal welfare and animal rights as existent in the Indian jurisdiction. A concise resource book to engage with the animal law in India.

17. Jaideep Verma & Ritika Modee, Animals and the Law

The book includes a compilation of several laws, rules, regulations, guidelines, precedents in the domain of animal law aimed at the protection, welfare and safety of animals. It is a good reference book to fathom the length of animal law in India.

18. Rachel Carson, The Silent Spring (1962).

The book is a classic and one of the most impactful books for environmental protection. The book mentions the harmful effects of DDT (a form of pesticide) and makes a larger case for interconnected nature of life. The book presents a model for radical environmental activism and the attitude that humans should have towards nature.

19. Madhav Gadgil & Ramachandra Guha, Ecology and Equity – the use and abuse of nature in contemporary India

The book contextualizes India and exposes its environmental conflict. It analyses political economy with ecology, presenting and emphasizing a forward-looking agenda for environmental reform in the Third world. The book presents interesting observations for environment related scholarship and also for animal law scholarship.

20. Madhav Gadgil & Ramachandra Guha, The Fissured Land: An Ecological History of India

The book presents a very interesting ecological history of Indian subcontinent. The book describes the use and abuse of forest resources in India. It produces a

theory of ecological prudence. The book analyses the social conflicts that have emerged over environment exploitation.

Articles/Research Papers-

21. P P Mitra, Animal Laws in Contemporary Legal System: Need for Inclusion in Legal Education, (Mitra, 2021)**.**

This aforementioned chapter in the edited book makes a case for animal law jurisprudence that has been slowly developing out of the judicial developments in the country and argues for its introduction in the modules of continuing legal education. Making the Court's opinion a basis of inquiry, the chapters questions to us all that why animal rights law (or animal law or animal welfare law) is not offered as a course in law educational institutions.

22. *Jessamine Therese Mathew & Ira Chadha-Sridhar,* Animal Rights under the Constitution: A misplaced approach? An Analysis in the light of Animal Welfare Board of India v A Nagaraja (Mathew & Chadha-Sridhar, 2014)

In the aforementioned research, the authors have made a critical comment on the recently passed and much celebrated judgment of the Apex Court of India where it recognized the rights of animals under Article 21 of the Constitution of India. The authors contended that this rights based approach is misplaced and problematic and suggested an alternative and more suitable approach i.e. duty-based approach for the purpose of animal welfare. This research directly attempts to comment on theoretical framework and seeks to suggest an approach that may be contributory in developing clarity and cogency in the theoretical framework of animal law.

23. Peirs Beirne, *The Use and Abuse of Animals in Criminology: A brief history and current review* (Beirne, 1995)

The article makes a detailed study of how animals have been positioned in the criminological discourse. There are four pointers on which Peirs Berine mentions animals as criminals (and vice versa), animals and humans as partners in crime, analogies between animals and humans and fourth being animals as objects. The article makes in-depth analysis on where criminology went wrong in missing out of animals as subjects of criminology in the proper sense. He points out that animals have entered criminology when they are stolen, poached,

damaged, held as ransom, rustled, or otherwise misappropriated. This is an invaluable piece of literature for the purposes of this research.

24. Annabel Brett, Rights of and Over Animals in *the ius naturae et gentium* (Sixteenth and Seventeenth Centuries) (Brett, 2020)

The research examines the different theological and philosophical paradigms of rights in the early modern period and how were 'animals' positioned in the discourse of rights and duties. This research is a rich literature reflecting on the jurisprudential history about the discourse of 'animal rights' which may be a great insight for understanding the theoretical framework of 'animal law'.

25. Anne Peters, Global Animal Law: what is it and why we need it (Peters, 2016)

This research contends that contemporary animal law must be global or trans-national. It claims that animal welfare has become a global concern, which requires global regulation considering that most instances of human-animal interactions (from food production and distribution, working animals and uses in research, to breeding and keeping of pets) possess a transboundary dimension. It recognizes an ongoing 'animal turn' in the social sciences, including political philosophy.

26. Brittany Hill, Restoring Justice for Animal Victims, (Hill, 2021)

Hailing from the criminal law scholarship background, the author mentions of restorative justice as an intervention (alternate sentencing) to deal with the animal cruelty cases more effectively and create a win-win opportunity for both the animal victim and the offender who may lose an opportunity of reform from a vengeful approach. Brittany expounds on a few pointers as to why the intervention of restorative justice is necessary in animal cruelty cases- first, animal cruelty involves violence. Second, animal cruelty indicates a deviant behavior which may not be occurring in vacuum. Third, animal victims deserve recognition. The research proposes that given the complexity of animal cruelty cases, restorative justice may have positive benefits for those who are accused of animal cruelty, communities, and primarily the animal victims. A significant literature for the purpose of this research.

27. Brigette Banaszak, The Case for Animal Rights by Tom Regan: Summary & Arguments(Banaszak, 2023)**.**

The article helps the reader understand the landmark work of Tom Regan, the Case for animal rights, in a summarized and lucid manner, highlighting the subject position of Tom Regan and the theory he attempts to propose.

28. Rita Brara, Courting Nature: Advances in Indian Jurisprudence, (Brara, 2017)

The article attempts to cover the recent developments in the judicial interventions in India and how those are changing the tides towards eco-centricism. It argues that the Indian judiciary has experimented with the language of 'rights of nature' and attempts to trace its source in the cultural heritage and the notion of 'dharma', 'Ahimsa' etc.

29. PP Mitra, Doctrine of Parens Pateriae and developing Trend of Animal Jurisprudence, (MITRA, 2018)

The author is an established name in the scholarship of animal law in India and through this article, attempt is made to define the concept of parens pateriae and how courts (especially high courts) are using it as an important philosophical foundation in developing animal law jurisprudence across the country. The article deals with the historical background, the evolution of this doctrine and how courts are using it to provide welfare prospects and protection to non-human animals. It lays special emphasis on the state of Uttarakhand also.

30. Nils Christie, The Ideal Victim in *From Crime Policy to Victim Policy,* (Christie, 1986)

Nils Christie stands as a tall figure who through his seminal works such as 'conflicts as property' and 'the Ideal victim' contributed to the critical criminal law and paved way for victimology to grow and prosper. This work 'the ideal victim' is also a significant contribution in the same line. It provides for what traits or features make a 'victim' assume victimhood and what are the factors informing law on this frontier. Through creating an image of a victim, Christie asserts who is readily given the legitimate and complete status of a victim of crime.

31. Jesse Downes, *Victimology of Animal Abuse: Why certain Animals subjected to harm are not seen as victims,* (Downes, 2020)

Jesse Downes uses three disciplines in the research – criminology, victimology, and animal rights philosophy to inquire into the question that why harming a

certain kind of non-human animals is often legal and socially acceptable, and therefore when they are harmed, they are not labelled as victims. The research also proposes that it is problematic that harm is inflicted to a non-human animal, without that animal assuming the status of a victim. The research also discusses recent disciplines such as green criminology and whether they have been able to cater to the welfare interests of non-human animals. Very interesting research and a significant one for the research questions of this research at hand also.

32. Pande, B. B. (1999). A Legal exclusion through 'CRIMINALIZATION', 'STIGMATIZATION' and 'INVISIBILIZATION' in the Pre and Post-Independence India, *NUJS Law Review*.

In this paper, the author, a renowned veteran professor of law, describes how law plays an instrument, both inclusionary and exclusionary roles and how it uses the tools of 'criminalization', 'stigmatization' and 'Invisibilization' towards a class or group and how it impacts the recognition of pain, suffering and grievances of the class or group. The researcher has attempted to juxtapose the observations in the paper in matters of animals as victims of crime.

33. Tatoian, E. R. (2015). Animals in the law: Occupying a space between legal personhood and personal property. *Journal of Environmental Law and Litigation*, *31*(1), 147–166.

In this paper, the author does a very detailed and insightful analysis into the question of positioning of animals as property within the common law framework. The paper also discusses the legal personhood of animals and how law has made a minor shift towards the non-property status. The paper discusses that animals now are positioned at an interesting juncture, acquiring a place between property status and non-property status, between personhood and personal property. The paper makes note of some remarkable developments through judicial decisions in *Fessenden & Nix*, which have been significant in having the impact of changing the property status of animals.

34. Erin Evans, Constitutional inclusion of animal rights in Germany and Switzerland: How did animal protection become an issue of national importance? (Evans, 2010).

The purpose of this study is to explain how, in two industrialized democracies, animal advocates were able to accomplish this important goal. The study emphasizes how important it is for social movements to preserve constitutional inclusion and given that other movements are competing for greater political attention and response, it is important to consider how non-human animals How and why was it allowed to enter this important political arena. This comparative study employs an approach derived from the mainstream canon on social movements to demonstrate how institutional selectivity, cultural influence, the influence of spontaneous events, and frame-bridging tactics influenced the success of both groups.

35. Bill Devall, The Deep Ecology Movement, (Devall, 1980).

The research paper describes the deep ecology movement as a revolutionary environmental philosophy that critiques the dominant social paradigm and its anthropocentric worldview. It seeks to establish a new ecological consciousness that recognizes the inherent worth of all living beings and promotes a harmonious relationship between humans and nature while emphasizing on the importance of biospheric egalitarianism, local autonomy, and the use of appropriate technology.

36. Anilla Srivastava, Mean, dangerous, and uncontrollable beasts: Mediaeval animal trials (Srivastava, 2007).

The research explores the historical practice of putting animals on trial for crimes in medieval Europe within their legal and social contexts, highlighting the attribution of partial legal personhood to animals, which allowed the law to address the harm they caused. By analyzing these historical practices, the author challenges the rigid distinction between persons and property in law and offers insights into how legal systems have grappled with the actions of non-human entities.

37. Upendra Baxi, Cruelty Vs Culture: Re-writing the Magna Carta of the Rights of Nature? (Baxi, 2023).

In this article, the author delves into the complex debate surrounding animal rights in cultural practices, using India's Supreme Court rulings on Jallikattu and bullock cart races as a focal point. The author dissects the conflicting narratives

of cruelty and culture, urging a critical reassessment of the *Magna Carta of the Rights of Nature*.

38. Nimita Aksa Pradeep, Noureen Siddique, Covid-19 and the Plight of Animals in India: Safety and Prevention Approaches (Pradeep, Siddique, 2021).

The research examines the impact of the COVID-19 pandemic on animals in India. The research discusses increased cruelty towards animals, including abandonment of pets and mistreatment of stray animals, due to misinformation about the virus. The authors highlight the legal framework for animal protection in India, including constitutional provisions and the Prevention of Cruelty to Animals Act, 1960, while arguing that these laws are insufficient and outdated.

39. Ecocentrism and anthropocentrism: Moral reasoning about ecological commons dilemmas, (Kortenkamp, Moore, 2001)**.**

The research investigates the extension of human ethics to nature through the lens of anthropocentrism (valuing nature for its utility to humans) and ecocentrism (valuing nature intrinsically). The research reveals that pro-environmental attitudes correlate with increased ecocentric and anthropocentric reasoning.

40. Udit Raj Sharma & Shreshtha Srivastava, DETERMINING THE CONTOURS OF SECTION 28 OF THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1960, (Sharma; Srivastava, 2023).

This research examines the conflict between religious animal sacrifice and animal rights in India, focusing on Section 28 of the Prevention of Cruelty to Animals Act, 1960. This section creates an exemption for animal killing that is required by the religion of any community. The authors argue that this provision contradicts the purpose of the act, which is to prevent cruelty to animals. The authors contend that religious animal sacrifice is incompatible with these evolving legal and ethical standards.

41. Udit Raj Sharma & Anushka Srivastava, A PRACTICAL SHIFT TOWARDS ECO-CENTRICISM: M.K. RANJITSINH & ORS. V. UNION OF INDIA & ORS., (Sharma; Srivastava, 2022).

The article highlights the shift in legal approaches from anthropocentric (human-centered) to ecocentric (nature-centered) perspectives. The M.K.

Ranjitsinh & Ors. v. Union of India & Ors. case serves as a model for how legal frameworks can evolve to prioritize environmental protection and conservation, even in the face of competing interests. The authors acknowledge the economic challenges involved in this shift but stress the need for continuous efforts to modify economic and infrastructural arrangements to align with ecocentric principles.

42. Louis J. Kotzé; Paola Villavicencio Calzadilla, SOMEWHERE BETWEEN RHETORIC AND REALITY: ENVIRONMENTAL CONSTITUTIONALISM AND THE RIGHTS OF NATURE IN ECUADOR, (Kotzé; Calzadilla, 2017).

The article's central argument revolves around the tension between the lofty ideals of Ecuador's constitutional provisions on the Rights of Nature and the practical challenges of their implementation. They examine how the Constitution recognizes nature as a subject of rights, capable of being represented in court to protect its interests. However, the authors also point out the complexities and limitations of enforcing these rights in practice, considering factors like political will, judicial interpretation, and competing economic interests.

43. Marina Lostal, DE-OBJECTIFYING ANIMALS: COULD THEY QUALIFY AS VICTIMS BEFORE THE INTERNATIONAL CRIMINAL COURT? (Lostal, 2021).

The article explores a critical and evolving discourse within international law: the legal status and protection of animals. Traditionally considered mere property under the law, this article challenges this perspective, advocating for the recognition of animals as victims and potentially even rights holders within the framework of international criminal justice.

44. NOMORE50: WILL INDIA FINALLY AMEND THE PREVENTION OF CRUELTY TO ANIMALS ACT AFTER 63 YEARS? (India Times, 2022).

The article effectively highlights the pressing need for amending the Prevention of Cruelty to Animals Act in India. It sheds light on the outdated nature of the existing legislation and the inadequacy of its penalties, which have failed to curb animal cruelty effectively. The campaign ‘Nomore50’, with its widespread public support, emphasizes the urgency of addressing this issue and ensuring that animals are provided with adequate protection under the law.

45. Bhumika Indulia, MOTHER NATURE IS A LIVING BEING HAVING LEGAL ENTITY? MADRAS HC ANSWERS., (Indulia, 2022).

The article discusses a landmark ruling by the Madras High Court, where it declared *Mother Nature* as a living being with legal personhood. This means that Mother Nature is now considered to have rights, duties, and liabilities similar to a human being. The Madras High Court's decision is a bold and innovative step towards recognizing the intrinsic value of nature. By granting legal personhood to Mother Nature, the court acknowledged the interconnectedness of humans and the environment. This ruling could potentially pave the way for a more eco-centric approach to jurisprudence in India and beyond.

46. Iyer, V.R. Krishna, THE RIGHTS OF OUR ANIMAL BRETHREN (2014).

The article advocates for a radical shift in how we perceive and treat animals. Drawing upon spiritual wisdom and ecological principles, the author argues that all living beings are interconnected and share a fundamental right to existence and well-being. By advocating for a more compassionate and just approach to animal welfare, the article makes a significant contribution to the ongoing discourse on animal rights by exploring the ethical and spiritual dimensions of our relationship with the animal kingdom.

47. Clark, N. L. (2000). Parens Patriae and a Modest Proposal for the Twenty-First Century: Legal Philosophy and a New Look at Children's Welfare. ***Michigan Journal of Gender and Law***

The paper provides a meritorious insight into the understanding of doctrine of *Parens Patriae,* and how the doctrine has been used over the years in order to protect the interests of those who could not have protected it themselves. Though the orientation of the paper is towards children and their best interests to be considered and how sensitively and cautiously the doctrine of parens pateria be applied in such matters, the philosophical underpinning of the paper helps understand the doctrine better.

Case-Laws-

48. Animal Welfare Board of India v. A Nagaraja (2014)

A truly landmark judgment of the two-judge bench of the Supreme Court of India, famous as the Jallikattu-1 case, and hailed as the 'magna carta of animal rights in India'. This case has to test the legality of customs such as Jallikattu (a bull taming festival in the state of Tamil Nadu) and bullock cart races in Maharashtra on the touchstone of cruelty to animals. The Court, making reference to the animal law jurisprudence and constitutional philosophy along with the Act of 1960 aimed at preventing cruelty, held these practices to be illegal and violative of the Act of 1960, causing unnecessary pain and suffering to animals.

49. Animal Welfare Board of India v. Union of India (2023)

This judgment, delivered by the five-judge bench of the Indian Supreme Court recently in 2023, stood as an embargo on the speedily developing animal law jurisprudence in India. This judgment overturned the ruling of Jallikattu-1 (delivered in 2014) by lifting the ban on Jallikattu in the state of Tamil Nadu by holding that post Jallikattu-1, the rules that are made by the state make sure that no unnecessary pain and suffering is inflicted on the animals (bulls in the given case). A widely criticized judgment among the animal law activists and one against which a review has been filed at the Apex Court of India and is pending consideration.

50. State of Oregon v. Nix (2015)

The Supreme Court of Oregon faced an issue concerning the victimhood of animals. The broad issue before the Supreme Court was that whether the defendant in the instant case is guilty of 20 separate punishable offences, which necessarily involves the determination of the question that whether animals are victims within the meaning of anti-merger statute. The Court, on careful examination of the text and context of the applicable statute and having gone through the evolution of legislation on the subject of animal cruelty, concluded that the legislature clearly attributed victimhood to the animal suffered and therefore the term *victim* would encapsulate animal suffering neglect.

51. State of Oregon v. Fessenden (2013)

Yet another significant ruling by the Oregon Supreme Court, which has the potential to further the animal law jurisprudence. An ailing horse was seized and saved from one's property by the deputy Sheriff and it was claimed that sheriff's

seizure of the horse was justified given the "emergency aid" doctrine, which creates a little exception for law enforcement officers to enter a property without warrant when "immediate aid to persons or to prevent harm or suffering" is needed. Getting the information from neighbours, the Sheriff rushed and did not wait for warrant to enter the property looking at the devastated condition of the animal. The Court held that action legitimate and also allowed the evidence to be presented.

52. Maya D. Chablani v. Radha Mittal (2021)

The Delhi High Court encountered a pragmatic issue causing good level of chaos in residential societies. The tussle between those feeding the stray animals and those who are scared of them and don't wish to face the community dogs in the vicinity. The Court held that the community dogs have the right to food and the citizens have the right to feed community dogs. It expanded on the word "compassion" within the Indian Constitution and extended this fundamental duty of citizens towards animals to include the duty of feeding the stray animals.

53. M K Ranjitsinh v Union of India (2021)

MK Ranjitsinh Case, the Supreme Court of India, stood at the crossroad of energy sector development and habitat conservation of the Great Indian Bastard (GIB). The matter concerned laying down of overhead transmission lines for the power transmission which were proving disastrous for the GIB. In its 2021 judgment, which we refer as GIB -1, the court ruled in favour of the habitat conservation of the GIB and ordered not to lay overhead transmission lines from the sensitive area, essentially giving precedence to habitat and specie conservation over infrastructure development.

54. People For Animals v. Md Mohazzim & Anr (2015)

This case involves a petition filed by PFA (People for Animals) challenging that a person in New Delhi keeping a large number of birds in small cages is in violation to the rules of PCA. The Court, taking lead from the A Nagaraja judgment of 2014, held that animals have a fundamental right to 'live with dignity' and therefore birds have a fundamental right to fly in the sky and humans have no right to keep them in small cages. It was ordered that the birds be set free in sky. This is where a higher court expressly recognizes animal rights in India and that too as a 'fundamental right'.

55. Soman v. State of Kerela (2012)

In this matter, the Supreme Court of India, delved into the 'proportionality analysis', in context of the appropriate sentencing for the offence committed. In India, there are no legislatively enacted sentencing guidelines and therefore the judiciary's contribution in this regard is pertinent. The rationale for the relevance of this case to this study is to assess whether the considerations directed for sentencing have been applied in animal cruelty matters also.

56. Center for Environment Law v Union of India, (Supreme Court of India, 2013)

In this landmark judgement, the Supreme Court of India addressed the issue of relocating Asiatic lions from Gir Forest to Kuno Wildlife Sanctuary. The court emphasized an eco-centric approach, prioritizing the species' survival over political considerations. It held that the translocation was necessary due to the vulnerability of the lions in their single habitat. This landmark judgment is significant for prioritizing species conservation, upholding the authority of scientific bodies, and demonstrating judicial activism in environmental protection.

57. Lalit Miglani v State of Uttarakhand (Uttarakhand HC, 2017)**.**

The case granted legal personhood status to the Himalayas, glaciers, streams, water bodies, and other natural entities in the state. The court took this unprecedented step in response to the government's failure to address the severe pollution and degradation of the Ganga River, as ordered in an earlier ruling. By conferring legal personhood, the court aimed to empower these natural resources to be protected and preserved, with designated "parents" or custodians responsible for upholding their rights. However, the practical implementation of this ruling remains unclear, and the Supreme Court later stayed the order, citing legal and practical concerns.

58. Urvashi Vashist & Ors. v. Residents' Welfare Association & Ors (Delhi HC, 2021).

The case addressed the issue of stray dogs in residential areas. The court directed that animal feeders should not be harassed for feeding stray dogs. It also ordered the Resident Welfare Associations (RWAs) and Municipal Corporation to work

together to manage the stray dog population humanely. The court emphasized the importance of addressing this issue to prevent residents from facing the menace of stray dogs. This ruling aimed to strike a balance between the concerns of residents and the welfare of stray animals in the city.

59. Tennessee Valley v. Hill (United States SC, 1978).

In, the Supreme Court ruled that the nearly completed Tellico Dam project must be halted due to its threat to the endangered snail darter's habitat, despite the dam being 80% finished and Congress continuing to fund it. The Court held that the Endangered Species Act required protecting the snail darter, even if it meant stopping a previously authorized federal project. The 6:3 decision affirmed that the Act's plain language took precedence over the potential benefits of the dam. The dissent argued applying the Act to projects already underway would lead to absurd results, but the majority emphasized it was Congress' role, not the Court's, to amend the law.

1.8 Limitations of the Research-

- **Scarce Literature**: Since animal law and animal rights are yet to become mainstream law, the amount of literature available on the subject within law and policy is far less compared to conventional disciplines like criminal law, mercantile law etc.
- **Lack of Global Framework**: There is no UN Convention or Declaration dealing with animal rights/animal law, which is a limitation in the growth and development of animal law/animal rights law.
- **Generalizations and limit of scope**: The research caters to animal law in general and for comparative context keeps the animal welfare law/anti-cruelty law as the yardstick, which essentially includes the statute concerning humane treatment of animals. The special laws pertaining to wildlife protection and specie conservation have not been focused upon specifically. The results may not apply in case of those specific laws. The same applies to vast amount of delegated legislation been made under the Indian law vis-à-vis preventing animal cruelty on various aspects. Also, the researcher has discussed the animal welfare and animal rights approaches in the research. However, the way animal

rights approach has manifested in the jurisdictions of the world are from two paradigms, one is through the 'rights of nature' route and the other is specific recognition of 'animal rights' (which may be an offshoot of social justice approach). The nuances, politics and challenges of both the dimensions have not been covered in the research.

- **Minimalist attention among the legal fraternity**: The subject of animal law/animal rights seems to be at the last in the list of priority in the legal fraternity be it judiciary, litigators or even academia. It was very difficult to establish a constructive conversation/discussion around the subject for receiving varied perspectives.

1.9 Overview of the research (An Eagle's View)-

The world is as it is. There are humans (homo sapiens) and there are lot of non-humans (which includes plants, trees, mountains, rivers, animals etc.), which jointly make this world as it is. There have been a lot of approaches and perspectives to look at the relationship of humans with non-humans. This research explores this relationship of humans with the non-human animals. The research tries to ponder upon the theoretical framework for animal law and the consideration of animals within the moral and legal spectrum. The research is titled as *Animal Law in India: A Jurisprudential Analysis* since it tries to understand the basis of animal law and also what approaches have been preferred by the law to shape the animal law in India. In order to be able to better explain what the research covers, it would be better to lay down a chapter wise overview of the work attempted through the research, which is as follows-

Chapter 1- Introduction to the Thesis. The Chapter the research question, hypothesis, literature review and chapterization of the thesis.

Chapter 2- Philosophical Foundation of Animal Law. The chapter discusses the leading philosophical and jurisprudential contributions and contributors which have shaped the discussion on animal law and animal related jurisprudence. The discussion which has shaped the position of animals as 'subjects of law' is also attempted to be explained here. It also discusses the leading approaches and theories which have impacted the growth and evolution of the domain of animal law, namely, Eco-centricism, Deep Ecology Approach, Parens Pateria, the shift

from anthropocene to eco-centric approach. The question of legal personhood of animals is also attempted to be discussed here.

Chapter 3- Duty Based and Rights Based Approaches to Animal Law. In contemporary discussion on animal law, there are two dominant approaches which define the legal relationship of humans with non-human animals. One of them is the animal welfare approach (which is also the duty-based approach) which has been in practice from long time, and which asserts that humans have duties towards animals (direct and indirect). The research discusses in detail what is proposed by the animal welfare approach, and it also tries to explain the evolution of animal welfare approach in the legal sphere through a heading 'from Bentham to Singer: the journey of animal welfare approach" wherein it mentions the impact of two prominent philosophers in development of this approach, Jeremy Bentham, and Peter Singer. The research also discusses the other prominent approach, which is a relatively recent development, Animal Rights approach, which propounds that humans just don't have duties towards animals to ensure 'humane care and treatment of animals' but animals (especially some higher animals) have rights which restrict the humans to make use of animals for their whims and wishes. The research also discusses the leading contributor behind this approach of animal rights, Tom Regan, and his work in development of this approach so as to become a significant approach in the theoretical framework of animal law. The research further discusses the contemporary developments in the domain of animal law (in specific) and environmental law (in general) which have furthered the rights-based approach. The research discusses the Indian law and attempts to understand the legal developments in India concerning animals have come from which approach, the rights based, or the duty based. It looks into the Constitution of India, the Prevention of Cruelty to Animal Act, 1960 to deduce that the legislative interventions in India towards animal law have been towards the duty/welfare-based approach. However, the recent development that have happened through the judicial interventions are more towards the rights-based approach. This makes the animal law in India an interesting case where the legislature and judiciary are both moving in different ways towards animal welfare. And with global developments towards the *rights of nature*, it would be interesting to

witness when the legislature in India heads towards the rights-based approach (as suggested by the Indian judiciary also).

Chapter 4- Deducing a suitable approach for animal welfare in India- This part of the research attempts to critically analyze the animal law in India. To do that, the research does a comparative study of several jurisdictions, through the reference of secondary data. Also, the research makes a critical analysis of the recent amendments proposed to the Prevention of Cruelty to Animals Act, 1960 through the Bill of 2022. Since, animal law in India is too wide in itself (encompassing even the wildlife protection laws), the research here confines itself to the aspect of animal cruelty for comparative purposes and through that attempts to analyze the effectiveness of animal law in India. The attempt which research makes is to deduce a legal mechanism which is futuristic and eco-centric.

Chapter 5- Positioning Animals in Criminology & Victimology as 'Victims of Crime'. There have been many researchers under ethics and pertaining to cruelty of animals or finding philosophical basis for ethical treatment of animals but very limited ones on assessing the status of animals as victims of crime. The domains of criminology and victimology have also been affected by speciesist tendencies wherein the positioning of animals and the themes of animal abuse or animal cruelty have seldom found their place in criminological and victimological literature. The research discusses this aspect of invisibilized victimhood of animals in criminal law and inquires the status of animals as stakeholders in criminal justice in capacity of the victims. The research also provides for the recent developments through judicial interventions in the state of Oregon (in the matters of Nix and Fessenden), which have paved way for new perspectives of recognizing the victimhood of animals, despite the technical obstacles of legal personhood or other such like challenges. The research also discusses the scope of restorative justice and community service sentences as effective measures in matters pertaining to animal cruelty/animal abuse to bring the animals in the mainstream of criminal justice. This part of the research makes observations from the critical criminal law perspective.

Chapter 6 - Conclusion and Recommendations. The research questions are answered, and hypothesis is tested. Conclusions and suggestions from the research are set out with further area of future research.

Through this introductory part, the research has tried to lay down the several aspects which are necessary to be determined before furthering or advancing in the merits of the research theme. This part mentioned about the motivation behind selection of the research theme, the statement of problem, the research objectives, the research questions, the research methodology, the hypothesis, the literature review, and the summarized description of chapters along with the aspects covered in each of the chapters.

CHAPTER 2

PHILOSOPHICAL FOUNDATIONS OF ANIMAL LAW

2.1 Animals as subjects of law/moral consideration – notable contributions

Since animals have been partners of the humans in the affairs of the world, the relation of humans and animals and the subject of treatment of animals by human beings has been a subject of ethics and philosophy also.

The debates and discussions on protecting animal interests have been complex and diverse. The complexity and diversity are such that these can be placed at various levels. One of the levels being that animals be recognized as possessors of rights since they have legitimate interests in their existence and those must be protected. The second level being that animals may not be suitable subjects for *rights* discourse and therefore animal interests must be protected without entering the rights discourse for animals. The alternative to it being the duty-based approach wherein the duty/obligation of the of the humans towards non-human beings is advocated. The third level being where animals are not even considered subjects of moral consideration and therefore there exists no duty owed by human beings towards them. These levels discussed above are themselves complex and diverse since there are many sub-levels within them which are further like a pandora box.

Robertson, in his book, Animals, Welfare and the Law, under the head *Philosophy in animal welfare and law*(Robertson, 2015) extensively covers about the philosophical pointers about animal welfare, which have been instrumental in shaping the law and policy on the subject. Few notable philosophers who have been indispensably quoted and referred extensively in the discussions encompassing animal welfare and the law are –

- Rene Descartes
- Immanuel Kant
- John Locke
- Jeremy Bentham
- John Rawls
- Peter Singer
- Tom Regan
- David Favre
- Martha C Nussabaum
- P P Mitra

They have been some of the notable philosophers whose opinions have shaped the law on animal welfare and the law.

2.1.1 Rene Descartes (1596-1650) was a French philosopher, a mathematician, and a writer. He was of the opinion that human mind was separate to the rest of the physical universe and that there is a linkage of human mind with the mind of God or divine. Also that, the non-humans lack this and they did not possess soul, minds or ability to reason. They were automata. Regarding non-humans, Descartes opined that even though the non-humans could see, hear and touch, they could not feel pain or experience suffering. His philosophy had profound negative impact on the animals. Denial of experiences of pain and suffering for non-humans may legitimize any kind of inhumane treatment of animals. His theories regarding animals had profound negative impact on the welfare of animals or compassionate treatment towards them(Robertson, 2015).

2.1.2 John Locke (1632-1704) was a British philosopher who opined from the standpoint of morality that unnecessary cruelty towards animals was morally wrong. He also opines that animals have feelings. He opined so with a view that causing death, pain or suffering to animals would *harden peoples mind even towards men* (Robertson, 2015). It perhaps had to do with humans.

2.1.3 Immanuel Kant, 1724-1804), was a German philosopher and a notable jurist referred extensively in legal theory in the study of law. Kant opined about duties of human towards both humans and non-humans, with a explanation that

perpetration of cruelty to animals was morally wrong solely on the ground that it was bad for humans, in a way, unbecoming for a human. He proposed that *cruelty to animals is contrary to man's duty to himself,* and the reason he ascertained was that *it deadens in him the feeling of sympathy for their sufferings, and* he goes on to propose that resultantly *a natural tendency that is very useful to morality in relation to other humans is weakened* (Robertson, 2015). In a way, Kant is coming close to John Locke on this point as both of them derive this duty towards non-humans from the ethical and moral dimension. Kant further developed on his observations and worked towards recognizing a link between violence to animals and the characteristics of people who perpetrate suffering on animals. Kant's philosophy has contributed to propelling extensive research towards violent behaviour.

2.1.4 Jeremy Bentham (1748-1832) was a renowned philosopher and jurist from England. Studies in jurisprudence and legal theory are incomplete without reading his work on positivism and utilitarianism. His opinions about animals could be referred as antithesis of Descartes views. Wherein Rene Descartes speaks from an insensitive point of view towards animals and holds compassion towards them as unreasonable, Bentham takes a sensitive point of view holding animals as *sensitive beings & objects of benevolence* and attaches great value to the pain and suffering of animals, so much so, that his statements are quoted an opening remark on almost any discussion aimed at animal welfare. His famous statement that is most referred to and quoted in animal law discussions is that ***the question is not, can they reason? Nor can they talk? But can they suffer?*** Owing to this sensitive approach towards animals and recognition of pain and suffering of animals, Bentham's contribution towards development of animal law remains unparalleled. In fact, his view that people have a responsibility to ensure animals do not experience unnecessary and/or unreasonable pain and suffering continue to be the foundational principles of animal welfare law across the globe(Robertson, 2015). It is one of the core principles that has impacted the law and policy towards cruelty to animals in almost every jurisdiction that has a legal mechanism in place regarding animal protection. Bentham may be credited for bringing a shift from a purely anthropocentric approach since he opined for the compassionate treatment of animals for their own sake, not solely

for human interests even morality. Among all philosophers and jurists who have contributed towards animal welfare law, Bentham stands tallest in stature for creating the amount of impact on the law and policy for future towards animal protection and welfare.

2.1.5 Peter Singer Peter Singer is an Australian Philosopher. He specialis es in applied ethics. His work in the form of his book Animal Liberation, is considered a significant work in animal rights literature.

He is one of the most influential contemporary philosophers working in the domain of animal law and policy. He does an insightful analysis of the human--animal relationship and brings many new perspectives to the forefront of animal law discourse. Among the modern-day contemporary literature on animal welfare/animal interests, the work of Peter Singer stands out, so much so that Courts have been making frequent references to his work, while ruling about animal law jurisprudence matters(*AWBI v A Nagaraja & Ors.*, 2014). Interestingly, Singer proposes a principle of equality, which does not advocate about equal or same rights as that of humans but advocates for fair consideration of the interests of the animals (in avoiding suffering). Singer's theory advocates *at least a starting point that gives equal consideration to each group's interests. Speciesism is naturally a barrier to purist's application of Singer's theory* (Robertson, 2015). Singer engages deeply with the concept of speciesism and how the speciesist approach creates challenges in recognition of the basic and minimal animal interests. He compares speciesism with sexism and racism and opines that speciesism is also loaded with the similar kinds of prejudices with which exclusionary trends of sexism and racism are loaded.

2.1.6 **Tom Regan** (1938-2017)

Among the contemporary scholars of animal law, Tom Regan stands as an important contributor to the theory of animal law, particularly animal rights. His major contributor is his book *The Case for Animal Rights,* which opines that non-human animals do have rights(Banaszak, 2023). Regan argues in his work that animals have rights because they are *subjects of a life*, just like human, and therefore there is an intrinsic value in their existence, regardless of it being recognized by humans or not. In establishing the 'subject of a life' criteria, he focuses on the ability to perception, memory, feelings of pain, pleasure, desires,

and goals. Relying on these indicators, Regan contends that animals have value in and of themselves, and it is not fair to hold them just as property or resources for human interests. Regan contends against the use of animals in science also. Regan objects to trapping, hunting and commercial agriculture also.

2.1.7 **Steven M. Wise** –

Steven M. Wise is an American legal scholar. His specializations are in Animal Protection Issues, primatology and animal intelligence. His prominent contributions in Animal Law have been the two books namely Rattling the Cage (2000) and Drawing the Line (2002).

Wise has been called as *one of the pistons of animal rights movement* by the Yale Law Journal. Wise took the scholarship of animal law and animal rights further than Tom Regan. One of his books *Rattling the Cage: Toward Legal Rights for Animals* (Wise, 2000) is a significant literature which takes both legal principles and scientific facts to make a case for animal rights, particularly for Chimpanzees and Bonobos. The book presents a very clear picture of the Anthropocene notions which informed and shaped our perception and treatment towards animals and much of it informs the law and policy. It's the universe of 'Anthropocene' notions, in which, unfortunately, animals are trapped. The book very meritoriously takes the reader through the journey that how the 'unfortunate' non-human animals remained excluded from the Greek Justice, and then Stoic justice, and finally from Christian justice also.(Wise, 2000). Also, one after the other, philosophy, science, theology and ultimately law got informed of the Anthropocene ideas and with such a gripping effect that any resistance to the notions was difficult. The book uses several pointers to convey those anthropocene notions- The Great Chain (Wise, 2000), the divine plan (Wise, 2000), Aristotle's Axiom (Wise, 2000). The part the *legal thinghood of non-human animals* very succinctly explores how such notions permeated jurisprudential ideas and gained so much stability that they inform the jurisprudential notions even now (Wise, 2000). The 'thinghood' of animals, the treatment of animals as 'property' and not 'person' are still glaring challenges before the jurisprudential and legal to extend remedy to the animals. Through the book, Wise opens the pandora box concerning questions surrounding welfare of non-human animals through this book. In a way, the book attempts

to make us introspect how easily we give up on the concerns for animals and pass on the stereotypical ideas and notions generations after generations, thus, bringing little or no change in the lives of non-human animals.

2.1.8 **David Favre**

David Favre, a professor at law, is one of the leading contributors to the animal law theory has written extensively on the theme of animal law, particularly on the property status of animals. Having worked in the theory of animal law for a good time, Professor Favre has covered the theme with many nuanced pointers and provided detailed suggestions in the changes in law to further animal welfare. For instance, in his work titled "*Integrating Animal Interests into our legal system*",(Favre, 2004) he contextualized the legal system of USA and gave suggestions on the legislative, executive, and judicial fronts to help evolve the status of animals in law. He proposed creation and recognition of *a new legal tort,* to be used by animals against humans (Favre, 2004). Being a scholar on property law also, Favre has critical remarks on the question of animals being considered property. Whereas he aims at animal welfare, he asserts that most activists of animal rights have an incorrect understanding of property law and that to seek abolition/elimination of property status of animals would be unwise and unnecessary now (Favre, 2004). The focus in Favre's work is towards creating a balance between the relationship of humans and animals through a systematic step by step process in this direction, having clarity on long term and short-term goals and aspirations. This is reflected evidently from the title of one of the leading books authored by him – "Respecting Animals: A balanced approach to our relationship with Pets, Food and Wildlife"(Favre, 2004).

2.1.9 Martha C Nussabaum-

One of the leading moral philosophers in the modern world, Martha Nussabaum, contributed to the theory on animal welfare/animal rights through one of her leading books, *Justice for Animals: Our Collective Responsibility*. According to her, justice for animals connotes allowing animals the freedom to live ***their full lives***. She relies on "capabilities approach", which considers not only the harm done to the animals, *but also whether we are infringing on their freedom to live full lives*(Resse, n.d.). One of the observations of Martha C Nussabaum, which reflects, a view in accordance with the Eco-centric

approach(*Better Lives for All Us Animals in Martha C. Nussbaum's "Justice for Animals" - Chicago Review of Books*, n.d.) -

All animals, both human and non-human, live on this fragile planet, on which we depend for everything that matters. We didn't choose to be here. We humans think that because we find ourselves here this gives us the right to use the planet to sustain ourselves and to take parts of it as our property. But we deny other animals the same right, although their situation is exactly the same. They too found themselves here and have to try to live as best they can. By what right do we deny them the right to use the planet in order to live, in just the way that claim the right?

2.1.10 P.P. Mitra (Mitra's Compassionate Jurisprudence) –

One of the leading contemporary scholars of animal law in India, Professor Partha Pratim Mitra (hereinafter referred as Mitra) has done extensive work on animal law in India (including the law concerning wildlife in India). In his work of following up with the judicial trend towards development of animal jurisprudence in India, he discovered the concept of "compassionate jurisprudence", which he claims as inherent in the Indian Constitution (as a fundamental duty). His article titled "From the 'Fundamental Right to Food' to the 'Fundamental Duty to Feed': The development of Compassionate Jurisprudence", published in the Economic and Political Weekly, makes the argument concerning compassionate jurisprudence in India(Mitra, 2023). Mitra, essentially, lays observations from the Maya D Chablani judgment of the Delhi High Court (also supplements his observations through other judgments also) and commends the Honorable high court in attempting to acknowledge "compassion" and extend this fundamental duty of citizens towards animals to include the duty of feeding the stray animals.

Mitra relies heavily on Maya D. Chablani Case and Mirzapur Moti Kureshi Kassab Jamat case to deduce the concept of compassionate jurisprudence since in both the cases the courts acknowledged and interpreted "compassion towards all living beings", which is a fundamental duty of all citizens to deduce a welfare oriented and animal welfare advancing approach which shapes the human-animal relationship much better than before. Maya D. Chablani case is based on

a very practical scenario of factual matrix representing diverse and conflicting interests of two sections of the society- one which chose to love animals and care for them and therefore consider it their right as well as duty to feed the stray dogs and the other section of the society, who get disturbed witnessing such acts of feeding of stray dogs since they consider stary dogs to be a 'threat' to safety and security of the human inhabitants in the surrounding. This tussle of interests was attempted to be resolved by the Delhi High Court by acknowledging the merit in the assertion/grievance of both the views and then suggesting an assimilative approach to strike a balance between these conflicting views. In this regard, the court acknowledged that fear may be one important factor which may be attributed to lack of compassion. (*Maya D. Chablani v Radha Mittal 2021*, 2021). Further to acknowledging these diverse views, the Delhi Court also suggested an approach which required understanding from the owners of both the views to have consideration for the interests of the other view. Stating practically, it means to connote that those who wish to feed the stary dogs may do so since its their right and just because some people think it's not good, they should not stop feeding the dogs. However, they must also realize this must not cause harassment or disturbance to others and therefore they must only feed at some designated locations and at some designated durations so that those who 'fear' stray dogs may arrange for themselves and get least disturbance. Feeding stray dogs may be a right but they can't be fed anywhere, anytime just because it is compassionate conduct. The Court, in this regard, observed that:(Maya D. Chablani v Radha Mittal, 2021)

"*Community dogs have the right to food and the citizens have the right to feed community dogs but in exercising this right, care and caution should be taken to ensure that it does not impinge upon the rights of others or cause any harm, hinderance, harassment or nuisance to other individuals or members of the society*."

Mitra hails this judgement and calls it "*a milestone on the field of stray animal laws and a landmark trendsetter in the area of animal protection jurisprudence in India*"(Mitra, 2023). Further, In the case *Moti Kureshi Kassab* (*State Of Gujarat vs Mirzapur Moti Kureshi Kassab*, 2005), the honorable Supreme Court of India emphasized on the "rich heritage" of India through which the idea of

compassion for living creatures gets support and inspiration. The Court mentioned of India as the great land from where so many visionaries such as Gautama (the buddha), Mahavira, Nanak and Gandhi hailed and taught compassion.

The animal protection/welfare jurisprudence is evolving slowly and gradually in Indian scenario. Some landmark judgments (including the ones discussed above) play a significant catalyst role in the development of this jurisprudence for animal welfare. Certainly, Article 51A (g) is a provision of untapped potential and whole new approach (as discovered by Professor Mitra in the name of compassionate jurisprudence) may contribute greatly towards recognition and protection of the interests of animals in India. Compassionate jurisprudence within the Indian Constitution as well as judgments on whom it bases itself (as aforementioned and as discussed by Professor Mitra) are both going to shape the animal welfare jurisprudence for times to come.

2.1.11 **Religious and Philosophical Basis of Animal Welfare- The East and the West**

This part does a study about the treatment of animals by humans as depicted by the religions of the world, primarily a comparison between the religious philosophy of the East and the West and the major pointers of differences amongst them and how they shaped the beliefs and jurisprudence around animal law and policy. The roots of the beliefs, perspectives, and attitudes towards animals were greatly shaped around theology, both in the East and the West.

In the East, Hinduism, Buddhism and Jainism, all played an immense role in shaping the philosophical foundations for treatment towards animals and imbedded the idea of 'Non-violence' or 'Ahimsa' in the philosophical roots of the East. Similarly, Hinduism had an approach which could see the entire existence as one (Eco-centricism). Therefore, deep regard for the existence of plants, trees, forests, animals, birds, and other non-human entities was embedded in the very manner of thinking and behaving with the outside world. East, therefore, could envision beyond human interests. In Hinduism, various animals are related to the Gods and deities in several ways, which also generates a feeling of reverence for animals. For e.g.- Lord Ganesha connected to

Elephants (having the face of an elephant), lord shiva connected to Snakes (placing the snake over his neck), Goddess Durga connected to the Lion and Tiger (both being the chariots of the Goddess), Lord Hanuman connected to Monkeys (existed in form of a monkey) and many more such illustrative instances. Even the daily behavioural patterns were shaped in a way which presented reverence for non-human animals and their lives. Few examples being cooking the first chapati of the day for Cow, feeding the crow, fishes, birds, dogs, monkeys and even ants have been few unique examples which present a picture that the daily life patterns were not surrounded by merely human considerations, they were equipped with beyond human considerations. One of the holiest religious texts of Hinduism, Mahabharata, criticizes the practice of eating meat by mentioning “the meat of other animals is like the flesh of one’s own son. The foolish person, stupefied by folly, who eats meat, is regarded as the vilest of human beings”(Chandola, 2002).

The Indus Valley civilization is renowned for its religious beliefs that animals should be respected as ancestors reincarnate in animal form. Buddhism, Jainism, and other south Asian religions all share this belief. Two tenets of the human-animal interaction were promoted by these religions: treating all living things with kindness. Furthermore, they believed that killing any living thing was sinful. The second idea permits people's souls to reincarnate as non-human animals and vice versa. These lessons led to a disdain of needless death, the promotion of vegetarianism, and the idea that the foundation of any civilization is a sense of kindness towards all living things.

The understanding of Jainism towards life may be best summarized by the following quote from one of the religious works known as the Acaranga Sutra, which provides that "All things are fond of life; they like pleasure and hate pain, shun destruction and like to live. To all, life is dear.” This understanding and approach of Jains point towards the intrinsic value of life. Also, that, unlike the Cartesian view, Jainism clearly recognized the sentience of animals. In Jainism and other eastern religious traditions, much different from the Judeo-Chirstain view, man is not considered the center of the universe, but merely a part of it, like any other being. These traditions completely decline the dominion approach as in the western traditions. King Ashoka, the Great Indian King, who hailed

from the Mauryan Dynasty and who was a very violent and ambitious king, embraced Buddhism religion and thereafter propagated the core tenets of the Buddhism, tolerance and non-violence. After embracing Buddhism, Ashoka renounced all violence and military conquest, even cruelty to animals(Rattini, 2019).

One of the historical sites connected to King Ashoka and Buddhism is the Rock Edict at Khalsi (Dehradun, Uttarakhand)("Exploring the History and Significance of the Kalsi Rock Edict," 2022). The Rock edict was originally written in Prakrit language. The contents of the edict translated by the Indian Archaeological Department in English language and renouncing cruelty towards animals and prohibition on animal sacrifice were instructions given to his subjects by the King Ashoka, inter alia. The Edict writes that "To implement his policies, Asoka put restraint in killing animals for the Royal Kitchen and established hospitals and planted medicinal herbs for both human beings and animals". This clearly reflects the approach of non-violence and compassionate treatment towards animals. Below is the picture of the Rock Edict at Khalsi (Dehradun).

Image Source -(Verma, 2019)

The religions of the West, differ in approach from the eastern religions as they derive their basis in the Ancient Greek and the Judeo-Christian tradition and mostly driven by the belief of natural superiority/dominion of humans over non-

human beings. Starting from great Greek philosophers like Aristotle (who propounded the idea of Great Chain of Being) placed humans at the pinnacle of the creation and animals and plants below humans. He believed the animals exist 'for the good of the man'(Mohapatra, 2020). According to him, plants existed for animals and animals existed for humans.

Further to Aristotle, St. Thomas Acquinas, one of the highly revered Christian philosophers, believed that "man occupies a position between God and animals within the universe", which aligns with the ideas of Aristotle on broadly philosophical parameters establishing the dominion of the man over animals. The philosophy flowing from Christianity that 'the man was created to have dominion over the fish of the sea, the birds of the air, and over every living being that moves on earth"(*Genesis 1:26-28 English Standard Version 2016 (ESV)*, n.d.), also known as the dominion approach, firmly established the man's superiority over other living beings of the universe, which is in contrast of the eco-centric beliefs, which informed the religions of the East. Acquinas also believed that inflicting pain and injury over animals is not per se wrong towards animals since humans have no duties towards animals; however such a behaviour will give rise to cruel tendencies in humans, and they may practice the same over other fellow human beings. By far, Acquinas goes close to believing that animals are akin to objects, who exist for the service of humans. The philosophy of Acquinas played a major role on shaping Christian beliefs towards animals.

To summarize, the West followed the utility approach more concerning the animals wherein animals could be used by the humans as per their wishes and pleasure since the rationale for the existence of other animals is to serve humans and make their lives easier and convenient, either for the fulfilment of material ends or for the spiritual ends.

Even the Renaissance could not bring a drastic change in the perception of humans towards animals, though it has a scientific basis. Its major focus was on human abilities and animals were again excluded from moral consideration. One of the significant figures who shaped the European idea towards animals was 'Rene Descartes', who had a significant regressive impact over humane treatment of animals since his belief was that animals were like machines,

without souls or consciousness. His approach gave a major push to vivisection and many scientists of Europe started calling them 'Cartesians' giving support to the idea of Descartes. Since then, many important contributions have happened towards moral and legal consideration of animals. A few big names could be Bentham, Kant etc., which have already been discussed in the first part of this chapter under the head 'notable contributions'.

Let us find a semblance, a bridge, a thread between the sayings of Jainism, where it declares that "all things are fond of life; they like pleasure and hate pain, shun destruction and like to live. To all, life is dear"(Chandola, 2002) and the research of a westerner Humphry Primatt, who wrote one of the first works entirely devoted to demolishing animal cruelty. He mentioned that "pain is pain, whether it be inflicted on man or on beast; and the creature that suffers it, being sensible to the memory of it while it lasts, suffers evil"(Primatt, 1776).

2.1.12 Summing Up the Philosophical Contributions

The researcher began with the hypothesis that the approaches towards animal welfare, mainly the welfarist approach and the rights approach are mutually exclusive and adverse to each other. They are definitely not the same and they have differences in the manner in which animal interests and welfare perspective is asserted and advocated. However, despite the differences amongst them, they have a lot of similarities, most of which are something to be worked upon by several jurisdictions of the world. One common and extremely significant thing among both is the moral and legal consideration of animals and recognition of sentience of non-human animals and resultantly extension of the legal and moral protections of interests of animals. it may be different that Bentham and Singer would keep pain and suffering as the basis of sentience, Martha Nussbaum would keep capabilities as the basis of sentience and Tom Regan would keep 'subject-of-a-life' as the basis of sentience, the fact that remains unchanged is that recognition of sentience and treatment of animals within the moral and legal arena of consideration is present in all these approaches, primarily the welfarist and the abolitionist (rights-based approach). Very few jurisdictions of world have expressly recognized the sentience of non-human animals in their Constitutions or legislations, though they may have anti-cruelty legislation. India is also amongst the nations who have not expressly

recognized the sentience of animals within their Constitutional framework. Express recognition of sentience is the basic step and there seems to be no divulgence or contradiction amongst the welfarist and abolitionist approaches in this regard. This is the most basic thing which must be reflected in the animal law of every jurisdiction of the world. Once sentience is recognized, conferment of victimhood and express recognition of victimhood is not too far. Though the aspect concerning victimhood of animals is dealt with in detail in the fifth chapter of the thesis, it is important to mention here that sentience once recognized, would open the doors for many more legal developments towards the non-human animals. Once sentience is expressly recognized through constitutional charter or a separate statute, how long can a legal system deny victimhood? Would it not look ironical that the legal system which acknowledges that the animal has the capacity to feel pain, suffering, emotional tornados, love, affection, trust, hunger, thirst, comfort, joy, freedom, distress etc. but still not be a victim when faced with cruelty, violence, neglect and abuse. It would definitely. Also, many other things and considerations which shape the human-animal relationship would be open to re-introspection and this will impact various facets of human lives, the way we eat, the way we like to be entertained, the way we do trade and business, the way we research and do experimentations, the way we pet animals, the way we perform religious and customary obligations, the way we wear (the kind of product we use to create our dressing, e.g. Fur etc.), all in all it will shape the way we think. In researcher's understanding, most people (which includes law-makers, academicians and judicial officers), who don't engage with the question of animal welfare seriously and think that how can law treat both animal and humans equally, suffer from a bias and prejudice that they see the last step and think it's impossible and then eventually stop engaging with the question itself or blame the animal law scholarship itself claiming that they are not clear on what they want, do they want rights for animals, or protection for animals, or legal personhood, or recognition of victimhood etc. and stop it right there, hardly taking even the first step which is to recognize sentience for animals in law. And one must notice very clearly that there is no doctrinal obstacle or inconsistency on that issue even within the contemporary animal law

scholarship. The legal systems must try to approach the idea of animal welfare step by step and confer at least that to the animals, which is not even disputed in the theoretical framework. As far as the Indian legal framework vis-à-vis animals is concerned, it would be safe to mention that India is following a mixed approach since the prime law preventing unnecessary pain and suffering towards animals, the Act of 1960, follows the approach of preventing cruelty, though it establishes a board named as 'Animal Welfare Board of India' and the emphasis must be placed on the word 'welfare' here. Essentially, it's a duty-based approach or welfarist approach. The Indian judiciary, through some of its precedents, have rather taken a rights-based approach (discussed further in chapter 3) and therefore Indian law is on a very interesting juncture, and it is very difficult to say that whether Indian law follows the approach or merely preventing cruel treatment to animals or to a higher level of animal welfare or to a further higher level of animal rights. This is why the study of animal law/animal welfare law contextualizing India is a very interesting domain. Further chapters elaborate upon these aspects.

2.2 Eco-centric approach to law – A shift from Anthropocentric to Eco-centric

"We did not think of the great open plains, the beautiful rolling hills, and the winding streams with tangled growth, as "wild". Only to the white man was nature a "wilderness" and only to him was the land "infested" with "wild" animals and "savage" people. To us it was tame. Earth was bountiful and we were surrounded with the blessings of the Great Mystery. Not until the hairy man from the east came and with brutal frenzy heaped injustices upon us and the families, we loved was it "wild" for us. When the very animals of the forest began fleeing from his approach, then it was that for us the "wild west" began".

Luther Standing Bear (DEVALL, 1980).

This part attempts to understand the concepts of Anthropocentricism, eco-centricism, and analyze the shift of the approach of law from *Anthropocene* to *eco-centric*. To analyze this shift, two judgments of the Supreme Court of India

have been analyzed, namely Hanif Qureshi (1958) and the Nagaraja Judgment (2014).

2.2.1 Understanding Anthropocentricism & Eco-centricism

The discourse on 'animal welfare' is gathering great attention among legal and policy developments at the national and international fora. The phrases 'animal rights', 'animal welfare', 'eco-centricism' and 'animal law' have also been gaining attention. Human dependence on 'Animals' is ancient as human civilization itself. However, with the changes in development standards across the world, human choices and incumbent behaviour have overlooked the impact it has on the environment and its dependent beings. The unperturbed anthropocentric approach has made it imperative to introduce, expose and sensitize the generation about animal laws. A holistic approach towards existence would give us a perspective that all species or life forms other than human beings are not just matters of utility for human race or meant to serve human race. The Lt. Justice Krishna Iyer opined that God (or call Him by whatever name you like) sleeps in the mineral, wakes in the vegetable, walks in the animal, thinks in man and reaches realization when the human ascent and the divine descent meet(Iyer, 2014). In these times where the anthropocentric model of governance and policy making is gradually replaced by 'eco-centric' model of governance and policy making, it is presenting the legislators, the bar, the bench, the academia and the society in general with several questions and challenges.

Anthropocentrism is an important concept in the domain of environmental ethics and environmental philosophy. It was first coined in the 1860s to represent the idea which positions humans are the core or focal point of the entire universe (Campbell, 1983). Anthropocentrism views the world through the lens of human values and experiences, promoting human survival and progress at the expense of other living things. Our consumerist demands – especially in the wake of industrialization – are a result of this. An anthropocentric policy views nature as morally important because changing or preserving it may have negative effects on human well-being. For example, it would be unethical to destroy rainforests because they may hold the keys to

curing human diseases. It views people as the most important living form and views other living forms as important only to the extent that they have an impact on humans or are beneficial to them.(Kortenkamp & Moore, 2001). The challenge with anthropocentrism is that it keeps humans at the center of everything and everyone (including animals) and then attribute only a instrumental value to every other species other than human beings. And therefore ece-centricism is a better futuristic approach where humans are considered as one of the life forms on earth, not the entire life on earth. The observations of the Apex Court of India the celebrated case of *Center for Environmental Law* have been produced in Annexure 2 for reference. (*Centre for Environmental Law, WWF-I v Union of India*, 2013).

In contrast, "ecocentrism" refers to a reverence for nature and a way of life that values the intrinsic value and well-being of all living things. The phrase "biocentric", first used by Lawrence Henderson in 1913 to denote the theory that life originated in the universe, is the source of the term "eco-centric"(Campbell, 1983). It was also adopted by the 'deep ecologists' in the 1970s to refer to the idea that all life has intrinsic value(Nash, 1989).

Aldo Leopold developed ecological policy to protect humans and all living things. It is a philosophy that transforms the underlying values of the planet from humans to the planet itself. This idea helps our understanding that humans are merely useful components of the universe and that ecosystems serve as the creative center of life.(Kalamdhad & S.P., 2018). It claims that we are all inhabitants of the same planet with essentially the same values, and that nature does not exist solely for human consumption and survival. Since we are all inhabitants of the same planet, we have a moral responsibility to protect all living things.

The Apex Court differentiated the anthropocentric and ecocentric approach of the law and emphasized how the way of ecocene is life centered and promotes the well-being of all including humans. (*Centre for Environmental Law, WWF-I v Union of India*, 2013). There is a need to move from an anthropocentric to an ecocentric perspective which further requires a shift in values, priorities, and behavior. It requires recognizing and valuing the interconnectedness of all life on Earth, acknowledging the impact of human actions on the natural world, and

taking responsibility for ensuring the health and vitality of the planet for future generations. Individuals can take concrete steps such as reducing their ecological footprint, supporting conservation efforts and sustainable practices, and advocating for policies and practices that prioritize environmental protection and sustainability. A lot of ink has flown in understanding the "Anthropocene" and also on the impact of the Anthropocene in shaping the thought, the life and the existence as a whole. Professor Baxi provides various other ways of referring to Anthropocene, by employing the word "capitalocene".

Anthropocene perspective is best explained in the book "Rattling the Cage", which presents a description of 'human centric world' under its chapter "Trapped in the Universe that no longer exists", an extract of which is produced in Annexure 2 for reference. It essentially depicts how various kinds of claims have been made in history relating to various impoverished/exploited classes, and so is the case for animals, being one of the class themselves.

International recognition of the intrinsic value of nature has had a checkered past. The World Conservation Strategy of 1980 and the World Charter for Nature of 1982 were strongly based on ecological concepts, while the Stockholm Declaration of 1972 was anthropocentric. According to the 1987 report of the World Commission on Environment and Development: Our Common Future, the natural systems that sustain life on Earth should not be endangered by development. However, the Rio and Tokyo declarations were anthropocentric. An ecological worldview was aggressively promoted with the adoption of the Earth Charter in 2000, which urged us to: Recognize that all beings are interconnected and that the value of every form of life is independent of its value to humans (Principle 1a).

Nonetheless, the Earth Charter was not endorsed in the 2002 Johannesburg Declaration. Similarly, the UN Rio +20 summit, The Future We Want, did not endorse the inherent value of nature. In contrast, neither ecocriticism nor the inherent value of the rights of nature were acknowledged in the UN Sustainable Development Goals adopted in 2015. This contradictory past perhaps reflects the issue that anthropocentrism predominates in politics, education, and even

global religious traditions. This emphasizes how important it is for academics to advocate eco-centrism. (Haydn et al., 2017).

The movement known as "ecocentrism" favors giving rights to legal persons and nature. This movement arises from Indigenous ontology, which views humans and the non-human world as a single, continuous whole. To overcome the anthropocentrism of environmental law, the nature rights movement recognizes the intrinsic value of the environment and grants legal rights to natural phenomena.

It has gained legal recognition around the world, with the most significant developments occurring in New Zealand, Bolivia and Ecuador. However, the extent of implementation is still questionable(Sundström, 2021). For example, Ecuador's legal personhood is revolutionary, but the lack of standardized hierarchy in the constitution and the economy's dependence on oil have made these rights difficult to realize. To complete a fully eco-centric reorientation of environmental law, rights of nature need to be incorporated into national constitutions (Kotzé & Calzadilla, 2017).

It may be acknowledged that the environmental law and policy have largely been anthropocentric, with humans being at the priority. For the Global North particularly, nature and its elements are properties that exist only to serve the humans (Cullet, 2016). Thus, nature appears subservient to humans. Attempts have been made to implement global ecological ideas through international initiatives such as the 2012 Rio+20 Earth Summit, the Universal Declaration of the Rights of Mother Earth, and the Earth Charter. These achievements mean that although there is still a long way to go, the rights of nature movement is beginning to gain acceptance in international legal forums.

The conventional jurisprudential theories, by far, excludes ‘animals’ as entities capable of holding rights (Mathew & Chadha-Sridhar, 2014) The concept of ‘animal welfare’ and ‘animal rights’ are, most often, understood very differently considering the jurisprudential debate over conferring ‘rights’ to animals who are excluded from the ambit of ‘persons’ or ‘possessors of rights(Peters, 2016). The core identifier of speciesism is belief that animals to exist as secondary to human race or merely to serve the human race. As Peter Singer puts it, the belief that human life, and only human life, is sacrosanct is a form of

speciesism(Peters, 2016). It is a prejudice or attitude of bias in favor of the interests of members of one's own species and against those of members of the other species(Singer, 2009). The Court in Nagaraja remarked about speciesism and attempted to draw a comparison with other 'isms' such as racism, sexism finding a common thread of supremacy of one group/class over the other (*AWBI v A Nagaraja & Ors.*, 2014). The Court also remarked that inequalities like Casteism, Racism, Sexism, etc. have been taken care of through the Constitutional and statutory interventions and that enactment like PCA Act is attempting to take care of the inequality of speciesism(*AWBI v A Nagaraja & Ors.*, 2014).

2.2.2 Analysis of the two Judgments – Reading together Qureshi and Nagaraja

This part of the research engages with the judicial process in India with regard to the development of animal welfare jurisprudence. To do so, it does a close reading of the two judgments of the Supreme Court, which according to the research are radically opposite in their approach towards animal welfare. There is a huge time gap between the two pronouncements of more than fifty years, which puts the research in further better position to analyze and mark the changes in the approach. It must not be ignored that in the meanwhile, several legislative changes have also been witnessed through amendment in the Constitution (Part IV-A) and enactment of the statutes (PCA Act, 1960) and rules thereunder and these changes would have bearing on shaping the approach of the Court in all these years. The First sub-part discusses the Hanif Qureshi judgment, the second sub-part discussed the Nagaraja Judgment and the third part makes the pointers of analysis and marks the points of difference between the two judgments.

2.2.2.1 **Hanif Qureshi Judgment**-

The matter emanated from petitions filed under Art 32 of the Indian Constitution, raising the question of constitutional validity of three legislative enactments banning the slaughter of certain animals passed by the States of Bihar(Bihar Preservation and Improvement of Animals Act, 1956), Uttar Pradesh(Uttar Pradesh Prevention of Cow Slaughter Act, 1955) & Madhya

Pradesh(C.P. and Berar Animal Preservation Act, 1949 , 1949) respectively(*Mohd . Hanif Quareshi & Others v. The State Of Bihar 23 April*, 1959).

The states contended that they have legislative competence to enact such legislations by virtue of Art. 48 of the Indian Constitution, which obligates them *to prohibit the slaughter of cows and calves and other milch and draught animals.* The petitioners in the matter were primarily, Kasias or Butchers, and their prime arguments (though specific arguments were made concerning each state enactment) revolved around the violation of their fundamental rights under Arts. 14, 19 & 25 of the Indian Constitution. The petitioners, on the aspect of freedom of religion contended that from time immemorial, the Indian mussalmans have been sacrificing cows (at Bakr Id) and therefore this practice is protected under Art. 25. The other contention concerning Art. 14 was that the petitioners are Muslim by religion and Kasias by occupation and they carry on the trade of selling beef. It was claimed that the impugned Acts prejudicially affect *only the muslim kasias who kill cattle but not others who kill goats and sheep and who sell goats meat and mutton*. This was claimed as an unreasonable classification. The final challenge to the impugned Acts came from Art. 19 (1) (g) claiming that the Acts will compel the petitioners to close down their business, and will be a complete denial of their right to carry their occupation. Essentially, that the state may regulate but not annihilate the occupation a citizen has a right to carry on.

The Court, with regard to the reasonability of restrictions on slaughter of animals reached the conclusion that the ban imposed by the respective legislation on the slaughter of cows of all ages, is within the limits of reasonability. The same was held for the ban on the slaughter of she-buffaloes or breeding bulls as long as they are fit for milch or draught purposes. The court was of the opinion that once these animals cease to be capable of yielding milk or breeding or to serve as draught animals, the ban on slaughter cannot be reasonable and cannot be supported in public interest (*Mohd . Hanif Quareshi & Others v. The State Of Bihar 23 April*, 1959). The relevant part of the judgment giving these observations is produced in Annexure 2.

To sum up, the basis of determining the reasonability was towards *utility based or economic approach*. The concept of animal welfare/animal rights were out of question in the findings of the Court. This judgment is an appropriate illustration of the Anthropocene judicial mindset/process. Multiple times, the Court referred to useful or economic cattle and useless or uneconomic cattle in the judgment (this has been discussed in later part of the paper). This reflects that the Court was ignorant about intrinsic value of survival of animals, irrespective of their utility to humans.

2.2.2.2 **Nagaraja Judgment -**

The much-celebrated *A. Nagaraja Case* witnessed the tussle of custom/tradition/culture on the one hand and the rights of animals to be protected from pain and suffering emanating from such practices on the other hand. The case concerned the tradition of Jallikattu, bullock-cart races etc., in the state of Tamil Nadu and Maharashtra, with specific reference to the provisions of PCA Act, 1960 & the Tamil Nadu Regulation of Jallikattu Act, 2009 and also one of the notifications issued by the Central government under section 22(ii) of the PCA Act dated 11th July 2011. The prime argument of the petitioners, AWBI (Animal Welfare Board of India) was that the bulls which are forced to participate in the events are subjected to immense pain and suffering, which clearly violates Section 3 and section 11(1)(a) & (m) of the PCA Act read with Article 51A (g) and Article 21 of the Constitution of India and hence exhibition or training them as performing animals be completely banned. The prime argument of the respondent was based on few limbs- age long practice of bull taming has become the part of culture and tradition of the state, denial of cruelty and suffering to bulls during the event and finally the economic ground that Jallikattu invites a lot of revenue for the people associated with the event. It was claimed that such sports events attract large number of persons, which generates revenue for the State as well as enjoyment to the participants(*AWBI v A Nagaraja & Ors.*, 2014).

The judgment, on the basis of the reports of AWBI, listed the following violations of the law(*AWBI v A Nagaraja & Ors.*, 2014)-

a. Ear Cutting/Mutilation

b. Twisting a Bulls Tail/Fracture and dislocation of Tail bones

c. Poking the Bulls with knives and sticks

d. Using Irritant solutions in the eyes and nose of bulls (in order to agitate them)

e. Usage of Nose Ropes

f. Cramped Conditions in the vadi vasal/frequent defecation and urination

g. Forcing bulls to move sideways

h. Lack of food and water

i. Forcing bulls to drink liquor on many occasions

j. Forcing bulls to stand in their own waste for long hours

k. Bulls being beaten and agitated by Spectators

l. Restraining and Roping

The Apex court, when made to decide over a tussle between the tradition of bull taming (Jallikattu) and the concern of law for cruelty to animals gave way to the animal rights and observed that the legislation in question, PCA, is a welfare-oriented legislation and must be construed that way in the given context (*AWBI v A Nagaraja & Ors.*, 2014). Given that it aimed at emancipating animals from unnecessary pain and suffering at the hands of humans, this legislative intent must override the custom in question.

The Court held that the right to life enshrined within the Indian Constitution included the right to security and life of animals also(Brara, 2017). The Court expressed concern over the fact that neither the United Nations Organization nor the international community have taken any sincere effort in the direction of protecting the rights of animal brethren.

2.2.2.3 Points of Analysis of the two Judgments-

i.*The Binary of Useful vs. Useless***-**

The whole judgment of Hanif Qureshi is based on the binary of useful vs useless cattle. Not once has the court used the concept of animal rights or animal welfare in the entire judgment.

The concern of the Court has been towards the utility of the cattle, their efficiency, their productivity etc. but not once has the Court assumed slaughtered animals as living beings or reflected an empathetic approach

towards their right to exist. Their existence was sometimes justified from religion and sometimes from economics but not once from humanitarian lens. There is a plethora of occasions wherein the Hon'ble Court has relied on this binary, some of them are reproduced here briefly. The Court made reference to report of the Expert Committee for the establishment of Gosadans in India, stating that *the Gosadan scheme was not likely to offer any solution for the problem of useless cattle and that it would be far more desirable to utilize the limited resources of the country to increase the efficiency of the useful cattle*(*Mohd . Hanif Quareshi & Others v. The State Of Bihar 23 April*, 1959).

ii.Twisting the Tail-

The expression ***twist in the tail*** used in the title of the research is coming from the Nagaraja Judgment itself. This expression, *twisting of the tail*, is used in the judgment to illustrate one of the forms of cruelty perpetrated on the bulls at the vadi vassal in relation to the Jallikattu sport. Allegedly, the bull owners routinely beat the bulls and twist their tails in order to induce fear and pain while the bulls are in the waiting area. However, this expression is used in title is reflective of the hopeful and bright side of the shift of jurisprudence vis-à-vis animal welfare in India.

iii.Parens Patriae-

The Nagaraja Case inspired a lot of hope for welfare of animals considering that the Apex Court, which is entrusted to be the guardian of the rights of the people, stepped ahead to declare that they are also custodians of the rights of the animals under the doctrine of parens pateria. The Court mentioned that "*it has a duty under the doctrine of parens pateria to take care of the rights of animals, given that animals are unable to take care of themselves as against human beings."*

This acknowledgement of this responsibility by the highest court of the land in the country would surely go a long way towards animal welfare. The concept places the state in the position of protector of its citizens as parents particularly when citizens are not in a position to protect themselves(Mitra, 2019). India, being a welfare state, is aptly positioned under the concept of parens patriae. Additionally, the Preamble to the Indian Constitution, read along with the directive principles under Articles 38, 39 & 39-A envisages the state to take all protective measures to which a social welfares state is committed.

In Hanif Qureshi, there is no such concern of the Court. No concern for animal existence was reflected in the opinion of the Court. On the issue concerning slaughter of animals, the only approach preferred by the Court was utility of animals to the human beings; the economics, the valuation of existence on the profit and loss scale was the approach of the Apex Court. Recognition of the suffering of animals, the obligation to protect them since they cannot by themselves claim for their protection, were all considerations absolutely absent from the vision of the Court in Hanif Qureshi Judgment.

iv.Mental Torture –

One of the stark differences between Hanif Qureshi and Nagaraja would be the aspect of mental torture towards animals. The Court in Nagaraja drew an analogy of torture of animals with the victims of accident in order to assert the deprivating effect of torture on animals (*AWBI v A Nagaraja & Ors.*, 2014).

In Hanif Qureshi, even physical torture was not a factor persuading the court to consider a case in the favor of animals, mental torture is out of question. It appears that the very possibility that even animals could face torture, might feel pain and suffering was out of the imagination and consideration of the Court in Hanif Qureshi.

v.*A shift from Article 48 to Article 21* **–**

Hanif Qureshi did not draw anything in relation to the animals/animal welfare/animal rights from Part III of the Constitution. It did refer to several fundamental rights but only in context of humans, which in the case were Kasias or butchers involved in the slaughtering of animals in question. The only protective provision referred by the Court in favor of animals was Art. 48. However, the approach in Nagaraja was entirely different. Nagaraja case focused on Art. 21 under the Indian Constitution and read the rights of the animals within its fold, which was an almost impossible proposition for Hanif Qureshi. The Court in Nagaraja remarked in reference to Art. 21 of the Indian Constitution and gave a comprehensive picture to word ‘life’ which could encapsulate all forms of life, animal life included within it. Perhaps the indication was towards a ‘one life, one health’ kind of a approach that for instance, if air becomes poisonous, both humans and animals would die and therefore the word life must have more expanse than mere human life.

The court envisaged a life of an animal having attributes such as intrinsic worth, honor and dignity, not just an instrumental value for human beings. This is starkly unimaginable proposition for Hanif Qureshi. Whereas the Qureshi view remained largely anthropocentric, the vision in Nagaraja is eco-centric.

Compassion and Humanism

In Nagaraja, drawing from the Constitutional aspirations from the citizens of the country, enshrined in Part IV-A of the Constitution of India, the Supreme Court emphasized on the values of compassion (Article 51 A (g))(Constitution of India, 1950) and humanism (Article 51 A (h))(Constitution of India, 1950) and that they should be read along with the PCA. The Court asserted that concern for suffering, sympathy, kindliness etc. has to be read along with Sections 3, 11(1) (a) & (m), 22 etc. of the PCA Act (The Prevention of Cruelty To Animals Act, 1960). With humanism, the Court inferred with an inclusive sensibility of our species.

vi.Acknowledgment of Pain, Suffering and Victimhood-

Nagaraja goes far away from the approach of the Court in Hanif Qureshi in the sense that the acknowledgment of pain, suffering, fear, and victimization of animals is writ large in the approach of the court in Nagaraja. Hanif Qureshi is totally silent on this aspect, even though the issue concerning was the slaughter of animals, at no point in the judgment it appears that the pain and suffering may also be one of the factors under consideration before the Court.

2.2.3 THE CHANGING APPROACH OF LAW- TOWARDS ECO-CENTRICISM: INDIAN JUDICIAL PERSPECTIVE

The Supreme Court of India, in the celebrated case of T.N. Godavarman Thirumulpad (*T.N. Godavarman Thirumulpad Vs Union of India & Ors.*, 2006) delved into the aspect of changing approach of law towards Eco-centricism.(*T.N. Godavarman Thirumulpad Vs Union of India & Ors.*, 2006). The Court explained in detail the difference in the approaches, the anthropocentric and the ecocentric approach, and focuses on the shift stating that humans must release their obligations towards the environment in its various manifestations. The relevant part of the judgment is produced in the Annexure 2 for reference.

In another leading celebrated case, Centre for Environmental Law, Worldwide Fund India v. Union of India(*Centre for Environmental Law, WWF-I v Union of India*, 2013), the Supreme Court dealt with the question of Asiatic Lions and reiterated jurisprudentially, most of it that was discussed in T.N. Godavarman Case vis-à-vis anthropocene and eco-centric world view and mentioned of the public trust doctrine to assert the "specie-best interests". The Court mentioned the loophole in the model of sustainable development as it is largely tilted towards anthropocene orientations. The relevant part of the judgment is reproduced in the Annexure 2 for reference. (*T.N. Godavarman Thirumulpad Vs Union of India & Ors.*, 2006) :

The Court reiterated this principle of eco-centricism in more tangible form in a matter concerning animal welfare and held in the case of A Nagaraja (*AWBI v A Nagaraja & Ors.*, 2014), and expressed critical remarks on the fact that there is no international binding document for the welfare of animals, which is a matter of serious concern. It also emphasized on the meaning of 'life' as relates to animals in the following words:

"*So far as 'animals' are concerned, "life" means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity*."

In the same matter the court explained about the gradual shift that has happened globally away from anthropocentricism and towards ecocentrism (*AWBI v A Nagaraja & Ors.*, 2014).

The Eco-centric view has been resonated in catena of judgments of the Hon'ble Apex Court of India, some of them are mentioned below with notable details. The Supreme Court of India in the case of *Fomento Resorts & Hotels Ltd.* (*Fomento Resorts & Hotels & Anr vs Minguel Martins & Ors*, 2009) emphasized how the Indian constitutional law made a shift in acknowledging the human responsibility towards the protection of environment, ecology, animals in general and wildlife in particular. The relevant extract of the judgment is produced in Annexure 2 for reference.

2.3 **Parens Pateria-**

2.3.1 Introduction

The concept of parens patriae recognizes the State as a protector of its citizens/subjects as parent particularly when citizens/subjects are not in a position to protect themselves. The preamble to the Indian Constitution, read with the 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(MITRA, 2018).

The evolution of this phrase could be traced to roman law where it meant as "the parent of his or her country" and it meant to signify the emperor as the embodiment of the state. It is a doctrine by which a government could have a standing to pursue a lawsuit on behalf of the citizens/subjects especially for someone who is under a legal disability to pursue the suit(MITRA, 2018).

In India, the judiciary, including the Supreme Court of India(*AWBI v A Nagaraja & Ors.*, 2014) and various high courts have used the concept of parens patriae doctrine in diverse kind of cases for environment (both flora and fauna) which has established this doctrine as a significant part of the environmental/eco-centric jurisprudence of India. Prof. P P Mitra mentions of several such judgments delivered by various courts in India emphasizing on the extension of Article 21 of the Indian Constitution to the Non-Human beings in India through his work titled doctrine of parens pateria and the developing trend of animal jurisprudence in India(MITRA, 2018).

2.3.2 Meaning and Concept-

The doctrine of '*Parens patriae'* may be one of the significant philosophical foundations for the 'animal welfare law'. '*Parens patriae'* literally means "parent of the country," is the government's power and responsibility, beyond its police power over all citizens, to protect, care for, and control citizens who cannot take care of themselves, traditionally "infants, idiots, and lunatics,"' and "who have no other protector"(Clark, 2000). The Hon'ble Supreme Court in *Aruna Ramachandra Shaunbaug* (*Aruna Ramachandra Shaunbaug v. Union of India*, 2011) held that *the State is the most competent to assume the role of a parent if a citizen is in need of protection.* However, does this maxim apply to animals also? The Hon'ble Supreme Court in the landmark judgement of Charan

Lal Sahu (*Charan Lal Sahu v. Union of India*, 1990) emphasized on the concept and stated that this principle allows the government to step in the shoes of the hapless and victims in times of need, in such a situation arises wherein they may themselves not be able to represent their interests in the Court of law. By this we can say that is not a rule, it is an evolution an evolutionary process which needs to be implemented to the highest level. Animals form part of our ecosystem, and it is the duty of our State to protect our ecosystem. Although the protection and welfare of animals is well covered under the article 21, thanks to A Nagaraja (*AWBI v A Nagaraja & Ors.*, 2014) which redefined the scope of animals under Article 21 and how this particular protection is the primary duty of State. The Apex Court mentioned that it has *a duty under the doctrine of parents patriae to take care of the rights of animals, given that the animals are unable to take care of themselves as against human beings*.

As a sovereign entity, the state may act as "parent of the nation" and may assume parenthood to protect and provide all the rights aimed for protecting challenged individuals and classes(Yamuna S, 2022).

The roots of this doctrine go back to the rule of King Edward I from 1272 to 1307, with the system of ward ship being institutionalized, whereby the Crown would exercise the prerogative power to exercise legal rights on behalf of those who were incapable of managing their own affairs, called 'wards'(P. Sharma & Mitra, 2020). This is a jurisdiction created in public interest, to protect the interests of persons under disability who have no rightful protector. Even the connotation of the phrase means different bodies under different jurisdictions (for example in England, it's the King and in America, it's the people). The doctrine originated in British Law in 13th Century, puts an obligation on the State (the sovereign) that it was his duty to protect the person and property of those who couldn't protect it themselves. The Courts, with due course of time and in their capacity of being the organ of the state, have inherited this jurisdiction which formerly would perhaps be of the King or the sovereign head. In its implication, through this doctrine, the government has a standing to prosecute a lawsuit on behalf of a citizen especially someone who is under a legal disability to bring forth a suit or legal action to protect his/her rights or interest.

2.3.3 Parens Pateria and recent developments in India (with emphasis on the State of Uttrakahnd)

The doctrine has been invoked several times by the Courts in India.

State of Uttarakhand is one of the most ecologically rich states in India. Also knows as ‘devbhoomi- the land of gods’ or the land of sages, this state inhabitates rich flora and fauna, which makes this state different from others and makes it pertinent for the State to ensure conservation and preservation of the rich flora and fauna in the State. The High Court of Uttarakhand has been instrumental in conservation of the natural environment and species of animals through its progressive judgments contributing to the ecological jurisprudence of India. The High Court of Uttarakhand has invoked the doctrine of parens pateria and acted as the guardian of the state several times and gave judgments in favor of ecology, flora and animals to ensure protection of the environment.

In Lalit Miglani (*Lalit Miglani vs State Of Uttarakhand And Others*, 2017), the high court of Uttarakhand, involved the doctrine of parens pateria and declared all the Glaciers which included Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forest wetlands, grasslands, springs and waterfalls as juristic persons (or legal 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 them.

In Narayan Dutt Bhatt(Narayan Dutt Bhatt vs Union Of India And Others on 4 July , 2018), wherein the petitioner exercised the public interest litigation jurisdiction to seek relief for horses and sought to restrict the movement of horse carts (tongas) from Nepal to India and from India to Nepal through Champawat and also for vaccination, medical checkup of the horses on the border areas. By declaring "the entire animal kingdom", including aquatic and bird species, to be separate personality and legal entities with rights, obligations and liabilities of living beings, the Uttarakhand High Court made a significant contribution to animal protection. Additionally, all Uttarakhand residents were declared "loco parentis" or the humanitarian face for the welfare and protection of animals. Alongside, the Court issues several directions for animal welfare.

2.3.4 Parens Pateria and Animal jurisprudence in India –

The doctrine has made positive implications towards the development of animal law and animal jurisprudence in India. One of the landmark verdicts of the Hon'ble Supreme Court of India, wherein this doctrine was employed to advance animal jurisprudence, and which later became a reference point for several observations for many High Courts in India was the much discussed and celebrated Jallikattu verdict(*AWBI v A Nagaraja & Ors.*, 2014).This judgment must be credited for philosophically enriching the jurisprudence of Animal law in India with several authoritative and logical explanations, one of them obviously being the parens pateria doctrine, considering India is a welfare state. In Ramesh Sharma (*Ramesh Sharma v. State of Himachal Pradesh*, 2014), the High Court put a restriction on sacrifice of any animal or bird in any place of religious worship, or any public street, way or place and also directed the State Government to employ publishing and circulation on pamphlets in order to create awareness among people in and around the places of worship about the ban on sacrifice of animals and birds.

In many such instances, the Courts have employed the doctrine to further the ends and protection of ecology, environment, and animals. The Courts, by virtue of this doctrine, have an obligation to protect the interest of those who could not protect it themselves and the primary stakeholders qualified for this exercise of jurisdiction appear to be animals and the environment in general. In years to come, we may see a lot of jurisprudence developing as branches, the roots of which would be connected to parens pateria doctrine.

2.4 ANIMALS AS PERSONS UNDER THE LAW-

2.4.1 Introduction

There has also not been universal consensus on conferment of rights to animals even within the animal welfare scholarship. This led to two prominent approaches, one being 'Animal Welfare' approach which propagates duty-based approach and asserts just and humane treatment of animals. It does not radically oppose the use of animals by humans. The other approach is 'Animal Rights' approach which claims animals to be entitled possessors of rights and therefore any kind of use of animals by humans is looked at from a critical approach and is vehemently opposed. The conferment of 'legal personhood' to animals is

another dark corner in the tunnel of jurisprudential, and there is hardly any light visible at the end of this tunnel.

2.4.2 Legal Personality -Meaning and Concept -

Person, simply, refers to a human being and is also termed as a natural person(Bryan A Garner, n.d.). Also, blacks law dictionary defines artificial person as an entity, such as a corporation, created by law and given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less a human being(Bryan A Garner, n.d.).

Salmond mentions that “as far as the legal theory is concerned, a person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man” (Fitzgerald, 2010).

Paton mentions that *legal persons are all entities capable of being right-and-duty-bearing units- all entities recognized by law as capable of being parties to a legal relationship*(Paton, 2023). In the view of Paton, making a clear distinction between legal personality and personality in the sense of an individual's cognitive personality is a first step towards understanding the latter. History has instances of legal personality not granted to humans, under previous legal systems, slaves were considered property and foreigners were not allowed to file lawsuits in courts. Many people, including children and the insane, may have limited legal personality. In addition to individual people, entities such as funds, statues or groups of people can be given legal personality. The elaborate view of Paton on this aspect is reproduced in the Annexure 2.

There are two categories of people in the legal system: natural persons and juridical persons. The first category includes all people who are unique entities with the capacity to bear rights and perform obligations. The second category includes entities having juridical personality, sometimes called collective persons, social persons or legal entities (Arcelia et al., 2015).

Persons are those who have rights and responsibilities. People are particularly important to the law in this way, and this is the only perspective that grants legal recognition to the individual (Fitzgerald, 2010).

2.4.3 Legal Personality- Jurisprudential Approach -

Historically, not all human beings were conferred legal personality. However, it is common for legal systems to grant personality to all living human beings within the territory of the state(Paton, 2023). In the past, there have been several instances wherein the legal personality was not granted to living human beings. At the time slavery was legal and prevalent, slaves were not granted legal personality(Paton, 2023). The monks who joins a monastery is considered 'civilly dead' by some legal systems and even his property is distributed as if he were dead(Paton, 2023). The legal systems have since evolved drastically and granted legal personality to several entities for several reasons and purposes. Some of those cases are –

1. Unborn child
2. Corporations
3. An Idol
4. Ships

Corporations-

A corporation or company is a separate legal entity and can perform several legal functions in its name just as if any other living individual would do. It may sue and be sued in its own name(Paton, 2023). It may possess, own, sell and dispose property in its own name. It may enter into contracts in its name. Its corporate seal is equivalent to that of a signature made by an individual.

As far as the corporation or company is concerned, entity totally abstract and invisible, neither having a body of its own, nor having a mind of its own, has been conferred the 'juristic entity' to further the economic interests and to limit the liability of the shareholders in a business. The classic and old cases such as Salomon v. Salomon(Dahal, 1897) & Foss v. Harbottle (Aniraj, n.d.) have established and upheld the separate legal juristic entity of the corporation. Solomon was the first case to establish the doctrine and principle that a corporation/company is a distinct legal person quite separate from its shareholders and directors, and therefore in cases of debt or liabilities of the

company, the shareholders or directors of the company cannot be held liable for the same(Playton, 2023).

In the Foss v. Harbottle case, the Court recognized the separate legal entity of a corporation and held that if the company has to be involved in the legal proceedings, they must be instituted in the name of the company, and not in the name of the directors or shareholders of the company, since the company exists as its own legal person, itself being suing or getting sued. It can be put in this manner that metaphorically, when the company is formed, a sort of veil is drawn between the shareholders/directors and the company, which separates both and protects the shareholders and directors of the company from the debt and wrongful acts of the company(Playton, 2023). This juristic phenomenon of conferment of separate legal entity to a corporation also be called the corporate veil.

In case of Idols-

'An Idol itself cannot act; it must do its business through its guardians. Nevertheless, it was the idol to which acts were attributed, not its guardians(*Pramatha Nath Mullick v Pradyumna Kumar Mullick*, 1925).

In the landmark pronouncement given by Privy Council in 1925, wherein the juristic personality or legal personality of the Idol of Hindu religion was upheld, the Court mentioned that it is firmly established that an Hindu idol enjoys the recognition as a "juristic entity" (*Pramatha Nath Mullick v Pradyumna Kumar Mullick*, 1925). The relevant extract of the judgment is produced in Annexure 2.

Legal Stature of Animals – Person or Property?

It is a complicated aspect to determine the legal status of animals. Though most jurisdictions of the world hold them as property, there are still restrictions on how one may treat them or use them, essentially codified in the form of Anti-cruelty statutes in various jurisdictions.

The common law provided for an owner to sue for damages resulting from physical injury to his/her animal(Tatoian, 2015).

A pro bono publico petition was filed in the Hon'ble Supreme Court of India, W.P.(C) No. 1265/2020, in the matter of *People Charioteer Organisation (PCO) & Another v Union of India & Ors*.(*Poeple's Charioteer Organization v Union of India*, 2020), filed under the jurisdiction of Article 32 of the Constitution of India, on behalf of the animals, with a remedy sought that the Hon'ble Court should exercise its powers under Article 142 (The Constitution of India, 1950) to seek the relief that the Court must declare that all entire of animal kingdom which includes the avian and aquatic species be treated as 'legal entities' and like any legal person be conferred with a distinct personality and the corresponding rights. Additionally, it was sought that to ensure their welfare and protection, guidelines be framed and issued in order to fill the vacuum in law enabling their protection. The extract of the petition seeking relief is produced in Annexure 2. There were in total seven (07) respondents in the matter, the Union of India, Ministry of Law & Justice through the Secretary, Ministry of Environment, Forest & Climate Change, through its Secretary, Ministry of Fisheries, Animal Husbandry and Dairying, through its Secretary, National Crime Records Bureau through its Chief Statistician, Animal Welfare Board of India through its Secretary, the States and the Union Territories through their Chief Secretaries. However, despite knocking the doors of the Hon'ble Supreme Court of India, nothing significant could be achieved in the matter. The Bench constituting Justice B.R. Gavai and Justice Vikram Nath dismissed the petition, through the order dated 29th March 2023, holding that "we find that the prayer sought in the writ petition cannot be granted by this Court in its extraordinary jurisdiction under Article 32 of the Constitution of India"(*Poeple's Charioteer Organization v Union of India*, 2020).

In a matter concerning the allocation of forest land on which unlawfully a patta was issued , the Madurai High Court gave extremely critical fact check concerning the state of nature and the kind of exploitative practices going on averse to nature and which are covered under the cloak of fancy words such as "compensatory afforestation" (*A.Periyakaruppan v. The Principal Secretary to Government*, 2022). The court reflected the concern to protect and nurture the remaining original forest lands and ecosystems sincerely. The relevant extract is produced in Annexure 2. The Court further held and declared "mother earth"

as a living being, conferring it the legal/moral personhood, with all corresponding rights, liabilities and duties as in the case of a living person. The Court went on to hold that in order to ensure their safety, survival, they may enjoy rights akin to 'fundamental rights'. Directions were issues to the state and central government to ensure appropriate protection of mother nature. Relevant extract is produced in Annexure 2.

Professor Upendra Baxi, through the book review of prominent literature on Animal Laws written by Professor P P Mitra (Baxi, 2022), mentioned that:

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

2.4.4 Contemporary Developments-

A theoretical discussion on animal rights and conferment of personhood always may receive inputs from the question about children having human rights. Lloyd, in his extensive book, Introduction to Jurisprudence, covers this aspect under the head, 'Do Children have human rights?' (Michael Freeman, 2014). It raises several pertinent questions pertaining to qualifier of rights for children and number of counter arguments which may create obstacle in the grant of 'rights' or 'personhood'. Also discusses what could have been the foundation during the conferment of rights to children in the CRC. The relevant extract is produced in Annexure 2.

2.5 DEEP ECOLOGY APPROACH

The term 'deep ecology' was coined in 1973 by a Norwegian Philosopher, Arne Naess through his article "The shallow and the deep, long range ecology movement"(Mouchang & Lei, n.d.). It is a contemporary ecological approach/philosophy which recognizes that there is an inherent worth of all beings, irrespective from their utility.

The work was furthered by the contributions of Bill Devall & George Sessions through their work *Deep Ecology: Living as if Nature Mattered* (Devall, 1980). They mention the eight principles of deep ecology. The principles essentially indicate that 'non-human life' on earth has an intrinsic value in itself and it must be regarded independent of human utility or purpose to it. The principles also indicate to acknowledge that the present way humanity is operating is regressive and unfair which will only worsen the situation on earth. They demand a change in policy and the way humans have been operating. The aforementioned eight principles are produced pointwise in Annexure 2.

It is also asserted that we should consider thinking 'like a mountain'(Devall, 1980), suggested by Aldo Leopold and that questions like 'Do rocks have rights' do no longer seem ridiculous or unimaginable to us (Devall, 1980). Roberick Nash mentions:

Do rocks have rights? If the times comes when to any considerable group of us such a question is no longer ridiculous, we may be on the verge of a change of value structures that will make possible measures to cope with the growing ecological crisis. One hopes there is enough time left.

This chapter engages with several questions and approaches pertinent to the discipline of animal law, which find their place in the philosophical foundations of animal law. This chapter partially addresses the research objectives number 1 and 2 and completely addresses the research objective number 3. The chapter discusses the leading philosophical and jurisprudential contributions and contributors which have shaped the discussion on animal law and animal related jurisprudence. The discussion which has shaped the position of animals as 'subjects of law' is also attempted to be explained here. It also discusses the leading approaches and theories which have impacted the growth and evolution of the domain of animal law, namely, Eco-centrism, Deep Ecology Approach, Parens Pateria, the shift from Anthropocene to eco-centric approach. The shift in the approach of law from its Anthropocene notions to eco-centric notions is also attempted to be understood in this chapter. This shift plays a very important role in recognition of the interests of non-human animals and towards the evolution of animal law. However, making eco-centrism a reality from

abstraction even after its recognition in the law, would be a herculean task in itself. Perhaps, the realization of ecocentrism from abstraction to reality would require separate research to be conducted on the same (and is beyond the scope of this research). The question of legal personhood of animals is also attempted to be discussed here.

CHAPTER 3

"Right Based Approach" & "Duty Based Approach" – Animal Rights, Animal Welfare and perspectives

3.1 Introduction-

Sometimes people use the phrases, *animal welfare & animal rights* interchangeably. However, as discussed earlier, there is a notable difference between the two approaches. Many animal welfare proponents call themselves animal rights advocates(Strand, 2014) and even animal rights campaigns use animal welfare issues to promote their agenda(Strand, 2014). Patti Strand, who speaks from the background of American jurisdiction, mentions that "although packaged for maximum appeal, animal rights beliefs conflict with the views of 94 percent of the Americans, the number who eat meat. And an additional portion, omnivores, and vegetarians alike, benefit from medical advances, go the circuses and zoos, keep pets, hunt or fish, ride horses or otherwise use animals(Strand, 2014)." Patti essentially mentions that the animal rights activists also use the language of animal welfare when gathering support of the masses. If the true agenda of the animal rights movement gets communicated, very few will be able to support considering the dependence on animals for use. Also, many who would like to refer to themselves as animal rights proponents since they love animals; however, they may not align to the approach of rights movement.

Under the head Duty based approach, the research primarily makes a mention of the primary legislation in India concerning animal abuse and animal cruelty i.e. Prevention of Cruelty to Animals Act, 1960 and the Constitution of India, since both prescribe a regime which is based on the duty-based approach. Apart from that, as far as the theoretical framework is concerned, Peter Singer's work makes a seminal contribution to this approach.

Under the head rights-based approach, the research refers to leading jurisprudential developments happening in the law in global sphere which is showing a shift towards rights-based approach. Also, the contribution of Indian judiciary which has created a rights-based approach regime through its interpretation of the Indian Constitution and the PCA. Also, as far as the theoretical framework is concerned, the work of Tom Regan on Animal Rights is the seminal work which is discussed within this approach.

3.2 Animal Welfare Approach –

Animal welfare refers to the relationships people/humans have with the animals and also the duty they have to assure that the animals are treated humanely and responsibly (Strand, 2014).

The animal welfare approach has its roots and genesis in *animal ethics* according to which even animals are subject of moral consideration. Animal welfare approach believers consider the human-centered moral philosophy as arbitrary since it emphasizes only on the huma interest and overrides the non-human animals and their interests from the arena of moral consideration. And since non-human animals may also feel pleasure and pain, this capacity becomes a qualifier for them to be treated as subjects of moral consideration. They cannot be treated akin to things (mere things). The two major names that stand behind this theory are Jeremy Bentham (the English philosopher also called the father of modern utilitarianism & made contributions in the 18th Century) and Peter Singer (the Australian applied ethicist and philosopher and who contributed the 20th Century & is still contributing in the 21st Century). Whereas Bentham, the great, is the initiator or pioneer of this view and theory, Singer is the modern architect of this theory in its modern version.

The essential argument of Singer, which is the basis of this animal welfare theory, is that the non-human animals have interests in getting humane treatment from us. Therefore, we humans have a responsibility to assure the well-being of these animals and lessen their suffering. That we must implement laws and regulations, to ensure that the suffering of animals in the farms, in the laboratories and in other fields where animals are used, abused and exposed to

pain and suffering could be minimized and avoided, so far as we can, all unnecessary pain and suffering we impose on them(Mukhopadhyay, 2018).

Animal welfare as a formal discipline began to shape after the Bram-bell Report (The report was led by Professor Roger Bram-bell and was concerning the investigation into the welfare of intensively farmed animals) got published in 1965 by the British Government which dealt with the confined farm animals. The Bram-bell report had a huge influence on the animal welfare law and policy across the globe(Orzechowski, 2015). It provided for the five freedoms in 1965, which became a reference point and a grundnorm for the animal welfare legislation across the world to be included in their domestic legal framework. For instance, the Amendment to the PCA,1960 which is proposed through the Amendment Bill of 2022, provides for the provision for inclusion for these five freedoms for animals. This is a latest example depicting the impact of the Bram-bell report on the various legislations across the world. It has been more than five decades to this and yet this is an important reference point. The five freedoms mentioned are –

- Freedom from hunger and thirst,
- Freedom from discomfort,
- Freedom from pain, injury, or disease,
- Freedom to express normal behaviour and
- Freedom from fear and distress.

The report gave suggestions pertaining to the farm animals only; however, the five freedoms have been generally used as a welfare standard for all animals, including the companion animals. The animal welfare statutes of several nations such as Mexico, Nicaragua, Austria, Bulgaria, Norway, Turkey, and Slovenia, inter alia, use the standard of five freedoms in their law making(Orzechowski, 2015). Post this Bram-bell Report, another landmark development that contributed towards the evolution of the Animal Welfare approach as a formal discipline was the Book coming from the Australian Philosopher and expert of Applied ethics Peter Singer, titled as *Animal Liberation: Towards an End to Man's Inhumanity to Animals*. This Book is quite famous and contributes to the theoretical framework of animal law substantially since it provides the

philosophical basis for the welfare of animals. Apart from this, Singer's work is also very important considering many other developments in the philosophy of animal welfare (for e.g. the Animal Rights approach by Tom Regan) came in response to his contribution. Therefore, the next part of the research will discuss the journey from Bentham to Singer which has substantially impacted the shaping of the animal welfare approach.

3.2.1 **From Bentham to Singer: An Insight into the Animal Welfare Approach –**

Jeremy Bentham is an important name in the field of philosophy and jurisprudence. He contributed a lot towards the theoretical background of law or the philosophical foundation of law. It would not be pertinent to state here all the important contributions he made to law, in the interest of ink and time since that could be research in itself. For this research, pertinent is to mention that he could be named as the pioneer of the animal welfare approach. His, one of the major contributions, the modern utilitarian moral theory, is the basis of the claim and that he considered animals within the realm of moral consideration is what made difference to perception towards animals in law. Let us ponder on this aspect in little detail.

Utilitarianism, generally understood, proposes that the morally right action is the action that produces the most good(*The History of Utilitarianism*, 2009). The right action is understood in terms of the consequences produced. So the right actions are those which maximise the best consequences over the bad ones, or minimize the worst consequences. It is essentially, the action that produces most good and least harmful consequences is the right action. The actions should be measured in terms of the happiness, or pleasure, that they produce. To put it succinctly, utilitarianism concerns itself with maximizing pleasure and minimizing pain for all those affected by the given action. The action which produces *greatest good for greatest numbers and least pain for least numbers* is the right action. One important thing that utilitarianists argue is that *as special as you are, you are no more special than anybody else.* So, the principle of moral equality bases itself on the concept that *each to count for one and none for more*

than one. Therefore, the interests of all being will be equally considered and will carry the same weight.

We must be able to understand that from utilitarianism point of view, which qualifiers or factors are relevant criterion for moral consideration, and which are not. Bentham mentions that the colour of skin, number of legs, ability to reason, ability to use language or some other sophisticated capacities are irrelevant for moral consideration. The important and testing criteria is *whether can a being suffer pain and feel pleasure*. And animals do suffer pain and feel pleasure. And pain is pain, to whomsoever it occurs and wherever it occurs. The criterion of pain and suffering is enough for taking some being within the sphere of moral consideration or within the moral compass. It is time to reiterate and produce the famous lines of Bentham, which echo on many forums to do with animal welfare/animal protection – *the question is not, about their reasoning or talk but about their ability to suffer.*

The *principle of equal consideration of interest* and *the capacity to feel pleasure, pain and suffering* become very important basic foundations for Bentham's inclusion of animals into the moral theory.

Now, let us ponder upon the one who took the baton from Bentham and is carrying it till now, Peter Singer, the modern-day face of animal welfare theory. Singer, through his book, Animal Liberation (1975), brought to the forefront the issues concerning moral relations between humans and animals and this book gained immense popularity, so much so, that it not only attracted academia, philosophy but the common masses also to this discussion. This book came to be recognized as the 'bible' for animal liberation movement across the globe. Singer still continues to work in this direction and make significant contributions to the theory of animal welfare and moral consideration of animals(A Life in Philosophy: Peter Singer, 2009). What Singer does is that he establishes the links between the case of animal's oppression with the other cases of oppression in the society i.e. racism, sexism, communalism, etc. He links the case of animal oppression with those of the cases of women, blacks, minorities, male chauvinism, gay (and people with other sexual orientations) etc. in order to argue that the welfare movement claims to end all prejudices and discriminations to non-human animals. The injustices and prejudices of the past

are linked to the case of discrimination and prejudicial mindset of humans against non-human animals also. So, whether it be the black-white discrimination, the struggle of women towards gender equality, the struggle of LGBTQ community for their recognition is not all. The struggle for equality doesn't end here. Singers brings a fresh perspective and claims that there are still many cases of prejudice so deep rooted in our mind that they are still pending to be introspected and challenged. Apart from racism, sexism, male chauvinism, he mentions of this discrimination against non-human animals as *speciesism*. Singers argues that while demanding equality for blacks, women, gay and minorities on one hand and denying equality for non-human animals is very unjustified. He focuses on the following pointers to consider the case of non-human animal's discrimination- introspecting our prejudices, expansion of moral sphere and re-evaluation of the principle of moral equality. Singer also pointed out the instances from history wherein when a new case for discrimination was made up, it was mocked and ridiculed and later the case was made on the basis of innate similarities and yet discriminate treatments. For e.g. Singer points to the demand of rights for women when in 1792, the work of Mary Wollstonecraft titled 'vindication of the rights of women' was published, it was considered absurd to demand rights for women, just like the demand for the rights of non-human animals today(Singer, 2009). Singer, further asserts that women and men may be different in some respect (for e.g. the right to abortion may not be that relevant to men); still the demands for certain rights are legitimate to both of them. Similarly, humans and animals may differ in several respects (for e.g. right to vote or right to contest elections or right to become an advocate or doctor may not be relevant to an animal since they neither vote nor contest elections) but animals do have things in common like humans i.e. they do suffer like humans. And therefore, justice and morality would demand 'equal consideration on interests' in both cases of humans and animals. Singer mentions in his book 'Animal Liberation' that "*No matter what the nature of the being, the principle of equality requires that its suffering be counted equally with the like suffering- in so far as rough comparisons can be made – of any other being"* (Singer, 2009).

As per Singer, the principle of equal consideration of interest (which is one of the core values of Singer's theory of animal ethics and which puts him and Bentham on an equalizer) denotes the fact that as membership or allegiance of someone to a particular race does not provide a basis for his/her moral consideration, similarly someone's membership of a particular species, like Homo Sapiens, does not provide a basis/rationale for its moral consideration (Mukhopadhyay, 2018). Therefore, there is no moral justification to treat creatures/animals as our resources simply because they do not belong to our own species. The principle mandates that animal interests be treated the same way that we would treat the similar interest of humans (and both have similarity when it comes to feeling of pleasure, pain and suffering). To denote this treatment of exclusion of similar animal interest from the realm of moral standing and to justify the behavior and treatment of animals as resources to humans (and to exploit them as per our whims and wishes), Singer uses the word speciesism. This word depicts the arbitrary attitude of humans towards animals in the sense that humans are put at a higher pedestal so much so that animals are believed not to exist for themselves but to fulfil the needs and aspirations of humans. This term was originally coined by Richard Ryder in 1970. Singer puts speciesism in the same basket as that of racism and sexism and perhaps other 'isms' depicting any discrimination and exclusionary practice. With regard to racism, where the interests of one race are valued more than the interests of the other race and in the case of sexism, where interest of male members of human community become far more highly regarded than the interests of female members of the human community. By the same analogy, the interests of humans are considered higher than the similar kind of interests of non-human animals, is where speciesism finds its place. And therefore, without any exception, speciesism should also be condemned as arbitrary and unjustified discrimination. Similar to humans, most mammalian animals are capable of feeling pleasure and pain; they are sentient beings as humans are. Therefore, an act or omission wrong to humans is equally wrong and unfair to such a sentient animal too when similar interests are in question. Singers lifts the veil of crony speciesism by asking "*If possessing a higher degree of intelligence does not*

entitle one human to use another for his won ends, how can it entitle humans to exploit nonhumans for the same purpose?" (Singer, 2009)

Singer mentions two prominent cases of speciesist tendencies the impacts of which are widespread and far reaching. Those two instances are animals as food and animals as experimental model. So, two prominent categories identified by Singer are farm animals and animals used in experimentation where the animals suffer the institutionalized speciesism. Singer also describes the cases of couple of farm animals such as Chickens and veal calves to mention the kind of violence and oppression that these farm animals undergo. In a tragically poetic way, Singer mentions in context of the chickens *who are hung upside down on the conveyor belt leading to the knife that will wipe out their joyful existence* (Singer, 2009). Having made a case from these, Singer contends that the use of animals for food is a luxury for us, in most cases, and not a necessity for us. Similarly, Singer explains the exploitation and suffering exposed to animals by sharing cases on experimentation on animals also. Dealing with the response that human race gets vastly benefited with experimentation on animals and it's a small cost for such a big reward, Singer questions that if this sacrifice is so scared then *whether the supporters of animal experimentation be ready to conduct experiments on severely damaged infant to cure several human lives*? It would not be possible because great *moral and legal obstacles would be raised to employ humans* as models in experimentations. Singer further exposes the speciesist biases that cloud the fair judgment among humans by mentioning few paradoxical instances that neither get justified on utilitarian parameter or moral parameter such as on one hand conducting painful experiments on animals but on the other hand agitating for better prison conditions for dreadful criminals, also when on one hand we don't feel uncomfortable in killing animals for decorating our plates with food but condemning negligence to an imbecile child. Singer mentions that grant of membership into the species homo sapiens as the moral basis, is no better position to take than as a racist or sexist. Singers also hold that the 'sanctity of human life/right to life' view or even the religious views (that humans are made in the image of God) just carry the assumption of human supremacy but without any justification.

The most blunt or undiplomatic argument that Singer presents is that if animals do not have a direct moral status, then humans such as infants, the senile, the severely cognitively disabled, and other such cases of humanity also do not have a moral status considering such humans are not self-conscious, rational, and that they cannot communicate and also have no sense of past and future. The reality is that such humans do possess a lot of rights, and they are not to be killed for food, or imprisoned in cages for human convenience, or are subjected to cruel and torturous experiments, or are hunted for entertainment or profit. Their rights and entitlements are grounded on sentience, something which many non-humans also possess sufficiently. Singer labels this as 'unqualified speciesism'. Singer assets that the moral equality in humans is based on the notion they humans have interests which are not to be harmed and not because of their rationality or capacity of using sophisticated language or other such kinds of characteristics. Singer therefore demands the extension and expansion of the 'arena of morality' to include other sentient beings also like higher animals, mammals, and birds etc. (Singer, 2009).

Singer addresses the other arguments concerning language, memory and others which have been constantly raised as objection to equal consideration of interest. Singer keeps coming back to that same focal point and repeatedly asserts about pain and suffering as the yardstick, regardless of the intensity. He makes it very clear and explicit by mentioning that regardless of the species of the being, the race or the sex, pain and suffering should be prevented or minimized (Singer, 2009).

Singer is able to concede that not all suffering of animals can be eliminated but through the equal consideration of interests principle, he asserts clearly that it be extended to all beings, poor or rich, black or white, male or female, and humans or non-human; and that the capacity to suffer is the basis of moral consideration and therefore, humans must cease to take animals as food menu or products of consumption, as experimental models, or as the objects of recreation, and through this a great amount of suffering can be eliminated from existence.

Singer speaks very closely to Bentham, and one may view the theory of Singer as the tree which emanated from the seed sprouted by Bentham. Singer also

admits being thinking on the lines of utilitarianism, however on technical grounds, he asserts that he does not align his theory with hedonistic utilitarianism (or classical utilitarianism) rather he aligns his theory with preference utilitarianism.

Apart from the theoretical and philosophical foundations as mentioned earlier, Singer's emphasis, for practical purposes, is on bringing such laws and regulations that promote *humane treatment of animals,* having effective and meaningful regulations on conditions of farms and laboratories, putting a full stop on hunting, regulating circuses (and many other such avenues where animals are used for entertainment purposes).

One of the practical pointers (which is also very controversial in the real execution) that Singer emphasizes is on practicing Vegetarianism in the personal lives, not just as a symbolic gesture to show respect and compassion to sentient animals but also as an effective tool to the need of ending animal killing and inflicting suffering upon them. However, one must not get confused about practicing *vegetarianism with veganism* (The people who don't consume animal's flesh (or eggs) are the ones practicing vegetarianism however these people include animal products in their diet (for e.g.- Milk and dairy products). On the other hand, vegans are the ones who do not want to use any animal products, be it meat, eggs, honey, or gelatin. Vegans don't even support the use of leather, wool, fur or silk, or other such cosmetic or household things that either are derived from animals or are a product of testing on animals. What Singer emphasizes is vegetarianism and not veganism). What Singer emphasizes on is the former and the latter (perhaps the animal rights advocates who argue about non-use of animals absolutely for human purposes may support for veganism than just being a vegetarian). As per Singer, if we stop eating animals, this will protect a vast number and vast number of animals from human abuse and also reduce the vast amount of suffering we inflict on them. Singer also doesn't assert complete use of animals by humans since he mentions that if instead of flesh, we rear animals for milk and eggs, we fill fulfil the human requirements of protein also and if we rear them in harmonious & humane conditions (obviously to ensure this effective legal regulations and enforcement would be a prerequisite else business, market and profits would superseded

animal welfare), this would reduce considerable pain and suffering to animals. Bringing all this to practicality would be a real challenge and therefore Singer asserts that to proceed with, a reasonable and defensible plan of action would be to tackle the worst abuses first and move on to lesser issues once substantial progress would have been made in the direction (Singer, 2009). Perhaps, moving towards veganism would also become and agenda point but not until substantial progress is achieved in practicing vegetarianism.

3.2.2 **PCA, 1960-**

The Act of 1960 replaced the then prevalent legislation Prevention of Cruelty to Animals Act 1890 (now referred to as the Act of 1890) by removing the deficiency in the Act of 1890 and making the law more comprehensive. The Act of 1960 declared certain types of cruelty to animals as offences, provided necessary penalties for such violations, and established an 'Animal Welfare Board' to promote animal welfare measures(The Prevention of Cruelty To Animals Act, 1960). The Act of 1960 also offered provisions concerning licensing and regulating the training and performance of the animals for any entertainment to which the public is admitted through the sale of tickets. The Preamble of the Act of 1960 provides that: "*An Act to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to prevention of cruelty to animals*." The Apex Court of India, in the celebrated case of. A. Nagaraja(*AWBI v A Nagaraja & Ors.*, 2014) , mentioned that it is a sound established principle of interpretation that welfare laws/legislations must be given liberal construction in the favor of the hapless and so is the case with the Act of 1960.

In the above case, the apex court, when made to decide over a tussle between the tradition of bull taming (Jallikattu) and the concern of law for cruelty to animals, observed that considering the welfare-oriented objective of the legislation which expresses and acknowledges concerns for the non-human animals from the ways in which unnecessary pain and suffering may be inflicted on the animals, it must be construed accordingly and must override the customary practice in question (*AWBI v A Nagaraja & Ors.*, 2014).

The Act of 1960, through section 4, established the Animal Welfare Board of India(The Prevention of Cruelty To Animals Act, 1960). Chapter III of the Act of 1960 is the most operative since it provides for what amounts to treating animals with cruelty and the necessary sanctions. The Act, under Chapter IV, makes provisions regarding experimentation on animals and performing animals. However, the main focal point of the paper is section 28, which provides for savings with respect manner of killing prescribed by religions.

3.2.3 **The Indian Constitution and the recognition of the Interests of Non-human Animals-**

Since the Constitution of India doesn't explicitly provide any fundamental right to the animals and provides for duties of the citizens towards animals (to have compassion for living creatures), it prima facie occurs that it lays down a duty-based approach towards animal welfare and not the right based approach. It would be fair to state that with this limited understanding however it has been difficult to conclude the same considering the various judicial developments happening in the recent years. Through those developments and interpretations, it appears that certain rights have been conferred on the animals which are read within the framework of rights under Part III of the Constitution read with Part IV & Part IV-A of the Indian Constitution (The Constitution of India, 1950). Therefore, it would be better to start with the hypothesis that the Indian Constitution lays down a duty-based approach and later test it. All this has been discussed further.

Indian Constitution is one of its kind. A result of freedom struggle from colonization and imperialism from Britian and a charter of new India, an Independent India. This Charter of governance did not only cherish and envisage political independence but also much more than that. Therefore, the ideals of the freedom struggle movement inspire the Indian Constitution through the spirit of social justice, economic justice, an interventionist state, a socialist state, a secular state and most importantly a welfare state. A state which does not merely concern itself with the police functions but also caters to the welfare needs and aspirations of the subjects. The subjects which primarily include human beings (and this is used inclusively to cover all human beings, including

persons with special abilities etc., juvenile etc.) also includes non-human animals since the constitutional concern goes beyond human boundaries.

India, being a welfare state, envisages to take care of its subjects from 'cradle to grave'. By virtue of the doctrine of 'parens pateria', which is also firmly established within the Indian jurisdiction (and effectively extended for non-human animals), it becomes unquestionably significant for the state to work towards 'dignified right to live' and 'dignified right to die' for non-human animals.

It would be wise to mention few important pointers from the Indian Constitutional perspective, which may give better perspective on theoretical framework of the positioning of the interests/rights of the non-human entities within the Indian Constitution. Article 48-A of the Constitution of India, which is a directive principle of state policy, obligates the State to protect and improve the '***environment***' and to safeguard forests and wildlife(Constitution of India, 1950). Article 48-A provides for 'Protection and improvement of environment and safeguarding of forests and wildlife. It was inserted in the Indian Constitution in 1976 through the 42nd Amendment to the Constitution. Article 51A(g), which is a fundamental duty cast on all citizens of the country, provides for the citizens to protect and "improve the ***natural environment*** including forests, lakes, rivers and wildlife", and to "have ***compassion*** for living creatures". Article 51 A(h) provides for each citizen to develop the scientific temper, ***humanism*** and the spirit of inquiry and reform. Article 41(Constitution of India, 1950)(it mentions of several instances of public assistance and one of such is 'underserved want' also. It primary acts like a social security enabler) of the Indian Constitution uses the phrase **underserved want**, which if given expansive interpretation in accordance with the nature of Indian state as a welfare state, may cross anthropocene boundaries and may make a strong case for animal welfare, in consonance, with the obligation of the state as **parens pateria**. Doing a corroborative reading of the above-mentioned extracts of the Indian Constitution and focusing on the words *compassion, humanism, protection of environment, underserved want, and parens pateria,* gives a clear indication that the protection of the interests of non-human animals, whether pet

animals, stray animals, or wild animals, is a constitutional obligation of the state and a duty of the citizens of India.

Since the 17th century, there have been laws establishing the restricted rights of animals. Over the past few decades, attempts to protect animals have multiplied dramatically. The United Nations has a framework to deal with protecting animals by way of various Conventions (United Nations' Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1963; World Heritage Convention, 1972**;** Convention on the Conservation of Migratory Species of Wild Animals, 1979; Convention on Biological Diversity (CBD), 1992 etc.).

Various attempts have also been made by different organizations in the form of declarations for the rights of animals (Declaration of Animal Welfare, 1977; International Guiding principles for Biomedical Research Involving Animals, 1985, Universal Declaration of Rights of Animals, 2003 etc.). The Constitution of India indirectly recognizes the rights of animals.

The Constitution of India is special in that it permits advocates to defend the rights of animals in court, resulting in the creation of a ready-made apparatus(Kelch, 2011). The Constitution of India is the *Grund norm* wherefrom flow the rights and duties of Indian citizens. In addition to this, the longest Constitution in the world also makes provisions for including wildlife under the ambit of its provisions on Fundamental Rights, Directive principles of State Policy and Fundamental Duties.

Article 21 of the Indian Constitution provides for the Right to Life and states that *No person shall be deprived of his life or personal liberty except according to procedure established by law*. This Fundamental Right in particular has been characterized as the *procedural magna carta protective of life and liberty*. The Apex court of the country has also undertaken a wide reading of this right to include under its ambit the right to food and shelter, right to shelter and many more. In fact, the Supreme Court of India has extended few rights under the Fundamental Right to Life, the most landmark of its decision on this point being *A.Nagaraja* (*AWBI v A Nagaraja & Ors.*, 2014) *popularly referred to as the Jallikattu case.* The Supreme Court, in the effort to ban the cruel use of bulls as performing animals, upheld the enforcement of the ban on the traditional sport

of Jallikattu, reiterating that animals also have the right to live with dignity as is enshrined under Article 21 of the Indian Constitution (*AWBI v A Nagaraja & Ors.*, 2014). On the aspect of Article 21 of the Indian Constitution, the Apex Court observed that every specie is entitled to the right to life and to the security of such life. The relevant part of the judgment is produced in Annexure 2.

The Directive Principles of State Policy enshrined in the Constitution in part IV form the foundation on which the States frame laws and policies. These principles are directive/guiding in nature and are not enforceable in a court of law for violation. Even so, it is the duty of the states to ensure compliance and adherence to them while framing laws. The directive principles related to animal welfare are enshrined in the Articles 48 & Article 48A. Article 48 lays down that 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 (The Constitution of India, 1950). Slaughtering cows is an extremely contentious issue in the country due to the sacred value attached to cows specially among the Hindu, Jain, Zoroastrian and Buddhist sect. There has been a debate as to whether this article ought to be included under the Fundamental Rights in the Constitution as effective adherence to the provision is not possible in its current form of a Directive Principle.

Article 48A declares as the duty of the state to protect and make all endeavors for safeguarding the forests and wildlife. This provision found its way into the Constitution by way of the 42nd amendment, 1976 and makes it an obligation upon the state to protect the environment and wildlife. While in itself the provision is not judicially enforceable, it becomes so under the ambit of the right to life under Article 21. In fact, in *M.C. Mehta* (*M . C . Mehta And Anr vs Union Of India & Ors*, 1986), the Supreme Court, while hearing the public interest litigation observed that Articles 39,47 and 48A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment(*M . C . Mehta And Anr vs Union Of India & Ors*, 1986).

Part IVA of the Constitution of India enshrines Fundamental Duties upon the citizens of India which are unenforceable yet often resorted to for interpretation

of the constitution. Art 51A(g)(Constitution of India, 1950) casts a duty upon the citizens to protect and improve the natural environment and have compassion for all living creatures. This provision was stressed upon in the *A. Nagaraja* (*AWBI v A Nagaraja & Ors.*, 2014). whereby the Apex Court held that compassion for living creatures includes the concern for their sufferings and pain.

The Supreme Court of India in the case of *Fomento Resorts* (*Fomento Resorts & Hotels & Anr vs Minguel Martins & Ors*, 2009) gave pertinent observations about the ecological conservation and the duty of the state in this regard, which are produced in Annexure 2.

Post 2014, also many judgments upheld the rights of the non-human animals, deriving the interpretations from Article 21 of the Constitution of India, notable ones being, Narahari Jagdish Kumar(*Narahari Jagadish Kumar vs The State Of Andhra Pradesh*, 2016) (involved the issue of cockfights and betting) and S. Kannan (*S . Kannan vs The Commissioner Of Police*, 2014) (involving the issue of granting permission to organize the cock-fight competition). One of the remarkable judgments of the Uttarakhand High Court, through a public interest litigation filed by Narayan Dutt Bhatt (Narayan Dutt Bhatt vs Union Of India And Others on 4 July , 2018), conferred *legal personality to all animals of the State* holding that *animals have lawful personality having rights, obligations, and liabilities like that of a living individual*. The Court went further and afformed that the 'citizens throughout Uttarakhand' have the fundamental obligation under Art. 51 A (g) as loco parentis to be custodians of animal welfare and protection. Further, in yet another important development, in Karnail Singh's case(*CNLU LJ (9) [2020] 300 Case Comment: Karnail Singh and Others v. State of Haryana Animals Are Legal Persons with Parents C*, 2021), the Court laid down extensive guidelines for the persons involved in the transport of cattle to prevent inhuman and cruel treatment towards animals.

Apart from this, in many cases, the Courts have attempted to define and distinguish between the anthropocentric and eco-centric approach of governance (*A Nagaraja* being one of them) and have mentioned that it's time we follow the eco-centric/ecological principles of governance. The landmark cases of *T.N Godavarman Thirumulpad v. Union of India* (*T.N. Godavarman*

Thirumulpad Vs Union of India & Ors., 2006), *Centre for Environmental Law, WWF- India vs Union of India*(*Centre for Environmental Law, WWF-I v Union of India*, 2013) & *M.C Mehta v. Kamalnath*(*M.C. Mehta vs Kamal Nath & Ors on 13 December 1996*, 1996) are few other shining stars in the sky of eco-centric governance. In Jalabhai Serasiya (*Muhammadbhai Jalalbhai Serasiya vs State Of Gujarat &*, 2014), Lalit Miglani (Lalit Miglani vs State Of Uttarakhand And Others, 2017), and many others, Courts have taken the baton of 'ecological and eco-centric governance' further. The Madras High Court (In India) held that *mother nature* has the status of a legal person along with having 'all corresponding rights' of a living person(Indulia, 2022).

In *M K Ranjitsinh & Ors.* v *UOI(M . K . Ranjitsinh vs Union Of India on 19 April , 2021)*, the Apex Court of India, stood at the crossroads of choice of priority between the two virtues of environment protection – one is clean energy generation through windmills and solar power panels. The other is the protection of bird species facing the havoc of powerlines, which become fatal through electrocution or collision. The conservation of the bird species '*The Great Indian Bustard'* was prioritized by the Court, and alternate arrangements were advised for generating electricity that did not become fatal to the existence of the species in question(U. R. Sharma & Srivastava, 2022). The case references various legislations governing environment and wildlife protection in India (The Wildlife Protection Act of 1972; Environment Protection Act of 1986; Compensatory Afforestation Fund Act of 2016; Compensatory Afforestation Fund Management and Planning Authority Rules of Rajasthan, Companies Act, 2013; National Wildlife Action Plan of 2012; and Centrally sponsored Integrated Development of Wildlife Habitats Scheme). In *People for Animals v Md. Mohazzim & Anr.*(*People For Animals vs Md Mohazzim & Anr*, 2015), the Delhi High Court encountered a petition through an NGO claiming that thousands of birds are subjected to pain as the so called owners put them in small cages and sell them in commercial market for their vested rights, despite their statutory and constitutional right to live with dignity. Basis the A Nagaraja judgment (2014), Justice Manmohan Singh observed that I am clear in my 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 purpose of their business or otherwise.

In India, the judiciary, including the Supreme Court of India and various high courts have used the concept of ***parens patriae doctrine*** in diverse kind of cases for environment (both flora and fauna) which has established this doctrine as a significant part of the environmental/eco-centric jurisprudence of India. Prof. P P Mitra mentions of several such judgments delivered by various courts in India emphasizing on the extension of Article 21 of the Indian Constitution to the Non-Human beings in India through his work titled doctrine of parens pateria and the developing trend of animal jurisprudence in India(Mitra, 2018).

The provisions of the Indian Constitution enabling protection of the interest of non-human animals (which is essentially a duty based approach emanating from Part IV & Part IV -A of the Indian Constitution) and the interpretations of Indian Courts (also bringing animal rights/interests within the sweep of Part III of the Indian Constitution) reflect that work has happened in the dimension of animal welfare and both the rights based and duty based approaches have been employed by the Indian Constitutional law to further the interests of non-human animals. The next part of the chapter discusses developments in other jurisdictions also. It is thus, amply provided for in the Indian Constitution and reiterated by the Indian judiciary that animals have certain rights, and the citizens have an equal duty to ensure their well-being. Food is one of the basic necessities of animals especially stray as they have no stagnant source for the same. In such a scenario it becomes the duty of every citizen around such strays to feed them but with due caution and care so as to not cause harm or obstruction to any individual or members of society. Guidelines and notifications in this regard are in existence for the protection of stray dogs.

The establishment of Animal Welfare Board of India, as per Section 4 of the Prevention of Cruelty to Animals Act 1960, was for the purpose of promoting animal welfare and protection. AWBI has been authorized by the PCA Act to make rules for the prevention of any injury to the animals. A guideline for feeding of stray dogs was issues by way of a notification in 2010 as a part of the decision in *Welfare and Protection of Animals* v. *State*(Mitra, 2023). Very recently, in lieu of an order passed in *Urvashi Vashist* (*Urvashi Vashist & Ors* .

vs Residents Welfare Association & Ors, 2021) a notification was issued by AWBI for identification of sufficient number of feeding areas for stray dogs in every district and to properly implement the AWBI Revised Guidelines on Pet and Street Dogs(Advisory to Identify Sufficient Number of Feeding Spots for Stray Dogs in Every District and to Properly Implement the AWBI Revised Guidelines on Pet Dogs and Street Dogs, 2021).

While the Apex Court has vehemently established that the citizens have the right to feed the dogs, it equivalently and logically establishes that community dogs have the right to be fed, subject to taking proper care and precaution. Feeding has to happen at specific designated feeding zones which will be established in consultation with AWBI and Resident Welfare Association or Municipal Corporation. It is the responsibility of AWBI and RWA to understand that stray dogs often live and move around in packs' and thus ideally there should be multiple feeding areas in a locality.

While the Constitution has laid down provisions for animal welfare, aided by notifications and guidelines of the AWBI, there still remains much need for spreading awareness on the perspective of 'Right to life' for animals which entails being able to live with respect and dignity. Despite laws in place, which prohibit cruelty to the animals, the tendency to defy these laws in on the rise which is evidenced by daily occurrences of some or the other cruel treatment the victim of which have no escape but to suffer. Right to Feed stray dogs is thus only one victory in the battle for many more rights for the voiceless.

Recently, an eco-friendly crematorium for the Pets is opened in Malad (Mumbai)(Times of India, 2023). It is a step towards providing dignified cremation/burial to the non-human animals. As per the news sources, this eco-friendly cremation facility was inaugurated by BMC on 15th Sep 2023 to cater to deceased pets/small animals. The welcoming thing is that the facility may be accessed by people across Mumbai and not just the residents of Malad. Also, it is free of charge. As per the sources, the BMC claimed to introduce a mortuary for small pets (dogs, cats, and stray animals). This also would be appreciable move towards animal welfare and conferment of dignified 'death' to non-human animals. Though there may be various procedural issues that may be erupt when this is functional including whether all stray animals would be covered within

its ambit etc. but this doesn't take away the fact that it is a step in the right direction. The status of burial grounds for animals in India is also scarce and questionable(Chakraborty & Sarkar, 2021).

There are a few points of observation which, through this work, we wish to unfold since *Jallikattu 2023* might have a significant impact on the evolving animal law jurisprudence and the more prominent theme of rights of nature(Sundström, 2021), just like the Jallikattu 2014(*AWBI v A Nagaraja & Ors.*, 2014) had; however, in the opposite direction. Since 2014, various high courts have referred to the judgment numerous times to give progressive judgments in favour of animal care and conservation. For instance, the Madras High Court in the matter of *S.G.M. Shaa v. Principal Chief Conservator of Forests* (*S.G.M. Shaa v. Principal Chief Conservator of Forests*, 2020) held that the Elephant named Lalitha is entitled to express her normal patterns of behaviour and a similar approach that the Courts have in child custody cases was held to be followed in a case involving the relocation of Lalitha, the Elephant. The pointers are as follows -

i. The judgment analyses the issue technically and misses the philosophical perspective, which should not have been missed considering the jurisprudence evolving in the dimension of animal welfare. The *Jallikattu 2023* selectively refers to a few paragraphs from the *Jallikattu 2014* judgment. It ignores the concepts of eco-centrism (which essentially differs in its approach from the anthropocene or the human-centric orientation) (*Centre for Environmental Law v. Union of India | UNEP Law and Environment Assistance Platform*, n.d.), parens pateria (*Parens patriae'* literally means parent of the country, is the government's power and responsibility, beyond its police power over all citizens, to protect, care for, and control citizens who cannot take care of themselves, traditionally infants, idiots, and lunatics, and who have no other protector) (Clark, 2000; MITRA, 2018) etc., referred to in the *Jallikattu 2014*, which have positively impacted the evolution of animal welfare jurisprudence. The Supreme Court of India has also employed the doctrine of parens pateria in several cases such as *Aruna Ramachandra Shaunbaug* (*Aruna Ramachandra Shaunbaug v. Union of India*, 2011) & A Nagaraja (*AWBI v A Nagaraja & Ors.*, 2014). Considering the evolving jurisprudence, the Constitutional bench is

ordinarily expected to deal with the issue comprehensively. This kind of philosophical and jurisprudential bankruptcy, as in the *Jallikattu 2023* judgment, is almost unfair on the part of the Supreme Court of India. The Apex Court should have appreciated the depth and gravity of the issue it was called upon to adjudicate through the constitutional bench. The problem was not just about bovine sports but a much larger question involving the stature of animals as sentient beings, the issue of the dignity of animals, and the issue of finding a balance in the relationship between humans and animals, particularly in the contours of prevailing cultures(*Animal Welfare Board of India v Union of India*, 2023). The Jallikattu 2023 judgment appears like a blank judgment decorated with technical observations but needs to include the entire essence of it. The letter of the law is upheld, and the spirit is lost in abeyance.

ii. The *Jallikattu 2023* judgment does not overrule the *Jallikattu 2014* judgment in any way. The philosophical developments of animal welfare law that were attempted to be discussed in detail in *Jallikattu 2014* have not been referred to, annulled, diluted, set aside, or turned down in *Jallikattu 2023*. The enactment of the three impugned legislations by the respective states led to the change in circumstances between Jallikattu 2014 and Jallikattu 2023, and the whole ruling in the latter is based on this difference. On the points of jurisprudence and the aspects of animal jurisprudence emanating from the *Constitution of India & the Prevention of Cruelty to Animals Act, 1960 (PCA 1960)*, there has been no objection/dissent made in the *Jallikattu 2023*. This judgment has deliberately evaded from delving into the jurisprudential questions or clarifying whether there is any dissent with the Jallikattu 2014 on these points, which has the effect that the Jallikattu 2014 remains unaffected and unreversed on any pointers of the development of law and jurisprudence.

iii. The Nagaraja 2023 judgment, at para 24, observed, that *regarding the question of conferring the fundamental right on animals, they do not have any precedent. The judgment also mentioned that in A Nagaraja (2014), the Division Bench also did not mention that animals have fundamental rights.* This observation of the Apex Court is problematic considering the catena of judgments delivered by the Courts in India, some of them expressly declaring fundamental rights and some of them, though not mentioning, still recognizing, and protecting the

interests of animals (For instance, The Gujarat High Court in *Jalalbhai Serasiya* (*Muhammadbhai Jalalbhai Serasiya vs State Of Gujarat &*, 2014) held that keeping birds in cages would be tantamount to illegal confinement of the birds which is in violation of the rights of the birds to live in free air and sky. The Court directed to release such illegally confined birds in open sky or air). In Jalabhai Serasiya, Lalit Miglani(*Lalit Miglani vs State Of Uttarakhand And Others*, 2017), and many others, Courts have taken the baton of 'ecological and eco-centric governance' further. Considering these precedents, the observation in Jallikattu 2023 seems deeply problematic. Interestingly, in *M K Ranjitsinh(M . K . Ranjitsinh vs Union Of India on 19 April , 2021)* the Apex Court of India, stood at the crossroads of choice of priority between the two virtues of environment protection – one is clean energy generation through windmills and solar power panels. The other is the protection of bird species facing the havoc of powerlines, which become fatal through electrocution or collision. The primary issue encircling the case was protecting the endangered species of the birds in question and finding an alternative to the overhead powerlines in the form of underground infrastructure. The primary consideration is the protection of the species in whichever manner possible. The feasibility of using bird diverters and installing underground power networks was discussed similarly. The case references various legislations governing environment and wildlife protection in India namely The Wildlife Protection Act of 1972; Environment Protection Act of 1986; Compensatory Afforestation Fund Act of 2016; Compensatory Afforestation Fund Management and Planning Authority Rules of Rajasthan, Companies Act, 2013; National Wildlife Action Plan of 2012; and Centrally sponsored Integrated Development of Wildlife Habitats Scheme. The Court referenced the landmark cases of *T.N Godavarman Thirumulpad* (*T.N. Godavarman Thirumulpad Vs Union of India & Ors.*, 2006), *Centre for Environmental Law, WWF- India*(*Centre for Environmental Law v. Union of India | UNEP Law and Environment Assistance Platform*, n.d.) & *Kamalnath* ***(M.C. Mehta vs Kamal Nath & Ors on 13 December 1996)***. The Court expounded the philosophy of eco-centrism and ruled in favour of the petitioners, granting them the relief sought. Essentially, the conservation of the bird species '*The Great Indian Bustard'* was prioritised by the Court, and alternate

arrangements were advised for generating electricity that did not become fatal to the existence of the species in question(U. R. Sharma & Srivastava, 2022). Foreign precedents are also available on the point that the interests of animals have been prioritised over specific human interests. The Tennessee Valley Case (*Tennessee Valley Auth. v. Hill*, 1978) may be advantageous wherein the U.S. Supreme Court passed an injunction to stop the construction of a dam which could have destroyed the critical habitat and endangered the survival of snail darter fish.

a. Giving impetus to the philosophy of eco-centrism and extending the priority to animal interests is something the Apex Court of India has done in the recent past, considering that the Jallikattu 2023 is a displeasing and disappointing judgment and the observation considering 'no precedent' is *problematic*.

b. Shockingly, the High Courts have adorned judicial activism and given many progressive judgments to facilitate the interests of the animals. In contrast, the country's highest court misses such a flare for protecting the vulnerable class. It abdicates its responsibility as the 'parens pateria'. The non-consideration of the efforts of various high courts of India towards developing a branch of animal law by the five-judge constitution bench reinforces the medieval mindset towards animals. Professor Baxi also finds this observation of the court *deeply puzzling* (Baxi, 2023).

iv. 'One step forward, two steps backwards' is how animal welfare at the hands of the Indian judiciary appears. Whereas on the one hand, the Courts of other jurisdictions are setting progressive precedents to protect the interest of animals, so much so that animals have been recognised as 'victims of crime'(U. R. Sharma, 2022; SHARMA & SRIVSTAVA, 2020), and the *Jallikattu 2023* judgment takes us back and impedes the rhythm and flow of the animal welfare movement which was evolving. The Supreme Court of Oregon in the matter of *Arnold Weldon Nix* (*State of Oregon v. Nix*, 2015) held the animals as 'victims' of crime. The Court, while explaining the ratio, was of the opinion that they must give effect to the legislative intent and for the anti-cruelty legislation in question, the intent clearly aligns with the implied positioning of animals as

victims of crime or abuse. The relevant extract of the judgment in Nix(*State of Oregon v. Nix*, 2015) is produced in Annexure 2 for reference.

v. Additionally, the Courts in India were gradually developing a 'compassionate jurisprudence'(Mitra, 2023) for protecting the interests of non-humans with a comprehensive reading of the Constitution of India. *Jallikattu 2023* is a setback to this evolving jurisprudence. Also, this compassionate jurisprudence has the basis in the composite culture of India. Prof. Mitra, in his book on animal law, mentions: *The concept of compassion for living creatures enshrined in Article 51A(g) is based on the background of the rich cultural heritage of India, the land of Mahatma Gandhi, Vinoda Bhave, Mahaveer, Buddha, Guru Nanak and others*(Mitra, 2019). The law has several times encountered the question of the legitimacy of customs. Several times, the legislature and the Courts have annulled/banned/prohibited/legitimized the practices which were inhumane, cruel or against public policy, irrespective of the fact that such practices continued for several years in history. Child Marriage(The Child Marriage Restriant Act, 1929; The Prohibition of Child Marriage Act, 2006), the Dowry system(The Dowry Prohibition Act, 1961), Sati practice(The Commission of Sati (Prevention) Act, 1987) (Originally, the practice of Sati was abolished through the Bengal Sati Regulation 1829), Devadasi practice(The Tamil Nadu Devadasis (Prevention of Dedication) Act, 1947), and animal sacrifice(The Gujarat Animals And Birds Sacrifices Act, 1972; The Karnataka Prevention of Animal Sacrifices Act, 1959; The Tamil Nadu Animals and Birds Sacrifices Prohibition Act, 1950) are all instances of the clash of law and customs. A few years back, In *Ramesh Sharma* (*Ramesh Sharma v. State of Himachal Pradesh*, 2014), the High Court decided upon the legality of animal sacrifice in the State and held that the ritual involves 'unimaginable cruelty*' towards* the animal to be sacrificed. Also, the court asserted that it reflects superstition and therefore needs to be abandoned (*Ramesh Sharma v. State of Himachal Pradesh*, 2014). Even, *Jallikattu 2014* did not *abdicate* from determining the legitimacy of the business on the touchstone of cruelty to animals and causing unnecessary pain and suffering to them.

3.3 Animal Rights Approach –

"Animals have a life of their own, of importance to them apart from their utility to us. They have a biography, not just a biology. They are not only in the world, they have experience of it. They are somebody, not something. And each has a life which fares better or worse for the one whose life it is."

Tom Regan (*One Life: In Honour of Professor Tom Regan - a Founding Father of Animal Rights*, 2020)

The rights-based view for animals rights aims to protect animals from being abused or used by humans. The view considers it wrong to use or exploit animals in any way. The contention that Animal Rights advocates present is that humans lack any moral justification for abusing or killing animals, however humanely we treat them and however painlessly slaughter them. This is where this view has a stark difference from the Welfare Approach (which emphasizes humane care for, and treatment of animals rather than complete abolition of use of animals by human beings).

The most significant contribution in the theoretical framework of the Rights Theory comes from an American Philosopher Mr. Tom Regan, through his book *The Case for Animal Rights (1983)* and his other contributions thereafter. Tom Regan justifies why he is in proposition of the animal rights approach rather than the welfarist view by asserting that a provision of right is much more important, since rights, by their implication, impose a burden/onus on the other party, who has to accept it as almost enforceable and irrevocable. Once we have accepted that animals have some rights, then we should not be able to do certain things to animals, since it would violate or impinge on their rights. Regan's basic concern is that by taking animals as mere means to fulfil our needs/wishes/aspirations, we take away their rights to be treated with respect and dignity. And he happens to contend that any cruelty to animals is wrong, since it violates their right of not being harmed. The following, are asserted, as the goals of Animal Rights movement by Regan:

i. The total ban on the use of animals in science
ii. The total dissolution of commercial animal agriculture
iii. The total ban of commercial and sport hunting and trapping of animals.

3.3.1 Tom Regan and his 'Subject of a life' approach for animals –

A lot of what gets presented as a theory from Tom Regan derives from a very important perspective that Regan shares with us in the form of 'subject of a life' approach.

This approach appears like the extension of the Kantian approach (Immanuel Kant's deontological ethics) as per which humans are to be treated as ends and not means. Regan extends this for animals and asserts that not just human beings but also animals (particularly, some higher animals) possess such a distinct value, namely, of inherent value, a value that demands respectful and dignified treatment from others. Any being who possesses this inherent value is the '*subject of a life'*, as such deserves respectful treatment. Regan may be considered an **Eco-centric Kantain** as far as the subject of a life approach is concerned. Therefore, it appears that 'subject of the life' approach and 'inherent value in being' are two important pointers in the approach of Regan and in the Animal Rights theory he proposes.

Regan also explains his '***subject-of-a-life'*** criteria in the following manner(Regan, 1983):

"*Individuals are subject-of-a-life if they have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychological identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and logically independently of their being the object of anyone else's interests*."

Joel Fienberg, and American legal scholar, could be referred as the first names to contribute towards the animal rights theory. In 1974, he published his essay titled *The Rights of Animals and Unborn Generations* wherein he proposed the need for some rights for animals in order to enable them to protect their interests. Whether animals have rights is not an easy question to answer. The reason is the complexity surrounding the discussion in so many ways. The complexity starts from questioning could animals be possessors of rights? Could they be 'persons' under the law to be able to possess rights? Towards the more complex contours which is if they can be holders of rights, then what rights are they entitled to

possess? What interests are sought to be protected through the acknowledgment and recognition of such rights? and how to resolve the tussle or encounter of human versus animal interest at each step of conflicting interest. The complexity keeps becoming grim because the human life is so much entangled with the usage of animals in their survival that there is an obvious reluctance to have a serious discussion on the issue as well as changing the life patterns and habits to make the rights of animals a reality from mere theoretical abstraction.

Humans beings have recognized certain inherent value in themselves which has rendered them capable of moral consideration as well as made them qualify as subjects of a life. The possession of cognitive and emotional traits involving self-awareness, being guided by conscious decisions and personal preferences and pursuit of the quality in lives are some traits making humans subjects of moral consideration under the law(Orzechowski, 2020).

One of the most prominent approaches to understand the Rights based approach is the **Capacity Approach** wherein the personhood of the subject is investigated as a qualifier to claim as possessors of rights. This is much more complicated than it seems since both the concept of rights and the concept of personhood are extremely complicated in themselves.

Many animal rights/animal welfare scholars have used the capacity approach to make a case for the rights of animals.

Notable Scholars of the Animal Rights theory –

i. Tom Regan
ii. Gary L Francione
iii. Joel Fienberg

3.3.2 Global Developments and the recognition of the interests of Non-human Animals in the Constitutional Scheme –

This part of the chapter mentions the instances of various jurisdictions/states who have ensured to mention the protection of the rights of the non-human entities within their constitutional framework. These nations have kept environmental concerns at a considerable priority and attempted to ensure the protection of environment, flora, fauna, and animals generally through making an express mention about them in the respective Constitutional law. This part

also mentions some considerable developments in the same direction. Some of the leading instances that this part attempts to cover are as follows -

In 2022, a latin American nation named Panama, passed a bill in their respective legislature, which conferred rights to nature *as like that for humans, corporations, or trusts*(Daunton, 2022). *It defined nature as unique, indivisible, self-regulating community of living beings, elements and ecosystems interrelated to each other that sustains, contains and reproduces all beings*(Yamuna S, 2022). Juan Diego Vasquez, a young Panamanian Congressman, introduced the law in the national assembly and he mentions that(Daunton, 2022):

the law aims, first and foremost, to acknowledge Nature as a subject of law, therefore redefining its legal scope of protection and guaranteeing an inherent list of rights to be safeguarded. It also creates a framework that enhances and complements the legal and judicial means, resources, and arguments available for environmental lawyers and activists.

Ecuador formally recognized the rights of nature in the Constitution in 2008 and became the first country to do so. It provides that nature (which is where the life is reproduced and occurs) has the right to *integral respect for its existence and for the maintenance and regeneration of life cycles, structure, functions, and evolutionary processes. All persons, communities, peoples, and nations can call upon public authorities to enforce the rights of nature* (GARCIA, 2022).

Columbia conferred personhood/legal personality to a river named 'Atrato' in the year 2016 in furtherance of recognizing the rights of 'indigenous communities' biocultural rights(Granting the World's Rivers Legal Personhood, 2023).

Bangladesh, in the year 2019, conferred legal protection to all its rivers when the Supreme Court of Bangladesh, granted 'legal personhood' to all the rivers in Bangladesh, along with giving 17 major directives in order to curtail river pollution and to prevent illegal riverbank development/ encroachment (Protecting Rights of Rivers: Turning Intention into Action, 2020).

In the year 2017, there are four leading instances wherein the rivers were conferred the legal protections/legal personality. One is from New Zealand for

the Whanganui River, the other is for the Rio Altrato river in Columbia, the other two are for the river Ganga and river Yamuna in India(Challe, 2021).

In Spain, one of the coastal enclaves, a rather unusual one, named Mar Menor has been conferred 'legal personality'(Mar Menor Now a 'Legal Person': How the Public Saved a Heavenly Sea, 2022). This conferment connotes that not only the State and the local government are under an obligation to preserve it and its health, the general public also is legally obliged to preserve it.

The employment of the doctrine of '***In dubio Pro Natura'***- This principle of interpretation, which connotes when in doubt, prioritize the environmental protection is a principle of statutory interpretation, which has been applied in multiple jurisdictions. It has emerged as an *ecological rule* of statutory interpretation. It may be necessary to reproduce few observations from the research of Nicholas S. Bryner, which are as follows(Nicholas S. Bryner, 2018): The line of judicial decisions on standing and access to judicial review for parties representing environmental interests portrays an analogous process, where environmental consciousness altered legal doctrine in ways that might have previously seemed unlikely. As comparative examples, the principle *in dubio pro natura*- when in doubt, decide in favor of nature – has reshaped statutory interpretation, and the recognition of an ecological function of property has redefined traditional thinking about property rights. These experiences provide a pattern to show how an environmental canon of construction con be incorporated into U.S. law.

In light of the previously mentioned, it is aptly clear that many nations of the world are giving rights to the non-human entities (both flora and fauna), sometimes as 'rights of the nature'. Regarding animals, Switzerland and Germany are the leading nations to recognize animal rights in its Constitution(E. Evans, 2010). Many other nations are following the shift towards eco-centricism.

3.4 Duty based approach and Rights based approach – A review of theoretical framework-

"We believe that the physiological, and more particularly the anatomical, evidence fully justifies and reinforces the commonsense belief that animals feel pain".

-Committee on Cruelty to Animals (Britain)(Singer, 2009)

Though animal welfare and animal rights appear to be synonymous or interchangeable, when it comes to theoretical framework of animal, there is a huge difference between the two. They are two streams flowing in different directions and labelled as two approaches of animal law. Whereas the animal welfare approach contends for humane treatment towards animals/humane use of animals, the rights-based approach demands animals to be treated as ends and not as means to be used for our purposes. The rights view has a problem and reservation on the very use of animals and not on how humans use animals. Therefore, the welfare approach doesn't claim for total abolition of animal use for human purposes, the rights-based view demands complete abolition of animal use.

Not just differences, there are a number of overlaps and similarities in the approach of Singer and Regan. Firstly, they both place animals within the sphere of moral consideration. The position of animals as subjects of moral consideration and therefore the recognition of their interest in law is undisputed from both the approaches, however both propose different criterion for moral consideration.

The other big similarity is the reference of 'human case' or 'human interest or human rights' yardstick or dimension for basing the approach of moral consideration for animals. Singer makes the case for similarity of animals with humans in respect of their ability to feel pleasure and pain whereas Regan proposes that the possession of morality demands more than consciousness, or sentiency: that the being must possess some complex cognitive abilities too (which in Regan's idea would be *subject of a life* and would possess *inherent value)*. In fact, Regan while supplying a summary of his book ***The Case for Animal Rights,*** stated this in clear and explicit terms:

The first is how the theory that underlies the case for animal rights shows that the animal rights movement is a part of, not antagonistic to, the human rights movement. The theory that rationally grounds the rights of animals also grounds the rights of humans. Thus, those involved in the animal rights movement are partners in the struggle to secure respect for human rights- the rights of women,

for example, or minorities, or workers. The animal rights movement is cut from the same moral cloth as these.

Amongst various notable contributions, two names stand out, Peter Singer for the Animal welfarist approach and Tom Regan for the Animal Rights Approach. The discussion surrounds their seminal contributions to the theory of animal laws.

Scholars like 'Peter Singer' take the route of 'Animal Welfare' approach whereas scholars like 'Tom Regan' take the route of 'Animal Rights' approach. Peter Singer is an Australian Philosopher. His work in the form of his book titled, *Animal Liberation: A New Ethics for Our Treatment of Animals published in 1975*, is considered a significant work in animal rights literature. *Animal Liberation* significantly impacted public perception and discourse on animal rights, initiated debates and conversations on moral treatment of animals. It inspired policymakers to address ethical issues in animal welfare and rights Tom Regan was an American Philosopher who focused and specialized on animal rights theory. His first book, *The Case for Animal Rights,* published in 1983, remains a seminal work in the field of animal ethics and has had a significant impact on the way people think about the moral status of animals. It has inspired debates and discussions about the rights of animals and the ethical treatment of non-human creatures. Amidst this conundrum, 'Steven M. Wise'(Wise, 2000), makes another strong case with jurisprudential richness, scientific wealth and logical virtuosity, through 'Rattling the Cage'. The book makes the reader understand about the 'cage' that has kept the welfare of non-human animals from realization and how is cage getting 'stronger and almost unbreakable' over the years and generations. Also, why it is important to 'rattle the cage' and how this cage could be 'rattled'.

A review of existing scholarship around animal law, would help better position this tributary 'Rattling the Cage' a little better in the river of animal welfare and animal rights. Two of the most prominent modern scholars in animal law, who have impacted the theoretical framework are Peter Singer(Singer, 2009) and Tom Regan(Regan, 1983), through whom a new discussion over the two approaches *i.e.,* animal welfare and animal rights started. Peter Singer does an insightful analysis of the human-animal relationship and brings many new

perspectives to the forefront of animal law discourse. Among the modern-day contemporary literature on animal welfare/animal interests, the work of Peter Singer stands out, so much so that Courts have been making frequent references to his work, while ruling about animal law jurisprudence matters(*AWBI v A Nagaraja & Ors.*, 2014). Interestingly, Singer proposes a principle of equality, which though does not advocate about equal or same rights as that of humans but advocates for fair consideration of the interests of the animals (in avoiding suffering). Singer's theory advocates at least a starting point that gives equal consideration to each group's interests.

On the other hand, Tom Regan opines that non-human animals do have rights(Banaszak, 2023). Regan argues in The Case for Animal Rights that animals have rights because they are subjects of a life, just like humans, and therefore there is an intrinsic value in their existence, regardless of it being recognized by humans or not. In establishing the 'subject of a life' criteria, he focuses on the ability to perception, memory, feelings of pain, pleasure, desires, and goals. Relying on these indicators, Regan contends that animals have value in and of themselves, and it is not fair to hold them just as property or resources for human interests. Regan contends against the use of animals in science also. Further, he objects to trapping, hunting and commercial agriculture.

Interestingly, these two major works have been written prior to 'Rattling the Cage' which gives a good theoretical background to Steven M. Wise to analyze and ponder upon. The Opinions of Rene Descartes, Immanuel Kant, John Locke, Jeremy Bentham, John Rawls have also contributed to the discourse a great deal. In the 21st Century, the opinions of notable scholars such as David Favre and Martha C. Nussbaum are contributing greatly to the theoretical framework of animal laws. Let us ponder upon their contributions from an Eagle's view perspective. Descartes was a French philosopher, a mathematician, and a writer (1596-1650). His opinions have greatly impacted the animal law in a regressive manner.

Immanuel Kant was a German philosopher, and a notable jurist referred extensively in legal theory in the study of law (1724-1804). He highlighted that humans have responsibilities towards both humans and animals. He argued that cruelty to animals is not only morally unacceptable for their sake, but also

because it harms human morality. Kant believed that such cruelty erodes human empathy and sympathy, qualities crucial for healthy human relationships.

John Locke was a British philosopher (1632-1704). He argued that cruelty towards animals was morally unjustifiable, as it desensitized individuals and made them less compassionate even towards humans. Jeremy Bentham was a renowned philosopher and jurist from England (1748-1832). Jeremy Bentham's perspective on animals contrasts with Descartes' insensitive views, valuing them as sensitive beings deserving benevolence. His famous quote, which connotes that *the real question is not about the ability to reason or talk, but rather the ability to suffer,* has influenced animal law development and global animal welfare laws. Bentham's shift from an anthropocentric standpoint to compassionate treatment of animals has shaped animal protection laws and policies. John Rawls was an American philosopher, famous in moral and political philosophy, particularly for his work, *A theory of Justice* (1921-2002). John Rawls did not extensively address animal rights. However, some scholars have attempted to extend their principles to discuss the ethical treatment of animals. *A Theory of Justice,* introduces the concept of the *original position* and *veil of ignorance* to determine fair principles of justice in society. These principles, including the maximin and difference principles, aim to ensure the well-being of the least advantaged members. David Favre has extensively researched animal law theory and provided detailed suggestions for changes to improve animal welfare. Favre critiqued the idea of animals being considered property, arguing that activists of animal rights have an incorrect understanding of property law. He focuses on creating a balance between humans and animals through a systematic process which has been reflected in his book, *Respecting Animals: A Balanced Approach to Our Relationship with Pets, Food, and Wildlife (2018)* also. Martha Nussabaum's book, *Justice for Animals: Our Collective Responsibility (2021),* emphasizes the importance of allowing animals the freedom to live their full lives. She uses the "capabilities approach" to consider harm and infringing on their freedom.

Inter alia the major influence on animal law have been from earlier philosophers, namely, Rene Descartes and Bentham, when Descartes opined that animals are like objects and they don’t feel pain and they are not even

subjects of moral consideration (Robertson, 2015). Whereas Jeremy Bentham opined that they are subjects of moral consideration with his famous argument about the ability to suffer rather than to reason or talk (Robertson, 2015). The modern philosophers, namely, Peter Singer and Tom Regan, for the reasons mentioned above.

The rights view, in contrast to welfare approach, argues that animals, especially the higher animals, should be treated as objects of moral concern considering their cognitive abilities. Thereby, it would be injustice to them to be treated as means for human ends and not an end in themselves. The animal rights view holds it morally wrong to use or exploit animals in any way. It also disregards the concept of treating animals as property. The animal rights approach questions the very use of animals and not how to use them (as in welfare approach).

3.5 Concluding Remarks -

With international developments happening in this regard wherein the rights of the non-human entities are expressly mentioned in the respective national constitution, and a number of suggestions and recommendations flown towards the Indian parliament from the Indian Supreme Court itself (In the A Nagaraja Judgment (2014), the Supreme Court, gave various directions to the Parliament and the executive, the 9th direction being as follows- *Parliament, it is expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honor)*, it becomes imperative for the law makers in India, the Parliament, to engage with the question of granting rights/legal personhood to the non-human entities (particularly animals) within the constitutional framework of India. As mentioned in above parts, many high courts, in their rulings, have conferred legal personality to animals and other natural entities and also conferred certain fundamental rights of the animals. Judiciary, which has majorly been proactive in recognition of the interest of non-human animals, delivered a regressive judgment, through a five judge bench decision(*Animal Welfare Board of India v Union of India*, 2023), which not only upsets the tune of evolving developments in animal law but also reflected that judiciary is not ready to take

up the question of animal protection seriously since instead of confronting and addressing the issue holistically, the court, in a way, put the ball in the court of the parliament, an instance of judicial evasion and also a missed opportunity to decide on issue pertaining to non-human animals. The responsibility of the Parliament becomes all the more significant, in this situation and it should rise to the occasion and make some efforts to make the law-making chambers raise eco-centric concerns and not just limit or exhaust itself with anthropocene commitments and concerns.

Apart from this, generating awareness and sensitization among the masses is another challenge for the protection of the interest of non-human animals. Professor Baxi, while commenting on Animal law, quoted Martin Luther King Jr. that *the law cannot change the heart, but it can restrain the heartless* and mentioned that the struggle for justice for animals (and rights) is both for restraining the heartless and to become the path for changing the very habits of the heart(Baxi, 2022). Perhaps, this is the long-standing challenge with the animal law.

This chapter of the research brings forth the discussion on the two prominent approaches within the animal law scholarship- the animal welfare approach and the animal rights approach and the basis of these theories, especially the Peter Singer's Equal consideration of interests (behind animal welfare theory) and the Tom Regan's subject of the life approach (behind animal rights theory). Thereafter the chapter discusses the Indian legal framework vis-à-vis non-human animals through the Indian Constitution and the Prevention of Cruelty to Animals Act, 1960 which have followed the duty-based approach towards animal welfare and thereafter discusses certain judgments of the Indian judiciary, which have taken both the rights and the duty-based approaches in interpreting the constitutional provisions. The chapter also discusses the global developments towards the recognition of the interests of the non-human animals and analyses the rights-based inclination of the approach. This chapter caters to research objectives number 1, 2 & 3.

CHAPTER 4
CRITICAL ANALYSIS OF ANIMAL LAW REGIME IN INDIA

4.1 Introduction

This part of the research attempts at critically analyzing the animal law in India. To do that, the research does a comparative study of several jurisdictions, through the reference of secondary data. Also, the research makes a critical analysis of the recent amendments proposed to the Prevention of Cruelty to Animals Act, 1960 through the Bill of 2022. Since, animal law in India is too wide in itself (encompassing even the wildlife protection laws and a vast quantum of delegated legislation made under the Act of 1960), the research here confines to the aspect of animal cruelty law of India for comparative purposes and through that attempts to critically analyze the animal law in India. The background is to place limitation with regard to the law concerning humane treatment of animals, which in several jurisdictions is existent under the head of 'anti-cruelty statute' (India, Pakistan, South Africa) or 'animal welfare statute' (UK, Germany, Switzerland). Also, such statutes generally deal with all animals (domesticated, community or wild) to the extent of preventing cruelty/animal welfare. India may be classical case here where the Act of 1960 aims to *prevent the infliction of pain or suffering on animals* and defines animal as 'any living creature other than a human being'. Also, such statutes deal with various aspects of human-animal relationship which have historically been the instances of causing 'pain and suffering' to animals and attempt to make a division in such suffering as 'necessary' or 'unnecessary'. For instance, the Act of 1960 in India, deals with 'duties of persons in charge of animals', 'treating animals cruelly', 'the practice of phooka or doom dev' 'destruction of suffering animals', experiments on animals', 'performing animals', 'killing of animal prescribed by the religions' 'treatment and care for animals', 'establishment of Animal Welfare Board of India', inter alia. Also, in India, a vast amount of legislative exercise is done in the form of delegated legislation (Draught and Pack Animal

Rules 1965, Licensing of Farriers Rules 1965, Performing Animal Rules 1973, Transport of Animal Rules 1978, Application of Fines Rules 1978, Registration of Cattle Premises Rules 1978, Capture of Animal Rules 1972, Breeding of and Experiments on Animals (Control and Supervision) Amendment Rules 2001, under the Act of 1960. Summing up all of it, it becomes a vast body of law. Even before the Act of 1960, India had the law for humane treatment of animals, which was the Prevention of Cruelty to Animals Act, 1890, which was repealed by the Act of 1960 only upon its enactment. Some of the other laws dealing with the animal conservation before the Act of 1960 were Madras Wild Elephant Preservation Act, 1873, British Cruelty to Animals Act, 1876, Elephant Preservation Act, 1879, Wild Birds Protection Act, 1887, The Mysore Games and Fish Preservation Regulations, 1901, inter alia.

In light of the reasons stated in the aforementioned paragraph, the research limits the ambit of the research for comparative purposes. The important reasons are tow fold - a) pragmatic (to make it practical, workable) and b) that animal welfare law/anti-cruelty law which deal with humane treatment of animals in several jurisdictions of the world cater to all animals and deal with several aspects of human-animal relationships unlike the specific specie protection or conservation law, which deals with a specific set of animal/animals and therefore, the animal welfare law/anti-cruelty law, grants a much more rational and logical basis for deducing generality in comparison. Animal law encompasses many areas of law including tort law, contract law, constitutional law, family law, environmental law, administrative law, criminal law, international law, law on trusts etc. Animal Law, in a way, could be defined as the blend of statutory law and case laws which relates to or has an impact on non-human animals(*Animal Law An Overview of Animal Law*, n.d.). The attempt which research makes is to deduce a legal mechanism which is futuristic and eco-centric.

4.2 **Prevention of Cruelty to Animals- A Historical Context-**

The first legislation concerning preventing cruelty to animals was passed in 1922 by the British Parliament (Stillman, 1912). It was introduced by the efforts and labour of Mr. Richard Martin, who was a member of House of Commons and therefore also known as Martin's Act. It was named 'The Cruel Treatment

of Cattle Act, 1922 and it aimed to *prevent the cruel and improper treatment of cattle* (Cruel Treatment of Cattle Act, 1822). Very recently in 2022, the UK Parliament celebrated 200th anniversary of this legislation and the motion text of the proceedings goes as follows:

That this House celebrates the 200th anniversary of Martin's Act, The Cruel Treatment of Cattle Act 1822, the first piece of animal welfare legislation in the world; celebrates the development of the body of animal welfare law in the UK today based on the principles of Martin's Act; recognises the role that the Act played in the establishment of the RSPCA, the world's oldest animal welfare charity; and calls on all Members to continue to support the development of new animal welfare law in the UK.

The scope of the legislation then was restricted to domesticated animals and preventing cruelty against them. The operative provision of the legislation reads : That if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any Horse, Mare, Gelding, Mule, Ass, Ox, Cow, Heifer, Steer, Sheep, or other cattle, and complaint on Oath and thereof be made to any Justice of the Peace or other Magistrate to issue his Summons or warrant, at his discretion, to bring the party or parties so complained of before him, or any other Justice of the Peace or other Magistrate has jurisdiction, who shall examine upon Oath any witness or witnesses who shall appear or be produced to give information touching such offence; and if the party or parties accused shall be convicted of such offence, either by his, her, or their own confession, or upon such information as aforesaid, he, she, or they so convicted shall forfeit and pay any sum not exceeding Five Pounds, not less than Ten Shillings, to his Majesty, His heirs and successors;

Also, it was in 1824, when the first society aimed at prevention of cruelty to animals was organized in London(Stillman, 1912). This is still in existence and now called by the name of 'Royal Society for the Prevention of Cruelty to Animals' (RSPCA). RSPCA depicts the story of its creation giving it a title It all began in a Coffee Shop. This society also claims to be the world's largest and oldest animal welfare charity, with its prime focus areas being the rescue, rehabilitation and rehoming or releasing animals across England and

Wales(RSPCA, n.d.). The RSPCA also acknowledged and celebrated 200 years of its existence recently(RSPCA, n.d.). Since its inception, it has done voluminous work towards animal welfare and protection. Its contributions towards pushing and facilitating the enactment of The Hunting Act, 2005 (for wildlife protection) & the Animal Welfare Act, 2006 in UK is significant (RSPCA, n.d.).

In 1866, the American Society for the Prevention of Cruelty to Animals (ASPCA) was founded by an American Diplomat, Mr. Henry Bergh. An interesting story depicts about his commitment to the cause of preventing cruelty wherein while in Russia, as an American diplomat, he stopped a carriage driver from beating his fallen horse(ASPCA, n.d.). It was then he realized that he must devote his work to protecting animals and thereafter resigned from his post, returned to New York to work towards the cause of preventing animals from cruelty and violence. Resultantly, the ASPCA was founded through him. It was the creation of this society and the works undertaken by it that prompted the New York State Legislature to pass the country's first anti-cruelty law(ASPCA, n.d.).

Below is the image of the official Seal of ASPCA that was released in 1867 and this also depicts the story that is narrated above and that perhaps led to the creation of ASPCA, an angel saving the fallen horse from the onslaught of the cart owner/cart driver and also signifying a message of 'humane and respectful treatment of animals'. The image is produced below from the official website of the ASPCA-

Source of the Image - (ASPCA, n.d.)

Later animal welfare societies got established and created in different parts of the world. India, Japan, Finland, Egypt, South Africa, South America, Europe and Noth America are few amongst the list where such societies are effectively working.

William O. Stillman, the then President of the American Humane Association, mentions of the scope generally covered by the Anti-cruelty legislations and the subjects and themes broadly covered by them(Stillman, 1912) -

" *There are laws which provide that proper food and drink must be supplied to them; that disabled animals must not be abandoned or any animals carried in a cruel manner, whether in private vehicles or by common carriers; that substances injurious to animals shall not be thrown in public places; that cows shall not be kept in unhealthy places or fed improper food; that animal fights for sports shall be forbidden; and there are a number of special provisions designed to protect beasts from heedless or intentional cruelty*. "

Stillman(Stillman, 1912) further also mentions the general policy of legislating about offences in anti-cruelty legislations, which is relevant from criminological point of view and worth reproducing here:

" The general policy of anti-cruelty legislation, however, has been not to legislate specially for every conceivable offense, but rather to provide general statutes designed to apply to most cases of abuse. As New York state was the first one pass a special law for the protection of animals, its blanket statute has been largely copied in other states, Section 185 of the penal law of New York state is designed to cover all ordinary forms of cruelty and will serve as an example of the legal protection given to animals by a blanket statute."

4.3 Animal Cruelty Legislation – Indian Context –

The subject of 'prevention of cruelty to animals' as a legislative subject has found its place in the Concurrent List, a subject of mutual relevance and importance to both the Centre and the State. As per the Government of India Act, 1935 also, it was listed Under Entry 22 of the Concurrent List and in the Constitution of India, 1950, it is listed under Entry 17. After the 74th Amendment to the Constitution in the year 1992, the subject 'prevention of

cruelty to animals' has also been conferred to the Municipal Authority of the Local Government as Schedule XII (Article 243 W) of the Constitution(Mitra, 2019).

The primary applicable law dealing with the subject of Prevention of Cruelty is the 'Prevention of Cruelty to Animals Act, 1960 (also referred to as the 'PCA' or 'the Act of 1960').

PCA, which came into force in the year 1960(The Prevention of Cruelty To Animals Act, 1960), covered the aspect of animal welfare and preventing animals from abuse and cruelty in a comprehensive manner. The Act aims *to prevent the infliction of unnecessary pain and suffering on animals* and for that purpose the law proposes *to amend the law relating to the prevention of cruelty to animals.*

The Act of 1960 prescribes a duty-based regime wherein several duties (negative to positive) are provided and recognized with the view to achieving animal welfare. The negative duty includes not to torture, hurt or abuse animals or to treat animals with cruelty and the positive duties include the duty to take care and take reasonable measures to prevent infliction of pain and suffering towards the animals. Section 11 and Section 3 of the legislation are the classic examples of the negative duty and positive duty-based regime respectively under the Act of 1960. Section 11 defines acts which amount to treating animals cruelly and section 3 provides for the duties of persons in charge of animals. The detailed provision has been mentioned in the Annexure-1. Section 3 prescribing duty towards care of animals provides that 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.

Section 2(a) defines *animal* as any living creature other than a human being (The Prevention of Cruelty To Animals Act, 1960), which gives a clear indication about the wide ambit of the legislation encompassing its jurisdiction over any animal (wild, companion, performing, cattle etc.). As per Section 3, a positive obligation is cast upon the person in charge of the animal (or animals) " to *take all reasonable measures to ensure the well-being of such animal and*

to prevent the infliction upon such animal of unnecessary pain and suffering(The Prevention of Cruelty To Animals Act, 1960). "

The legislation, through Section 4, also establishes a body named Animal Welfare Board of India (The Prevention of Cruelty To Animals Act, 1960) (which will also be referred as AWBI hereinafter). Like any other juristic entity, the AWBI , as per Section 4(2), shall be a body corporate, shall enjoy a perpetual succession, and have a common seal and shall have the power to hold, and dispose of property in its name, also it may be sued and may sue and may pursue litigation in its name (The Prevention of Cruelty To Animals Act, 1960).

The purpose of the Board, as per Section 4, is the promotion of animal welfare generally and in particular, the protection of animals from being subjected to unnecessary pain or suffering(The Prevention of Cruelty To Animals Act, 1960). The objective of establishment of AWBI, as mentioned, clearly reflect towards the wide nature of functions entrusted on the AWBI by the Act of 1960 since the general object of *promotion of animal welfare* may include dozens of functions in furtherance of welfare of animals, and may include protection of habitat of animals, pursuing scholarly and research activities for the furtherance of animal welfare, pursuing litigation on behalf of animals for protecting their interests, generating sensitization and awareness for the cause of animal welfare, suggesting policy and legal changes and advocating for the constitutional protections to be conferred on animals, envisioning an eco-centric approach of law and making efforts to dislodge the anthropocene framework step by step gradually. These are just a few notable areas; the list is clearly not exhaustive. Section 9 of the Act, comprehensively and in detailed manner, provides for the functions of the AWBI, enumerated in twelve (12) clauses from 9(a) to 9(l) of the Act of 1960. Those functions are –

The most important substantive provision of the Act is Section 11, which falls under Chapter III, which provides for the elaborate meaning of the phrase *Treating animals cruelly*. It also provides the punishment for the same. The provision uses 14 subclauses from 11(1)(a) to 11(1)(o) to provide for the acts and omissions constituting cruelty towards animals.

The practices of Phooka or doom dev are also made punishable under Section 12 of the Act of 1960. A detailed provision in the Act (Section 13) also deals with destruction/extermination of the suffering animal, in such cases, where the Court is satisfied that it would be cruel to keep the animal alive(The Prevention of Cruelty To Animals Act, 1960). Performance of experiments on animals is dealt with under Chapter IV of the Act of 1960 and the provisions concerning 'Performing Animals' are dealt under Chapter V of the Act of 1960.

Section 28 of the Act of 1960 provides immunity to killing of animals for religious or spiritual purposes(Sharma, Udit Raj;Srivastava, 2023). It is a notorious provision in the sense that no limitation is provided by the legislation expressly and it appears as an overriding provision as all acts involving killings of animals or sacrifice of animals in the name of religion will get protection. However, with the course of time, the provision has been vastly narrowed down in its scope by the judicial decisions which has put ban on the performance of sacrifice of animals. however, there is still a deeper and insightful review needed of the provision since many practices like Bakra-Eid (involving sacrifice of animals) continue to be practices openly, which likely, by the necessary implication of the judicial decisions must be banned.

Power to deprive a person of the ownership of animal, if one is found guilty of any offence under the Act of 1960, is also conferred to the Court through Section 29 of this Act.

4.4 The Prevention of Cruelty to Animal Act (Amendment Bill) 2022: Review and observations-

The Prevention of Cruelty to Animal Act (Amendment Bill) 2022 (hereinafter also referred as the 'Bill of 2022' or the 'the Amendment Bill of 2022', attempts to overhaul and amend the Act of 1960. It introduces and defines a few substantive words, namely, bestiality, gruesome cruelty, Community Animals, and provides for the five freedoms for animals, establishes the State Animal Welfare Board, substantially increases the penalties for the offences under the Act and strengthens the mechanism for the prosecution and investigation of the offences. It also attempts to create sensitization, generate awareness, and facilitate capacity building for the larger object of animal welfare and humane

treatment of animals. All these pointers are discussed in detail in the following part of the research.

The key pointers of the Bill proposing Amendment to the Act of 1960 with the intent to overhaul it and create a more stringent and deterrent framework to stop animal abuse and animal cruelty are as follows –

1. Proposing few terms to be added which have substantive implications –

1.1. Bestiality : The Bill of 2022 proposes to add the definition of 'bestiality' as any kind of intercourse between human being and animal (Draft Prevention of Cruelty to Animal (Amendment) Bill, 2022).

1.2. Gruesome Cruelty: The Bill of 2022 intends to create a class separately for more heinous and gruesome acts of cruelty towards animals and thereby proposes the definition and addition of a new phrase *gruesome cruelty* and defines it as any act involving animals which led to extreme pain and suffering to the animals which is most likely to leave the animal in life long disability which includes mutilation or killing of animal by the use of strychnine injection in the heart or any other cruel manner that is known to cause permanent physical damage to the animal or render the animal useless or cause any injury which is likely to cause death including bestiality, animal fighting for the purpose of bating or promote or take part in any shooting match or competition wherein animals are released from the captivity for the purpose of such shooting. The detailed definition as in the Bill is reproduced in the Annexure-1 for reference.

Since the intention is to create a stricter regime to prevent animal cruelty in India, this classification looks appropriate. Surely, all kinds of cruelty can't be put in the same basket. An act of kicking an animal (causing minor pain) must be a different class of offence than killing an animal or causing such injury which exposes the animal to extreme pain and suffering. The step looks in the right direction. The punishment for the same is also proposed to be inserted as Section 11 (A) in the Act of 1960, and the offence herein is punishable with a minimum fine of fifty thousand rupees which may be extended up-to seventy five thousand rupees or the cost of the animal as may be decided by judicial magistrate in consultation with the jurisdictional veterinarians whichever is more or with the imprisonment of one year which may extend up to three years or with both.

Also, a new offence of *Killing an animal* is proposed to be added as Section 11B which provides that if any individual or group of individuals or organization commits any act with the intention to harm any animal leading to its death, kills an animal by use of strychnine injection or any other cruel manner he or she or they shall be punishable with a minimum fine of seventy-five thousand which may extend up to one lakh rupees per animal or three times to the cost of the animal as determined by a judicial magistrate in consultation with the jurisdictional veterinarian, whichever is more, or with the imprisonment of three years which may extend up to five years or both.

Recognition of Five Freedoms-

The Bill of 2022 proposes insertion of Section 3A which recognises five freedoms, which are considered significant for the protection of interests of animals. These five freedoms were also stated in the famous A Nagaraja Judgment by the Supreme Court of India in 2014 (*AWBI v A Nagaraja & Ors.*, 2014). The duty is cast upon the 'person having charge of an animal' to ensure that the 'animal in his care or under his charge' has:

i. Freedom from thirst, hunger, and malnutrition (access to appropriate food & water for bodily requirement, specie specific).
ii. Freedom from discomfort due to environment (access to appropriate shelter and resting area. Other surrounding aspects such as appropriate temperature, noise levels and access to natural light are also included).
iii. Freedom from pain, injury, and diseases (prevention from injury, rapid diagnosis and medical treatment which includes timely vaccinations, and monitoring health).
iv. Freedom to express normal behaviour for the species (to be able to exhibit all emotions and be able to run, jump and play. Managing sufficient space and facilities to ensure this freedom is important).
v. Freedom from fear and distress (considering the importance of mental health of animals, which is as relevant as physical health and the presence of fear and distress among the animal make eventually transition into physical illness, it is important to ensure that the animal feels safe. Subjective assessment of the

surroundings as per the animal has to be done to ensure freedom from fear or distress. Preventing overcrowding etc. can be useful.

The aforementioned five freedoms are globally accepted standards of care that affirm every living being's right to humane treatment. These are considered essential for the dignified existence of animals and therefore play an important role in shaping human-animal relationship. These standards were developed in 1965 by the Britain's Farm Welfare Council and adapted by the Association of Shelter Veterinarians for companion animals in shelters(*The Five Freedoms for Animals*, n.d.).

The renowned animal activist Gauri Maulekhi mentioned the significance attached with passing of this Bill since it would not only curtail the rising cases of cruelty against animals but also create a healthier environment for animals and humans to coexist (Madaan, 2023). A social media movement named #NOMORE50 was also started by various animal protection organizations and people which made an appeal about bringing the stringency ang deterrence in the punishments concerning cruelty to animals. Here is a link of the video(*Nomore50: Will India Finally Amend The Prevention Of Cruelty To Animals Act After 63 Years?*, 2022) related to the movement where celebrities and Samaritans are requesting the state to bring changes to the provisions of the law concerning animal cruelty. Bollywood biggie Mr. John Abraham, known for his love and care concerning animals could be seen being vocal about *Nomore50*.

4.5 **Leading Incidents of Animal Cruelty in India – Recently**

Not all incidents could be mentioned here but those mentioned are just the tip of an iceberg. Most times they don't even come to our attention and are not reported. Here is a list of few more highlighted gruesome unfortunate incidents of perpetration/hurt/suffering/abuse over non-human animals by the human hands which fortunately came to the light. Some of those are –

1. **Killing a Leopard, and Eating its Meat (Kerela, 2021)**(Abraham, 2021)**:** It's just a myth that wild cats are apex predators, humans are even more gruesome in this respect. A dismal incident happened in Kerela wherein five people not just killed a leopard but also ate its flesh. They also collected the

bones, claws, and teeth of the wild cat perhaps with the intention to trade in illegal markets.

2. Tying Dog to a two-wheeler and dragging him (Delhi)(KC Archana, 2021)

A dismal inhuman act was caught in Delhi when a person tied a hapless dog to his two-wheeler and dragged him along the road. Some locals noticed the incident, raised objections and the dog was rescued.

3. A Kitten burnt alive using a Lighter (Hyderabad) (KC Archana, 2021)

A kitten died a gruesome death when an inhumane person used a lighter to burn the kitten. This person also recorded the incident.

4. Monkey hanged to death over a tree (Telangana, 2020)(KC Archana, 2021)

An unbelievably shocking and inhumane incident came to light in Telangana when a video released on social media, wherein a monkey was hanged to a tree and tortured to death. Allegedly, in the video the crowd gathered around was seen cheering the inhuman act, which raises a question on the public conscience about the incident also.

5. Multiple incidents of torture and perpetration over the Dolphin (UP & Kolkata)(KC Archana, 2021)

Two similar kinds of inhuman acts towards dolphin fishes were reported, one in the state of UP and the other in the state of West Bengal. In first incident, a group of men were seen torturing and killing a Gangetic dolphin with sticks and axes until the poor fish perished to death. Since killing a Gangetic River dolphin is a crime punishable under the Wildlife Protection Act, 1972, an FIR was registered for the same.

In the other incident which happened in Kolkata(KC Archana, 2021), a video was uploaded by a person which showed a group of men holding the dolphin by its snout and torturing the poor animal.

6. Killing a leopard as an act of revenge (Kerela, 2021)(KC Archana, 2021)

Having lost his cow over a leopard attack, the man decided to avenge for the lost cow by killing a leopard and waiting for it for more than a year. A weird incident, where the accused, Kumar, confessed that he trapped and killed the wild cat to fulfil his vow of killing the animal to avenge his lost cow. This is disturbing considering wild animals (especially leopards) have been at the receiving end of this human-animal conflict.

7. **Monkey Killing (Rajasthan, 2018)**

11 monkeys were found dead close to a motorway. It was found that they were hit with a stick and then doused with an acid-like chemical. These were the findings of the forest officers.

8. Sexual Abuse with Cows (Gujarat, 2018)

In Vadodara, a man who was engaged as a labourer at the cowshed was accused of engaging in unnatural carnal intercourse with three cows. The owner of the cows found the cows in a problematic situation – one was lying dead, and the legs of the other cows were bound together with the rope.

9. Sexual Abuse with a Cow (Gujarat, 2020)(Gujarat: Man Sexually Assaults Cow in Dwarka, Video Surfaces on Social Media, 2020)

In Dwarka, a 42-year man was found perpetrating sexual abuse over the cow. He was caught red handed by a 52-year-old social activist. The whole incident got recorded in a CCTV Camera and later the accused was found, and case was booked under section 377 of IPC, against the person.

10. Pregnant Elephant Killed by Firecrackers (Kerela, 2020)(Kerala: Pregnant Elephant Dies after Consuming Pineapple Stuffed with Crackers, 2020)

One of the most heartbreaking and shameful news came from Kerela wherein a year-old female elephant was killed by the locals in Pathanapuram in the Kollam district of Kerela in May 2020. The locals put firecrackers inside the food (pineapple etc.)(S. Gupta, 2020). Unlike many other incidents of animal cruelty, this one got huge attention and saw a lot of outrage from the people of the country(S. Gupta, 2020; Krishnan, 2020). The elephant suffered for several days before she died, she could not eat anything since her lower jaw was completely

injured. The picture below depicts her condition as she was standing in the river with her mouth and trunk in water for some relief from the excruciating pain.

Image Source- Economic Times Report(Kerala: Pregnant Elephant Dies after Consuming Pineapple Stuffed with Crackers , 2020)

4.6 The Act of 1960 and thereafter –

The Table below attempts give an overview of the major legislative interventions and the amendments proposed over the years since the Act of 1960 or the PCA came into force. However, unfortunately, none could see the light of the day and become a law. Yet, it would be very informative and interesting to witness the journey as depicted below in the tabular form.

S.No.	Year	Legislation/Amendment/Other Document	Major Highlights
1	1960	Prevention of Cruelty to Animals Act	• The Act of 1960 was enacted with the objective to prevent the infliction of pain and suffering on animals and to repeal the earlier legislation of 1890 dealing with the subject.

			• The Act established the AWBI (Animal Welfare Board of India) and prescribed several punishments for causing unnecessary pain and suffering to animals. • The legislation was progressive considering the time and context when this came into force. Even the penalties which per prescribed for violations under the Act of 1960 were stringent and proportionate as per the time and era in which it was enforced. Such penalties had the potential to deter the perpetrator from treating animals cruelly.
2	2011	Draft Animal Welfare Act	• The Draft Animal Welfare Act 2011 was proposed to replace the Act of 1960 and to establish a new regime under the Act of 2011. It was drafted by the Animal Welfare Board of India.

			• It aimed at providing for enhanced penalties for animal abuse/animal cruelty and to provide for the clearer definition of animal abuse. • The intent was to make a shift or transformation from the negative duty of preventing cruelty towards animals to a positive duty approach of working for welfare and well-being of animals (wherein preventing cruelty towards animals is implicit). The Preamble of the Draft Act of 2011 clearly reflect this intent. The preamble provides that(Draft - The Animal Welfare Act , 2011) - *An Act to provide for the welfare and well-being of animals, and to prevent the infliction of trauma, pain and suffering on them, and to prevent unnecessary killing of animals, and for that*

			purpose to consolidate the law relating to prevention of cruelty to animals and providing for their welfare generally. • It also proposed to make provision for the five freedoms that are famously referred to as the Brambell's freedoms under Section 3 of the Draft Act. • Proposed enhanced penalties for violations under the law and also added more categories of cruelty towards animals. • The Draft Act 2011 could not take its shape into a law and remained a paper tiger only.
3	2016	Prevention of Cruelty to Animals (Amendment) Bill	• The statement of objects and reasons of the Bill of 2016 (which was tabled in Lok Sabha)(*Sankalp Santosh Golatkar v Union of India*, 2020) provided that this bill was aims to fulfil what was directed

			by the Hon'ble Supreme Court of India in the A Nagaraja Judgment of 2014 dated 07.05.2014 and therefore aimed to overhaul the Act of 1960 and provide effective deterrence by bringing effective penalties under it. It also read out that the amended provision will promote the constitutional duty of compassion towards the animals. • In order to make the penalties stringent, effective amendments were proposed, primarily, in Sections 11, 12, 20 & 26 of the Act of 1960 and the new penalties were substantially higher than the earlier one. For instance- In section 20 of the principal Act, for the words *which may extend to two hundred rupees*, the words which shall not be less than ten thousand rupees, but which may extend to twenty

			thousand rupees shall be substituted. • The Bill of 2016 also made a proposal and a very significant one under section 31 wherein all offences under the Act would be treated as cognizable offences under the Code of Criminal Procedure, 1973. However, this also remained a mere dead letter as it never got transformed into law.
4	2022	Prevention of Cruelty to Animals (Amendment) Bill(Draft Prevention of Cruelty to Animal (Amendment) Bill, 2022, 2022)	• The aim is similar to what the earlier bills proposed, which is to overhaul the law concerning prevention of cruelty to animals in India and infuse deterrence by increasing the penalty and adding few more substantive offences to the list of animal cruelty or animal abuse. It proposes a long list of amendments, to be

			specific, 61 amendments to the Act of 1960. • The Bill of 2022 makes addition of new terms such as *bestiality, gruesome cruelty, community animals* etc. • The Bill proposes to add the five freedoms (the Brambell's freedoms) in relation to those in charge of animals, which is a much-awaited progressive step in India. • The Bill of 2022 also proposes that several offences under the new law be cognizable, and no person accused of any offence under those sections be released on bail or his own bond unless the Public Prosecutor has been given an opportunity to oppose the application of such release. • Even this Bill, like many previous ones attempting to infuse life into PCA 1960 could not

			see the light of the day. Other aspects of this Bill are discussed in detail in other part of this chapter only.

The PIL seeking legal status for animals in India, did a thorough study of animal welfare legislations of other jurisdictions as well and made a comparison of the Indian law vis-à-vis animal welfare with those of Swiss, British or German laws on the subject, and mentions that:

It has to be asserted unequivocally, though with a feeling of shame that, the Indian legal regime when it comes to have a comparison with the laws of various countries is out of picture and we have hardly enacted any law with the element of human empathy involved in it. The Penalties, which are prescribed under the law is so trivial that, a person doesn't even bother about the amount of fine. Considering the aspect of dignity, laws in India need complete overhaul in such a manner that the dignity of animals should never be compromised, and they should be treated at par with humans.

4.7 Comparative Analysis of Jurisdictions vis-à-vis Animal Welfare Law & Policy

The research, in order to critically analyze the legal regime in India vis-à-vis, animal protection and welfare, would compare the legal mechanisms of few jurisdictions to peep into the progressive aspects, initiatives and provisions with which the laws of other jurisdictions are decorated so as to make the regime of animal protection more result oriented and impact the lives of the animals, while ensuring their dignity and wellbeing.

The research, having done a preliminary study about the animal protection laws of few jurisdictions, has sorted out some of the countries wherein arguably the animal protection/welfare laws are applicable. The research has taken multi-prong approach while selecting countries for comparison. The factors

considered are having jurisdictions which have arguably the best framework for animal welfare/animal rights (Germany and Switzerland), also country which shares the same legal history as India (Pakistan) so as to deduce how they have shaped their animal law, also country from which India borrowed the common law framework and how as a common law jurisdiction they have worked upon animal law (UK), also to ensure some kind of geographical parity and not restrict to European and Asian countries (USA) and also to consider how African nation which has vast resource in the form of flora and fauna has catered to animal law (South Africa). Keeping these factors and considerations as the basis, the research has selected the aforementioned countries to gather the manner in which animal law is situated and positioned across the globe. Thereby, enabling the research with a better yardstick to deduce the best practices and make recommendations for the Indian law in this regard.

1. Switzerland –

The Animal Welfare Act of Switzerland

The law aims to *protect the dignity and welfare of animals* (Animal Welfare Act Switzerland, 2005). The way the legislation is titled, and the way object of the legislation is expressed, it gives an indication that the approach is not restricted to prevention of cruelty against animals only but goes further to encapsulate and envisage about the 'protection', 'welfare' and 'dignity' of animals. The legislation also defines the word 'dignity' as *inherent worth of the animal that has to be respected when dealing with it*.

The attempt is made to define it in eco-centric terms where the focus is on 'inherent worth' (which means it is irrespective the utility of the animal to humans or any such anthropocene or commercial interest), it is about the 'inherent' being of the animal that has to be respected. This is an indication of the progressive aspect of the legislation.

It further defines 'dignity' with the explanation that *if any strain imposed on the animal cannot be justified by overriding interests, this continues a disregard for the animal's dignity. Strain is deemed to be present in particular if pain, suffering, or harm is inflicted on the animal, it is exposed to anxiety or*

humiliation, if there is major interference with its appearance or its abilities or if it is excessively instrumentalized (Animal Welfare Act Switzerland, 2005).

The legislation also attempts to define the phrase '*well-being*', by prescribing the situation of well-being if – (i) the husbandry and feeding are such that their bodily functions and their behaviour are not disturbed and excessive demands are not made on their capacity to adapt, (ii) species-specific behaviour within the limits of their biological capacity to adapt is guaranteed, (iii) they are clinically healthy, (iv) pain, suffering, harm and anxiety are avoided (Animal Welfare Act Switzerland, 2005).

The petition filed before the Hon'ble Supreme Court of India(People's Charioteer Organization v Union of India, 2020), seeking the grant of legal status for animals in India also referred to the animal welfare provisions of the Swiss Animal Welfare Act, and mentioned:

The Swiss Animal Welfare Act protects the welfare and dignity of animals. Serious infringements of its provisions may lead to a ban on keeping animals, breeding animals, handling animals commercially, or trading in animals. The most significant aspect of the Swiss Legal system is related to the fact that under their legal system animals are never considered to be creatures that are subservient to humans.

2. <u>Pakistan-</u>

Since Pakistan is a neighboring state to India and it also inherited the same legal system as that of India from the colonial clutches who left the Indian Subcontinent after dividing it into India & Pakistan. It would be pertinent to draw a comparison with the state of Pakistan also and to reflect on how far our neighboring nation has legislated towards the protection of the rights of the non-human animals.

Pakistan has a legislation on the subject of prevention of cruelty to animals (The Pakistan's Prevention of Cruelty to Animals Act, 1890). This is the same law which was inherited by Britishers and made when Pakistan was not in existence, and it was within the British India. This legislation does provide a basis for the protection of animals, on the acknowledgment that animals are capable of feeling pain and suffering and they are sentient (though sentience of animals is

not recognized specifically in any legislation in Pakistan)(Animal Protection Index (API), 2020). The legislation of 1890 is certainly outdated and does not reflect the current scientific and cultural positioning of animal welfare, neither does conceive the idea of 'welfare' for animals as opposed to 'protection' to animals. As per the latest 2020 report of the API (Animal Protection Index), Pakistan is urged to update and amend the archaic Prevention of Cruelty to Animals Act, 1890 to ensure better protective regime for the animals in Pakistan and also to align the anti-cruelty measures with the current animal welfare science(Animal Protection Index (API), 2020). There have a lot of dismal news of animal cruelty and ill treatment in Pakistan(Junaidi, 2018).

3. Germany –

Germany is one of the nations which is often complimented for its law and policy on the aspect of animal welfare. It has the reflections of 'animal welfare and protection' at three important places- first, the German Constitution (Article 20 a of the German Constitution (Basic Law of the Federal Republic of Germany) provides that: *Protection of the natural foundations of life and animals- Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with the law and justice, by executive and judicial action, all within the framework of the constitutional order.)*, second being the German Civil Code (Section 90a of the German Civil Code provides that animals are not things. They are protected by special statutes. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided). and third being a standalone legislation dedicated to animal welfare in the nation, the Animal Welfare Act, 2006(Animal Laws at National Level - Germany (Anti-Cruelty, Protection and Welfare), n.d.). The Animal welfare Act of Germany is held as one of the most stringent laws concerning animal welfare across the globe(Animal Laws at National Level - Germany (Anti-Cruelty, Protection and Welfare), n.d.). The Animal Welfare Act of Germany, about its purpose and aim, provides that it is to protect the life and well-being of animals based on their responsibility of human beings for

their fellow creatures. No one may cause pain, suffering or harm to an animal without reasonable cause(The German Animal Protection Act, 2006).

4. UK –

Very recently in 2022, the UK welcomed a landmark legislative move towards animal welfare by enacting the Animal Welfare (Sentience) Act 2022 which stands as a clear and expressed legislative affirmation of recognition of sentience of animals in the UK.

The legislation aims to make provision for an Animal Sentience Committee with functions relating to the effect of government policy on the welfare of animals as sentient beings (Animal Welfare (Sentience) Act 2022).

Henceforth, the law makers and policy makers would be bound to take into consideration the needs and interests of animals (which include all vertebrate animals and some invertebrate animals too such as octopuses and lobsters) while they create a law or draft policies and therefore to analyze the impact of the law on the interests of animals also.

Way back in 1822, the UK was amongst the pioneer nations to implement the law concerning protection of animals named the Cruel Treatment of Cattle Act, 1822. This was however narrower in its scope and application. In 1911, the UK brought the Protection of Animals Act, which was the first general animal protection law which underwent updation on several occasions in its application. Thereafter in the early years of 21st Century, UK brought the Animal Welfare Act, 2006 (which came into force in England and Wales in 2007)("Welfare Law in the UK," n.d.). Even with the use of the vocabulary, one may figure out that it was a leap from 'protection to welfare', which is a progressive transformation in any jurisdiction. The Act of 2006 aimed to make provision about animal welfare; and for connected purposes (Animal Welfare Act, 2006). The law makes comprehensive scope of application for animals, including the protected animals (commonly domesticated ones). The legislation defines 'unnecessary suffering'(Animal Welfare Act, 2006) and makes causing unnecessary suffering punishable. The legislation elaborately focuses on the various considerations to be regarded in the determination of the question

whether the suffering caused was unnecessary. Such considerations include that whether the suffering could reasonably have been avoided or reduced; whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a license or code of practice issued by an enactment; whether the purpose for which the conduct caused suffering was 'legitimate' (such as for benefiting the animal or for protecting a person, property or another animal); whether such suffering was proportionate to the purpose of the conduct and whether such a conduct was in all the circumstances that of a reasonably competent and humane person(Animal Welfare Act, 2006). Under the Act of 2006, there is a provision for duty of care applicable on owners and keepers towards animals to make sure that they get a suitable environment and place to live, they get suitable diet, they are able to explicit normal behaviour patterns, they be protected from pain, suffering and diseases and that they be housed according to their needs (i.e. with or apart from other animals). The Act of 2006 brings forth the anti-cruelty regime whereby it prohibits causing unnecessary pain and suffering to an animal, causing mutilation to the animal and also poisoning an animal. The law also prescribes rigorous sanctions for the non-complaints and those people may end up being banned from owning animals, or face and unlimited fine or even face imprisonment for up to five years(*Animal Welfare*, 2013).

The Act of 2006 in UK is a comprehensive legislation having 69 provisions and 4 schedules aimed at creating a regime for prevention cruelty and unnecessary suffering towards animals and furthering animal welfare by making provision for positive duties towards animals. Section 12 of the Act of 2006(Animal Welfare Act, 2006) provides for 'Regulations to promote welfare' and empowers the appropriate national authority that it may make regulations as the authority thinks fit for the purpose of promoting the welfare of animals for which a person is responsible, including the progeny of such animals. In particular, the provision aims that such regulations make arrangement for ensuring specific requirements for the purpose of securing that needs of animals are met, or to facilitate or improve co-ordination to be carried out by different persons relating to the welfare of animals, and also to make such provision which establish one or more bodies which functions relating to advising about

the welfare of animals. Additionally, such regulation making power conferred in the form of delegated legislation also includes the power to provide for sanctions in case of breach of a provision of such regulations, and to make provision for fees or other charges or to provide exemptions from a provision of the regulations (either subject to conditions or without them)(Animal Welfare Act, 2006).

5. USA –

USA, at the federal level, doesn't expressly recognize the sentience of animals. Most part of the aspect of animal welfare has been addressed at the State level rather than the federal level in the USA. As per the American Constitution, powers not expressly provided to the Federal government, belong to the States and the People, and animal welfare being one of such subjects, falls with the States primarily.

The federal legislation dealing with the subject in USA, namely the Animal Welfare Act, 1966 aims to *authorise the Secretary of Agriculture to regulate the transportation, sale, and handling of dogs, cats, and certain other animals intended to be used for the purposes of research or experimentation, and for other purposes* (Animal Welfare Act, 1966). This law came into force after the outcry in public about the conditions of animals, particularly abuses of dogs reported by the Media. A body named Animal and Plant Health Inspection Service (APHIS), which works under the US Department of Agriculture looks after the enforcement of the Animal Welfare Act, 1966 (also referred as the 'Act of 1966').

It reflects from the preamble of the Act of 1966 that the law is more inclined towards the economic or commercial interests rather than the welfare of animals; however the law intends to infuse humane treatment and care for animals though ensuring that the animals intended for use in research facilities or exhibition or those used as pets are provided humane care and treatment, and that humane treatment is ensured to animals during transportation in commerce; and to confer protection to the owners of the animals from the theft of their animals by preventing the sale or use of those animals which have been stolen. This federal law, however, gives a restrictive meaning to the word 'animal'

wherein it includes live or dead dog, cat, monkey, guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine, is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; and the definition excludes birds, rats (bred for use in research), horses not used for research purposes and other farm animals. Section 13 of the Act of 1966, which is one of the most important provisions of the legislation, authorizes the Secretary to promulgate the standards for the *humane handling, care, treatment, and transportation of animals* by dealers, research facilities, and exhibitors. These generally include the minimum requirements for *handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species when found necessary.*

David Favre tries to explain the challenges with the manner animal law is positioned in the USA in following words:

State law governs the issues of liability for harm to animals, or harm caused by animals. Moreover, for 120 years, state law has been the location for the criminal prohibitions against cruel acts to animals and the requirement of duty of care. But these criminal laws are ineffective in many circumstances and are often difficult to prosecute or do not apply to specific areas of use such as animals in research. Additionally, a number of animal activities have a multi-state focus that makes one state's efforts to control a problem difficult e.g. the interstate shipment of stolen pets. Therefore, national law has been sought for a limited number of topics, particularly where there has been a desire to create a regulatory structure, without national rules, inspections and reports.

As per the rankings released by the Animal Law Défense Fund (ALDF),

Another federal law titled Humane Methods of Slaughter Act (HMSA) applies in the USA and has been applicable since 1958. The enforcement of this law is questionable given the fact that chickens are exempt from protection under the Act, and they alone constitute for over 95 percent of the animals slaughtered in the USA.

Since all states have different legal mechanism to make law concerning animals and preventing cruelty towards them, it would be wise to have a broad eagle's view about how those states have performed on these parameters. As per the

research and statistics by the Animal Legal Defense Fund titled '2023 U.S. Animal Protection Laws Rankings'(*2023 U.S. Animal Protection Laws Rankings*, 2023) wherein an effort is being made to find out the best performing and worst performing states vis-à-vis respective Animal Protection Laws, it is found out that among the top performing states are the states of Oregon, Maine and Illinois and among the worst performing states have been the states of North Dakota, Alabama and Idaho. Essentially, Oregon being the most progressive on the animal protection laws aspect and North Dakota the worst progressive on the same.

6. South Africa –

South Africa as a nation is endowed with the bliss on nature as it holds within its sweep diverse variety of flora and fauna. A large animal population, coming from both terrestrial and marine ecosystems is within the fold of this nation. The precise reason for choosing this nation by the researcher and employing it in the comparison of jurisdictions was the reason that having such a massive population of animals and species, and national parks being one of the biggest sources of tourism and revenue for the country, it would be interesting how legal regime provides for the protection/welfare of animals in the country. As far as mammals are concerned, 297 species of mammals have been found in South Africa, making it a rich ecosystem for many species.

Coming to the legal regime for animal welfare in the country, the first learning is that there is no formal recognition of animal sentience in the legislation or policy in South Africa. The legislation titled Animal Protection Act, 1962 (Act No. 71 of 1962) is the prime animal welfare legislation in the country which aims to prohibit animal cruelty(Animals Protection Act Act 71 (1962), 1962; World Animal Protection International, 2020). It covers all domestic and wild animals in captivity or under the control of humans. Additionally, the South African Bureau of Standards (SABS), along with the National Council of SPCAs (NSPCA), have laid down a series of standards towards animal welfare in relation to certain animals(World Animal Protection International, 2020).

The Animals Protection Act, 1962 (South Africa) repealed the earlier applicable law on the subject i.e. the Prevention of Cruelty to Animals Act, 1914 (along

with its amendments that followed after 1914)(Animals Protection Act, 1962). The legislation defines the word ‘owner’ in a wide ambit, and it includes the person having the possession, charge, custody or control of the animal. Section 2 (1) of the Act, which provides for the ‘offences in respect of animals’ is a comprehensive provision having 18 clauses to cover the aspects of cruelty against animals. It includes a wide sweep of the phrase animal cruelty, impacting both on their physical and psychological welfare, and even includes failure to act in case of animal cruelty. The Court is also conferred with wide powers under the Act of 1962, wherein the in addition to passing the conviction order and imposing punishment to the perpetrator, the court may order that the animal be destroyed (if such is the nature of the case that keeping the animal alive would be cruel) or may deprive the perpetrator of the ownership of such animal, or may pass any other order in regard to such animal(Animals Protection Act, 1962).

The Department of Agriculture, Forestry and Fisheries (DAFF) of the country has declared its intention of replacing the animal protection law with a new legislation named Animal Welfare and Protection Bill, which will be in accordance with the relevant provisions of the Constitution, as well as the international animal welfare standards.

The challenges that stand prima facie are no express recognition of the sentience of animals and the non-application of the Act to fish or wild animals in their natural habitat since only such wild animals which are ‘in captivity or under control of any person’ are considered. One more challenge is that the various standards produced by the SABS are not freely and readily available to the public at large; in fact, they need to be purchased and therefore awareness about those is a concern. Also, the cultural practices such as bull killing rituals still prevail and those cause animal suffering to a considerable extent. On the front of enforcement of the legislation, it is not clear whether sufficient financial and human resources are allocated for the purpose of giving effect to the law. Also, as far as hunting is concerned, it is regulated at the provincial level in the country and all nine provinces have their own hunting regulations. Ideally, there should be a nationwide ban on hunting since this is a highly inhumane and cruel practice, whether carried out for entertainment or meat. In South Africa, hunting

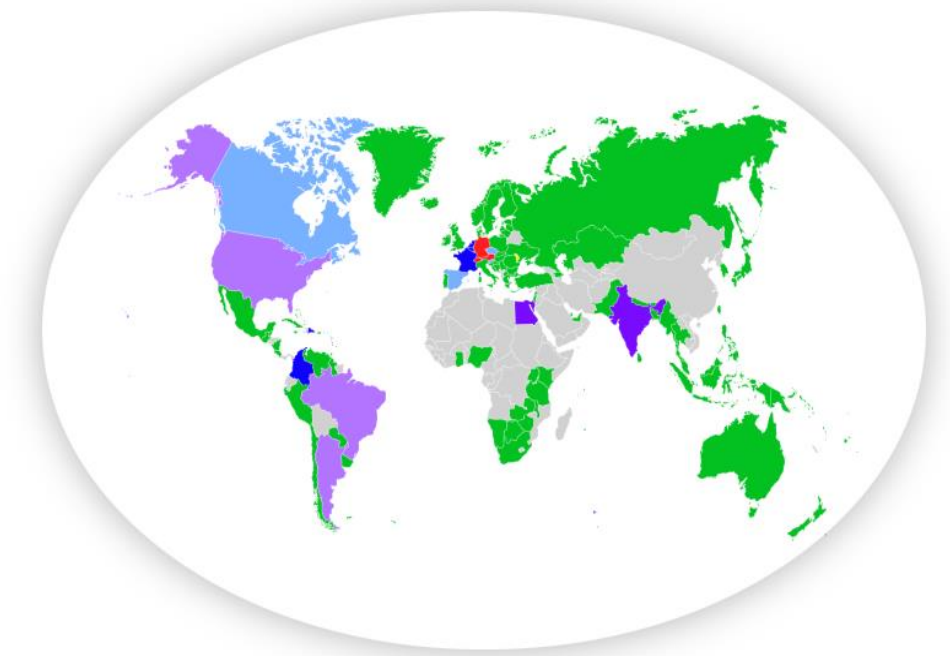
is also seen as financially valuable tourist activity and an economic activity, which is highly problematic and stands in way of the approach of animal welfare.

Critical Analysis of the Indian Law on Animal Welfare and Prevention of Animal Cruelty – A Comparative Approach –

India has an extensive legal mechanism under the head of animal welfare and prevention of animal cruelty ranging from constitutional provisions to statutory provisions and detailed rules made by virtue of the legislative power delegated under the parent legislation.

The Global Animal Law Association has conducted extensive research into the legislative framework of all jurisdictions of the word under the head ***Legislative Database*** (Database Legislation, n.d.) and accordingly have categorized the countries into eight categories ranging from Case 1 to Case 8 and the yardstick of categorization is the development of animal law within these jurisdictions from lower to higher order i.e. Case 1 reflects the least presence of animal protective legislation and Case 8 reflects the most comprehensive legal mechanism for animal protection and welfare.

i. **Case 1** provides for countries where no animal welfare legislation was found.
ii. **Case 2** provides for countries having basic national laws: anti-cruelty laws (or penal code provisions) and new legislation on the aspect of animal welfare.
iii. **Case 3** provides for countries with a national civil code provision giving a new status to animals.
iv. **Case 4** provides for countries with basic national law and a provincial civil code provision giving a new status to animals.
v. **Case 5** provides for countries with a basic national law and a national civil code provision giving a new status to animals.
vi. **Case 6** provides for countries with a basic national law and a provincial or local constitutional principle.
vii. **Case 7** provides for countries with a basic national law and a national constitutional principle.
viii. **Case 8** provides for the countries with a basic national law, national civil code provision giving a new status to animals and a national constitutional principle.



The Source of this data is - (Database Legislation, n.d.) https://www.globalanimallaw.org/database/national/index.html

India, here, finds a position at the Case 7 wherein the country has a basic law on animal welfare at the national level and also a constitutional principle which is of national applicability. In India, there is the Prevention of Cruelty to Animal Act, 1960 (which is a national law on animal protection and animal welfare applicable across the whole country) and there is Article 48-A & Article 51 A (g) of the Indian Constitution (particularly the latter) which provides *that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for all living creatures.*

Law and Policy on Animal Protection and Welfare Laws- Comparative Approach of India law on the subject with other countries-

There have been two comparative studies generated through the 'Comparison Tool' of the Animal Protection Index (API)(Animal Protection Index, 2020). First being between *India, Switzerland, UK & Pakistan* and the second one being between *India, USA, Germany & South Africa.*

API prepares a database after minutely analyzing the law and policy on animal protection and animal welfare across all nations of the world and generates a Ranking ranging from A to G, wherein A represents the jurisdiction with highest of scores (which means the most effective animal welfare and protection law and policy) and G represents the lowest scores (such jurisdictions where the law and policy around animal protection and animal welfare is least effective and a lot of work in terms of law and policy making has to be done by those jurisdictions. From A to G is the ladder of decreasing effectiveness of law and policy in a jurisdiction. There are four broad yardsticks or parameters for evaluating and grading the jurisdictions –

1. **Sentience** – Two parameters here mentioned as follows -

i. Animal sentience is formally recognized in legislation.
ii. Laws against causing animal suffering.

2. **Legislation** – Six parameters here, mentioned as follows –

i. Protecting animals in captivity
ii. Protecting animals used for draught and recreation.
iii. Protecting animals used in farming.
iv. Protecting animals used in scientific research.
v. Protecting companion animals.
vi. Protecting the welfare of wild animals.

3. **Governance** – the only parameter here being 'government accountability for animal welfare through establishment of supportive government bodies.

4. **Standards**- the two parameters here being as follows based on the support for international welfare standards-

i. OIE animal welfare standards
ii. Support for the Universal Declaration on Animal Welfare

Comparison Case 1-

India, Switzerland, UK & Pakistan

The research approached the data available through the Animal Protection Index (API), on the yardstick of effectiveness of animal protection framework and made a comparison of the four nations – India, Switzerland, United Kingdom, and Pakistan. The API uses four parameters for analyzing the law and policy in these jurisdictions-

Here is the result fetched from the API, on giving the input of comparison among the four countries and this is depicted through four pictures depicting the comparison(Animal Protection Index, 2020).

Table No-1

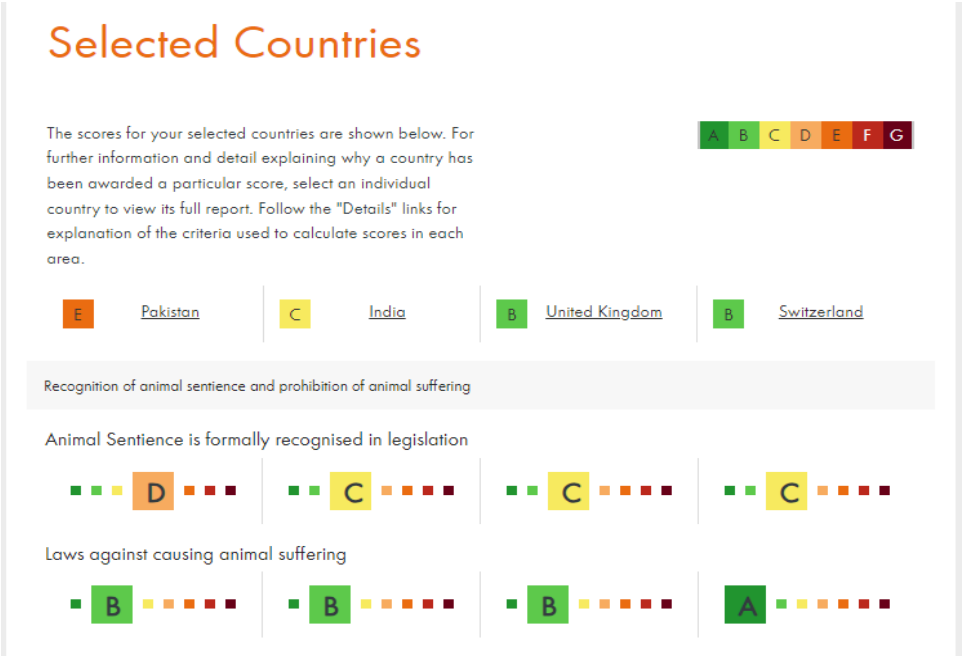


Table No- 2

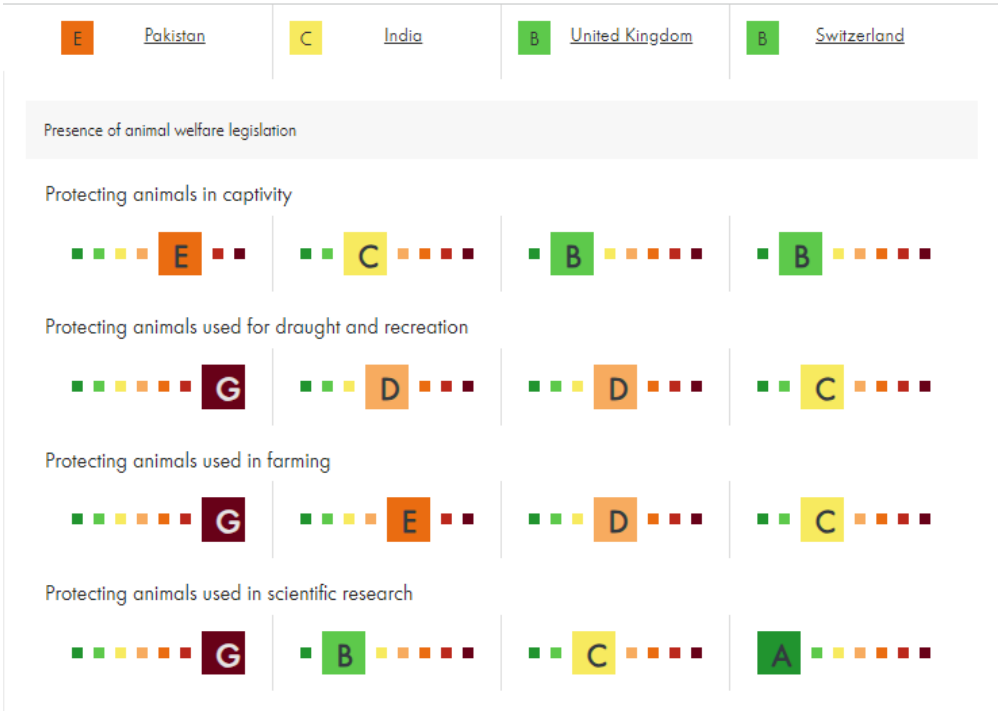


Table No- 3

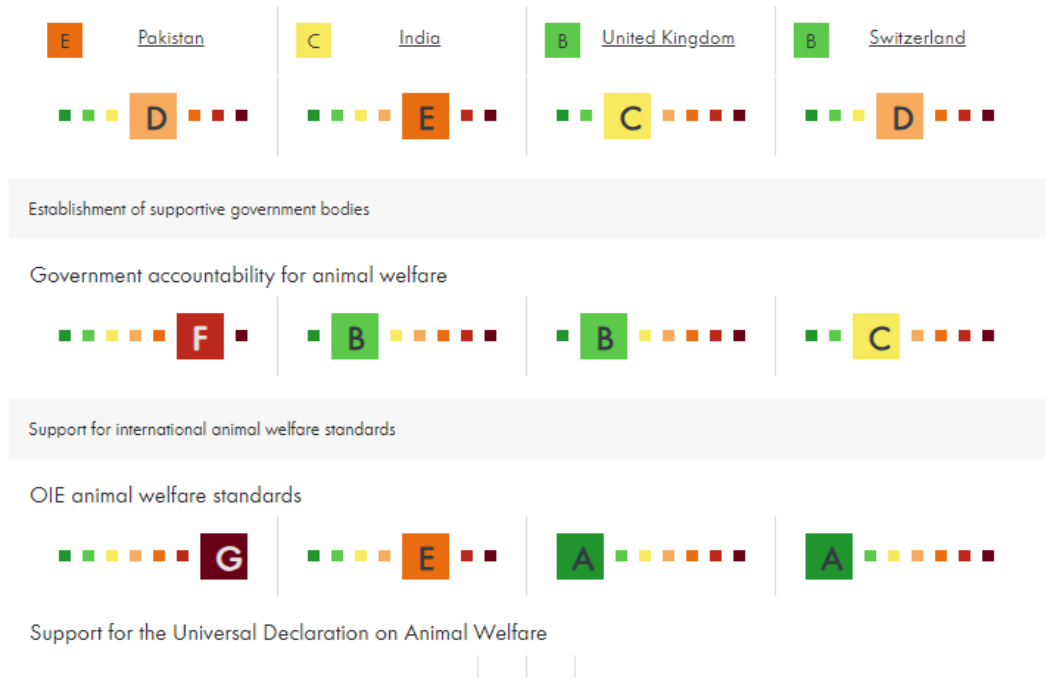
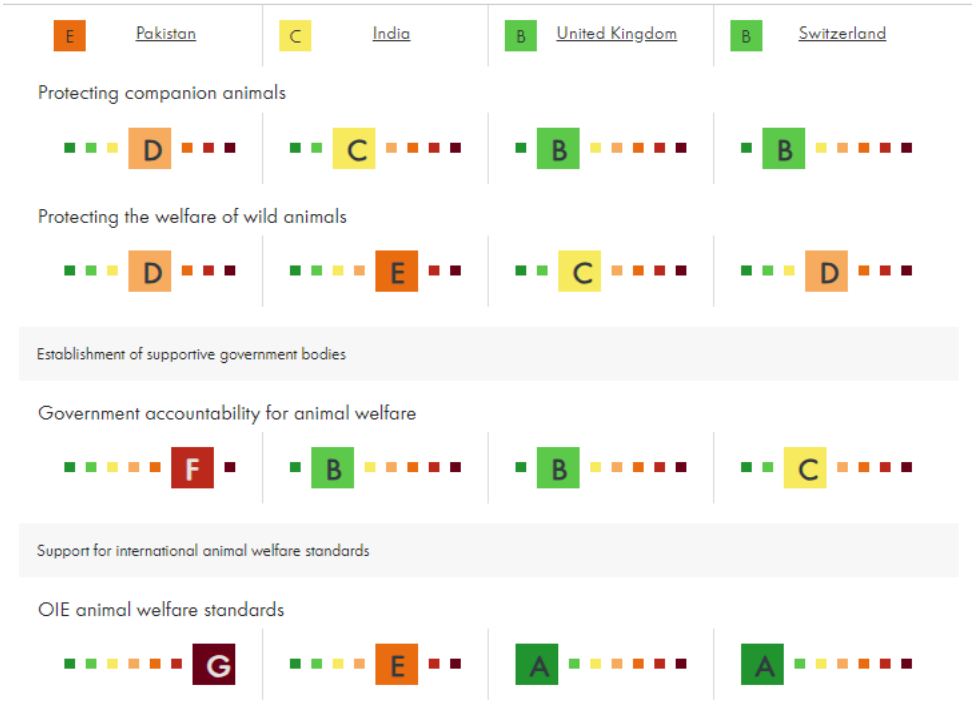


Table No- 4



Comparison Case -2

India, USA, Germany & South Africa

Herein, on the similar patterns, the comparison was drawn between yet another four nations- India, USA, Germany, and South Africa. All the four nations coming from four different continents of the world present a very diverse and comprehensive picture of the global spectrum around animal welfare law and policy, when looked from comparative aspect.

Here is the result fetched from the API, on giving the input of comparison among the four countries and this is depicted through four pictures depicting the comparison(Animal Protection Index, 2020).

Table No- 5

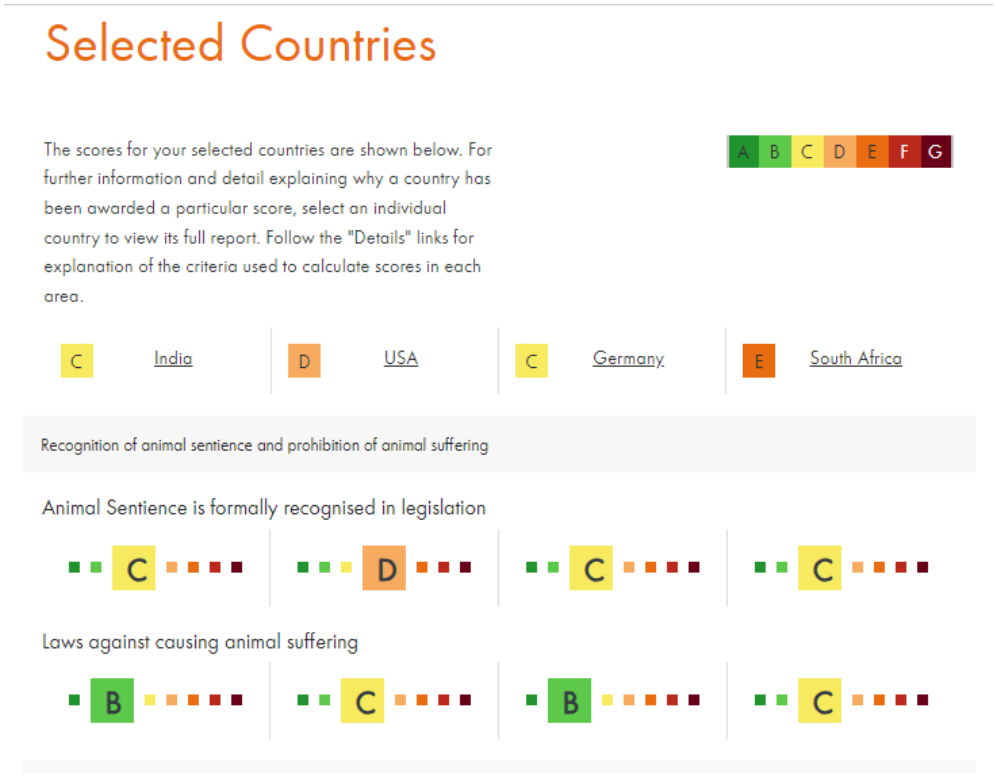


Figure 1 Comparative Chart

Table No- 6

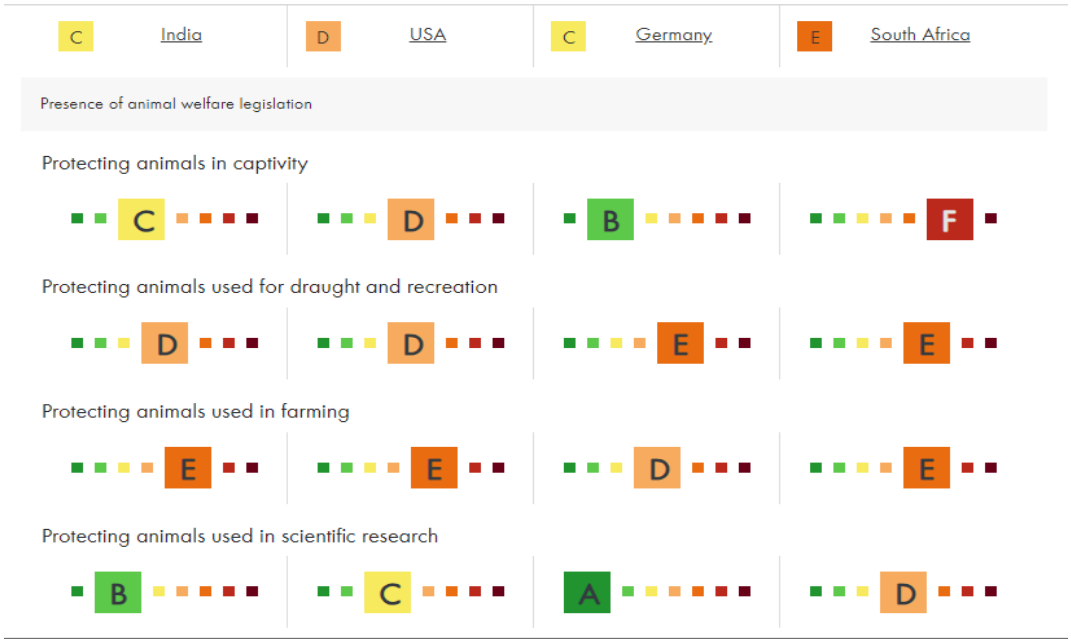
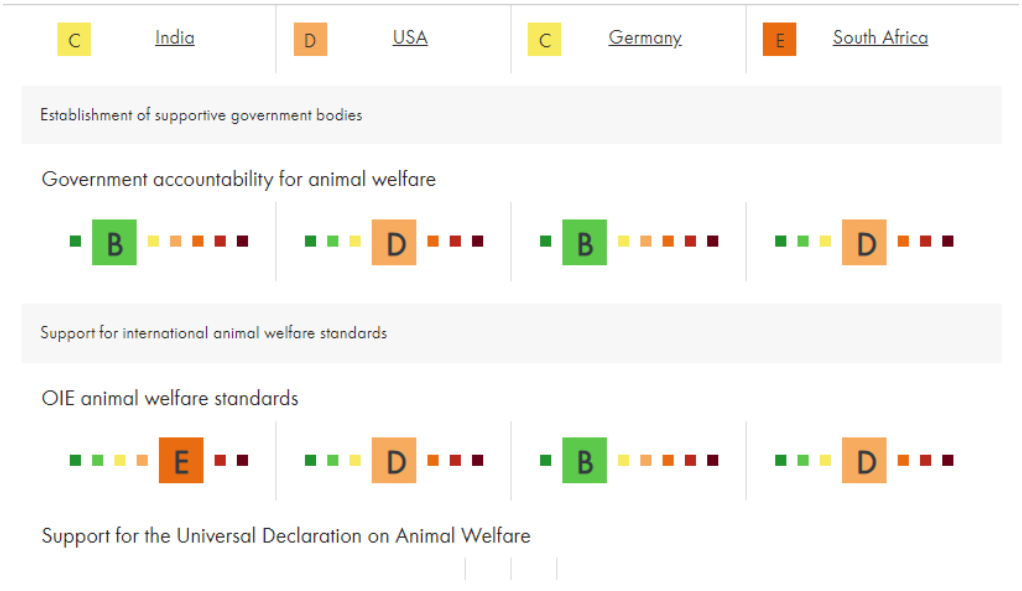


Table No-7

Table No- 8



The analysis of the data-

The Comparative tool and the results of the same are self-explanatory to a large extent. However, on the basis of the same, if we look at the **Comparative Case-1** wherein the four nations compared are – Pakistan, India, United Kingdom &

Switzerland and as per the yardsticks of comparison (already previously mentioned in this chapter), these four countries are respectively at position E, C, B & B, which indicates that UK & Switzerland are ahead of India and Pakistan has performed the worst amongst there four nations.

Further, in the **Comparative Case -2**, wherein the four nations compared are – India, USA, Germany, and South Africa and as per the yardsticks of comparison (already previously mentioned in this chapter), these four countries are respectively at position C, D, C & E, which indicates that amongst the four nations, India and Germany are the average performers and South Africa is amongst the worst performing countries out of these four.

Overall, one cannot say that even globally, animal law has taken huge strides. As per these yardsticks, none of the nations qualify for the A position, which itself shows the state of animal law which exists at the global spectrum. Therefore, even India falling at Position C is not very inspiring. India needs to work on the pointers and take huge strides towards animal law.

This chapter of the research caters to the research objective number 4 and attempts to analyze the effectiveness of legal remine for animal protection/animal welfare in India. This part of the research attempts at analyzing the effectiveness of the animal law in India. To do that, the research does a comparative study of several jurisdictions, through the reference of secondary data (to do that the research makes two comparative case studies). Also, the research makes a critical analysis of the recent amendments proposed to the Prevention of Cruelty to Animals Act, 1960 through the Bill of 2022. Since, animal law in India is too wide in itself (encompassing even the wildlife protection laws), the research here confines itself to the aspect of animal cruelty for comparative purposes and through that attempts to analyze the effectiveness of animal law in India. The attempt which research makes is to deduce a legal mechanism which is futuristic and eco-centric.

CHAPTER 5
POSITIONING OF ANIMALS IN CRIMINOLOGY AND VICTIMOLOGY

5.1 Introduction

'Animals' are an integral part of existence and co-sharers of the world with the human race. The association of humans with animals is from time immemorial and therefore, the presence of animals and discourse about animals has influenced all dimensions of human life. From the point of view of welfare, animals have not received as much attention and emphasis in law as they should have. This is true for every jurisdiction of the world. Unfortunately, animals have received even lesser attention, emphasis and concern in the disciplines of criminology and victimology(Downes, 2020) (E. P. Evans, 2009) (Srivastava, 2007). As a discipline, criminology is guilty of thoroughgoing speciesism(Beirne, 1995). Scholarly studies of animal abuse remain virtually non-existent, and the topic is completely ignored in criminology textbooks(Beirne, 1995) (Singer, 2009). The difficulty of legal systems in recognizing animals as persons under the law (and treating them as property) became a tremendous impediment for their recognition as victims of crime under criminal law (Lostal, 2021; The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985). *The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* does not include animals in the definition of victims. Also, the Indian *Code of Criminal Procedure, 1973*, under section 2(wa) defines victim but does not mention of non-human victims of crime. Is capacity to suffer not enough to hold someone as victim, is capacity to feel pain, suffering and harm not enough & should victimhood be jeopardized in the technical jurisprudential discussion of personhood and the one pained be kept in abeyance to be further victimized by the hands of process of law, are questions, inter alia, research attempts to explore.

Part I of the research provides for the introductory part establishing the researchable aspect and research questions with regard to positioning animals

in the Victimological discourse. The Part II attempts to define victimhood and analyses whether the international and municipal instruments consider animals as the entitled victims. This part also discusses two significant judgments delivered by the Oregon Supreme Court in the recent past, namely, *Nix and Fessenden,* and the contribution they make towards positioning animals as crime victims. Part III of the research focuses on restoring justice for animal victims and explores the scope of community service sentences in animal cruelty matters. It explores the constructive contribution that restorative justice and community service sentences could make in animal cruelty matters. Part IV of the research provides for the concluding remarks and recommendations.

5.2 Criminology, Victimology and 'victimhood of animals'-

This part engages with the two disciplines, criminology (including green criminology) and victimology and attempts to understand the concept of 'victim' to inquire about a case for nonhuman animals as victims of crime. This part questions whether the theoretical framework of criminology and victimology covers nonhuman animals as the ones being affected or grieved by human conduct and if not, is it the time to make space for this development. Let's begin with engaging with the word 'victim'.

5.2.1 Who is a 'victim'?

The word 'victim' is derived from the latin word *victima,* and originally included the concept of sacrifice (Burgess, 2017). A crime victim in a purely legal sense refers to a person, organization, or business that has been directly harmed (physically, emotionally, or financially) as a result of the commission of an offense(Burgess, 2017). The phrase 'victims of crime' broadly refers to any person, group, or entity who has suffered injury or loss due to an illegal activity. A 'victim' includes – (a) a person who has suffered direct, or threatened, physical, emotional, or pecuniary harm, as a result of the commission of crime; or in case of a victim being an institutional entity, any of the same harms by an individual or authorized representative of another entity(Randhawa, 2011). There could also be *secondary crime victims*, who experience the harm second hand, such as intimate partners or significant others of rape victims or children of a battered woman. There could also be "tertiary crime victims" who undergo

the harm vicariously, such as through media account or through watching television(Randhawa, 2011).

There are instances wherein those not able to have the capacity to exercise their own rights are also considered victims. Those include victims of crime who are younger than 18 years of age, incompetent, incapacitated, or deceased. In such cases, the legal guardians of the victim or the representatives of crime victims' estate, family members, or any other persons appointed as suitable by the Court may assume the crime victims' rights(Randhawa, 2011).

One of the authoritative documents which defines 'victims of crime' is the United Nations Declaration on the basic principles of justice for victims of crime and abuse of Power, which was passed by the UN unanimously in 1985(The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985). The declaration is also referred to as the 'Magna Carta' for the rights of victims(Randhawa, 2011). This declaration mentions two kinds of victims; namely the victims of crime and the victims of abuse of power, both having meaning of their own. Article 1 defines 'victims of crime' whereas Article 18 of the declaration defines the 'victims of abuse of power'. "Victims" are defined as(The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985):

"Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power."

Further, the victim, also includes, where appropriate, the immediate family or dependents of the direct victims and persons who suffered in intervening to assist victims in distress or to prevent victimization(The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985). Also that a person would be regarded as victim, irrespective of the fact that whether the perpetrator is identified, apprehended, prosecuted or convicted regardless of the familiar relationship between the perpetrator and the victim (The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985). The declaration also proposes fairness and equality in the treatment of victims

by stating that it shall be applicable, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth, or family status, ethnic or social origin, and disability. The victims of abuse of power are defined as **(Article 18, The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985)**:

" Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights ."

It appears clearly that while conceptualizing 'victims of crime', the UN General Assembly, then could not imagine 'animals' or 'non-humans' as victims. The declaration is antithesis of any racist, castist, sexist or like exclusions yet it could not surpass the speciesism which is informing the making of such instruments. Peter Singer would perhaps find the declaration speciesist since it excludes animals as victims though it encapsulates all human beings watering down all the other barriers and classes. It would be fair to say that the construct of a 'victim' was anthropocentric. Since, at the time this declaration came into being, victims were the less acknowledged stakeholders in the criminal justice system and therefore the broad ambit of defining victims was progressive and significant.

The declaration proposes four major benefits for the welfare of the victims –

i. Access to Justice and fair treatment **(Article 4,5,6 & 7, The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985)**
ii. Restitution **(Article 8, 9, 10 & 11, The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985)**
iii. Compensation **(Article 12 & 13, The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985)**
iv. Assistance**(Article 14, 15, 16 & 17, The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985)**

5.2.2 Criminology, Green Criminology, Victimology and 'Animals' as 'victims of crime'-

Criminology, in simple words, is the science of crime and studies the phenomenon of criminality in its entirety. It seeks to discover the causes of criminality and suggest remedies to reduce crimes. *Victimology* is the study of the victim, including the offender and society. Victimology is a social-structural way of viewing crime, the law, the criminal, and the victim(Burgess, 2017). Historically, victimology was a branch of criminology only(Burgess, 2017). One of the significant literatures to understand the evolution of victimology is the work of John P.J. Dussich (P. J. Dussich, 1989) , titled '*Victimology -Past, Present and Fut*ure' who has comprehensively covered the subject. He has listed *Critical dates in Victimology* wherein a long list is provided covering almost every notable event globally which led to growth and blooming of this discipline. A few pioneers and notable personalities that emerge as contributors in the growth of this discipline are Edwin Sutherland, Beniamin Mendelsohn, Hans von Hentig etc. Several earlier writings than from those mentioned above have also mentioned about the victims (Criminologists such as Beccaria (1764), Lombroso (1876), Ferri (1892), Garofalo (1885), Sutherland (1924), Hentig (1948), Nagel (1949), Ellenberger (1955), Wolfgang (1958)).

Animal abuse has seldom entered criminological discourse as a signifier of violence between humans; however, the harm imputed to the animals was not a matter in question. Speciesism has impacted both criminology and victimology a great deal so as to reduce the animals as almost non-existent, as a mere property. It appears as though in victimology, as well as the criminological literature in general, animals are very rarely presented as valid victims(Flynn & Hall, 2017). There is scanty literature on the aspect of animals as victims of crime in the victimology literature. To exemplify that, one could make a reference to the Indian Penal Code, which is the general penal law made for India during the British colonialism and was enacted in the year 1860. This code defines the animals as any living creature, other than a human being(The Indian Penal Code, 1860). The same definition is enacted in later enactment about animal cruelty, the Prevention of Cruelty to Animals Act, 1960. Apart from that, the relevant provisions concerning animals in IPC(The Indian Penal Code,

1860) are section 289, 324, 326, 349, 363A, 377, 378, 428, 429 & 430 (The Indian Penal Code, 1860). The provisions also make a mention of 'killing' or 'maiming' of animals but only in the manner as the property of some human owner, just like causing damage to one's property, not as an injury or hurt to animals themselves. It does not reflect from the text or context that in the scheme of IPC, animals were considered as ones capable of feeling pain or suffering and thereby potential of being victimized. The impact of common law principles of holding animals as property had a huge role to play behind this approach.

Peirs Beirne accuses criminology of being guilty of thorough-going speciesism since it hardly made serious engagements with animals as subjects of criminal law, nor placed animal abuse among the serious discussions of criminology(Beirne, 1995). Flynn & Hall also did one of the staunchest critique of the image of 'ideal victim' understood by Christie, in the following words: "*such was an anthropocentric bias of academic study in this area that even Christie did not problematize the fact that the ideal victim is of course also human"*(Flynn & Hall, 2017). Also, *nonhuman animals are not afforded victimhood purely because they are not human. The notion of the ideal victim and the discipline of victimology are inherently speciesist* (Flynn & Hall, 2017). Since victimology has often engaged with the concept of 'ideal victim', it would be fair to ask that whether animals are the "ideal victims"? Engaging with the question that why non-human animals have not been able to find their place in victimological discourse, and also attempting to understand whether they fell short of being considered as *ideal victims* (Duggan, 2018), Flynn and Hall make notable observations and critical questions to the scholarship of victimology which include asking the basis of exclusion of non-human animals from victimology. Is the basis of exclusion their non-ideal perception as victims of crime, can at least some socially constructed 'companions' be understood as 'ideal' of being victims is the question they put across. Their observations are truly worthy of reproduction and therefore have been mentioned in Annexure 2 (Flynn & Hall, 2017).

Recently, with the growth a new branch of critical criminology named 'Green Criminology', the discussion over the victimization because of environmentally

or ecologically destructive acts and omissions have started among victimologists and through that a class of victims called ‘environmental victims’ also emerged(Flynn & Hall, 2017).

Jesse Downes(Downes, 2020), in his extensive research on finding the positioning of animals in the discourse of victimology, analysed the literatures around three distinct disciplines: animal rights philosophy, criminology, and victimology. Based on this review, he concluded that:

The criminological literature has largely ignored offences against non-humans, and even when it has taken these into account (for e.g. Green Criminology), it has done so without looking at their victimisation. Finally, victimology suffers from the same deficiency as the criminological literature, with animals barely being the subject of research.

Jesse Downes tests the proposition that some animals are regarded as victims whereas others are not. He proposes that even animal harm and animal abuse is not equally addressed.

It has also been clearly proposed that since the discipline of victimology has increasingly embraced the concepts of victimisation based on ‘social harms’ rather than strict legalistic categories, its rejection of nonhuman victims is both unjust and unmeritorious. Victimology is a branch of sociology and over the times it has increased its ambit manifold to bring within its sweep many cases of victims, which may not have made it on purely ‘legalistic’ arguments. A vacuum in the theoretical framework of criminology (even green criminology) and victimology is where animals, as sentient beings, must be placed as ‘the sufferers’ of abuse and as entitled ‘victims of crime’(Sharma & Srivastava, 2020). The ‘ideal victim’ must be made more idealistic while conferring victimhood. The next part shall discuss what developments have happened in this regard, taking help from two cases/stories in America.

5.3 **The Evolving law on Animals as ‘Victims of Crime’: The stories of Nix and Fessenden**

This part of the research discusses two judgments delivered in America in the last decade, which have given constructive interpretation of the animal welfare law, which have shaped jurisprudence about victimhood of animals and have

the potential to guide the judiciary across the globe in this regard. Oregon Supreme Court has turned out to be a pioneer in evolving jurisprudence around animal welfare, particularly on the aspect of victimization and their status as victims. The two remarkable pronouncements are Nix (*State of Oregon v. Nix*, 2015) and Fessenden (State of Oregon v. Linda Diane Fessenden , 2014).

5.3.1 Oregon v Nix- A welcome development –

Not long back, the question of victimhood of animals knocked the doors of the Oregon Supreme Court, in the matter of Nix (*State of Oregon v. Nix*, 2015). The case involved accusation against the defendant of 20 counts of second-degree animal neglect. The police officials, informed through a tip, entered the farm of the defendant and found many emaciated animals (most of them were horses and goats). The broad issue before the Supreme Court was that whether the defendant in the instant case is guilty of 20 separate punishable offences, which necessarily involves the determination of the question that whether animals are victims within the meaning of anti-merger statute. The state argued that the applicable substantive criminal statute reflects through its text, context and legislative history that the legislature intended the neglected animals as the victims of the offence. The defendant maintained that animals, as per the law of Oregon, are considered property and not persons, and therefore, animals cannot be victims since property cannot be a victim. At best, the victim of an animal neglect case is either the public at large or the owner of the animal.

The Court, on careful examination of the text and context of the applicable statute and having gone through the evolution of legislation on the subject of animal cruelty, concluded that the legislature clearly attributed victimhood to the animal suffered and therefore the term *victim* would encapsulate animal suffering neglect. According to the law of Oregon, one commits a second-degree animal neglect, *if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in such persons custody or control* (*State of Oregon v. Nix*, 2015). The Court explained that the offence is constituted *by failing to provide required care* to an animal, regardless of who owns it. Therefore, it appeared that the focus of legislature behind this penalizing neglect was the treatment of individual animals, which also negated the argument of the

defendant that only public at large or the animal owners could be the victim of the harm inflicted to animals. This is a remarkable interpretation that must guide the Courts in all jurisdictions to constructively interpret the animal cruelty statutes in their respective jurisdictions. This judgment of Oregon Supreme Court has made immense contribution to make towards animal welfare and towards placing animals in Victimological discourse.

5.3.2 State v Fessenden- A value addition to animal care and protection –

This case (*State of Oregon v. Fessenden*, 2014) presents a unique situation wherein the police officials considered protection and care of animal and the Courts stood behind the protectors and took a stand in their favor by applying the exigent circumstances exception to animals, thereby allowing the police officer to seize an emaciated animal (horse) without a warrant.

The facts of the case are that a neighbor informed the Sheriff's office that the horse in the neighborhood appears to be starving. One of the officers approached the premises and from the driveway itself, the officer could observe few obvious signs of emaciation. The officer had specialized training in animal husbandry and the sings that made the officer believe about the emaciation were that the horse backbone swollen, her withers stood up, her neck was thin, all of her ribs were visible, she has no visible fatty tissue in her shoulders, and she was *swaying a little bit* (*State of Oregon v. Fessenden*, 2014). Considering this situation to be one of medical emergency, the officer entered the property, seized the horse, and immediately took her to a veterinarian. The co-owner of the horse, Mr. Fessenden, was charged with second-degree animal neglect. The officer revealed during the trial that the condition of the horse was so critical that he was afraid if the horse fell over, it would never be able to get up and in such situation, he did not bother about acquiring a warrant, which would have taken a few hours and instead responded immediately.

Mr. Fessenden claimed violation of the warrant requirement of Article 1 section 9 of the Oregon Constitution(Constitution of the State of Oregon, 1858) and the fourth amendment of the US Constitution (THE CONSTITUTION of the United States, 1789) and sought for suppression of evidence. The state contended that the medical emergency and such exigent circumstances created

exception from the warrant requirement and that given the circumstances, the search and seizure of the horse in need of protection is not invalid and evidence not be suppressed on this ground. The trial Court ruled in favor of the state and held the defendants guilty of the second-degree animal neglect. The Court of Appeal also upheld the lawfulness of the entry and seizure conducted by the office though without warrant. The Supreme Court of Oregon also upheld the legality of the action, observing that *as we continue to learn more about the interrelated nature of all life, the day may come when humans perceive less separation between themselves and the other living beings than the law now reflects*.(*State of Oregon v. Fessenden,* 2014).

The Court in Fessenden, by standing with the police officials, acted as a savior, and contributed immensely towards the animal welfare jurisprudence. These kinds of constructive interpretations provide life and blood to the welfare statutes like the anti-cruelty ones. The two case studies of Nix and Fessenden not only push further the progressive jurisprudence on animal welfare but also present an example that judicial bodies of the world can contribute a great deal in this nascent yet expanding branch of laws i.e., animal laws. The contribution of the judiciary in Oregon towards upholding victim protection to non-humans deserves every bit of appreciation and must guide the other jurisdictions also.

5.4 IPC, Animals & the Invisibilized Victimhood

All the societies in the world are based on the hierarchical set up establishing power of one over the other. All the social, cultural, political, and economical systems are created to reinforce the hierarchy. Gender is the most basic criteria to understand human behavior, roles and relations in society. The gendered undertones are reflected everywhere that establishes and reinforces male superiority over female; endosex over intersex; heterosexual relations over homosexual relation and so on. The same kind of power dynamics is seen in anthropocentric approach that values human concerns more than other non-human species. The superiority of humans over animals has subjected them to various vulnerabilities that inmates from human made systems. Parallels of gendered perspective can be drawn to understand human- animal relationship; their roles and their place in a human created, male dominated set up. In a patriarchal set up both animal and women are treated as property. Both the

systems, anthropocentric and patriarchal, depict the relation between oppressors and oppressed. Both engulf discrimination against the suppressed class. Unlike sexism, human made systems still does not recognize speciesism as a basis of discrimination. Laws regarding animal welfare is of very recent development and has started gaining popularity in different parts of the world.(Srilakshmi et al., 2020). The status of women and animals has many commonalities. 'Objectification' is one such thing experienced by both these categories for years. Both women and animals were treated as property of their masters. Historically humans have exercised ownership rights over animals. They are an object of trade, a useful commodity, a thing of pomp & show, a thing that can be used as per the need and convenience of the owner.

Similarly, women also did not have separate identity. They were either seen as the property of their father or their husband. They were not entitled to hold property, no voting rights, even sexual abuses were also seen violation of father's or husband's right that were capable of settlement by compensating the aggrieved master of the woman. Section 497 of IPC is a clear manifestation of male mastery over women where she is considered so dumb that she does not even understand the nature of her sexual activity and therefore cannot be held responsible. It is an offence against the husband therefore, if the adultery happens with consent of the husband, no offence is done. The wife is neither capable of being responsible, who can be punished nor qualifies as a victim. She was mere property of husband. Similarly, animals have never been considered as victims of crime.

Speciesism is similar to sexism. Both women and animals have been viewed as an object to fulfil the desire of men. The objectification of animals is clearly manifested in section 428 (Mischief by killing or maiming animal of the value of ten rupees) and 429 (Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees) of IPC (The Indian Penal Code, 1860) which states that killing or maiming an animal is an offence against property of a person IPC. Speciesism talks about superiority of human over non-humans. Equality between them means equal consideration for equal interest ought to be given wherever it exists. This will elevate the status of animals from being mere properties to a living being which can feel hunger, pain and love and can make

them a subject of victimization implying thereby that responsibility can be imposed on oppressor.

The struggle to end sexism is not to favor one group, race or class of women it is a struggle to end the discrimination on the basis of differences and supposed superiority of one sex over another. Similarly, speciesism and anthropocentricism that establishes human superiority over other non-humans needs to be questioned on the ground that non-humans also have intrinsic values independent of their usefulness to human beings.(Boslaugh, n.d.) Feminists who do not voice for animal welfare movement might be weakening their own movement by ignoring the similarity between the two movement which is based on oppression by another supposed superior being.(Srilakshmi et al., 2020).

In an analogical manner- considering marital rape is not an offence and thereby doesn't fit in the ambit of the crime of rape. A married woman having undergone a sexual assault at the hands of the spouse is stripped of her position as a victim, which she would feel having undergone the assault. Similarly, the animals since ages have been stripped of the right to be victimized. The only victims in relation to the non-humans would also be either the owners of the animals (since they are property devoid of feelings under the penal law) or the society at large. This is a gendered way of exclusion of a category and taking away their subject position as victims, invisibilizing them as entities and also the pain and suffering they undergo.

In this part, attempt is made to witness the positioning of animals in the general penal law of India, the Indian Penal Code along with the nature of construct with which the animals are approached by IPC and the case of invisibilized victimhood. This part refers to the classical work of Prof. B.B. Pande, A Legal Exclusion through Criminalization, Stigmatization, and Invisibilization in the pre and post-independence India(Pande, 1999), in order to understand invisibilization and also to draw suggestion to address the same. Also, how far the work holds relevance for animals as subjects of criminal law. The part also reflects how far the common law principle of attributing to animals the status of property has impacted the positioning of animals under IPC and also denied them victimhood.

The Indian Penal Code, under section 47, defines the animals as any living creature, other than a human being (The Indian Penal Code, 1860). The same definition is enacted in later enactment on the subject of animal cruelty, the Prevention of Cruelty to Animals Act, 1960. Apart from that, the relevant provisions concerning animals in IPC are section 289 (Negligent conduct with respect to animal), 324 (Voluntarily causing hurt by dangerous weapons or means), 326 (Voluntarily causing grievous hurt by dangerous weapons or means) 349 (Force), 363A (Kidnapping or maiming a minor for purposes of begging.), 377 (Unnatural offences), 378 (Theft), 428 (Mischief by killing or maiming animal of the value of ten rupees), 429 (Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees) & 430 (Mischief by injury to works of irrigation or by wrongfully diverting water). It does not reflect from the text or context that in the scheme of IPC, animals were considered as ones capable of feeling pain or suffering and thereby potential of being victimized. The impact of common law principles of holding animals as property had a huge role to play behind this approach. The Bharatiya Nyaya Sanhita, 2023 (the penal code which replaces the Indian Penal Code, 1860 in India) is no different in this respect from the IPC. It places similar kind of treatment for animals and puts them on similar footing. It defines 'animal' under section 2(2) similarly as that of IPC to mean any living creature, other than human being (The Bharatiya Nyaya Sanhita, 2023). Further in section 118, which deals with voluntarily causing hurt or grievous hurt by dangerous weapons or means, animals have been referred as means or instruments for causing hurt (The Bharatiya Nyaya Sanhita, 2023). Similarly, other provisions such as Section 122, Section 139, Section 291, Section 303, Section 325, Section 326, refer to animals but in capacity either as a property or as a subject used in commission of crime, but not as a victim. To this extent, the approach has not changed with the earlier penal code since it also 'invisibilizes' the victimhood of animals(The Bharatiya Nyaya Sanhita, 2023).

The Common law principle of holding animals as property is diluted a great deal owing to the legislative and judicial developments across the globe. The exact jurisprudential status is not so clear since the animals are not clearly persons capable of rights, nor property in the correct sense, a shift has happened

towards the non-property status(Tatoian, 2015). At this critical juncture of evolving animal law across the globe, the legal position and personhood of animals would keep witnessing changes; however, their position as victims of crime & suffering must be secured on priority basis by the law and policy across the globe. There is sufficient literature before the law makers, enforcers and adjudicators to make this shift possible and situate animals as victims of crime. Oregon Courts have stood out as pioneer in this development. In the Indian context, the Supreme Court of India, in the much-celebrated judgment of A Nagaraja, involving legitimacy of the tradition of Jallikattu sat over an issue concerning clash of tradition and animal protection. The Court in the judgment, while elaborating on the hardships faced by the bulls in the festival in vadi vasal, made an observation that *being dumb and helpless, they suffer in silence* (*AWBI v A Nagaraja & Ors.*, 2014). This does point towards the acknowledgment of victimization of animals by the Indian Courts.

5.4.1 Understanding Invisibilization-

Prof. Pande mentions that laws have always functioned as a tool for both social exclusion and inclusion in practically all civilizations. In the past, common law was regarded as an exclusive tool used primarily to protect a few interests held dear by the majority, preventing the majority from claiming valuable interests, let alone enjoying them (Pande, 1999). It is ironic that despite sixty years of independence and democratic rule, a large section of our population remains nameless and faceless. By making people invisible they can be easily managed by the state and its officials without any sense of accountability (Pande, 1999). In the concluding section of the research, the author also raises an important question: "On what basis should social exclusion be criticized?" To this, the author responds that social exclusion is against the equality clause and non-discrimination clause of the Indian Constitution, which promotes inclusion for all its citizens. In context of invisibilization as a means of exclusion, Prof. Pande made notable observations which are produced in Annexure 2 (Pande, 1999).

The same argument may be juxtaposed in context of exclusion of animals also to answer the question that how the exclusion of animals be critiqued? The same constitution mandates that each citizen must have compassion for living creatures(Constitution of India, 1950), and denial of victimhood to animals who

are animate/living beings appears antithetical to the inclusionary agenda mandated by the Indian Constitution. The recent judicial decisions by the Indian Supreme Court have conferred the animals with right to life and freedom from unnecessary pain and suffering as part of the fundamental rights available to animals through Article 21 of the Indian Constitution (*AWBI v A Nagaraja & Ors.*, 2014).

Prof Pande also provided six heads of suggestions from point (a) to (f) in his work regarding addressing exclusions made by law. The suggestions require exposure of the social exclusion as much as possible in line with the philosophy that 'sunlight is the best disinfectant'. Open discussion on such exclusion would be helpful. The other suggestion focuses on knowledge and understanding of the implications of such social exclusion. Further suggestions focuses on increasing agency of the excluded class to access to justice. A few of those suggestions/steps are reproduced in the Annexure 2 as they may have immense significance for making a case against invisibilized victimhood of animals (Pande, 1999). It appears that all the four points produced above (points a, b, e & f) may be read in the context of the animals with equal sense of sincerity and curiosity. This research may humbly contribute to suggestion (a) since it attempting to expose this exclusion devised on anthropocene notions and also attempting to subject it to public debate and deliberations.

5.5 Ponamma Case and the Analysis -

The researcher would like to extend the gratitude to Mr. Neggehalli Jayasimha, who is the Managing Director at the Humane Society International (India) for sharing the details of the matter with the researchers. This case at hand provides an interesting insight into the way in which animal cruelty prosecutions are carried out in the country. It would be imperative to mention the factual background associated with the case.

The accused in the matter, Smt. Ponnamma, on the unfortunate day of 15.03.2016, took eight (08) twenty day old puppies from a drain in front of her home and flung the nascent puppies to the ground with force in a vacant site nearby her house. Further, she also blocked the drain in front of her house preventing the puppies from returning to the shelter where their mother had given birth to them. Due to the injuries inflicted on them coupled with the

severance from their mother (resulting in absence of care) and unkind warm weather, the puppies acceded to demise on 17th March. One noble person, who is an honorary Animal Welfare Officer, gave a written complaint of the matter to the nearby police station and consequently FIR in the matter was lodged against the accused. During the investigation, sufficient evidence was collected against the accused and consequently charge sheet was filed against the accused for offences punishable under section 11 of Prevention of Cruelty to Animals Act, section 429 of the Indian Penal Code and section 93 of the Karnataka Police Act. The accused appeared in the Court of the learned Presiding Officer, 45th Addl. CMM, Bangalore, and pleaded guilty (confessed) for all the offences charged with. The learned court convicted the accused and sentenced her to pay fine of a meager amount with the order of simple imprisonment in default of payment of fine. The sentence awarded by the learned trial court was as follows – Fine of Rs. 700/- for offence punishable under section 429 of Indian Penal Code and in default of the payment of fine, the accused shall face simple imprisonment for seven days. It further sentenced to pay fine of Rs. 100/- (hundred rupees) for offence punishable under section 93 of Karnataka Police Act and in default of payment of fine accused shall undergo simple imprisonment for 15 days and sentenced to pay fine of Rs. 200/- for offence punishable under section 11 of Prevention of Cruelty to Animals Act, 1960 and in default of payment of fine accused shall undergo simple imprisonment for 15 days.

The gruesome, cruel and inhuman act of inflicting pain on eight little puppies resulting in their death and the sentence awarded clearly seem disproportionate and not in tune with the gravity at which the offences were committed. What could have been the reason behind such a sentence passed by the learned court? Was it because the victims of the crime were a few puppies? Was it because the accused herself pleaded guilty of the offences charged with and therefore a lenient view? Was it because even the prosecution would not object to such a punishment since they have managed to seek conviction in the matter? Was it because no relative/family of the deceased puppies would contest the sentence awarded for obvious reasons of being non-humans? Was it because during the

trial neither the prosecution nor the Court conceived the poor hapless deceased puppies as victims of the gruesome crime?

The punishment awarded in the matter in no form acts as a deterrent and on the contrary sets a wrong precedent in society to encourage in committing such heinous acts with impunity. Especially in context of crimes against animals, this punishment would set a bad precedent thereby defeating the purpose of the legislation itself. The hapless puppies have nobody to represent their interest in the system. This is where the role of courts as guardians or 'parens pateria' comes in; to protect the interest of such victims who have no means or capability to protect it himself or herself.

Awarding the sentence commensurate with the seriousness of the offence is a mandate settled by the Apex Court in its decisions concerning sentencing. In Soman v. State of Kerela(*Soman vs State Of Kerala*, 2012), the Apex Court of India, did employ some ink in explaining the rule of proportionality while sentencing the offenders and also stressed the factor of 'seriousness of an offence' to be employed in determining the punishment of the offender. The part of judgment is reproduced in Annexure 2.

From the perspective of sound sentencing, awarding such a punishment in the given case is also not warranted. There is also a settled law that the fact mere fact of acceptance of guilt is no reason for the magistrate to award a lesser sentence. The court may have assessed the 'harmfulness' less since the lives of puppies were involved rather than humans which again compels the research to introspect whether the victimization of animals is a concern to the legal system? Are they enough victims or something lesser than the 'entitled' or 'recognized' victims in the eyes of the law (especially Courts)?

It is apparent from the aforementioned case and the sentence passed by the trial court in the case that the Court has failed to perform its duty as a 'parens pateria' and also set a wrong precedent that crimes against animals (puppies in this case) can be disposed of with minimum or no sanctions at all thus providing a situation of impunity to the perpetrators. This case provides a critical study of the role of the public prosecutors also.

In the reassessment and introspection of the operation of IPC in the last 150 years, the need is to unpack the hidden biases and discriminations informing the

operation of criminal justice system in the country and defeating or deviating from the spirit of the legislation. Critical criminal law demands exposure of such biases and one of the approaches under critical criminal law studies must be the development of eco-centric critique of criminal law. The engagement of non-humans with criminal law demands sincere and informed deliberation.

Considering the contemporary developments in the law, namely, the gradual shift from anthropocentric model of governance to eco-centric model of governance; the extended responsibility of the welfare state under the doctrine of parens pateria; the shift in the status of animals from property to somewhere between property and persons; and the development of the branches of victimology, green criminology and critical criminal laws; it is imperative to review the policy of general penal law towards living beings apart from human beings. The anthropocentric model of governance and policymaking is in process of being replaced by 'eco-centric' model of governance, and it is presenting the legislators, the bar, the bench, the academia and the society in general with several questions and challenges. Human interest should not take a by default automatic priority or precedence over all other species of animals (*Centre for Environmental Law, WWF-I v Union of India*, 2013). Animals form part of our ecosystem, and it is the duty of our State to protect our ecosystem. Although the protection and welfare of animals is well covered under the article 21, thanks to *A Nagaraja* (*AWBI v A Nagaraja & Ors.*, 2014) which redefined the scope of animals under Article 21 and how this particular protection is the primary duty of State. The Apex Court acknowledged its duty under the doctrine of parens pateria. In light of these legal and jurisprudential developments, the inquiry relating to animals as crime victims and subjects of victimology becomes much more imperative.

5.6 Restorative Justice, Alternate Sentencing/Community Service sentences and the 'Victimhood of Animals'

The research attempts to analyze the scope of restorative justice and alternatives punishment methods in animal cruelty matters and crimes affecting animals. Further, there are numerous questions which would require attention for a meaningful discourse on the status of animals as victims of crime. This would

include exploring innovative ways to incorporate criminal justice reforms into animal law (Hill, 2021) (for eg- alternate sentencing, community service sentencing, and restorative justice). Pursuit of a process which not only deters someone from hurting or injuring animals but also teaches empathy towards animals, attempts to target the root causes of animal cruelty, provides due acknowledgment to non-human sufferers of crime as victims and attempts to restore and rehabilitate them, are all important considerations for this discourse to be made meaningful(Hill, 2021).

Hill claims that "*utilizing restorative justice can be a compelling way to hold animal cruelty offenders accountable, address their needs, as well as the needs of animal victims, and most importantly, recognize that animals are victims and their experiences- including of pain and suffering- must be acknowledged and repaired"*(Hill, 2021).

5.6.1 Community Service Sentences and the Indian Law -

Community service is a form of sentence, and the research therefore tries to highlight it as an 'alternate to incarceration'. This is a court order that requires the offender to carry out community service projects without compensation under the supervision of a probation officer, who will also provide the offender with appropriate support and counseling for rehabilitation (Jayasree, 2005). One of the legislative attempt (Bill), mentions it to be as a non-custodial punishment awarded by the Court post-conviction which requires the offender to render unpaid service for the benefit of the community (Andhra Pradesh Community Service of Offenders Bill, 2010, n.d.). Kenneth D. Miller calls it a way of 'symbolic restitution' which gives sometime from the life of the convict to the community for its service (Hurd & Miller, 1981).

The Law Commission of India in its 156th Report proposed the amendment to section 53 of the IPC, 1860 (Law Commission of India, 1997) (Law Commission of India, 1997)emphasizing that since the Supreme Court has observed to adopt reformative approach instead of deterrent (wherever possible), new forms of punishment in addition to or as alternative to imprisonment are proposed, namely – (a) community service; (b) disqualification from holding office; (c) order for payment of compensation; (d) public censure. The commission further mentioned few important factors to be

considered in case the option of community service is accepted. The relevant factors highlighted in the Report which would be required to be considered are:-

i. What are the kinds of offences for which these punishments should be made applicable?(Law Commission of India, 1997)

ii. Whether, while awarding the punishment of community service, relevant factors such as age of the convict, nature of work, duration of work, remuneration, if any, payable to the convict, be also considered?(Law Commission of India, 1997)

The Malimath Committee on the Criminal Justice System Reform (Government of India, 2003) recommended the review of the IPC to consider, inter alia, enhancement, reduction or prescribing alternative modes of punishments. While mentioning alternate forms of punishment, the Committee makes a mention of community service as an alternate mode of punishment under IPC e.g. There is a need to have new forms of punishment such as community service, disqualification from holding public office, confiscation orders, imprisonment for life without commutation or remission etc. The committee also proposes that instead of sentencing for default in payment of fine, community service may be awarded in such cases(Government of India, 2003). Paragraph 103 of the report provides that the IPC empowers the court to prescribe the sentence of imprisonment when the accused commits default in payment of fine. The Committee recommends that a suitable provision should be made empowering the court to prescribe as an alternative to default sentence, community service for a specified time (Government of India, 2003). The committee also recommended grouping of crimes into three codes: "Economic and Other Offenses Code," "Correctional Offenses Code," "Criminal Offenses Code," and "Social Welfare Offenses Code." Additionally, it is recommended that community service be the preferred punishment rather than prison for social welfare offences, and the use of punitive fines and jail time along with community service for offenses falling under the "Economic and Other Offenses Code". The provision of ‘community service’ within the legislation in India is in the section 15 (c) of the Juvenile Justice (Care and Protection of Children) Act, 2000. The Courts in India have not behind any behind in awarding community service sentences on several occasions. The Supreme Court of India,

the High Courts(*Francis @ Pasha Dias v. State of Maharastra*, 2014; *Parvez Jilani Shaikh and Anr. v. State of Maharastra*, 2015) and also the lower courts(Akaant Kumar Mittal, 2012; Pathak, 2013; Singh, 2012) have been instrumental in awarding community service sentences. In the popular, 'BMW Hit & Run Case'(*State Tr . P . S . Lodhi Colony , New Delhi vs Sanjeev Nanda*, 2013), the Supreme Court of India, invoked 'complete justice', to award the community service sentence in the matter. The Trial Courts in India also in number of cases involving theft, drunken driving and other petty offences, have directed the convicts to work for NGO's, at government hospitals, at religious institutions for small durations instead of resorting to imprisonment. In a very recent order, the Uttarakhand High Court ordered the accused of online sexual harassment case to plant 50 trees, at the appropriate location designated by the Horticulture department, as a condition to quash the case. It appears to be the case that the Courts have been frequently using the community service sentences in order to meet the ends of justice, wherever the judicial conscience guides the courts that way. Therefore, in matters of animal abuse and animal cruelty, Indian courts may resort to community service sentences, in the appropriate cases and situations, to the convicts, to further – (a) the welfare of animals, (b) to restore the animal hurt/abused and (c) to give an opportunity to the convict to reform him by engaging with the animal in question or animals generally and get a chance to understand their pain and suffering closely. This would not only create a win-win situation for the accused, the victimized animal and also the criminal justice system (since reformative elements will potentially flourish).

There have been various demands for incorporation of community service sentences as an alternate sanction/sentence. The awarding of such sentences to a few celebrities have given it due recognition also and now there is a strong argument in its favor that for minor offences, this should be a mode of punishment and the perpetrator must be made to give back to the society and social work may be extracted as a punishment(Singh, 2012). This may be particularly suitable in cases involving animal cruelty wherein apart from taking care of the animal who is hurt/injured, the convicted person may also be made to contribute towards animal protection and welfare. This may include

rehabilitation and care of the aggrieved animal or generally working with the animal shelter and looking after animals and their requirements, adopting an animal, inter alia(Arya, n.d.).

India is on the way to amend its Criminal laws and from 1st July, 2024, through which it is replacing the Indian Penal Code, the Criminal Procedure Code & the Indian Evidence Act and enforcing Bharatiya Nyaya Sanhita, Bhartiya Nagarik Suraksha Sanhita & the Bhartiya Sakshya Adhiniyam to replace the older laws respectively(Three Criminal Laws to Be Effective from July 1, 2024). Amongst them, the law which replaces the Indian Penal Code i.e. Bharatiya Nyaya Sanhita brings forward the provision for community service as one of the punishments under the new penal law. This is provided under Section 4, Chapter II of the Sanhita which mentions several punishments from clause (a) to (f), among which community service finds place at clause (f). The various punishments mentioned are produced in Annexure 1 (The Bharatiya Nyaya Sanhita, 2023). This shows that the penal law in India is taking a shift towards acknowledging the scope of community service as a potent tool for punishment and also as a viable alternative to incarceration in certain matters and therefore this manner of punishment should also be used in the anti-cruelty statute in India.

5.7 Concluding Remarks

A few observations and recommendations are worth pondering –

5.7.1 The status of animals as victims of crime is a critical area of research and must be an important consideration for the critical criminal law scholarship. It is as relevant to the critical criminal law studies as gender studies(U. R. Sharma, 2022). Developing an anthropocene critique to criminal law, where the animate beings, capable of feeling pain and suffering, are invisibilized as victims e.g. IPC provides for 11 provisions concerning animals but not a single provision where animals are victims or entities capable of being harmed. It is positioned on the status of animals as property.

5.7.2 The judicial and legislative bodies across the globe must take learnings from the Oregon Supreme Court, from the rulings of *Nix and Fessenden*, which are discussed in earlier part of the research. The Common law principle of

holding animals as property is diluted a great deal owing to the legislative and judicial developments across the globe. The exact jurisprudential status is not so clear since the animals are not clearly persons capable of rights, nor property in the correct sense, a shift has happened towards the non-property status(Tatoian, 2015). At this critical juncture of evolving animal law across the globe, the legal position and personhood of animals would keep witnessing changes; however, their position as victims of crime & suffering must be secured on priority basis by the law and policy across the globe. There is sufficient literature before the law makers, enforcers and adjudicators to make this shift possible and situate animals as victims of crime. Oregon Courts have stood out as pioneer in this development. In the Indian context, the Supreme Court of India, in the much celebrated judgment of A Nagaraja, involving legitimacy of the tradition of Jallikattu sat over an issue concerning clash of tradition and animal protection. The Court in the judgment, while elaborating on the hardships faced by the bulls in the festival in vadi vasal, made an observation that *being dumb and helpless, they suffer in silence*(*AWBI v A Nagaraja & Ors.*, 2014). This does point towards the acknowledgment of victimization of animals by the Indian Courts. Further, the legislation for the protection of animals from cruelty in India (The Prevention of Cruelty To Animals Act, 1960),which is a welfare oriented legislation for the protection and well-being of animals prescribing both positive and negative duties towards animals, may also be construed in line of the interpretation provided in the case of Nix (*State of Oregon v. Nix*, 2015) and the status of animals as victims may be read into from the analysis of text, context and the legislative intent behind the Act of 1960.

5.7.3 The shift towards *eco-centricism from anthropocentricism* or semi-eco-centricism is a difficult one. Bringing eco-centricism into practice would require key changes to be brought in the laws, policies, and practices. Recognizing the victimhood of animals would be at the heart of the eco-centric shift since the status of animals as co-sharers on earth would require changes in the way humans behave. From the religious practices, customs, traditions, to the ways of amusement, entertainment, and appetite, also involving the ways of labour and work involving animals, the approach has to be transformed. Accordingly,

the law, especially the constitutional law, the environmental law, the criminal law and the PCA 1960 needs to be relooked to better position animals in tune with the eco-centric requirements. The Apex Court of India in *T.N Godavarman Thirumulpad v. Union of India* (*T.N. Godavarman Thirumulpad Vs Union of India & Ors.*, 2006) opined about this shift towards the eco-centric approach. The approach must be support all life forms and manifestations and it must be acknowledged that humans are just one of those manifestations or life forms.

Further than this, the Indian Supreme Court, in the celebrated judgment of A Nagaraja, made notable observations and remarks to strengthen the animal welfare jurisprudence as well as the spirit of eco-centricism. The Court made remarkable observations about understanding of eco-centricism, stating that human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. The Court also made recommendations at the concluding part of the judgment, which are pertinent to take further the aspiration of animal welfare and counter the invisibilized victimhood of animals. Two of those recommendations, namely point 8 and 9, are extremely pertinent for reference since one of them proposes to bring in more rigor to the Act of 1960 by putting appropriate penalties and enforcing deterrence and the other proposes to recognize the rights of animals within the constitutional framework of India (*AWBI v A Nagaraja & Ors.*, 2014). Both the directions of the court are produced in Annexure 2.

Further, there is a prevalent inconsistency in the positioning of animals when it comes to common law, the Indian Penal Code, the PCA 1960 on one hand and the recent constitutional interpretations by the Indian Supreme Court referred in the last point. The Indian Penal Code defines the animals as any living creature, other than a human being(The Indian Penal Code, 1860). The same definition is enacted in later enactment on the subject of animal cruelty, the Prevention of Cruelty to Animals Act, 1960. It does not reflect from the text or context that in the scheme of IPC, animals were considered as ones capable of feeling pain or suffering and thereby potential of being victimized. The impact of common law principles of holding animals as property had a huge role to play behind this approach(U. R. Sharma, 2022). There is thus a prevailing inconsistency in the treatment of animals through the hands of law which needs to be resolved taking

clues from the progressive developments (as reflected from the judgments of Nix and Fessenden) and through sincerely chalked out legislative interventions (as has been insisted by the Indian Supreme Court also).

5.7.4 With the sincere recognition of the animals as victims of crime and suffering, it would be a corollary that the scope of restorative justice needs to be explored within the criminal justice system. Alongside this, the scope of community service sentences in the matters of animal cruelty would be highly imperative. This would ensure the wellbeing and rehabilitation of the aggrieved animal (physically, financially, medically and emotionally), also provide an opportunity to the perpetrator to reform, and expiate for the wrong committed through him/her. It may even act as a therapy(Maya D. Chablani v Radha Mittal 2021) for the perpetrator.

This chapter addresses the research objective number 5 of the research. This chapter of the research engages with the aspects of animal law, criminology, victimology, restorative justice and alternative sentencing, inter alia. It analyses the positioning of the animals within the disciplines of criminology and victimology and whether the animals have been conferred the status of 'victims of crime'. The literature of criminology has flown a lot of ink but rarely has it considered the aspect of animal abuse/cruelty or perpetration of violence against animals worthy of the cost if ink. The discipline of victimology, which is relatively a new discipline, when compared to criminology, also has been evasive on the front of recognizing animals as victims of crime. The same has permeated national jurisdictions wherein animals are not considered effective stakeholders of the criminal justice system. This part also discusses certain judicial developments which are lighting the path towards a more inclusive theorization of criminology and victimology, coming from the judicial precedents of Oregon. Also, this part discusses the idea of restorative justice and alternative sentencing and how it could become a progressive inclusion for animal abuse/cruelty matters. The part also provides some suggestions.

CHAPTER 6
CONCLUSION & RECCOMENDATIONS

6.1 CONCLUDING REMARKS

They are found in the discussions of the legislature, they are the subjects of law making, so what if they don't contest themselves for their interests in the law-making chambers. They are subjects of law enforcement, whether it is about humane treatment towards them or avoiding unnecessary pain and suffering to them, or whether they are depended on by the law enforcers (search dogs etc.), so what if they do not plan enforcement themselves. Their interests, rights and issues are argued in courts on daily basis, from the lower courts till the highest of the judicial office, and jurisprudence around them is discovered by the Courts on day-to-day basis, so what if they cannot themselves contest their claims in the Courts or become Lords in matters concerning them. They are everywhere on the map of governance. As much as they are intertwined with human lives (the species homo sapiens), as much they are intertwined with issues of governance today (whether it is law-making, law-enforcement or interpretation of law). There is not much strength in the argument that they are not subjects of rights or subjects needing protection from their interests.

Let us draw an analogy of a family where we have a preaching father, an unperturbed Kid and a son-loving mother and the words of late grandparents (Too much thunder, too little rain). The preaching father- Supreme Court of India (Judiciary in general), the unperturbed son- The Executive, the son-loving mother – The Legislature, the late grandparents – The Constitutional aspirations Let's conceptualize a normal family where everybody seems to perform their work religiously as they should. Things don't change much, however.

The relation of governance with protection of animal rights/animal interests is nearly the same. The judiciary of the country (like a preaching father) keeps on guiding/blessing the son about right and wrong referring to the aspirations of the grandparents or referring to the ideal lives spent by the grandparents. It sometimes interprets Part III, sometimes Part IV, sometimes Part IV-A to instill a sense of compassion for animals. The son, in most cases, turns a blind eye to the father's words through pretending to him that his advice is taken seriously. It hardly cares about the enforcement of the advises/verdicts of the father. Sometimes, does things in absolute derogation of what is advised to him. For e.g.- A Nagaraja judgment expected animal rights to be recognized in Part III of the Constitution, rather than that, the AWBI is put within the supervision of the Ministry of Fisheries, Animal Husbandry and Dairying (Department of Animal Husbandry and Dairying), which doesn't appear to be a proper ministry for the purpose of animal welfare. It could have been befitting to dedicate a separate ministry to work towards the issue of animal welfare and contribute to both research and practice around the aspect. This way sometimes the expectations of judiciary and functions of executive go in opposite directions. Now about the son-loving mother, who also gets suggestions from the preaching father for improving certain things (accountability) concerning the son doesn't consider it too seriously. It assumes the son to be good in all respects. Certain suggestions placed by the judiciary which could have greatly contributed to the furtherance of animal welfare could not be backed by the legislature of the country and the resultant accountability on the executive is loosened. It is time for the family to rethink the loss that is incurred owing to the respective approaches preferred by each of them.

The journey of animal welfare laws/policies across the globe has happened in three broad stages, which have also been mentioned in the Nagaraja Judgment. Those are – first, creating laws for human self-interest reasons; second, making laws/policies to sub-serve the needs of future generations of human beings (Intergenerational Equity); and third and most recent, laws to protect nature's own rights considering their intrinsic self-worth. Such has been the journey of animal welfare legal framework at municipal levels, as in India. In India, the Act of 1960 came to replace the then prevalent legislation Prevention of Cruelty

to Animals Act 1890 (hereinafter referred as the Act of 1890) by removing the deficiency in the Act of 1890 and to make the law more comprehensive. The Act of 1960 declared certain types of cruelty to animals to be offences and provided necessary penalties for such offences and also established an 'Animal Welfare Board' with the object of promoting measures of animal welfare(The Prevention of Cruelty To Animals Act, 1960). The Act of 1960 also provided for provisions concerning licensing and regulating the training and performance of animals for the purpose of any entertainment to which the public are admitted through the sale of tickets. The Preamble of the Act of 1960 provides that the legislation aims to *prevent the infliction of unnecessary pain or suffering on animals.*

The Apex Court of India, in the celebrated case of A Nagaraja(*AWBI v A Nagaraja & Ors.*, 2014), mentioned that in interpreting such a law, the Act of 1960, which is welfare inclined towards a class which is weak, infirm or unaware as animals, the courts must be vigilant in protecting their interests.

Rita Brara(Brara, 2017) mentions that judicial thinking in India is steering towards eco-centric course, by experimenting with a language for 'Rights of Nature' that draws on the Indian Constitution, the shift of international treaties, the judgments of its apex and provincial courts as well as the decisions of the green tribunal.

The Supreme Court in India made an extremely pertinent remark in the Nagaraja Judgment concerning elevation of the rights of animals to the status of fundamental rights, which must be a triggering point for the legislature of the country for years to come. The Court expressed in Nagaraja (*AWBI v A Nagaraja & Ors.*, 2014) that the respective articles in the constitution of India claiming duty to have compassion for animals is no less than the 'magna carta of animal rights'. The relevant part is produced in Annexure 2.

The Court also gave a set of twelve (12) directions in the Nagaraja Judgment. Amongst those, direction number 8, 9 & 10 are of utmost importance to facilitate the animal welfare. The directions number 8 & 9 are expecting from the legislature of the country and would play a big role in furthering the animal rights jurisprudence in the country. The direction number 10 is expecting from the executive branch since mere enhancement of substantiveness of law would

not remedy the animals unless the provisions of the PCA Act are effectively and strenuously enforced, which already has been an issue of concern in the past. It would be pertinent to reproduce the aforementioned directions of the Court(*AWBI v A Nagaraja & Ors.*, 2014) and they find place in the Annexure 2 for reference.

Nagaraja verdict clearly settled that in case of customs, traditions causing unnecessary and suffering to the animals, such events/customs have to give way to the cause of protection of animal welfare. However, in India, still the festival of Bakr Id, is celebrated every year, in the manner that causes killing and sacrifice of numerous animals. Even Hanif Qureshi, in 1958, opined that this practice of sacrifice of animals does not fall as the essential religious practice. It shows how despite clear jurisprudential developments, lack of awareness and political will, lets a practice continue which sacrifices/causes killing of animals across the nation in huge numbers, which as per present legal development is clearly illegal and intolerable. Even section 28 of the PCA Act has been judicially curtailed and may not be used to provide blanket protection to sacrifice of animals in the festivals to the likes of Bakr Id.

Humanity for years has been struggling of various evils of divisive nature, racism, casteism, communalism, and regionalism etc. Not that all these dividers are completely abdicated across the globe, but the world community and municipal jurisdictions have taken firm steps in recognizing these injustices and resolving them. It is time to counter speciesism in the same fashion and spirit. It is time to realize & recognize this injustice and to resolve against this divisive evil, which has always kept the interests of humans and non-humans at loggerheads. The need is to realize the shared identity, the shared existence and shape a stable eco-centric vision of law and justice. The technical rules to prevent harm and suffering to animals or recognizing their personhood, or recognizing them as holders of rights, would be secondary step to this realization. Moreover, in acknowledging this realization and making the aforementioned resolve the words of *Geremy Bentham* would go a long way as the lighthouse by the side of distant ocean, in shaping the eco-centric theory of law and justice.

Introspection of Research Questions and Hypothesis Testing –

This part attempts to assess and conclude that the research discovered following answers/responses to the research questions with which it started the research at hand. The Research Questions, with which the research began were-

i. Whether there exists a theoretical framework for animal welfare law?
ii. To what extent do the principles of governance protect the non-human species based on the 'rights-based approach' and 'duty-based approach'?
iii. Whether existing legislations are progressive enough or requires improvement to cater to the needs of non-human species?
iv. Whether the legal and policy mechanism in India (which involves the lawmakers, the Courts and the prosecution) consider 'animals' as entitled or recognized 'victims of crime' and whether it confers due dignity to 'animals' as stakeholders in victim justice?

The research began with the hypothesis that since the approaches towards animal welfare, mainly the welfarist approach and the rights approach are mutually exclusive and adverse to each other, this is the reason why there is inconsistency in the legal framework for animal law. However, the researcher opines that the hypothesis taken stands disproved. This is because of the underlying fact that both approaches talk about the larger goal which is creating a better world for animals. If we align them as per stages, prevention of cruelty towards animals would be the first stage, animal welfare (which is more of a positive obligation towards animals) would be the second stage and animal rights would be the third stage. The legal frameworks have enough autonomy and flexibility to work towards this and they would find support from the philosophy and jurisprudence for doing so. This is particularly true for the Indian legal framework since it has reflections of both the approaches in the legal framework. However, most jurisdictions restrict to 'preventing cruelty' (as is the case with Indian legislature) and that too with wide exceptions. The welfarist and rights approaches are definitely not the same and they have differences in the manner in which animal interests and welfare perspective is asserted and advocated. However, despite the differences amongst them, they have a lot of similarities, most of which are something to be worked upon by several jurisdictions of the world. One common and extremely significant thing among both is the moral and legal consideration of animals and recognition of

sentience of non-human animals and resultant extension of the legal and moral protections of interests of animals.

The following responses are reached upon by the researcher in response to the research questions-

1. During the research having spent considerable time to read, understand and analyze the theoretical framework for animal law, the researcher found out that there exists a profound theoretical framework for the domain of animal law. Contributed by various philosophical disciplines such as ethics, law, culture, there does exist a vast literature through which the essential question that animal law tries to address is attempted to be taken on merits i.e. 'the relationship between humans and non-human animals'. Chapter 2 and 3 of the research delve upon such theoretical framework. Chapter 5 attempts to explore the existence of such theoretical framework in criminology and victimology but as found out, such literature is scarce. Criminology, victimology, and critical criminal law studies should take into account animals as subjects in criminology and especially in victimology, in light of contemporary legal developments.

2. In the contemporary state of affairs, it would be wrong to say that the model is anthropocentric approach which was a dominant discourse, and which informed several aspects including law, is slowly breaking apart. The development of environmental law (at the international and the national level jurisdictions generally) and the evolution of animal law (as a standalone discipline) have an important role to play in this regard. 'To what extent' has eco-centricism become a reality is a very difficult question to answer. Slowly and gradually, the foundational and philosophical justification regarding ecocentric approach is also developing. Chapter 2 discusses this aspect in detail. There does exist a good philosophical and jurisprudential case/basis for eco-centricism. How various jurisdictions act upon it to make it a reality from abstraction is what matters. Having researched the approaches (welfare and rights view) for some time, the researcher considers the approaches are not antagonistic to each other. They are perhaps complimentary to each other. Most jurisdictions concern themselves with the technical philosophical obstacles (for e.g.- personhood of animals etc.), and lean towards status-quoism, which is

something neither the welfare nor the rights view would want. The contributions of Peter Singer, Tom Regan and Steven Wise in this regard stand important.

3. There is a huge body of law in India on the subject of animal law. Even on the subject of animal cruelty, India was among one of the few nations of the world which had a specific legislation dedicated to the subject since 1960 (Prevention of Cruelty to Animals Act, 1960). Also, with great body of rule-making through delegated legislation under the Act of 1960 (The Prevention of Cruelty to Animals Act, 1960), the extent of law-making on the subject of animal cruelty is itself very vast. However, when it comes to bringing substantive changes in the Act of 1960, that has not happened and it's a long due thing. The legislative inaction or indifference about the subject is prima facie since an NGO was compelled to approach the Hon'ble Supreme Court of India, pleading to avail a judicial remedy for the welfare of animals in India, on the ground that since 1960, even after number of bills being presented to amend and overhaul the law concerning welfare of animals, nothing has happened from the legislative front. They pleaded that the only resort is the judicial intervention in the matter and grant of 'personhood' to animals through judicial effort that something beneficial could happen for the animals in the country. The Bill of 2022 does present some important pointers for amending the law concerning cruelty on animals in India (this has been discussed in detail in Chapter 4 of the research). The legislative and judicial developments which would help further the end of 'dignified existence of non-human animals' have been discussed through Chapter 4 and chapter 5 jointly. 'Learnings from the Oregon Supreme Court' is something which may be reiterated here even at the cost of repetition.

4. The positioning of animals in the domains of criminology and victimology is significant. As of now, the status of animals as stakeholders in criminal justice (especially as victims of crime) is highly problematic. Even critical criminology could not fill the vacuum. Recognizing the *invisibilized victimhood of animals* is perhaps the first steps to start towards the end of animal welfare through law. Also, the scope of 'alternate sentencing' in matters concerning animal cruelty/animal abuse must be explored since this may have the effect of realizing 'restorative justice' and may create a win-win situation for both the offender and the victimized animal and also in the larger spectrum,

promote sensitivity and awareness concerning animals and humane treatment towards animals, which may contribute a lot towards changing perception towards animals also.

In addition to the aforementioned, following are a few notable observations of the research –

Welfare Perspective –

The critical challenges that are impacting the animal welfare agenda is that it is still not finding place as one of the core elements of governance. Instead of rising to it, we are further levelling down from it. Situating Animal Welfare Board of India (AWBI) within the Ministry of Animal Husbandry appears to be counterproductive. The functions of the mentioned ministry are much narrower than the objectives for which the AWBI was constituted under the PCA Act 1960. The objective of AWBI is to protect from "ants to elephants"(Press Information Bureau, 2018) and the mandate is *to prevent cruelty, suffering and pain to all creatures*(Press Information Bureau, 2018). The functions of AWBI must be independent and the aim of animal welfare must be kept above politics(Koshy, 2017). Article 41 of the Constitution provides the state to work towards 'undeserved wants' and if the state wishes to, it may utilize the mandate given by the constitutional makers to work towards 'Animal Welfare'. Do we have graveyards or designated places to bury the dead animals with dignity? What is the condition for the medical infrastructure of the animals? Is it welfare oriented?

It is time to change the discourse from animal protection to animal welfare. It will require a huge shift wherein not just negative responsibility of not causing 'unnecessary pain and suffering' is concerned, rather a positive responsibility of care, affection, compassion and wellbeing of animals is involved. From 'not doing something to animals which causes them pain and suffering' to 'doing something for animals to let them utilize their capabilities to the true potential'. From feeder zones to medical facilities, to rehabilitation of injured animals, to sensitization and awareness on compassion towards animals are all things within the fold of 'animal welfare'.

Welfare Schemes-

1. Financial Assistance to be provided to Goshalas/Pinjara Poles/AWOs.
2. Financial Assistance to the AWOs, local bodies for taking care of the rescued animals from natural disasters and calamities, illegal transportation, illegal slaughterhouses etc.
3. Construction of shelter houses, dispensary, water tank, drainage system etc. for animal welfare.
4. Animal Ambulance schemes and provision for medical facilities.
5. Arrangements for animal birth control measures and anti-rabies vaccination.
6. Setting up of Animal Helpline for facilitating help to injured animals in each district.

Employing CSR for Animal Welfare-

Can India also capitalize on its Corporate Social Responsibility (CSR) in India to further the ends of animal welfare?

In India, we do have a provision, Section 135 of the Companies Act, 2013, which mandates the business entities and corporate houses having a certain net income to dedicate a certain percentage of their profits towards the Corporate Social Responsibility (also referred as 'CSR') and contribute to the welfare and development of society in general. The operative provision i.e. Section 135 (mainly clauses 1 and 5) are worthy of cognizance and have been produced in the Annexure-1.

Schedule VII of the Companies Act, 2013 provides for the subjects and the activities which may be considered by the companies in their CSR Policies.

Clause (iv) of the Schedule VII provides for "protection of flora and fauna" and "animal welfare" as agenda items on which CSR obligations may be spent by the corporates. The clause (iv) also reproduced in the Annexure.

Therefore, the law does provide an avenue for animal welfare even through the hands of the corporates as their Corporate Social Responsibility (CSR). The need is that more awareness be generated about this among the citizenry and masses, and this will ultimately impact the decisions of the corporates also to work towards the aim of 'animal welfare' and shaping the human animal

relationship better. Let us ponder upon some of the initiatives in this direction. Some of the impactful CSR projects in India, which have worked towards wildlife protection and animal welfare are discussed below-

1. Human- Elephant Conflict Management by The Muthoot Group(Fernandes, 2019) -

The Muthoot Group, which is one of India's leading business entities, collaborates with WWF (World Wildlife Fund-India) and launched an initiative called 'Friends for Life', which is basically an elephant conservation project dedicated towards effective protection of the habitats of Asian Elephants across six states in India and for effective management of human-animal conflict. This initiative is under the larger initiative named *Haathi Mera Saathi* initiative and the name get derived from the very logo of the Muthoot Group which depicts elephants(*The Muthoot Group and WWF-India Join Hands for 'Friends for Life,'* 2020). This collaboration aimed to work across six states, namely, Arunachal Pradesh, Assam, Uttarakhand, Uttar Pradesh, Bihar, Tamil Nadu and Kerela (also some parts of Northern West Bengal). It aims to scale up the existing efforts by identifying conflict management measures specific to each region and to enforce the law and policy concerning the protection of elephants(*The Muthoot Group and WWF-India Join Hands for 'Friends for Life,'* 2020).

The effort aims to reduce conflict between elephants and humans, protect human lives as well as elephant lives, and prevent crop damage and village property damage. To achieve this, it will be necessary to collaborate closely with local populations and assess the outcomes of any programs put in place to manage human-elephant conflict.(*The Muthoot Group and WWF-India Join Hands for 'Friends for Life,'* 2020).

We could see that the project has gained success and the Muthoot group has declared it themselves under the head *Finally, there's peace*. (*Creating Sustainable Human- Elephant Coexistence*, n.d.). Relevant extract produced in Annexure 2.

2. Tata Group- Tata Chemicals and the 'Save The Asiatic Lion' Project and many other stories.

Tata group is one of the most reputed and faithful brands for any Indian. A magnanimous corporate entity having its presence in numerous business segments and impacting huge number of lives.

Tata Chemicals did a major CSR project towards the conservation of 'the Asiatic Lion' in the state of Gujarat(*TCSRD Builds 1000 Parapet Walls around the Wells in Gir as Part of the Lion Conservation Project of the Gujarat Government*, n.d.). The Tata Chemicals Society for Rural Development (TCSRD), in partnership with the Gujarat State Forest Department, undertook the job of building parapet walls around 1000 wells to render the Asiatic lions safe. It was learnt that a major threat to the 400+ lions found in the Gir region of Gujarat was the presence of some 15000 'open wells' in and around that protected area. There were incidents that the lions and other wildlife perish as a result of falling into these open wells(*TCSRD Builds 1000 Parapet Walls around the Wells in Gir as Part of the Lion Conservation Project of the Gujarat Government*, n.d.).

This project was already accomplished years ago. Apart from this, as part of the sustainability initiatives, TCL (Tata Chemicals Limited), launched a comprehensive scheme named 'DHARTI KO ARPAN' programme which aims at the restoration and conservation of the coastal ecosystems along with conservation of endangered species. The multidimensional projects proposed under this project include health, education, infrastructure development, women empowerment, income generation and livelihood skill development, biodiversity and nature conservation, natural resource management etc. The overall objectives of the programme 'Dharti ko Arpan', as mentioned on the official website of TCL(*Conservation by Intelligent Design*, n.d.), are mentioned in the Annexure 2.

The projects planned under the 'Dharti ko Arpan' programme for conservation of species are(*Conservation by Intelligent Design*, n.d.) -

1. Save the Whale Shark Project
2. Mithapur Coral Reef Restoration Project
3. Save the Asiatic Lion Project
4. Biodiversity Plantation Project

5. Prakruti Eco Club Programme
6. Waterfowl Conservation at Charakla Saltworks
7. Regeneration of Mangroves

There is much more done by the Tata Group such as the 'World on Wheels' Project etc.(*Tata Chemicals Launches Centre of Excellence to Safeguard Marine Biodiversity*, 2018).

3. NDTV & Aircel – "Save our Tigers" Campaign(*Aircel Save Our Tigers* , n.d.) - The two big corporate houses, NDTV & Aircel, partnered to work towards the cause of 'save our tigers' by raising awareness about the state of tigers in the country and would attempt to gather public support for tiger conservation. The campaign launched in 2010 and it attempted to also provide a platform to tiger conservationists and concerned citizens to raise issues, voice their opinions and contribute to the cause(*Aircel Save Our Tigers* , n.d.). At that point in time, the tiger population in the country declined to as low as 1411 in number and it was critical to raise awareness and take immediate measures for tiger protection in the country. The majestic wild cat, which is also the National Animal of India, needed our attention and this campaign did successfully raise awareness and sensitization towards protection of this specie of wild cat, panthera tigris.

4. Sony India Private Limited – Conservation of Wildlife

Through the CSR initiative, Sony partnered with WWF (World Wildlife Fund India) to protect several threatened species, namely, Red Panda, Snow leopard, marbled cat etc. in the state of Arunachal Pradesh(*CSR Project By: Sony India Private Limited*, n.d.). The state of Arunachal Pradesh is home to diverse and huge biodiversity, also major habitat for Red Panda(*Short Film: Sony-WWF Partnership for India's Red Pandas*, 2017). The collaboration aims at getting data on the Red Panda population, their habitat, the challenges and threats they face as specie(*Short Film: Sony-WWF Partnership for India's Red Pandas*, 2017). Thereafter, to create and operationalize mechanisms for effective human-animal conflict prevention and management measures, especially concerning snow leopards(*Short Film: Sony-WWF Partnership for India's Red Pandas*, 2017). To reduce the chances of human-animal conflict, the project will focus

on the development and promotion of sustainable livelihoods for local communities in these regions so that they do not have to depend solely on the forest resources and therefore the possibility of human-animal conflict reduces.

5. ONGC- Eastern Swamp Deer Conservation Project (Assam, India) (*Securing the Future of the Eastern Swamp Deer in Assam*, 2023)

A big pocket state entity, Oil & Natural Gas Corporation (ONGC), instrumental in exploration and production Oil & Gas in the country, has just not been a part of Deer Conservation efforts through its CSR initiatives but has achieved laurels and reputation for doing it remarkably well(*ONGC Bags FICCI CSR Award for Eastern Swamp Deer Conservation Project*, n.d.). ONGC, was awarded the FICCI CSR Award, under the category of 'environmental sustainability' for its initiatives towards the conservation of Eastern Swamp Deer in India. ONGC worked in association with the Wildlife Trust of India, to conserve the eastern swamp deer, which was listed in Schedule-I of the Wildlife Protection Act, 1972 in India(*ONGC Bags FICCI CSR Award for Eastern Swamp Deer Conservation Project*, n.d.). The project was started in 2010 and completed in several phases involving the study of habitat and ecology conducive for the specie of eastern swamp deer and thereafter studying the reasons behind dwindling population of the specie and ultimately the relocation of the swamp deers to Manas National Park, quite away from the Kazi Ranga National Park in Assam(Karmakar, 2010). In fact, since Kaziranga national park is famous for One horned Rhino in India, it was surprising that an oil major like ONGC laid its attention to sort of 'backbencher specie' (a relatively less highlighted one) and spend huge sums for the conservation package of the specie, fortunately for the specie and the biodiversity of India(Karmakar, 2010).

People for Animals (PFA)(*Corporate Social Responsibility*, n.d.), suggests avenues wherein an animal friendly CSR initiative could contribute towards-

i. plantation activities of fruit trees in and near jungle (which will ensure monkeys have enough to eat and they would not be driven towards urban locations, and which will keep both humans and animals safe),
ii. building or running small rural hospitals for farmer's animals (this will boost the confidence of the poor farmer who rears milch animals since animals are big assets for them and their life and earnings largely depend on animals. Also, if

the medical services could be provided at minimal or no cost, it would greatly benefit both the animal and the rural people domesticating them),

iii. building veterinary colleges and hospitals (there is a scarcity of animals vets across the globe not just in India. In India, the medical infrastructure for even humans is challenging, we can easily predict the state of medical infrastructure for animals. This is where CSR can play a big role by providing funding to create medical infrastructure for animals and also training animals vets, wildlife vets, zoo vets, and bird vets in the country).

iv. Supporting dog sterilization programmes in various towns.

v. Building animal shelters or Funding various animal shelters (most animal shelters are run by NGOs who try to do excellent work but face various challenges economically in gathering infrastructure and well-trained human resources. CSR could be a great help here as these corporates may adopt various animal shelters.

vi. Teaching and training veterinary compounders who will then get jobs in their own hometowns and villages.

Raising Awareness and Sensitization towards Animal Welfare, Animal Abuse and Animal Cruelty-

There are a lot of misconceptions and lack of awareness issues concerning animals that become disadvantageous for both humans and animals and also for the human-animal relationship. A lot of animals suffer neglect, cruelty through indifference and abandonment because many perceive them as threats when they are actually not.

In a celebrated and controversial judgment of the Delhi High Court(*Maya D. Chablani v Radha Mittal 2021*, 2021) concerning the question of feeding and other interests of stray dogs, the Court spent good amount of judicial ink and judicial time, in covering various aspects of the lives of stray dogs, one of which was the ‘prevalent myths’ about them. This was one of the remarkable things done by the Court. The major pointers of the prevalent myths discussed in the judgment are as follows –

1. Animals can’t be trusted.
2. Strays are seen as carriers of rabies.

3. Myth concerning the temperament of Stray dogs.
4. That Indian stray dogs cannot be trained.
5. Wrong notions concerning the health of stray dogs.
6. About the exercise and activity levels of dogs.
7. That Indian dogs require a lot of grooming and maintenance.

This is one reason why stray dogs have remained 'stray' and not become 'community dogs', at least in practice. Because there is a lot of misinformation concerning animals.

COVID19, the pandemic which took a lot of human lives and impacted almost all lives across the globe, also brought a very difficult time for animals, especially pet and stray animals. The Pet animals were abandoned in large numbers in many areas during the pandemic since the misconceptions has spread regarding the spread or transmission of the virus through animals(Pradeep & Siddique, 2021). One of the research projects which focused on safety and prevention approaches concerning animals during pandemic, came up with four suggestions as the outcome of their research, the first two dealing with bringing more stringency and penalty in anti-cruelty provisions and the last two are worth producing here considering the nature of discussion aforementioned. The last two suggestions stated(Pradeep & Siddique, 2021):

i. A legal provision about the protection of animals in the country during pandemics such as COVID-19 needs to be instated in the Disaster Management Act, 2005.
ii. The misconception amongst the common masses concerning animals being carriers of the coronavirus needs to be corrected. The general public also needs to be made aware of the importance of protecting animals and their rights.

Deconditioning from this speciesist mindset would require some effort from the sensitization and awareness point of view. Peter Singer also mentions this. People are not aware of the miserable life animals have to lead on the farms, and what goes on in the laboratories with animals used for experimentation. Such an ignorance becomes one of the defenses of speciesist attitudes and strengthens the model of speciesism. Most don't care or put effort to find out the truth. Even those who are aware of these tend to believe that some animal

welfare groups or bodies would do something for their betterment. However, it doesn't happen that way (Mukhopadhyay, 2018).

Sandris Admiris, an animal rights advocate, mentions in the TED talk (Ādminis, 2019) delivered on animal rights that *our understanding about animals is incomplete and superficial, and even wrong in many cases.* (for e.g.- sheep can remember many faces). He also raises a significant question about animals that '*why do we treat some animals as individuals and even as our friends, while at the same time, others we treat as replaceable units, and even things*?'. What needs to change is the perception of humans towards animals. The perception of humans towards animals has to go through a transformation for humans to be able to treat animals with dignity and humaneness. But the precondition for it is that humans must know about animals, they should be able to engage with animals as sentient beings, not just a product that has a price and an expiration date. He mentions that with the advancement of science and through that the advancement of knowledge about animals, slowly and gradually humans should 'dethrone' and 'de-crown' themselves and get over the illusion that they are the center of everything (Ādminis, 2019).

Learnings from the Ponamma Case -

The approach of the judiciary in dealing with the matters pertaining to the injury, cruelty, abuse, or perpetration of crime over the animals. Such matters deserve due consideration from the Courts and judicial officers. It appears that the matters concerning animal cruelty are handled mechanically since the identification of animals as 'victims of crime' is still difficulty for the judiciary. One of the cases involving the death of eight (08) puppies was in question in the matter concerning Smt. Ponamma, who is accused in the matter (C.C.No.17338/2016, 45th Addl. CMM, Bangalore, order dated 23.01.2017).

This case at hand provides an interesting insight into the way in which animal cruelty prosecutions are carried out in the country. It would be imperative to mention the factual background associated with the case.

The accused in the matter, Smt. Ponnamma, on the unfortunate day of 15.03.2016, took eight (08) twenty-day old puppies from a drain in front of her home and flung the nascent puppies to the ground with force in a vacant site

near her house. Further, she also blocked the drain in front of her house preventing the puppies from returning to the shelter where their mother had given birth to them. Due to the injuries inflicted on them coupled with the severance from their mother (resulting in absence of care) and unkind warm weather, the puppies acceded to demise on 17th March. One noble person, who is an honorary Animal Welfare Officer, gave a written complaint of the matter to the nearby police station and consequently FIR in the matter was lodged against the accused. During the investigation, sufficient evidence was collected against the accused and consequently charge sheet was filed against the accused for offences punishable under section 11 of Prevention of Cruelty to Animals Act, section 429 of the Indian Penal Code and section 93 of the Karnataka Police Act. The accused appeared in the Court of the learned Presiding Officer, 45th Addl. CMM, Bangalore, and pleaded guilty (confessed) for all the offences charged with. The learned court convicted the accused and sentenced her to pay fine of a meager amount with the order of simple imprisonment in default of payment of fine. The sentence awarded by the learned trial court was as follows – Fine of Rs. 700/- for offence punishable under section 429 of Indian Penal Code and in default of payment of fine accused shall undergo simple imprisonment for 7 days. The accused was also ordered to pay a fine of Rs 100/- (rupees hundred only) and in default of payment of fine, for an offense punishable under Section 93 of the Karnataka Police Act, the accused shall undergo simple imprisonment for 15 days. For the offense punishable under Section 11 of the Prevention of Cruelty to Animals Act, 1960, the accused was ordered to pay a fine of Rs. 200/- and in default on payment, the accused will have to undergo simple imprisonment for 15 days.

The gruesome, cruel and inhuman act of inflicting pain on eight little puppies resulting in their death and the sentence awarded clearly seem disproportionate and not in tune with the gravity at which the offences were committed. What could have been the reason behind such a sentence passed by the learned court? Was it because the victims of the crime were a few puppies? Was it because the accused herself pleaded guilty of the offences charged with and therefore a lenient view? Was it because even the prosecution would not object to such a punishment since they have managed to seek conviction in the matter? Was it

because no relative/family of the deceased puppies would contest the sentence awarded for obvious reasons of being non-humans? Was it because during the trial neither the prosecution nor the Court conceived the poor hapless deceased puppies as victims of the gruesome crime?

The punishment awarded in the matter in no form acts as a deterrent and on the contrary sets a wrong precedent in society to encourage in committing such heinous acts with impunity. Especially in context of crimes against animals, this punishment would set a bad precedent thereby defeating the purpose of the legislation itself. The hapless puppies have nobody to represent their interest in the system. This is where the role of courts as guardians or 'parens pateria' comes in; to protect the interest of such victims who have no means or capability to protect it himself or herself.

Awarding the sentence commensurate with the seriousness of the offence is a mandate settled by the Apex Court in its decisions concerning sentencing. The concept was elaborately discussed in the case of Soman (*Soman vs State Of Kerala*, 2012), which is discussed in chapter 5 of the research.

Other Measures –

a. Animal Law as a discipline to be empowered (BCI to make it mandatory subject of Study)

b. Compassion towards animals be taught as a subject in schools since it is our fundamental duty, and it will not just make them good and humane citizens of the nation but humane citizens of the world.

Professor Baxi, while commenting on Animal law, quoted Martin Luther King Jr. *the law cannot change the heart, but it can restrain the heartless* and mentioned that the struggle for justice for animals (and rights) is both for restraining the heartless and to become the path for changing the very habits of the heart(Baxi, 2022). Perhaps, this is the long-standing challenge with animal law.

6.2 RECCOMENDATIONS

The research puts forth the following set of recommendations which would clarify on the jurisprudential aspect of animal law in India as well as strengthen the animal law regime in India, rigorous enough to protect the interests of the

non-human animals in India as well as creating a win-win situation in cases of animal cruelty matters, ultimately serving the broad interest of animal law in India. The recommendations are set out in the tabular form below wherein each recommendation carries with it the rationale/explanation for the same as well as the benchmarking/reference point for the same (indicating whether such interventions have been made in any manner in other jurisdictions or in India only) to serve as a guiding light for the interventions to be made in India.

The six pointer recommendations are as follows –

1. Express Recognition of Sentience within the Indian Constitution (under Part III) or alternatively a statute in lines of UK Animal (Sentience) Act 2022.
2. Recognition of Victimhood of Animals
3. Education and Awareness about Animal Welfare/Animal Rights
4. Judicial Activism (where legislative incompetence)
5. Employment of Restorative Justice and Community Service Sentences to Animal Cruelty/Animal Abuse matters in India.
6. Pragmatic measures from 'preventing cruelty' to 'animal welfare' approach.

A detailed description of each of the recommendations is provided in the tabular form below. The research opines that if the pointers suggested by the researcher are implemented in Indian jurisdiction, Indian law on animal welfare/animal right would stand out as one of the laws to look up to for other jurisdictions and it would bring a huge change in the lives of the animals within the Indian jurisdiction. It would be a sharp move from the 'prevention of cruelty' dimension of law to the animal welfare dimension of law and then a gradual movement towards animal rights dimension of law also (which would involve recognition of 'thin' rights at the outset and thereafter a gradual shift towards the 'thick' legal rights for animals). India, a country already having footprints of animal welfare within its constitution since 1976 and having a dedicated law to prevent cruelty against animals since 1960, *cannot not* afford to elevate its commitment towards animals through a stronger reflection and manifestation within Part III of the Indian Constitution. With express recognition of sentience, the claim for acknowledgment of victimhood would also increase substantially since it would appear ironical and inconsistent that a sentient being who is also

a beneficiary/protected subject under the anti-cruelty penal statute, may not be conferred victimhood even after cruelty/ abuse perpetrated upon those sentient beings. Further, Indian judiciary is widely applauded for upholding the constitutional governance through its activist approach wherein there appeared a gap/vacuum in law needing urgent attention or which caused violation of the rights of the subjects. Perhaps, the Apex Court in India should not miss an opportunity to confront the questions of animal rights, personhood of animals, victimhood of animals etc. on merits and when found a case to adorn the virtue of judicial activism, it should do so considering that the legislature has been virtually sleeping over the issues from a long time. Also, criminal justice system in India should explore ways to make the adjudication of animal abuse/cruelty matters more meaningful and facilitative of creative a win-win situation for the animal victim, the idea of animal welfare as well to promote scope of reform in the life of the perpetrator. One way is to employ the restorative justice model and bring in community service sentences in India, for matters of animal abuse/animal cruelty in India. One of the reference points may be CAAP Model employed in American jurisdiction as discussed below. Also, in India, there is a necessity to generate awareness and impart education pertaining to animal welfare and animal rights. Two important pointers may be to introduce Animal Law as a mandatory law course for law students in India by the Bar Council of India and the other that the fundamental duty to have compassion towards animals (and all living beings) be taught as a practice in the schools to the small kids be encouraged to engage with the aspect of human-animal relationship. Below produced is a detailed tabular point-wise description of the recommendations.

S. No.	**DESCRIPTION OF THE RECCOMENDATION**	**EXPLANATION**	**BENCHMARKING/ REFERENCE POINT**
1	Express Recognition of Sentience within the	The Indian Constitution, since a	• The Hon'ble Supreme Court of

	Part III of the Indian Constitution or alternatively through a statute in lines of UK Animal (Sentience) Act 2022.	long time, has enabled a fundamental duty of all citizens to have compassion for all living beings. Also, India has a composite culture of non-violence and compassion, which has been its foundational virtues. However, the fact that fundamental duties are not enforceable and often not considered seriously, animal cruelty incidents, both at individual level and institutional level have been on a rise. It is time that India takes a shift from 'prevention against cruelty' to 'animal welfare', which is a more positive obligation. It is not possible to take this leap unless the vision of 'animal welfare', 'conferment of dignity to animals' and 'recognition of sentience of animals' is	India, in the much celebrated A Nagaraja Judgment (Jallikattu-I 2014) gave several recommendations to the legislature and the government. Amongst those, two notable ones, number 8 and 9, are as follows- *8. Parliament is expected to make proper amendment to the PCA Act to provide an effective deterrent to achieve the object and purpose of the Act and for violation of Section 11, adequate punishment and penalties must be imposed.* *9. Parliament, it is expected, would elevate rights of animals to that of constitutional rights, as done by many of the countries around the world, so as to protect their dignity and honor.*

		expressly mentioned under Part III of the Indian Constitution, especially after several judgments of hon'ble courts In India have read rights (including fundamental rights for animals) and made appeal to the legislature to elevate the status of animal welfare/rights from Part IV to Part III of the Indian Constitution.	• The Constitution of Germany (Basic Law for the federal republic of Germany) has inculcated a provision (Article 20a) about 'Protection of Natural foundations of life and animals' which provides that the State shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order(Basic Law for the Federal Republic of Germany, n.d.). The UK Animal (Sentience) Act 2022, aims to make provision for an Animal Sentience Committee with functions relating to

			the effect of government policy on the welfare of animals as sentient beings (Animal Welfare (Sentience) Act 2022).
2	Recognition of Victimhood of Animals	Despite having a substantive law for preventing cruelty towards animals from 1960 (even earlier since this law repealed the Act of 1890), animals are still not conferred victimhood. This is a challenge globally since the criminal law scholarship has done very little in the fields of criminology and victimology to bring the animals as significant subjects of the domains of criminology and victimology. The legal pandora boxes which get stuck on the question of legal personality of animals	The Supreme Court of Oregon, in a significant ruling given few years back, in the matter of State of Oregon v Nix (355 Ore. 777 (2015),

		don't let the issue of victimhood of animals come to the forefront. Whether or not animals be conferred legal personality, by virtue of sentience and existence of an anti-cruelty legislation to protect them, their victimhood should not stand obstructed. Animals, without a doubt or delay, be accorded the capacity to be victims of crime and necessary protections.	
3	Education and Awareness about Animal Welfare/Animal Rights	• Animal law be brought up as a regular credit course by the Bar Council of India.	• In the NR Nair Judgment of the Kerela High Court, the Court reflected on this aspect and inquired as to why Animal Rights Law is not offered as a course in law educational institutions. Also, some steps have been taken in this regard as NALSAR Hyderabad, through its Center for

		• Awareness about animal cruelty and treating animals with compassion be taught at the school level as a mandatory subject.	Animal Law has started a PG Diploma course for Animal Law. Even, IGNOU (Indira Gandhi National Open University) has started Post Graduate Diploma in 'Animal Welfare' as a multidisciplinary course. • Indian Constitution puts forth it as a fundamental duty of each citizen of this country to have compassion for all living beings. Therefore, all children in India must be taught to have compassion for living beings so that they grow up to become responsible, sensitive and compassionate individuals who respect not just human

			dignity but the dignity for non-human animals also.
4	Judicial Activism, when legislative incompetence	Indian judiciary has been a flagbearer of judicial activism wherever the legislature has slept over an issue which impacts a number of beings. Indian judiciary has always filled up the vacuum which is left by the legislature to extend the relief to the hapless and the victimized. Such has been the case with animals also. A detailed discussion of the same is provided in Chapter 4 of the thesis where it is claimed that since the enactment of Act of 1960, no important substantive change has come either in the policy or in the sanction to prevent animal cruelty in India. The legislature has slept over the issue for	In sensitive issues such as protection of women from sexual harassment at workplace, the Supreme Court of India, did an activist move in the much celebrated and landmark matter of Vishaka v State of Rajasthan (*Vishaka & Ors vs State Of Rajasthan & Ors*, 1997).

		a considerably long period of time. There is no option but for the judiciary to intervene. It stands as a clear fertile ground for the seed of judicial activism to germinate.	
5	Employment of 'Restorative Justice' and 'Community Service Sentences' in cases of animal cruelty/animal abuse.	The scope of community service sentences in the matters of animal cruelty would be highly imperative. This would ensure the wellbeing and rehabilitation of the aggrieved animal (physically, financially, medically and emotionally), also provide an opportunity to the perpetrator to reform, and expiate for the wrong committed through him/her. This helps the cause of animal welfare in the long run. Also, as discussed in chapter 5 of the thesis, there is a great	In USA, there is a programme named **CAAP (Courtroom Animal Advocate Programs)**, wherein supervised law students/volunteer lawyers advocate for animal victims in criminal cruelty matters(*Courtroom Animal Advocate Programs (CAAP)*, n.d.). They also make recommendations to the Court on behalf of animal victim's interests. These volunteers also appear in the Court and gather relevant information from various agencies such as veterinarians, animal control

		potential for 'community service sentences' and if it has the potential to create a win-win situation for animals as well as humans, it is certainly worth exploring.	officers, and law enforcement officers etc. It is relevant since the is a good amount of complexity which comes with the animal victims since they cannot speak in the most obvious ways
6	Pragmatic Steps from mere 'prevention of cruelty' to 'animal welfare' approach	This has been explained earlier in chapter 6 that the animal law regime in India needs a push from negative duty to a positive duty of ensuring 'animal welfare'. Some of those measures involve - Financial Assistance to be provided to Goshalas/Pinjara Poles/AWOs.	known to humans and explain their grief, injury, loss and best interest and therefore this program makes sures that the needs of animal victims are considered.
		1. Financial Assistance to the AWOs, local bodies for taking care of the rescued animals from natural disasters and calamities, illegal transportation, illegal slaughterhouses etc.	NA.

		2. Construction of shelter houses, dispensary, water tank, drainage system etc. for animal welfare. 3. Animal Ambulance schemes and provision for medical facilities. 4. Arrangements for animal birth control measures and anti-rabies vaccination. 5. Setting up of Animal Helpline for facilitating help to injured animals in each district.	

It is little paradoxical that in a world where some clearly non-sentient entities such as corporations, idols and several others have been conferred with legal personality and legal rights since thy further either the commercial interests or the religious interest of the people, animals who are clearly sentient beings and who possess all emotional capabilities of pain pleasure, grief, hurt, joy, love, affection and even intelligence, have been kept out of the purview of the legal rights and legal personality. In the same world where in times to come even the rights of robots and artificial intelligence creations would become a question before the society, it would be a shame that animals have not been considered worthy of a sincere discussion and determination over their legal rights. The theoretical framework of animal law may differ on the technical basis of claiming the correct manner of protecting the interests of the animals (rights v welfare), however they have no disparity on the view that animals must be the

subjects of moral and legal consideration. Looking at the condition of animals in the queue of priority for humans, it becomes clear that speciesism is embedded deep down the human thinking as Singer would say and that it is time to 'Rattle the Cage' as Steven M. Wise would put it. In India, very recently in 2024 itself, the Lok Sabha general elections were held, which are one of the biggest elections held across the world. Sadly, none of the political parties kept animal protection/animal welfare as one of their major thrust areas of work once elected. This reflects poorly on India's commitment to its composite culture of ahimsa, non-violence and of being a land of Buddha and Mahavira. It would be a tragedy if questions of animal welfare revolve only in the files of the bureaucracy or the corridors of the higher courts, and not really touch the soul of this great nation who taught the world about peace, compassion and respect of the dignity of all sentient beings, not just humans. This also raises questions about the fundamental duty of the citizens towards animals to have compassion for all living beings. The legal systems must develop on the jurisprudence developed by the higher courts in the last few years and give a serious consideration to the protection of the interests of animals, whether through a strong and deterrent duty perspective or a right based approach or a mix of both having been neatly bifurcated for the 'best interest of the animals' and 'co-existential' approach between humans and animals. Recognition of sentience, recognition of victimhood are some of the primary steps, whether with or without conferment of legal personality, for any legal system to proceed, especially India.

Perhaps, concluding note must be aptly summed up by quoting from one of the first important researches vis-à-vis animal cruelty, *A dissertation on the Duty of Mercy and Sin of Cruelty to Brute Animals, by Humphry Primatt*, who mentioned that(Primatt, 1776):

"See that no brute of any kind, whether entrusted to thy care, or coming in thy way, suffer thy neglect or abuse. Let no views of profit, no compliance with custom, and no fear of ridicule of the world, ever tempt thee to the least act of cruelty or injustice to any creature whatsoever."

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ANNEXURE- 1

REFERENCE OF IMPORTANT PROVISIONS OF LEGISLATIONS

1. The Prevention of Cruelty to Animals Act, 1960-

1.1 Section 11: Treating Animals Cruelly

A person is said to have treated animal cruelly when - (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 (b) [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed; (c) willfully and unreasonably administers any injurious drug or injurious substance to [any animal] or willfully and unreasonably causes or attempts to cause any such drug or substance to be taken by [any animal]; or (d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or (e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or (f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or (g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or (h) being the owner of [any animal] fails to provide such animal with sufficient food, drink or shelter; or (i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or (j) willfully permits any animal, of which he is the owner, to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or (k) offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or [(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in

the heart or in any other unnecessarily cruel manner; 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; or] (n) organizes, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or (o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting; he shall be punishable, [in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both].

1.2 **Section 9: Functions of the Board (Animal Welfare Board of India)**

The Functions of the Board shall be-

(a) to keep the law in force in India for the prevention of cruelty to animals under constant study and advise the Government on the amendments to be undertaken in any such law from time to time.

(b) to advise the Central Government on the making of rules under this Act with a view to preventing unnecessary pain or suffering to animals generally, and more particularly when they are being transported from one place to another or when they are used as performing animals or when they are kept in captivity or confinement.

(c) to advise the Government or any local authority or other person on improvements in the design of vehicles so as to lessen the burden on draught animals;

(d) to take all such steps as the Board may think fit for amelioration of animals by encouraging, or providing for, the construction of sheds, water-troughs and the like and by providing for veterinary assistance to animals;

(e) to advise the Government or any local authority or other person in the design of slaughterhouses or in the maintenance of slaughterhouses or in connection with slaughter of animals so that unnecessary pain or suffering, whether physical or mental, is eliminated in the pre-slaughter stages as far as possible, and animals are killed, wherever necessary, in as humane a manner as possible;
(f) to take all such steps as the Board may think fit to ensure that unwanted animals are destroyed by local authorities, whenever it is necessary to do so, either instantaneously or after being rendered insensible to pain or suffering.
(g) to encourage, by the grant of financial assistance or otherwise the formation or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and the like where animals and birds may find a shelter when they have become old and useless or when they need protection.
(h) to co-operate with, and co-ordinate the work of, associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds.
(i) to give financial and other assistance to animal welfare organizations functioning in any local area or to encourage the formation of animal welfare organisations in any local area which shall work under the general supervision and guidance of the Board.
(j) to advise the Government on matters relating to the medical care and attention which may be provided in animal, hospitals and to give financial and other assistance to animal hospitals whenever the Board thinks it necessary to do so.
(k) to impart education in relation to the humane treatment of animals and to encourage the formation of public opinion against the infliction of unnecessary pain or suffering to animals and for the promotion of animal welfare by means of lectures, books, posters, cinematographic exhibitions and the like.
(l) to advise the Government on any matter connected with animal welfare or the prevention of infliction of unnecessary pain or suffering on animals.

2. Draft Prevention of Cruelty to Animal (Amendment) Bill, 2022

2.1 Definition of Gruesome Cruelty: Sub-section (k) of Section 2:

“gruesome cruelty” happens when an individual or group of individuals or an organization-(i) has carnal intercourse against the order of nature with any animal , (ii) causes permanent damage to any part of the body of an animal or commits an act of mutilation that causes permanent or lifelong damage to the animal or renders the animal useless, (iii) causes any injury which is likely to cause death or lifelong physical deformity to the animal, (iv) incites any animal to fight or bait any other animal, (v) organizes, keeps, uses, or acts in the management of, any place or animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes or (vi) promotes or takes part in any shooting match or competition wherein animals are released from the captivity for the purpose of such shooting.

3. Companies Act, 2013

3.1 Section 135: Clauses (1) & (5)

Corporate Social Responsibility— (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy: Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities: Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

3.2 Clause (iv) of the Schedule VII of the Companies Act, 2013-

(iv) ensuring environmental sustainability, ecological balance, ***protection of flora and fauna, animal welfare,*** *agroforestry, conservation of natural resources and maintaining quality of soil, air and water (including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga);*

ANNEXURE -II

EXTRACTS/QUOTES FROM THE JUDGMENTS/PRECEDENTS/BOOKS

1. **Animal Welfare Board of India v A Nagaraja (Civil Appeal No. 5387 of 2014)**

   Paragraph 43 of the Judgment-

   PCA Act, a welfare legislation, in our view, over-shadows 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. Assuming, it has been in vogue for quite some time, in our view, the same should give way to the welfare legislation, like the PCA Act, which has been enacted to prevent infliction of unnecessary pain or suffering on animals and confer duties and obligations on persons in-charge of animals. Of late, there are some attempts at certain quarters, to reap maximum gains and the animals are being exploited by the human beings by using coercive methods and inflicting unnecessary pain for pleasure, amusement and enjoyment. We have a history of doing away with such evil practices in the society, assuming such practices have the support of culture and tradition, as tried to be projected in the TNRJ Act. Professor Salmond states that Custom is the embodiment of those principles, which have commended themselves to the national conscience as the principles of justice and public utility.

2. **Animal Welfare Board of India v A Nagaraja (Civil Appeal No. 5387 of 2014)**

   Paragraph 26 of the Judgment-

"The PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favor of the weak and infirm. The court also should be vigilant to see that subtle devices do not defeat benefits conferred by such remedial and welfare legislation."

3. **Animal Welfare Board of India v A Nagaraja (Civil Appeal No. 5387 of 2014)**

Paragraph 47 of the Judgment-

Unfortunately, there is no international agreement that ensures the welfare and protection of animals. Of course, there has been a low but observable shift from the anthropocentric approach to a more nature's rights centric approach in international environmental law, animal welfare laws, etc. Environmentalist noticed three stages in the development of international environmental law instrument, which are as under- the instruments in the first stage of ecocentricism (human self-interest reason for environmental protection) was fuelled by the recognition that the conservation of the nature was in the common interest of all mankind. In this stage, man asserted an unlimited right to exploit natural resources which derived from their right as sovereign nations. The second stage of ecocentricism (that is the stage of international equity) saw the extension of treaties beyond the requirements of the present generation to meet the needs of future generations of human beings. The shift signaled a departure from the pure tenets of anthropocentricism. Some documents expressed the shift in terms of sustainability and sustainable development. Recent multinational instruments (during the third stage of Ecocentricism that is Nature's own rights) have asserted the intrinsic value of nature. Based on ecocentric principles, the rights of animals have been recognized in various countries.

4. **Animal Welfare Board of India v A Nagaraja (Civil Appeal No. 5387 of 2014)**

Paragraph 17:

It is a known fact that victims of accident, crime or disasters recover from their physical injuries in certain time but mental injuries remain etched for decades, play havoc in day to day life. Animals, irrespective of the fact whether they can express it or not, in this particular case were seen going through the same shock and terror as a person goes into a hostage situation. Constant fear of death and continuous torture.

5. **T N Godavarman Thirumulpad v Union of India & Ors. (2012) 3 SCC 277**

Paragraph 12:

Environmental justice could be achieved only if we drift away from the principle of anthropocentric to eco-centric. [E]co-centric approach to environment stresses the moral imperatives to respect intrinsic value, inter dependence and integrity of all forms of life. Eco-centrism supports the protection of all life forms, not just those which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth.

6. **State of Gujarat v Moti Kureshi Kassab (2005) 8 SCC 534**

Paragraph 67:

The concept of compassion for living creatures enshrined in Article 51A(g) is based on the background of the rich heritage of India, the land of Mahatma Gandhi, Vinoda Bhave, Mahaveer, Buddha, Guru Nanak and others. No religion or holy book in any part of the world teaches or encourages cruelty.

7. **Centre for Environmental Law, WWF-India v Union of India & Ors. (2013) 8 SCC 234**

Paragraph 46:

Anthropocentrism is always human-interest focused thinking that non-human has only instrumental value to humans, in the other words, humans take precedence and human responsibilities to non-humans are based benefits to humans. Eco-centrism is nature centered, 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-centered, nature-centered, where nature includes both humans and non-humans.

8. **Mohd. Hanif Qureshi & Ors. v State of Bihar & Ors. AIR 1958 SC 731**

Paragraph 10:

To sum up, under the Bihar Act there is in the state of Bihar a total ban on the slaughter of all categories of the animals of the species of bovine cattle. In Uttar Pradesh, there is under the UP Act, a total ban on the slaughter of cows and her progeny, which include bulls, bullocks, heifer and calves. The buffaloes (male or female adults or calves) are completely outside the protection of the Act. In the present Madhya Pradesh and the districts which formerly formed part of the MP but have since been transferred to the state of Bombay and where the MP Act still applies, there is a total ban on the slaughter of cow, male or female calves of the cow, bulls, bullocks or heifer and the slaughter of buffaloes (male or female adults or claves) are controlled in that their slaughter is permitted under certificate granted by the proper authorities mentioned in the Act.

9. **T.N. Godavarman Thirumulpad v Union of India & Ors. (2012) 4 SCC 362**

Paragraph 20 & 21:

Anthropocentricism considers humans to be the most important factor and value in the universe and states that humans have greater intrinsic value than other species. Resultantly, any species that are of potential use to humans can be a reserve to be exploited which leads to the point of extinction of biological reserves. Further, that principle highlights human obligations towards the environment arising out of instrumental, educational, scientific, cultural, recreational, and aesthetic values that forests have to offer to humans. Under this approach, the environment is only protected as a consequence of and to the extent needed to protect human well-being.

On the other hand, eco-centric approach to environment stresses the moral imperatives to respect intrinsic value, interdependence and integrity of all forms of life. Eco-centricism supports the protection of all life forms, not just those

which are of value to humans or their needs and underlines the fact that humans are just one among the various life forms on earth. Eco-centric principles have its roots in India also. All those concepts find their place in Article 51A (g) as well. The intrinsic value of the environment finds place in various international conventions like, the Convention for Conservation of Antarctic Marine Living Resources, 1980; the Protocol to Antarctic Treaty on Environmental Protection 1998; the Bern Convention on Conservation of European Wildlife and Natural Habitats, 1982; CITES & CBD etc.

10. <u>Centre for Environmental Law, WWF-India v Union of India & Ors. (2013) 8 SCC</u> 234

Paragraph 46 & 48:

Sustainable development, it has been argued by various eminent environmentalists, clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth. Anthropocentricism is always human-interest focused thinking that non-human only has instrumental value to humans, in other words, humans take precedence and human responsibilities to non-humans are based on benefits to humans. Eco-centricism is nature-centered, where humans are a part of the nature, and non-humans also 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-centered, nature centered where nature includes both humans and non-humans.

Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct, conservation and protection of environment is an inseparable part of right to life. The thrust of the "public trust" doctrine 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. And 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 in that perspective. We, as human beings, have a duty to prevent the specie from going extinct and have to advocate for an effective species protection species.

11. **Fomento Resorts & Hotels & Anr. v Minguel Martins & Ors (2009) 3SCC 571**

Paragraph 59 & 60:

The Indian society has, since time immemorial, been conscious of the necessity of protecting the environment and ecology. The main motto of social life has been "to live in harmony with nature". Sages and saints of India lived in forests. Their preachings contained in Vedas, Upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water, and every form of life.

The Constitution of India, which was enforced on 26-01-1950 did not contain any provision obligating the State to protect environment and ecology. But, after almost three decades of independence, the legislature recognized the importance of protecting and improving environment and safeguarding forests and wildlife and Articles 48-A and 51-A were introduced in Para IV & IV-A of the Constitution respectively. Thereafter, the Courts invoked Articles 48-A and 51-A for protecting environment and ecology and several orders were passed in public interest litigation mandating the State to take action for protecting forests, rivers and for anti-pollution measures.

12. **Charan Lal Sahu v Union of India (1990)1 SCC 613**

Paragraph 37:

The doctrine of parens patriae cannot be confined to only quasi- sovereign right of the state independent of and behind the title of the citizen. The concept of parens patriae can also be varied to enable the government to represent the victims effectively in domestic forum if the situations so warrant. The jurisdiction of the State's power cannot be circumscribed by the limitations of the traditional concept of parens patriae jurisprudentially, it could be well utilized to suit or alter or adapt itself in the changed circumstances.

13. **State of Oregon v Arnold Weldon Nix (Supreme Court of Oregon) (355 Ore. 777)**

Page 448:

'victims' for the purposes of defining animals as persons, we emphasise that our decision is not one of policy about whether animals deserve such treatment under the law. That is a matter for the legislature. Our decision is based on precedent and careful evaluation of the legislature's intentions as expressed in statutory enactments. Our prior decisions held that the meaning of the word victim for the purposes necessarily depends on what the legislature intended in adopting the underlying substantive criminal statute the defendant violated. In this case, the underlying substantive criminal statute protects individual animals from suffering from neglect. In adopting that statute, the legislature regarded those animals as the victims of the offence.

14. **Peter Singer in the book 'Animal Liberation' at Page 49:**

Pain and suffering are in themselves bad and should be prevented or minimized, irrespective of the race, sex, or species of the being that suffers. How bad a pain is depending on how intense it is and how long it lasts, but pains of the same intensity and duration are equally bad, whether felt by humans or animals.

15. **Steven M. Wise in the book "Rattling the Cage" at Page 9:**

The ocean tides were designed to move our ships in and out of ports. Horses and oxen exist just to work in our fields. Apes and parrots were produced to entertain us. Pigs were created for us to eat. Slaves live for the sake of their masters. The human races were placed on separate continents so they would not mix. Nature has made Chinese as inferior to whites. Women are made for men. Blacks lie so far below whites on the scale of created beings that they have no rights that whites are bound to respect. Each of these claims has been made.

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