

Reserved Judgment IN
THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 43 of 2014

Narayan Dutt Bhatt

....Petitioner

Versus

Union of India & others

....Respondents

Mr. Piyush Garg, Advocate for the petitioner.

Mr. Rakesh Thapliyal, Assistant Solicitor General for the Union of India.

Mr. S.S. Chauhan, Dy.A.G. for the State/respondent nos.2 and 3.

Judgment Reserved- 13.06.2018 Date of
Judgment - 04.07.2018

Coram: Hon'ble Rajiv Sharma, J. Hon'ble
Lok Pal Singh, J.

Per: Hon'ble Rajiv Sharma, J.

The present petition has been filed pro bono publico for the protection and welfare of animals. The petitioner has sought directions to the respondents to restrict the movement of horse carts/tongas from Nepal to India and from India to Nepal through Banbasa, District Champawat, India. Petitioner has prayed that there should be provisions for vaccination, medical checkup of the horses for suspected infections before entering into the Indian territory from Nepal and for regulating the traffic on the border areas. The route starts from Banbasa, District Champawat, Uttarakhand, India to Mahendra Nagar, Nepal. It runs over 14 Kms. (7 Kms. in India and 7 Kms. in Nepal). The route of 7 Kms. in India along with the width of the road is as under:-

Route	Approximate Width of the Road
Banbasa Bus Stand to NH PC	7 meter wide
NHPC to Canal	3½ meter wide
Canal to Banbasa Dam	3½ meter wide
Banbasa Dam (Bridge)	1000 meters- 10 feet wide 600 mts. – 8 feet wide
Banbasa Dam to CPO Check Post	3½ meter wide
CPO Check Post to Custom	3½ meter wide
Custom to SSB	3½ meter wide

SSB to 7 Number pillar (India- Nepal Border) by road on the side of the river channel	3½ meter wide
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2. This route of 7 Kms. is in the territory of India and after reaching the 7 number pillar (India-Nepal Border), a further distance of 7 Kms. within the territory of Nepal is also being covered by the horse carts/tongas for reaching the destination Mahendra Nagar, Nepal. Petitioner has sought information from the Nagar Palika, Bhim Dutt, Kanchanpur, Nepal.

3. The Nagar Palika Bhim Dutt, Kanchanpur, Nepal registers the horse carts/tongas plying over the route within the territory of Nepal and in India.

4. The gates of Sharda river dam for the purposes of movement remain open between 6 o'clock to 7 o'clock, 12 o'clock to 2 o'clock and 5 o'clock to 6 o'clock. There is no check on number of horse carts/tongas which enter the Indian Territory.

5. The Indian Government is aware of the same but no concrete steps have been taken to restrict the movement of horse carts/tongas in border areas.

6. The Government of India and Government of Nepal have entered into a treaty of transit, trade and agreement of cooperation to control unauthorized trade between Government of Nepal and Govt. of India in the year 1991. The revised Indo-Nepal treaty of trade between India and Nepal came into existence in 2009. The text of Article

IX reads as under:-

“Article IX

Notwithstanding the foregoing provisions, either Contracting Party may maintain or introduce such restrictions as are necessary for the purpose of:

- a. Protecting public morals
- b. Protecting human, animal and plant life,
- c. Safeguarding national treasures,
- d. Safeguarding the implementation of laws relating to the import and export of gold and silver bullion, and
- e. Safeguarding such other interests as may be mutually agreed upon.”

7. There is no check on the fare to be charged from the passengers and the luggage travelling from Nepal to India and India to Nepal. The horse

dung is polluting the river water. The ailing, infirm and old horses are abandoned by the owners in the Indian Territory. The infected horses are hazardous to the human beings. The horse carts/tongas stay overnight and are being parked on the roadside. The tongas are overloaded. It causes cruelty to the horses. There is no record of the persons or their identity plying the horse carts/tongas with the Indian territory. The record of horse carts/tongas is required to be maintained. Pictures have also been placed on record showing the injured horses. It is in these circumstances, the present petition has been filed.

8. The scope of the writ petition was enlarged with the consent of parties in larger public interest to promote the protection and welfare of the animals.

9. The Central Government has filed the counter affidavit. According to the averments made in the counter affidavit, the Sashastra Seema Bal (SSB) was placed under the administrative control of MHA on January 15, 2001. It was given the responsibility of Indo-Bhutan Border during 2004. The Role and Character of the SSB is as under:-

- a. To promote sense of security amongst the people living in the border areas.
- b. To prevent trans-border crimes and unauthorized entry into or exit from the territory of India.
- c. To prevent smuggling and other illegal activities.

10. The routes have been identified. The check-post is functioning at Banbasa for checking and frisking and preventing entry or exit of illegal items like

Arms/Ammunition, Narcotics, wildlife crime, human trafficking etc. The medical check-up of the horses and the persons entering from Nepal border to Indian Territory does not fall under the duty and scope of SSB. It falls within the jurisdiction of District administration. As far as restriction of movement of people/goods by horse cart/tongas is concerned, there is no policy/guidelines to restrict the movement. Such horse carts/tongas are allowed to enter after thorough checking at SSB check-post to prevent smuggling of contraband items, arms/ammunition, narcotics, wildlife crime, human trafficking etc.

11. The respondent no.4 has filed the counter affidavit. The gist of the counter affidavit is that the Zila Panchayat, Pithoragarh has framed the bye-laws, which were published in the Gazette Notification on 10.06.2006. The license fee of Rs.100/- was to be charged from tonga owners. Thereafter, new Zila Panchayat, Champawat came into existence. The supplementary counter affidavit was filed by the Zila Panchayat, Champawat. The Govt. of Uttarakhand vide Notification dated 02.02.2014 notified the establishment of Nagar Panchayat, Banbasa in District Champawat in which village Bhajanpur, Banbasa, Pachpakariya, Bamanpuri and Chandani of District Champawat were included.

12. Learned counsel for the petitioner has vehemently argued that the Indian authorities have failed to regulate the entry of horse carts/tonga entering from Nepal to India. The horses are not medically examined. The fare and freight are not regulated. He has referred to the treaty signed in the year 1991, revised in 2009. According to the treaty, the contracting party may impose restrictions for protecting public morals, protecting human, animal and plant life, safeguarding national treasures. He has also argued that there is overloading in the horse carts/tonga going from India to Nepal and vice-versa. The animals are treated with cruelty. The horses are abandoned in the Indian Territory. He then argued that the provisions of Prevention of Cruelty to Animals Act, 1960 and the rules framed thereunder and the provisions of Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 have not been enforced. He also argued that the animals are transported in violation of Transport of Animals Rules, 1978. The animals are transported on foot to long

distances causing immense pain and suffering to them. He also prayed that the entire animal kingdom may be conferred status of legal entity/legal person.

13. Learned Advocates for the respondents have argued that the SSB is undertaking necessary checking and frisking in the border areas. However, the SSB cannot medically check-up the horses. It cannot prescribe the fare to be charged for carrying the passengers from Nepal to India and vice-versa. According to the respondent no.1, it is to be done by the District Administration.

14. The parties were heard at length on the question of regulating the plying of horse carts/tongas coming to India from Nepal and vice-versa as well as enforcement of Prevention of Cruelty to Animals Act, 1960 and the Rules framed thereunder as well as the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009.

15. The Nagar Panchayat, Banbasa is a municipality under Article 243-Q of the Constitution of India.

16. The duties of Municipality are mentioned in Section 7 of the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as the Act, 1916).

“7. Duties of [Municipality]. - (1) It shall be the duty of every [Municipality] to make reasonable provision [within the municipal area for], - (a) lighting public street and places;

(b) watering public streets and places;

[(bb) making a survey, and erection of boundary marks, of the Municipality;]

(c) cleaning public sheets, places and drains, removing noxious vegetation, and abating all public nuisances;

(d) regulating offensive, dangerous or obnoxious trades, callings or practices;

[(dd) confinement, removal or destruction of stray dogs and dangerous animals;]

(e) removing, on the ground of public safety, health or convenience, undesirable obstructions and projection in streets or public places;

(f) securing or removing dangerous buildings or places;

(g) acquiring, maintaining, changing, and regulating places for the disposal of the dead [and making arrangements for disposal of unclaimed dead bodies after ascertaining from the police in writing that there is no objection to do so;]

(h) constructing, altering and maintaining public streets, culverts, [markets]latrines, privies, urinals, drains, drainage works and sewerage works;

[(hh) reclaiming unhealthy localities;]

(i) Planting and maintaining trees on road sides and other public places;

[(ii) providing water supply for domestic, industrial and commercial purposes;]

(j) providing a sufficient supply of pure and wholesome water where the health of the inhabitants is endangered by the insufficiency or unwholesomeness of the existing supply, guarding from pollution water use for human consumption and preventing polluted water from being so used;

[(jj) maintaining in addition to any other source of water supply, public wells, if any, in working condition, guarding from pollution their water and keeping it fit for human consumption;]

(k) registering births and deaths;

(l) establishing and maintaining a system of public vaccination;

(m) establishing maintaining or supporting public hospitals and dispensaries, and providing public medical relief;

- [(mm) establishing, maintaining and assisting maternity centres and child welfare and birth control clinics and promoting population control, family welfare and small family norms;]
 - [(n) maintaining or contributing to the maintenance of veterinary hospitals;]
 - [(nn) establishing and maintaining or guaranteeing aid to institutions of physical culture;]
 - [(o) establishing and maintaining primary schools;
 - [(p) rendering assistance in extinguishing fires and protecting life and property when fires occur;
 - [(q) protecting, maintaining and developing the property vested in, or entrusted to the management of the] [Municipality];
 - [(qq) maintaining the finances of the] [Municipality] in satisfactory condition and meeting its liabilities;
 - [(r) [prompt attention to official letters and preparation of] such returns, statements and reports as the [State Government] requires the [Municipality] to submit; and
 - [(s) fulfilling any obligation imposed by law upon it;
 - [(t) regulating tanneries;
 - (u) construction and maintenance of parking lots, bus stops and public conveniences;
 - (v) promoting urban forestry and ecological aspects and protection of the environment;
 - (w) safeguarding the interests of weaker sections of society including the handicapped and mentally retarded;
 - (x) promoting cultural, educational and aesthetic aspects;
 - (y) constructing and maintaining cattle pounds and preventing cruelty to animals;
 - (z) slum improvement and upgradation;
 - (za) urban poverty alleviation;
 - (zb) providing urban amenities and facilities such as gardens, public parks and play grounds.]
- (2) [* * *]"

17. The discretionary functions of Municipalities are provided under Section 8 of the Act, 1916.
18. Section 298 empowers the Municipality to make bye-laws including the bye-laws for imposing the obligation of taking our licences on the proprietors of drivers of vehicles [other than motor vehicles], boats or animals kept or plying for hire, or on person hiring themselves out for the purpose of carrying loads within the limits of the [municipal area], and fixing the fees payable for such licences and the conditions on which they are to be granted and may be revoked, as per List I (H)(c).
19. The Municipality can limit the rates which may be demanded for the hire of a carriage, cart, boat or other conveyance, or of animals hired to carry loads, or for the services of persons hired to carry loads, and the loads to be carried by such conveyances, animals or persons when hired within the [municipal area] for a period not exceeding twenty-four hours or for a service which would ordinarily be performed within twenty-four hours.
20. There is no material placed on record that the Nagar Panchayat, Banbasa has framed any bye-laws for granting

license for plying the horse carts/tongas and also for prescribing the rates to be charged from the passengers and for freight.

21. The trade between Nepal and India is regulated under 1991 treaty, which was revised in the year 2009.
22. It is incumbent upon the Govt. of India to maintain/introduce restrictions for protecting moral values of human, animals and plant life, as per Article IX of the revised treaty.
23. What is stated in the counter affidavit filed by the Central Government, the SSB has setup its check-post at Banbasa and is checking and frisking the passengers. However, the horses coming to India are not medically examined. It is to be done by the District Administration, as per the averments made in the counter affidavit. There are specific routes on which the trade is to be carried out.
24. The petitioner has placed on record the photographs showing the injured horses roaming on the Indian side. The horses tethered are unhealthy. They are roaming in the streets. The horse carts are overweight. No shed is provided for the horses. There is rather no tonga stand at Banbasa. The children are seeing plying the horse cart/tonga in the picture. The Indo-Nepal border is a very sensitive border. Close vigil is required to be maintained by the authorities of Banbasa to check illegal transit of contraband items like arms/ammunition, narcotics substances, wildlife crime, human trafficking etc.
25. According to the averments made in the petition, horse carts/tonga plying from Banbasa to Nepal are also to be licensed. All the horses should be medically examined. The horses entering into India are also supposed to be diseased free. The over-charging from the passengers at Banbasa by the tonga owners is also required to be regulated. Horses cannot be abandoned in the streets of Banbasa and the

adjoining areas. It is evident from the photographs that the horses are injured but they are not attended too.

26. The Parliament has enacted the Act called Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as the Act, 1960).
27. Chapter III deals with cruelty to animals generally.
28. Section 11 defines cruelty to animals as under:-

“11. Treating animals cruelly: (1) If any person

(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes, or being the owner permits, any animal to be so treated; or

(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 employed; or

(c) wilfully and unreasonably administers any injurious drug or injurious substance to 14(any animal) or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by 15(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 tender it likely that it will suffer pain by reason of starvation thirst; or

(j) wilfully 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 illtreatment; 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 or prey for any other animal; or (ii) incites any animal to fight or bait any other animal; or]

(n) [xxxx] organises, keeps uses or acts in the management or, 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 19(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.]

(2) For the purposes of section (1) an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence;

Provided that where an owner is convicted permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall apply to -

- (a) the dehorning of cattle, or the castration or branding or noserooping of any animal in the prescribed manner, or (b) the destruction of stray dogs in lethal chambers 20[by such other methods as may be prescribed] or
- (c) the extermination or destruction of any animal under the authority of any law for the time being in force; or
- (d) any matter dealt with in Chapter IV; or
- (e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.”

29. Section 35 provides for treatment and care of animals. It reads as under:-

“35. Treatment and care of animals : (1) The State Government, may by general or special order appoint infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorise the detention therein of any animal pending its production before a magistrate.

(2) The magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animals concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a pinjrapole, or if the veterinary officer in charge of the area in which the animal is found or such a veterinary officer as may be authorised in this behalf by rules made under this Act certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

(3) An animal sent for care and treatment to an infirmary shall not, unless the magistrate directs that it shall be sent to a pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as may be authorised in this behalf by rules made under this Act.

(4) The cost of transporting the animal to an infirmary or pinjrapole and of its maintenance and treatment in an infirmary, shall be payable by the district magistrate, or, in presidency-towns, by the commissioner of police;

Provided that when the magistrate so orders on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

(5) Any amount payable by an owner of an animal under sub-section (4) may be recovered in the same manner as an arrear of land revenue,

(6) If the owner refuses or neglects to remove the animal within such time as a magistrate may specify, the magistrate may direct that the animal be sold and that the proceeds of the same be applied to the payment of such cost.

(7) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale be paid to him.”

30. Section 38 empowers the Central Government to frame rules.

31. The Central Government has framed the Rules called Prevention of Cruelty to Draught and Pack Animals Rules, 1965 (hereinafter referred to as the Act, 1965).

32. Rule 2(a) defines “large bullock” or “large buffalo”.

33. “Medium bullock” or “medium buffalo” has been defined under Rule 2(b).

34. “Small bullock” or “small buffalo” has been defined under Rule 2(c).

35. Rule 2(e) defines “Vehicle”. “Vehicle” means a wheeled conveyance of any description which is capable of being used as such on any street.

36. Rule 3 provides for the maximum loads for draught animals as under:-

	1	2	3
Small bullock or small buffalo	Two-wheeled vehicle-		1000 kilograms
	(a) if fitted with ball bearings		
	(b) if fitted with pneumatic 750 kilograms tyres		
	(c) if not fitted with pneumatic 500 kilograms tyres		
2. Medium bullock or buffalo	Two-wheeled vehicle-	1400 kilograms	
(a) if fitted with ball bearings			
(b) if fitted with pneumatic 1050 kilograms tyres			
(c) if not fitted with pneumatic 700 kilograms tyres			
3. Large bullock or large buffalo	Two wheeled vehicle-	1800 kilograms	
(a) if fitted with ball bearing			
(b) if fitted with pneumatic 1350 kilograms tyres			
(c) if not fitted with pneumatic 900 kilograms tyres			
4. Horse or mule	Two-wheeled vehicle-	750 kilograms	
(a) if fitted with pneumatic tyres			
(b) if not fitted with pneumatic 500 kilograms tyres			
5. Pony	Two-wheeled vehicle-	600 kilograms	
(a) if fitted with pneumatic tyres			
(b) if not fitted with pneumatic 400 kilograms tyres			
6. Camel	Two-wheeled vehicle	1000 kilograms.	

37. Rule 4 provides for maximum load for certain pack animals including small bullock or buffalo, medium bullock or

buffalo, large bullock or buffalo, pony, mule, donkey and camel.

38. Rule 5 provides for maximum number of passengers for animals drawn vehicles.
39. Rule 6 provides that no person shall use or cause to be used any animal for drawing any vehicle or carrying any load for more than nine hours in a day in the aggregate, for more than five hours continuously without a break for rest for the animal, in any where the temperature exceeds 37°C (99°F) during the period between 12.00 noon and 3.00 P.M.
40. Rule 7 provides for animals to be disengaged after work.
41. Rule 8 provides for prohibition of use of spiked bits.
42. Rule 10 provides for certificates regarding unladen weight of vehicles etc.
43. The powers of police officers and other authorized persons are provided under Rule 11.
44. The Central Government has also framed rules called Transport of Animals Rules, 1978 (hereinafter referred to as the Rules, 1978). The mode of transport of dogs and cats, monkeys, cattle, equines, sheep and goats, poultry by rail, road and air is provided in the rules.
45. We can take judicial notice of the fact that the cattle are transported in breach of provisions of the Rules, 1978.
46. Rules 47 to 56 apply to the transport by rail of cows, bulls, bullocks, buffaloes, yaks and calves.
47. When cattle are to be transported by goods vehicle, the precautions are required to be taken as provided under Rule 56.
48. The transport of sheep and goats is provided under Chapter VI.

49. The transport of poultry by rail, road and air is provided under Chapter VII.
50. The Court can take judicial notice of the fact that the animals are also transported on foot.
51. The Central Government has also framed the Rules called Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, 2001 (hereinafter referred to as the Rules, 2001).
52. The “animal” is defined under Rule 2.
53. Rule 4 provides that every animal are to be transported on foot shall be healthy and in good condition for such transport. A certificate of a veterinary doctor in respect of each animal to be transported to the effect that such animal is in a fit condition for such transportation and is not suffering from any infectious, contagious or parasitic diseases and that it has been vaccinated against any infectious, contagious or parasitic diseases shall accompany such animal. The certificate under sub-Rule (1) shall be in the form as specified in the First Schedule.
54. Rule 5 provides that certain animals are not to be transported on foot including new born animals of which the navel has not completely healed, diseased, blind, emaciated, lame, fatigued, or having given birth during the preceding seventy two hours or likely to give birth during transport is not be transported on foot.
55. Rule 7 provides that the owner of the animal shall provide veterinary first aid equipment to be accompanied with such animals while being transported on foot.
56. Rule 9 provides that there should be arrangement of water during transportation of animals.
57. Rule 10 provides that sufficient feed and fodder with adequate reserve of such feed and fodder for the animals is to

be made available by their owner during their transport on foot.

58. Rule 11 provides for prohibition of the use of whip, etc. during transportation of animals on foot.

59. Rule 12 provides certain prohibitions on transport of animals on foot. These are as under;-

“12. Certain Prohibition on transport of animals on foot- (1) No person shall transport on foot an animal before sunrise or after sunset.

(2) No animal shall be transported on foot beyond the distance, time, rest interval and temperature specified for such animal in the Table below, namely:-

Species (Animals)	Maximum distance covered/day/hour	Maximum no. of walking/day of hours (Travelling)	Period of rest (interval)	Temperature range Max. Min.
Cattle (Cows)	30 km/day 4 km/hr	8 hours	At every 2 hours for drinking and at every 4 hrs for feeding	12°C to 30°C
Buffaloes	25 km/day 4 km/hr	8 hours	At every 2 hours for drinking and at every 4 hrs for feeding	12°C to 30°C
Cows and Buffaloes Calves	16 km/day 205 km/hr	6 hours	At every 1½ hours for drinking and at every 3 hrs for feeding	15°C to 25°C
Horses, Ponies, Mules, Donkeys	45 km/day 6 km/hr	8 hours	At every 3 hours for drinking and at every 6hrs for feeding	12°C to 30°C
Young ones (Foal)	25 km/day 4 km/hr	6 hours	At every 2 hours for drinking and at every 4 hrs for feeding	15°C to 25°C
Goats and Sheep	30 km/day 4 km/hr	8 hours	At every 2 hours for drinking and at every 4 hrs for feeding	12°C to 30°C
Kids and Lambs	16 km/day 2.5 km/hr	6 hours	At every 1½ hours for drinking and at every 3 hrs for feeding	15°C to 25°C
Pigs	15 km/day 2 km/hr	8 hours	At every 1½ hours for drinking and at every 3 hrs for feeding	12°C to 25°C
Piglets	10 km/day 1.5 km/hr	6 hours	At every 1½ hours for drinking and at every 3 hrs for feeding	15°C to 25°C

Note : After being provided with water every animal shall be given a break of 20 minutes before the commencement of the transport of the animal on foot and in case of feeding the break shall be given for one hour before the commencement of the transport of the animal on foot.

(3) No animal shall be made to walk under conditions of heavy rain, thunderstorms or extremely dry or sultry conditions during its transport on foot.”

60. Rule 13 provides that in certain cases, transportation of animals is not permitted without shoes.

61. The Central Government has also enacted the Act called the Prevention and Control of Infectious and Contagious

Diseases in Animals Act, 2009 (hereinafter referred to as the Act, 2009) to provide for the prevention, control and eradication of infectious and contagious diseases affecting animals, for prevention of outbreak or spreading of such diseases from one State to another, and to meet the international obligations of India for facilitating import and export of animals and animal products and for matter connected therewith or incidental thereto.

62. Section 3 provides for appointment of Veterinary Officers.
63. The duty to segregate infected animals is provided under Section 5.
64. Section 6 provides for notification of controlled areas and free areas.
65. Section 7 provides that where a notification has been issued under sub-section (1) of Section 6 declaring any area as a controlled area in relation to any disease affecting any species of animals, no animal belonging to that species shall be moved from the place where it is kept.
66. Section 10 provides for entry and exit of animals into controlled area and free area.
67. Section 14 provides for check posts and Quarantine Camps.
68. Section 20 provides for declaration of infected areas.
69. It is the duty cast upon the State Government to enforce the Uttar Pradesh Municipalities Act, 1916 and the rules framed thereunder.
70. In 1969(1) SCC 555, their Lordships of Hon. Supreme Court in 'Yogendra Nath Naskar v. Commission of Income-Tax, Calcutta' have held that a Hindu idol is a juristic entity capable of holding property and of being taxed through its Shebait who are entrusted with the possession and

management of its property. In paragraph no.6, their Lordships have held as under: -

“6. That the consecrated idol in a Hindu temple is a juridical person has been expressly laid down in Manohar Ganesh's case, I.L.R. 12 Bom. 247 which Mr. Prannath Saraswati, the author of the 'Tagore Lectures on Endowments' rightly enough speaks of as one ranking as the leading case on the subject, and in which West J., discusses the whole matter with much erudition. And in more than one case, the decision of the Judicial Committee proceeds on precisely the same footing (Maharanees Shibessourec Dehia v. Mothocrapath Acharjo 13 M.I.A. 270 and Prosanna Kumari Debya v. Golab Chand Baboo L.R. 2 IndAp145 Such ascription of legal personality to an idol must however be incomplete unless it be linked of human guardians for them variously designated in Debya v. Golab Chand Baboo L.R. 2 IndAp145 the Judicial Committee observed thus : 'It is only in an ideal sense that property can be said to belong to an idol and the possession and management must in the nature of things be entrusted with some person as shebait or manager. It would seem to follow that the person so entrusted must be necessarily be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir'-words which seem to be almost an echo of what was said in relation to a church in a judgment of the days of Edward I: 'A church is always under age and is to be treated as an infant and it is not according to law that infants should be disinherited by the negligence of their guardians or be barred of an action in case they would complain of things wrongfully done by their guardians while they are under age' (Pollock and Maitland's 'History of English Law', Volume I, 483.”

71. In 1999(5) SCC 50, their Lordships of Hon. Apex Court in the case of “Ram Jankijee Deities & others v. State of Bihar & others”, have held that Images according to Hindu authorities, are of two kinds: the first is known as Sayambhu or self-existent or self-revealed, while the other is Pratisthita or established. A Sayambhu or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover its existence and such images do not require consecration or Pratistha but a manmade image requires consecration. This manmade image may be painted on a wall or canvas. God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent: It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in images of the Supreme Being. It was further held that the deity/idol are the juridical person entitled to hold the property. In paragraph nos.14, 16 and 19, their Lordships have held as under: -

“14. Images according to Hindu authorities, are of two kinds: the first is known as Sayambhu or self-existent or self-revealed, while the other is Pratisthita or established. The Padma Purana says: "the image of Hari (God) prepared of stone earth, wood, metal or the like and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established images...where the self- possessed Vishnu has placed himself on earth in stone or wood for the benefit of mankind, that is styled the self-revealed." (B.K. Mukherjea -Hindu Law of Religious and Charitable Trusts: 5th Edn.) A Sayambhu or self-revealed image is a product of nature and it is Anadi or without any beginning and the worshippers simply discover

its existence and such images do not require consecration or Pratistha but a manmade image requires consecration. This manmade image may be painted on a wall or canvas. The Salgram Shila depicts Narayana being the Lord of the Lords and represents Vishnu Bhagwan. It is a Shila - the shalagram form partaking the form of Lord of the Lords Narayana and Vishnu.

16. The observations of the Division Bench has been in our view true to the Shastras and we do lend our concurrence to the same. If the people believe in the temples' religious efficacy no other requirement exists as regards other areas and the learned Judge it seems has completely overlooked this aspect of Hindu Shastras - In any event, Hindus have in Shastras "Agni" Devta; "Vayu" Devta - these deities are shapeless and formless but for every ritual Hindus offer their oblations before the deity. The Ahuti to the deity is the ultimate - the learned Single Judge however was pleased not to put any reliance thereon. It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate the image.

19. God is Omnipotent and Omniscient and its presence is felt not by reason of a particular form or image but by reason of the presence of the omnipotent: It is formless, it is shapeless and it is for the benefit of the worshippers that there is manifestation in images of the Supreme Being. "The Supreme Being has no attribute, which consists of pure spirit and which is without a second being, i.e. God is the only Being existing in reality, there is no other being in real existence excepting Him - (see in this context Golap Chandra Sarkar, Sastri's Hindu Law: 8th Edn.). It is the human concept of the Lord of the Lords - it is the human vision of the Lord of the Lords: How one sees the deity: how one feels the deity and recognises the deity and then establishes the same in the temple upon however performance of the consecration ceremony. Shastras do provide as to how to consecrate and the usual ceremonies of Sankalpa and Utsarga shall have to be performed for proper and effective dedication of the property to a deity and in order to be termed as a juristic person. In the conception of Debutter, two essential ideas are required to be performed: In the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person and in the second place, the personality of the idol being linked up with natural personality of the shebait, being the manager or being the Dharam karta and who is entrusted with the custody of the idol and who is responsible otherwise for preservation of the property of the idol. The Deva Pratistha Tatwa of Raghunandan and Matsya and Devi Puranas though may not be uniform in its description as to how Pratistha or consecration of image does take place but it is customary that the image is first carried to the Snan Mandap and thereafter the founder utters the Sankalpa Mantra and upon completion thereof, the image is given bath with Holy water, Ghee, Dahi, Honey and Rose water and thereafter the oblation to the sacred fire by which the Pran Pratistha takes place and the eternal spirit is infused in that particular idol and the image is then taken to the temple itself and the same is thereafter formally dedicated to the deity. A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colour. While it is true that the learned Single Judge has quoted some eminent authors but in our view the same does not however, lend any assistance to the matter in issue and the Principles of Hindu Law seems to have been totally misread by the learned Single Judge."

72. In AIR 2000 SC 1421, their Lordships of Hon. Supreme Court in the case of 'Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others' have held that the concept 'Juristic Person' arose out of necessities in the human development- Recognition of an entity as juristic person- is for subserving the needs and faith of society. In paragraph nos.11, 13 and 14, their

Lordships held as under: -

"11. The very words "Juristic Person" connote recognition of an entity to be in law a person which otherwise it is not. In other words, it is not an individual natural person but an artificially created person which is to be recognised to be in law as such. When a person is ordinarily understood to be a natural person, it only means a human person. Essentially, every human person is a person. If we trace the history of a "Person" in the various countries we find surprisingly it has projected differently at different times. In some countries even human beings were not treated to be as persons in law. Under the Roman Law a "Slave" was not a person. He had no right to a family. He was treated like an animal or chattel. In French Colonies also, before slavery was abolished, the slaves were not treated to be legal persons. They were later given recognition as legal persons only through a statute. Similarly, in the U.S. the African-Americans had no legal rights though they were not treated as chattel.

13. With the development of society, 'where an individual's interaction fell short, to upsurge social development, co-operation of a larger circle of individuals was necessitated. Thus, institutions like corporations and companies were created, to help the society in achieving the desired result. The very Constitution of State, municipal corporation, company etc. are all creations of the law and these "Juristic

Persons" arose out of necessities in the human development. In other words, they were dressed in a cloak to be recognised in law to be a legal unit.

Corpus Juris Secundum, Vol. LXV, page 40 says:

Natural person. A natural person is a human being; a man, woman, or child, as opposed to a corporation, which has a certain personality impressed on it by law and is called an artificial person. In the C.J.S. definition 'Person' it is stated that the word "person," in its primary sense, means natural person, but that the generally accepted meaning of the word as used in law includes natural persons and artificial, conventional, or juristic persons.

Corpus Juris Secundum, Vol. VI, page 778 says:

Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.

Salmond on Jurisprudence, 12th Edn., 305 says:

A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human being is one of the most noteworthy feats of the legal imagination.... Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. Those which are actually recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations. ... If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties, of which three may be selected for special mention...

1. The first class of legal persons consists of corporations, as already defined, namely, those which are constituted by the personification of groups or series of individuals. The individuals who thus form the corpus of the legal person are termed its members....¹

2. The second class is that in which the corpus, or object selected for personification, is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution, but to the institution itself....

3. The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses - a charitable fund, for example or a trust estate...

Jurisprudence by Paton, 3rd Edn. page 349 and 350 says:

It has already been asserted that legal personality is an artificial creation of the law. Legal persons are all entities capable of being right-and-duty-bearing units - all entities recognised by the law as capable of being parties to legal relationship. Salmond said: 'So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties...

...Legal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, an idol. Twenty men may form a corporation which may sue and be sued in the corporate name. An idol may be regarded as a legal persona in itself, or a particular fund may be incorporated. It is clear that neither the idol nor the fund can carry out the activities incidental to litigation or other activities incidental to the carrying on of legal relationships, e.g., the signing of a contract: and, of necessity, the law recognises certain human agents as representatives of the idol or of the fund. The acts of such agents, however (within limits set by the law and when they are acting as such), are imputed to the legal persona of the idol and are not the juristic acts of the human agents themselves. This is no mere academic distinction, for it is the legal persona of the idol that is bound to the legal relationships created, not that of the agent. Legal personality then refers to the particular device by which the law creates or recognizes units to which it ascribes certain powers and capacities." Analytical and Historical Jurisprudence, 3rd Edn. At page 357 describes "person";

We may, therefore, define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights or duties may be attributed.

14. Thus, it is well settled and confirmed by the authorities on jurisprudence and Courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol, was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church hospital, gurudwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an Idol or for a mosque or for any institution, it necessitates the creation of a juristic person. The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurudwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such."

73. Their Lordships of the Hon'ble Supreme Court in 2010 (1) SCC 234, in the case of "Bharat Amratlal Kothari & another vs. Dosukhan Samadkhan Sindhi & others", have held that animals filled in trucks in a cruel manner and being transported, seized by police on complainant's report and sent to pinjrapole and the owner of animals claiming custody of animals. In these circumstances, normal cost of maintenance and treatment of animals under Section 35(4) would be payable by the persons claiming custody and not by the complainant. Their Lordships have held as under:-

"40. Moreover, no claim was advanced by Respondent 8 herein that Appellant 1 should be directed to pay, on behalf of the owners i.e. Respondents 1 to 6, the cost of maintenance and treatment of the animals in question in accordance with the provisions of sub-section (4) of Section 35 of the Act. Normally, cost of maintenance and treatment of the animals in such cases would be payable by one who claims custody or who are the owners of the livestock but not by the complainant. In the instant case the assertion made by Appellant 1 is that he was handed over custody of goats and sheep by the police after registration of FIR whereas the case of Respondents 1 to 6 seems to be that Appellant 1 had taken possession of the livestock and trucks illegally before the FIR was lodged and had acted in a high-handed manner."

74. Their Lordships of the Hon'ble Supreme Court in 2014 (7) SCC 547, in the case of "Animal Welfare Board of India vs. A. Nagaraja & others", have held that animal welfare laws have to be interpreted keeping in mind the welfare of animals and species best interest subject to just exceptions out of human necessity. Their Lordships have further held that there are internationally recognized freedoms of animals as under:- (i) freedom from hunger, thirst and malnutrition; (ii) freedom from fear and distress; (iii) freedom from physical and thermal discomfort; (iv) freedom from pain, injury and disease; and (v) freedom to express normal patterns of behavior. These five freedoms have to be read into Sections 3 and 11 of PCA Act and have to be protected and safeguarded by the States, Central Government, Union Territories, MoEF and AWBI. Though no international agreement ensures protection of animals' welfare, campaigns like UDAW and WSPA's and OIE's effort in this regard, taken judicial note off. It is the duty to protect welfare of animals and not to put them to avoidable pain and suffering. Their Lordships have also explained the meaning of "pain and suffering". Pain informs an animal which stimuli it needs to avoid and suffering informs it about a situation to avoid. Their Lordships have held that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the

rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, within the meaning of Article 21 of the Constitution. 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. Their Lordships have held as under:-

“15. We have to examine the various issues raised in these cases, primarily keeping in mind the welfare and the well-being of the animals and not from the standpoint of the organisers, bull tamers, bull racers, spectators, participants or the respective States or the Central Government, since we are dealing with a welfare legislation of a sentient being, over which human beings have domination and the standard we have to apply in deciding the issue on hand is the “species’ best interest”, subject to just exceptions, out of human necessity.

33. 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 favour of the weak and infirm. The court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. The court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smokescreen and discover the true state of affairs. The court can go behind the form and see the substance of the device for which it has to pierce the veil and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, the court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. The court has also a duty under the doctrine of *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

34. The PCA Act, as already indicated, was enacted to prevent the infliction of unnecessary pain, suffering or cruelty on animals. Section 3 of the Act deals with duties of persons having charge of animals, which is mandatory in nature and hence confer corresponding rights on animals. Rights so conferred on animals are thus the antithesis of a duty and if those rights are violated, law will enforce those rights with legal sanction. Section 3 is extracted hereunder for an easy reference:

“3. Duties of persons having charge of animals.—It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.”

36. We will now examine whether the second limb of Section 3 which casts a duty on the person in charge or care of animal to prevent the infliction upon an animal, unnecessary pain or suffering, discharges that duty. Considerations, which are relevant to determine whether the suffering is unnecessary, include whether the suffering could have reasonably been avoided or reduced, whether the conduct which caused the suffering was in compliance with any relevant enactment. Another aspect to be examined is whether the conduct causing the suffering was for a legitimate purpose, such as, the purpose for benefiting the animals or the purpose of protecting a person, property or another animal, etc. Duty is to prevent the infliction of unnecessary pain or suffering, meaning thereby, no right is conferred to inflict necessary/unnecessary pain or suffering on the animals. By organising Jallikattu and bullock cart race, the organisers are not preventing the infliction of unnecessary pain or suffering, but they are inflicting pain and suffering on the bulls, which they are legally obliged to prevent. Section 3 is a preventive provision casting no right on the organisers, but only duties and obligations. Section 3, as already indicated, confers corresponding rights on the animals as against the persons in charge or care, as well as AWBI, to ensure their well-being and be not inflicted with any unnecessary pain or suffering. Jallikattu or bullock cart race, from the point of the animals, is not an event ensuring their well-being or an event meant to prevent the infliction of unnecessary pain or suffering, on the contrary, it is an event against their well-being and causes unnecessary pain and suffering on them. Hence, the two limbs of Section 3 of the PCA Act have been violated while conducting Jallikattu and bullock cart race.

40. Pain and suffering are biological traits. Pain, in particular, informs an animal which specific stimuli, it needs to avoid and an animal has pain receptors and a memory that allows it to remember what caused the pain. Professor of Animal Welfare, D.M. Broom of the University of Cambridge in his articles appearing in chapter fourteen of the book *Animal Welfare and the Law*, Cambridge University Press (1989) says:

“Behavioural responses to pain vary greatly from one species to another, but it is reasonable to suppose that the pain felt by all of these animals is similar to that felt by man.”

Suffering has the same function, but instead of informing the animal about stimuli to avoid, it informs it about a situation to avoid. An animal might be regarded as suffering, if it is in pain, distress, or acute or unduly prolonged discomfort. Consequently, to experience the suffering, the animal needs an awareness of its environment, the ability to develop moods that coordinate a behavioural response, and the capacity to change adverse situation or avoid them. Reports submitted by AWBI clearly indicate that bulls are being treated with extreme cruelty and suffering, violating the provisions of Section 11(1) of the PCA Act. Over and above, Section 11(1) clauses (b) to (o) also confer various duties and obligations, generally and specifically, on the persons in charge of or care of animals which, in turn, confer corresponding rights on animals, which, if violated, are punishable under the proviso to Section 11(1) of the PCA Act.

55. As early as 1500-600 BC in Isha-Upanishads, it is professed as follows:

“The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species.”

In our view, this is the culture and tradition of the country, particularly the States of Tamil Nadu and Maharashtra.

56. The PCA Act has been enacted with an object to safeguard the welfare of the animals and evidently to cure some mischief and age old practices, so as to bring into effect some type of reform, based on eco-centric principles, recognising the intrinsic value and worth of animals. All the same, the Act has taken care of the religious practices of the community, while killing an animal vide Section 28 of the Act.

International approach to animals welfare

57. We may, at the outset, indicate unfortunately, there is no international agreement that ensures the welfare and protection of animals. The United Nations, all these years, safeguarded only the rights of human beings, not the rights of other species like animals, ignoring the fact that many of them, including bulls, are sacrificing their lives to alleviate human suffering, combating diseases and as food for human consumption. International community should hang their head in shame, for not recognising their rights all these ages, a species which served the humanity from the time of Adam and Eve. Of course, there has been a slow but observable shift from the anthropocentric approach to a more nature’s 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:

(a) The First Stage: Human self-interest reason for environmental protection

57.1. The instruments in this stage were fuelled by the recognition that the conservation of nature was in the common interest of all mankind.

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

57.3. The attitude behind these treaties was the assertion of an unlimited right to exploit natural resources—which derived from their right as sovereign nations.

(b) The Second Stage: International Equity

57.4. This stage saw the extension of treaties beyond the requirements of the present generation to also meet the needs of future generations of human beings. This shift signalled a departure from the pure tenets of anthropocentrism.

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

(c) The Third Stage: Nature’s own rights

57.6. Recent multinational instruments have asserted the intrinsic value of nature.

57.7. UNEP Biodiversity Convention (1992) “Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic values of biological diversity and its components ... [we have] agreed as follows: ...” The World Charter for Nature proclaims that “every form of life is unique, warranting respect regardless of its worth to man”. The Charter uses the term “nature” in preference to “environment” with a view to shifting to non-anthropocentric humanindependent terminology.”

58. We have accepted and applied the ecocentric principles in T.N. Godavarma Thirumulpad v. Union of India, T.N. Godavarma Thirumulpad v. Union of India and in Centre for Environmental Law, World Wide Fund-India v. Union of India.

59. Based on ecocentric principles, rights of animals have been recognised in various countries. Protection of animals has been guaranteed by the Constitution of Germany by way of an amendment in 2002 when the words “and the animals” were added to the constitutional clauses that obliges “State” to respect “animal dignity”. Therefore, the dignity of the animals is constitutionally recognised in that country. German Animal Welfare Law, especially Article 3

provides far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners' fundamental rights to property and the animals' interest in freedom from unnecessary suffering or pain, damage and fear.

60. The Animals Welfare Act of 2006 (UK) also confers considerable protection to the animals from pain and suffering. The Austrian Federal Animal Protection Act also recognises man's responsibilities towards his fellow creatures and the subject "Federal Act" aims at the protection of life and well-being of the animals. The Animal Welfare Act, 2010 (Norway) states:

"3. General requirement regarding the treatment of animals.— Animals have an intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain."

Section 26 of the legislation prohibits training an animal to fight with people; the operative portion of the same reads as follows:

"26. Training, showing, entertaining and competition.—Any person who trains animals and who uses animals which are used for showing, entertainment and competitions, including those who organise such activities, shall ensure that the animals:

(a)-(c) * * *

(d) are not trained for or used in fights with other animals or people." 64. Chapter

7.1.2 of the Guidelines of OIE, recognises five internationally recognised freedoms for animals, such as:

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

Food and Agricultural Organisation (FAO) in its "Legislative and Regulatory Options for Animal Welfare" indicated that these five freedoms found their place in Farm Welfare Council 2009 UK and is also called "Brambell's Five Freedoms". These five freedoms, as already indicated, are considered to be the fundamental principles of animal welfare and we can say that these freedoms find a place in Sections 3 and 11 of the PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India.

65. Animals are worldwide legally recognised as "property" that can be possessed by humans. On deletion of Article 19(1)(f) from the Indian Constitution, right to property is (sic no) more a fundamental right in India, this gives Parliament more a leeway to pass laws protecting the rights of animals. Right to hold on to a property which includes animals also, is now only a legal right not a fundamental right. We have also to see the rights of animals in that perspective as well.

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

Humanism

68. Article 51-A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression "humanism" which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, to understand benevolence, compassion, mercy, etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of the PCA Act as well as in Sections 3 and 11 of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51-A(h). Both Articles 51-A(g) and (h) have to be read into the PCA Act, especially into Section 3 and Section 11 of the PCA Act and be applied and enforced.

74. We are, therefore, of the view that Sections 21 and 22 of the PCA Act and the relevant provisions have to be understood in the light of the rights conferred on animals under Section 3, read with Sections 11(1)(a) and (o) and Articles 51-A(g) and (h) of the Constitution, and if so read, in our view, bulls cannot be used as performing animals for Jallikattu and bullock cart race, since they are basically draught and pack animals, not anatomically designed for such performances.

82. Section 3 has been specifically enacted, as already indicated, to confer duties on persons who are in-charge or care of the animals, which says, it is the duty of such persons to ensure the well-being of such animals and to prevent infliction of unnecessary pain or suffering upon the animals. In other words, the well-being and welfare of the animals is the paramount and dominant intention of the PCA Act and with that intention it has conferred duties on the person in-charge or care of the animals and corresponding rights on the animals. Section 11 confers obligations on all persons, including persons-in-charge or care of the animals to see that Section 3 has been fully obeyed. Exemptions to Section 11 have been provided in sub-section (3) on the doctrine of necessity, which concept we have already dealt with in the earlier

part of the judgment. Section 22 of the PCA Act, which deals with “performing animals”, has to be read along with Sections 3, 11(1) and 11(3) of the Act and that expects only the animal to perform in an exhibition and bull tamers have no role unlike the TNRJ Act. Sections 21 and 22 refer to training of animals for performance and not training to withstand the onslaught of bull tamers. Sections 3, 11 or 22 do not confer any right on the human beings to overpower the animals while it is performing, on the other hand, under Section 11(1)(m), inciting an animal to fight is an offence.

83. Section 38 of the PCA Act confers rule-making powers on the Central Government and, in exercise of its rule-making powers, the Central Government made the Performing Animals Rules, 1973 and the Performing Animals (Registration) Rules, 2001 and thrust of all the substantive and procedural provisions is the welfare and well-being of the animal and the duties and obligations of the persons who are in charge of the animals and also to safeguard the rights conferred on the animals. Rule 8(vii) specifically refers to animals’ “basic natural instinct” and cautions that the basic natural instinct of the animals be protected and be not exploited.

84. The TNRJ Act, 2009 is an anthropocentric legislation enacted not for the welfare of the animals, unlike the PCA Act, which is an ecocentric legislation, enacted to ensure the well-being and welfare of the animals and to prevent unnecessary pain or suffering of the animals. The State Act basically safeguards the interest of the organisers and spectators while conducting the event of Jallikattu.

85. The Act has no Preamble and the Statement of Objects and Reasons of the Act reads as follows:

“STATEMENT OF OBJECTS AND REASONS

1. ‘Jallikattu’ includes ‘Manjuvirattu’, ‘Oormadu’, ‘Vadamadu’ or ‘Erudhu vidum vizha’. The said function consists of taming of bulls as a part of ancient culture and tradition of the Tamils. The said tradition is in vogue for more than 400 years. At present, there is no legislation to regulate the conduct of Jallikattu, Manjuvirattu, Oormadu, Vadamadu, Erudhu vidum vizha or any such activity involving the taming of bulls. The Government have, therefore, decided to bring out a legislation to regulate the conduct of the Jallikattu in the State of Tamil Nadu by prescribing norms to hold such events and to ensure the safety of animals, participants and the spectators.

2. The Bill seeks to give effect to the above decisions.”

86. Section 4 deals with the responsibility of the organisers. Section 4(iii) provides for double barricade area in order to avoid injuries to the spectators and bystanders, the prime consideration is, therefore, to avoid injuries to spectators and bystanders and not that of the animal. Section 4(iv) deals with the fixing of the gallery for the spectators to sit and watch the event. Section 4(vi) empowers the Animal Husbandry Department to test the bulls to ensure that performance enhancement drugs are not administered. Duties have also been assigned to the District Collector, under Section 5 of the Act, to ensure safety of the spectators and to see that bulls are free from diseases and not intoxicated or administered with any substance like nicotine, cocaine, etc. to make them more aggressive and ferocious. Sections 5(ix) and (x) authorise the District Collector to give wider publicity to the provisions of the PCA Act and the Rules made thereunder and to ensure the presence of animal welfare activists of AWBI during the conduct of the event. Section 7 deals with penalty, it says

“whoever contravenes the provisions of this Act shall, on conviction, be punishable with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees or with both”. Section 11 of the PCA Act, it may be noted, provides for imprisonment for a term which may extend maximum to three months, to that extent, there is inconsistency between Section 7 of the TNRJ Act as well as Section 11 of the PCA Act.

87. Section 2(d) of the PCA Act speaks of domestic animal and taming the animal for use of men, which is evidently for domestic use, being domestic animal, not for entertainment or amusement. Section 11(3), as already stated, excludes five categories of cases from Section 11 “due to necessity” and Section 28 speaks of killing of animal in a manner required by the religion of any community. Section 22 of the Act speaks of performing animal, meaning thereby, exhibition and training only for performance of the animal. The PCA Act does not speak of “taming of animals” (overpowering animals). Taming of animal for domestic use and taming of animal for exhibition or entertainment are entirely different. Section 2(c) of the TNRJ Act speaks of “taming of bulls” which is inconsistent and contrary to the provisions of Chapter V of the PCA Act. Sections 4(vii), (viii) and 5(viii) speak of bull tamers. Bull tamers, therefore, tame the bulls at the arena, thereby causing strain, stress, inflict pain and suffering, which the PCA Act wants to prevent under Section 11 of the Act. Taming of bulls in the arena during Jallikattu, as per the State Act, is not for the well-being of the animal and causes unnecessary pain and suffering, that is exactly what the Central Act (the PCA Act) wants to prevent for the well-being and welfare of animals, which is also against the basic natural instinct of the bulls.

88. The PCA Act, especially Section 3, coupled with Section 11(1)(m)(ii), as already stated, makes an offence, if any person solely with a view to provide entertainment, incites any animal to fight. Fight can be with an animal or a human being. Section 5 of the TNRJ Act envisages a fight between a bull and bull tamers, that is, bull tamer has to fight with the bull and tame it. Such fight is prohibited under Section 11(1)(m)(ii) of the PCA Act read with Section 3 of the Act. Hence, there is inconsistency between Section 5 of the TNRJ Act and Section 11(1)(m)(ii) of the PCA Act.

89. The TNRJ Act, in its Objects and Reasons, speaks of ancient culture and tradition and also safety of animals, participants and spectators. The PCA Act was enacted at a time when it was noticed that in order to reap maximum gains, the animals were being exploited by human beings, by using coercive methods and by inflicting unnecessary pain. The PCA Act was, therefore, passed to prevent infliction of unnecessary pain or suffering and for the well-being and welfare of the animals and to preserve the natural instinct of the animal. Overpowering the performing animal was never in the contemplation of the PCA Act and, in fact, under Section 3 of the PCA Act, a statutory duty has been cast on the person who is in-charge or care of the animal to ensure the well-being of such animal and to prevent infliction on the animal of unnecessary pain or suffering. The PCA Act, therefore, casts not only duties on human beings, but also confer corresponding rights on animals, which is being taken away by the State Act (the TNRJ Act) by conferring rights on the organisers and bull tamers, to conduct Jallikattu, which is inconsistent and in direct collision with Section 3, Section 11(1)(a), Section 11(1)(m)(ii) and Section 22 of the PCA Act read with Articles 51-A(g) and (h) of the Constitution and hence repugnant to the PCA Act, which is a welfare legislation and hence declared unconstitutional and void, being violative of Article 254(1) of the Constitution of India.

91.11. The TNRJ Act is found repugnant to the PCA Act, which is a welfare legislation, hence held constitutionally void, being violative of Article 254(1) of the Constitution of India.

75. Their Lordships of the Hon'ble Supreme Court in the judgment cited hereinabove have held that animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks. The principle of equality of all species found in Isha Upanishads is the culture and tradition of the country, particularly the States of Tamil Nadu and Maharashtra. The PCA Act has been enacted with an object to safeguard the welfare of the animals and evidently to cure some mischief and age old practices, so as to bring into effect some type of reform, based on eco-centric principles, recognizing the intrinsic value and worth of animals. So far as animals are concerned, "life" means something more than mere survival or existence or instrumental value for human being, but to lead a life with some intrinsic worth, honour and dignity.

76. In AIR 1972 Allahabad 287, learned Single Judge of Allahabad High Court in case of 'Moorti Shree Behari ji v. Prem Dass 7 others' has held that a deity can sue as a pauper. In paragraph no.6, it was held as under: -

"6. The question then that arises is why a deity who is juristic person and can sue or be sued through its Pujari, Shebait or any other person interested, cannot sue as a pauper? To my mind when an incorporated limited company has been held by this Court capable of suing as a pauper, a fortiori it follows that a deity can also sue as a pauper. The learned Judge of the court below was in error in explaining away the Full Bench decision of this Court in the case of AIR 1959 All 540 (FB) (supra) on the observation that It related to a joint stock company, hence not applicable. The court below thus was in error in rejecting the application of the deity for that reason.

77. Mr. Justice Douglas, has given a dissenting judgment in the case of "Sierra Club vs. Morton, Sec. Int.", 405 U.S. 727. Hon'ble Judge has held that critical question of "standing" would be simplified and also put neatly

in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, de-faced, or invaded by roads and bulldozers and where injury is the subject of public outrage. A ship has a legal personality, a fiction found useful for maritime purposes. The river, for example, is the living symbol of all the life it sustains or nourishes -- fish, aquatic in-sects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man. Those people who have a meaningful relation to that body of water -- whether it be a fisherman, a canoeist, a zoologist, or a logger -- must be able to speak for the values which the river represents and which are threatened with destruction. The voice of the inanimate object, therefore, should not be stilled. Hon'ble

Judge has held as under:-

"I share the views of my Brother BLACK-MUN and would reverse the judgment below.

The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, de-faced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation. See Stone, *Should Trees Have Standing?* -- *Toward Legal Rights for Natural Objects*, 45 S. Cal. L. Rev. 450 (1972). This suit would therefore be more properly labeled as *Mineral King v. Morton*.

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole -- a creature of ecclesiastical law -- is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.

So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes -- fish, aquatic in-sects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plain-tiff speaks for the ecological unit of life that is part of it. Those people who have a meaning-ful relation to that body of water -- whether it be a fisherman, a canoeist, a zoologist, or a logger -- must be able to speak for the values which the river represents and which are threatened with destruction.

Mineral King is doubtless like other wonders of the Sierra Nevada such as *Tuolumne Meadows* and the *John Muir Trail*. Those who hike it, fish it, hunt it, camp in it, frequent it, or visit it merely to sit in solitude and wonderment are legitimate spokesmen for it, whether they may be few or many. Those who have that intimate relation with the inanimate object about to be injured, polluted, or other-wise despoiled are its legitimate spokesmen.

The voice of the inanimate object, therefore, should not be stilled. That does not mean that the judiciary takes over the managerial functions from the federal agency. It merely means that before these price-less bits of Americana (such as a valley, an alpine meadow, a river, or a lake) are forever lost or are so transformed as to be reduced to the eventual rubble of our urban environment, the voice of the existing beneficiaries of these environmental wonders should be heard.

Perhaps they will not win. Perhaps the bulldozers of "progress" will plow under all the aesthetic wonders of this beautiful land. That is not the present question. The sole question is, who has standing to be heard?"

78. Mr. Justice Blackmun, in his dissenting judgment has held as under:-

"The Court's opinion is a practical one espousing and adhering to traditional notions of standing as somewhat modernized . . . If this were an ordinary case, I would join the opinion and the Court's judgment and be quite content.

But this is not ordinary, run-of-the-mill litigation. The case poses . . . significant aspects of a wide, growing, and disturbing problem, that is, the Nation's and the world's deteriorating environment with its resulting ecological disturbances. Must our law be so rigid and our procedural concepts so inflexible that we render ourselves helpless when the existing methods and the traditional [*756] concepts do not quite fit and do not prove to be entirely adequate for new issues?

Rather than pursue the course the Court has chosen to take by its affirmance of the judgment of the Court of Appeals, I would adopt one of two alternatives:

1. I would reverse that judgment and, instead, approve the judgment of the District Court which recognized standing in the Sierra Club and granted preliminary relief. I would be willing to do this on condition that the Sierra Club forthwith amend its complaint to meet the specifications the Court prescribes for standing. If Sierra Club fails or refuses to take that step, so be it; the case will then collapse. But if it does amend, the merits will be before the trial court once again. As the Court, . . . , so clearly reveals, the issues on the merits are substantial and deserve resolution. They assay new ground. * * *. They raise important ramifications for the quality of the country's public land management. They pose the propriety of the "dual permit" device as a means of avoiding the 80-acre "recreation and resort" limitation imposed by Congress in 16 U. S. C. § 497, an issue that apparently has never been litigated, and is clearly substantial in light of the congressional expansion of the limitation in 1956 arguably to put teeth into the old, unrealistic five-acre limitation. In fact, they concern the propriety of the 80-acre permit itself and the consistency of the entire, enormous development with the statutory purposes of the Sequoia Game Refuge, of which the Valley is a part. * * *.

2. Alternatively, I would permit an imaginative expansion of our traditional concepts of standing in order to enable an organization such as the Sierra Club, possessed, as it is, of pertinent, bona fide, and well-recognized attributes and purposes in the area of environment, to litigate environmental issues. This incursion upon tradition need not be very extensive. Certainly, it should be no cause for alarm. * * *. It need only recognize the interest of one who has a provable, sincere, dedicated, and established status. We need not fear that Pandora's box will be opened or that there will be no limit to the number of those who desire to participate in environmental litigation. The courts will exercise appropriate restraints just as they have exercised them in the past. * * *"

79. The “person” and “personality” in English Law has been discussed in depth in English Private Law, Edited by Professor Peter Birks Qc FBA, Volume I, including that of non-human animal as under:-

“(a) Natural and artificial persons distinguished

3.18 The word ‘person’ is now generally used in English to denote a human being, but the word is also used in a technical legal sense, to denote a subject of legal rights and duties. English law recognizes two categories of persons in this legal sense: ‘natural persons’ and ‘artificial persons’. Natural persons are those animate beings which possess a capacity to own legal rights and to owe legal duties; artificial persons are those inanimate entities which possess such a capacity. Artificial persons are sometimes also described as ‘legal’ or ‘juristic’ persons, but this usage can be confusing, as the latter terms are also used of both animate beings and inanimate entities, to denote the fact that they have an existence as legal actors, rather than the fact that they exist only in the legal, and not in the biological sphere. (b) Natural persons

3.19 The only animate beings currently recognized by English law as natural persons are human beings. Other animals have not been thought capable of bearing legal responsibility for their actions since the thirteenth century, although the idea that a non-human animal or indeed an inanimate object should itself be punished for causing the death of a human being underlay the old rule, which was not abolished until 1846, that in such circumstances the animal or object should be forfeit as ‘deodand’ to the Crown or other franchise-holder. English law has never regarded non-human animals as possessing the capacity to enjoy legal rights, although the argument has been made by some theorists that in principle they should be regarded as possessing this capacity. In the case of human beings, English law assigns them ‘status’, or standing in law, according to their individual attributes and characteristics, and a human being’s legal rights and duties are then determined on a case-by-case basis by reference to relevant aspects of his status. Thus, for example, a human being’s capacity to enter a contract can be affected by whether he is a minor or full age, bankrupt or solvent, mentally capable or incapable. Questions going to the attributes and characteristics of a human being which may or may not have legal significance in different circumstances include: (i) has he been born? (ii) has he acquired full age? (iii) has he died? (iv) what is his gender? (v) is he legitimate, illegitimate, or adopted? (vi) is he single, married, divorced, or in an unmarried cohabiting relation (heterosexual or homosexual)? (vii) is he a British citizen, a foreign national, a foreign diplomat, or a refugee? (viii) is he bodily capable? (ix) is he mentally capable? (x) is he a prisoner? (xi) is he solvent? (xii) is he a layperson or a cleric? (xiii) is he a member of the armed forces? (xiv) is he a Member of Parliament? (xv) is he a member of the Royal Family?

(c) Artificial persons

3.20 Prior to the Supreme Court of Judicature Act 1873, the Admiralty courts sometimes ascribed artificial personality to ships, as a means of circumventing the writs of prohibition issued by the

common law courts to restrain the expansion of the Admiralty in personam jurisdiction. However, the theory that the ship is the real defendant in an Admiralty action in rem fell into decline after 1873, and the only bodies now recognized by English law as artificial persons are ‘groups or series of [human] individuals’, conceptualized as abstract entities, but possessing ‘an essentially animate content’. Thus, English law currently ascribes artificial personality to certain private groups of associates, as discussed in the following parts of this chapter, to various public bodies, religious bodies, and their officers, and also to various foreign states and international organizations.

However, ‘formidable conceptual difficulties’ would lie in the English courts’ way if they wished to recognize a tangible inanimate object as an artificial person, ‘something [like a Hindu temple] which on one view is little more than a pile of stones’. They would also find it difficult to permit an action by or against an abstraction such as a fund of money, for as a general rule this is ‘a form of proceeding unknown to English law’. Thus, for example, English law does not consider a trust estate to possess the capacity to sue or be sued, and requires trust funds to be vested in trustees with the personal capacity to sue (and to be sued) in their own names in the course of administering the trust business, executors and administrators (collectively termed personal representatives) perform a similar function with respect to a deceased person’s estate, as do receivers and liquidators when a company goes into receivership or liquidation.

(d) The nature of personality

3.22 Many legal theorists have written on the nature of personality, and have addressed themselves to such questions as whether personality entails anything more than the possession of a set of duty-owning, right-owning capacities, and whether the possession of such capacities is necessarily a legal construct or can derive from some extra-legal source. Questions of this sort do not often strike the English courts as having a practical bearing on the cases which they must decide, and even when they declare themselves to be ‘concerned with abstract jurisprudential concepts [so far as these] assist towards clarity of thought’, they generally recoil from discussing them in any detail. In consequence, they have not often expressly considered, still less committed themselves to, any particular jurisprudential theory of personality. However, it has rightly been observed that ‘realist theories of the company in which the company is viewed as a real person have had a limited influence on the development of [English company law, by comparison with]... Continental Europe, where that theory has been much more significant’, and some recent judicial statements confirm that the English courts have no liking for realist theories of artificial personality in general.

3.23 In *Bumper Development Corp Ltd. v Metropolitan Police Commissioner*, Purchas LJ approved the statement in *Salmond on Jurisprudence*, that [artificial] persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases’, and went on to hold that a Hindu temple recognized as an artificial person by the law of Tamil Nadu could therefore be a party to proceedings in the English courts, even though it would not be recognized as a person by English Law. In *Meridian Global Funds Management Asia Ltd v Securities Commission*, Lord Hoffmann stated that ‘a company exists because there is [legal] rule... which says that a persona ficta shall be deemed to exist,’ and that although ‘a reference to company...[there] is in fact no such thing as the company as such, no Ding an sich, only the applicable rules’ which enable the shareholders of the company to conduct their collective activities through the medium of the corporate form. And writing extrajudicially, Lord Cooke has since interpreted Lord Hoffmann’s reference to ‘Ding an sich’ in the *Meridian* case as an allusion to Kant’s noumenon, a thing whose existence is postulated but ultimately unknowable as it is in itself, and also as a ‘dig’ at Viscount Haldane LC’s supposed acceptance of German realist theory in *Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd*, where he spoke of a company possessing an ‘active and directing will’. In Lord Cooke’s view, however, ‘too much has been ascribed to alleged metaphysics by Viscount Haldane’, and it is ‘very doubtful’ whether his exposition in the *Lennard’s* case was in fact influenced by the German realists.

(e) The use of the terms ‘person’ and ‘personality’ in English legal practice (i) The possession of personality does not entail the possession of a fixed set of legal capacities

3.24 Three broad observations should be made here about the English legal terms ‘person’ and ‘personality’. First, the question whether a human being or abstract entity should be regarded as possessing the capacity to enforce a particular right, or to owe a particular duty, is one that lawmakers can rationally answer by considering the nature of the right or duty in question, by looking at the character of the fruitfully, have approached the question by considering instead whether it lies in the public interest to fix a company with criminal liability for, say, personal injuries or deaths caused by particular types of corporate actions or omissions; on a positive answer being given, they could then have formulated a new set of rules to govern the determination of corporate liability in terms reflecting the reality that human being or entity in question, and by assessing in the light of these matters, whether it would be consistent with the goals of society at large, and of the legal system in particular, to give a positive answer. But the need to approach the question in this way can be overlooked if the terms ‘person’ and ‘personality’ are used carelessly. A human being or entity which has been said by Parliament or the courts to be capable of enforcing a particular right, or of owing a particular duty, can properly be described as a person with that particular capacity. But it can be easy to forget the qualifier, and to assume when the question later arises, whether the individual or entity has the further capacity to enforce some other right, or to owe some other duty, that this must be so because he or it has previously been said to be a person with an unlimited set of capacities, or to be a person who possesses the ‘powers normally attendant on legal personality’. In other words, the careless use of the terms ‘person’ and ‘personality’ can create the false impression that a particular human being or entity has been said to possess a larger set of right-owning, duty-owning capacities than is in fact the case.

3.25 Thus, for example, English registered companies are frequently said to possess ‘personality’, but it would be wrong to infer from this that they necessarily possess the capacity to enjoy a privilege

against self-incrimination, or the capacity to perjure themselves, or the capacity to be the subject of defamatory statements, or the capacity to enjoy a right to privacy under Article 8 of the European Convention on Human Rights. Whether they possess these or any other capacities must be considered from first principles when the question arises. To say that a human being or entity possesses the ‘powers normally attendant on legal personality’ is to suggest that the ascription of personality entails the ascription of a generally agreed and particularized set of capacities, possession of which can be safely assumed of every natural and artificial person. But this is not so. Different human beings and entities may properly be characterized as natural or artificial persons for different purposes even though they possess different capacities from one another.”

80. Mr. David R. Boyd, in the latest book “The Rights of Nature”, has dealt with various issues of understanding animal minds including emotions, intelligence, language, memory, culture, co-operation, foresight, self-awareness, altruism. Learned author has discussed the intelligence, emotions, self-awareness, altruism of animals as under:-

“Emotions

In her book *How Animals Grieve*, Barbara J. King defines grief as “when a survivor animal acts in ways that are visibly distressed or altered from the usual routine, in the aftermath of the death of a companion animal who had mattered to him or her.” Dolphins, primates, and elephants exhibit behavior that clearly appears to be grief. According to Jeffrey Kluger, writing in *Time* magazine, “It’s well established that elephants appear to mourn their dead. They will linger over a family member’s body with what looks like sorrow, and African elephants have a burial ritual, covering dead relatives’ bodies with leaves and dirt. Elephants show great interest—some scientists suggest it may even be respect—when they come across the bones of dead elephants, examining them closely, with particular attention to the skull and tusks.” Similarly, great apes will remain close to a dead troop mate for days.

There are stories from Africa and Asia of elephant herds and tigers taking revenge on targeted human settlements or hunters for having slaughtered members of their families, stolen their food, or attempted to kill them. Baby elephants sometimes throw what can only be described as temper tantrums if their mothers deny them milk. In addition to observation, scientists can now use physiological data to track changes in the emotional state of animals. Recent studies have demonstrated that dogs feel elation in their owners’ presence.

Intelligence

Scientists believe that the large brains of primates, cetaceans, and elephants evolved for dealing with social complexity—recognizing friends and foes, engaging in lifelong social relationship, co-operating for mutual benefit, and developing unique cultures. Humans were supposed to have the biggest brains, and thus the gold medal, in animal intelligence. Not so fast. The brains of *Homo sapiens* are outweighed by those of dolphins, elephants and whales. In our defence, we cunningly deemed brain weight to be an unfair comparison, so we calculated brain-to-body-weight ratios. Then the tree shrew bests us, so that can’t be right. Despite being smaller than whale brains, human brains have more neurons (aha!), but whale brains have more glia, specialized cells used in information processing.

There is no question that dolphins, whales, primates, and elephants are highly intelligent. Dolphins not only have big brains, but possess extraordinary abilities such as sonar or echolocation, with which they send out sound waves that bounce back as echoes, providing extensive information about their surroundings. Echolocation enables dolphins to “see” through solid objects, like a superhero’s X-ray vision. For example, dolphins can tell if another dolphin, or a human, is pregnant, using their sonar to detect two separate heartbeats. A few years ago, scientists discovered that dolphin brains contain large numbers of specialized spindle neurons, previously thought to be unique to great apes. These neurons are believed to rapidly transmit important social/emotional information. In fact, dolphins’ brains have more spindle neurons than humans’. Dale Peterson writes in *The Moral Lives of Animals* that dolphins “have excellent memories and high levels of social and self-awareness, are excellent at mimicking the behavior of others and can respond to symbolic presentations, form complex and creatively adaptive social systems, and show a broad capacity for the cultural transmission of learned behaviours.” In short, dolphins are really smart.

The phrase “bird brain” has long been employed as a put-down, but may now be seen as a compliment. In 2004, scientists completely renamed the parts of avian brains based on new knowledge about their evolution. The brains of birds, contrary to previous understanding, are structurally similar to mammal brains. Despite having relatively small brains, crows, ravens, and jays—members of the corvid family—have proven to be talented problem solvers and tool users. In one experiment, a New Caledonian crow overcame a series of eight obstacles before acquiring a piece of aluminum and bending it with uncanny accuracy into a hook that it used to retrieve a morsel of food. The crow accomplished this feat on its first attempt.

Intelligence is not limited to primates, cetaceans, and birds. Archerfish can instantly calculate complicated mathematics of distance, speed, and time when blasting their prey with jets of water. They can learn to be better hunters by watching skilled individuals of their species. Many species, from

monarch butterflies and humpback whales to Pacific salmon and Arctic terns, undertake amazing migrations every year without map, compass, or GPS.

A variety of different species practice deception, behaving in ways intentionally designed to mislead predators or even members of their own group. In his bestseller *The Parrot's Lament*, Eugene Linden chronicles acts of deception by parrots, elephants, orangutans, dolphins, and hawks. Some birds feign injury to lead predators away from their nests. Jays will not cache food when other animals are watching, or will subsequently re-cache the food in a different location. Chimpanzees and gorillas will pretend not to notice desired food items when accompanied by more dominant members of their family. The less dominant primates will return later, unaccompanied, to collect the food. The zone-tailed hawk imitates the flying style of a vulture, a scavenger that poses no threat to other birds, then dives to attack unsuspecting birds. These uses of deception suggest that some species may have the ability to understand what other animals are thinking.

Self-Awareness

Self-awareness refers to the ability to recognize oneself as an individual distinct from the environment and other individuals. In 1838, Charles Darwin watched an orangutan at the London Zoo looking at herself in a mirror. He naturally wondered what she was thinking. More than a century later, scientists inspired by Darwin began placing animals in front of mirrors to explore the question of self-awareness. Animals are marked on their head or body (with paint or a sticker, for example) and then exposed to a mirror. If they touch the mark on themselves rather than on the mirror, scientists conclude that the animal perceives the reflected image as itself, rather than another animal. Experiments indicate that dolphins, orcas, Eurasian magpies, elephants, and some primates recognize themselves in mirrors.

Other scientists bristle at the notion that animals responding to seeking themselves in a mirror should be an indicator that they possess self-awareness. For example, in *Beyond Words*, conservationist Carl Safina argues that the day-to-day behavior of many different species provides clear evidence of self-awareness. He concludes that “maybe a mirror is mainly a test for which species is the greatest narcissist.”

Altruism

Altruism involves behavior benefitting someone who is not a close relative, despite some personal cost or risk. Field researchers in Africa have observed chimpanzees assisting unrelated chimps without expecting favours in return. Lab tests done decades ago demonstrated that rhesus monkeys will consistently choose to go hungry if their decision to secure food would result in another unrelated rhesus monkey being subjected to an electrical shock. Dolphins have saved humans and seals from sharks and helped rescue whales stranded on rocks or beaches. In *The Moral Lives of Animals*, Dale Peterson recounts stories of a wild elephant in Kenya that defended an injured man from a herd of wild buffalo, a bonobo in an English zoo that saved a starling that had crashed into a window, and a gorilla at Chicago's Brookfield Zoo that rescued a three-year old who fell into her exhibit, landing on a concrete floor.

In 2016, the journal *Marine Mammal Research* published a remarkable article about the seemingly altruistic behavior of humpback whales. In dozens of recorded observations from around the world, humpbacks responded to the distress calls of other species—including seals, sea lions, and grey whales—that were being attacked by groups of killer whales. In each case, the humpback whales disrupted the hunt by harassing the orcas and driving them away. Scientists cannot find any plausible biological explanation for why the humpbacks would place themselves at risk on behalf of other species, and are left to speculate that this is an example of altruism.

These studies mark huge leaps in our scientific understanding of animal intelligence and consciousness in recent decades. From elephants and cetaceans to ants and fish, animals clearly feel, think, and reason. They are scientist creatures, not machines. As humans, we may never fully understand the intelligence, emotions, or morality of other species. We can study other types of animals, observe their behavior, analyze their DNA, carry out sophisticated experiments, and attempt to imagine what goes on inside their minds, but knowing is probably an impossible task.

In 2012, a multi-disciplinary group of scientists who study how brains work produced the Cambridge Declaration on Consciousness, stating, “The weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness. Non-human animals, including all mammals and birds, and many other creatures, including octopuses, also possess these neurological substrates.” The declaration noted that many animals experience pain in ways similar to humans—the same chemical reactions in the brain and body (such as the production of adrenalin and other hormones) and the same observable physical reactions (like dilated pupils and elevated heart rates). Scientist Philip Low, one of the authors of the declaration, said that numerous colleagues approached him afterwards and said, “We were all thinking this, but were afraid to say it.” Reviewing the evidence, the *New York Times* concluded, “The overwhelming tendency of all this scientific work, of its results, has been toward more consciousness. More species having it, and species having more of it than assumed.”

From a scientific perspective, the myths of human superiority and exceptionalism have been repeatedly and convincingly debunked. As Charles Darwin observed almost 150 years ago, the difference between humans and other animals is one “of degree, not of kind.” After studying chimpanzees for more than forty years, in her foreword to *Building an Ark: 101 Solutions to Animal Suffering*, Jane Goodall concluded, “It is clear that there is no sharp line between us and chimpanzees, between us and the rest of the animal kingdom. The more we learn, the more blurry the line becomes. We are not the only beings on the planet with personalities and minds capable of rational thought and feelings.” The knowledge that animals feel, think, and reason has profound consequences for our relationship with them. As journalist Elizabeth Kolbert observed in the *New York Review of Books*, “To acknowledge that we are

separated from other species by 'degree, not kind' is to call into question just about every aspect of modern life." We have a powerful moral imperative to change the way we relate to, interact with, and exploit other animals."

81. Author Albert Schweitzer has said, "Until we extend the circle of compassion to all living things, we will not find peace." The first American law prohibiting cruelty to animals was passed by the Puritans of the

Massachusetts Bay Colony in 1641: "No man shall exercise any turranny or crueltie towards any brute creatures which are usuallie kept for man's use." Learned Author has made very pertinent observation on legal changes taking place globally to recognize non-human animals as legal persons as under:-

"On the frontiers of legal change, there is a growing global movement to recognize non-human animals as legal persons, a radical change that would endow them with the variety of legal rights. Animal rights advocates are not saying primates, cetaceans, or elephants are people. A 'legal person' is not necessarily a human being, but rather an entity to which the law grants specific rights. A corporation is considered a legal person, as are ships, churches and municipalities. The rights and responsibilities of a legal person vary according to the nature of the entity. Corporations and human beings have different sets of legal rights and duties. For example, corporations may assert freedom of expression, but are not protected by the right to life."

82. With the development of the society where the interaction of individuals fell short to upsurge the social development, the concept of juristic person was devised and created by human laws for the purposes of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, as their Lordships have held in the judgments cited hereinabove, that for a bigger thrust of socio-political-

scientific development, evolution of a fictional personality to be a juristic person becomes inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society. Corpus Juris Secundum, Vol.6, page 778 explains the concept of juristic persons/artificial persons thus: "Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic." A juristic person can be any subject matter other than a human being to which the law attributes personality for good and sufficient reasons. Juristic persons being the arbitrary

creations of law, as many kinds of juristic persons have been created by law as the society require for its development. (See Salmond on Jurisprudence 12th Edition Pages 305 and 306).

83. We have to show compassion towards all living creatures. Animals may be mute but we as a society have to speak on their behalf. No pain or agony should be caused to the animals. Cruelty to animals also causes psychological pain to them. In Hindu Mythology, every animal is associated with god. Animals breathe like us and have emotions. The animals require food, water, shelter, normal behavior, medical care, self-determination.

84. Due to damage caused to environment and ecology, the avian and aquatic life is also threatened. Major rivers have been reduced to the status of a sewer. Aquatic life cannot survive without water. The rivers have inherent right to flow in length as well as in width. The oceans are choked with plastic. Many species are becoming extinct. The loss of one species causes immense damage to the entire ecosystem. Global warming has arrived and its impact can be seen in day-to-day existence. There are gaps in laws. New inventions are required to be made in law to protect the environment and ecology. The animals including avian and aquatics have a right to life and bodily integrity, honour and dignity. Animals cannot be treated merely as property.

85. In a well researched book, “A Short History of Nearly Everything- A Journey through Space and Time”, by Bill Bryson, it is stated as under:-

“There is 1.3 billion cubic kilometers of water on Earth and that is all we’re ever going to get. The system is closed: practically speaking, nothing can be added or subtracted. The water you drink has been around doing its job since the Earth was young. By 3.8 billion years ago, the oceans had (at least more or less) achieved their present volumes. The water realm is known as the hydrosphere and it is overwhelmingly oceanic. Ninety-seven per cent of all the water on Earth is in the seas, the greater part of it in the Pacific, which is bigger than all the land masses put together. Altogether the Pacific holds just over half of all the ocean water (51.6 per cent); the Atlantic has 23.6 per cent and the Indian Ocean 21.2 per cent, leaving just 3.6 per cent to be accounted for by all the other seas. The average depth of the ocean is 3.86 kilometers, with the Pacific on average about 300 metres deeper than the Atlantic and Indian Oceans. Sixty per cent of the planet’s surface is ocean more than 1.6 kilometres deep. As Philip Ball notes, we would better call our planet not Earth but Water. Of the 3 per cent of Earth’s water that is fresh, most exists as ice sheets. Only the tiniest amount- 0.036 per cent- is found in lakes, rivers and reservoirs, and an even smaller part – just 0.001 per cent- exists in clouds or as vapour. Nearly 90 per cent of the planet’s ice is in Antarctica and most of the rest is in Greenland. Go to the South Pole and you will be standing on over 2 miles of ice, at the North Pole just 15 feet of it. Antarctica alone has 6 million cubic miles of ice- enough to raise the oceans by a height of 200 feet if it all melted. But if all the water in the atmosphere fell as rain, evenly everywhere, the oceans would deepen by only couple of centimeters.”

86. In the book, there is also reference to the book, “The Sinking Ark”, authored by Norman Myers. He suggested that human activities were causing about two extinctions a week on the planet. By the early 1990s he had raised the figure to some six hundred per week. A United Nations report of 1995, on the other hand, put the total number of known extinctions in the last four hundred years at slightly under five hundred for animals and slightly over six hundred and fifty five for plants.

87. It would be pertinent at this stage to make reference of book, “Sacred Animals of India”, written by Nanditha Krishna. She has introduced every animal with the myths and legends that establish its religious status, followed by a short note on the ecological or social role of the animal, which made it important in people’s lives. Learned author has also discussed the Ahimsa and Nonviolence preached by Lord Mahavira, Lord Gautama Buddha as under:-

“Ahimsa or Non-violence

The concept of ahimsa – non-violence in thought and deed – is India’s unique contribution to world culture. The Vedas and Upanishads were the first to speak of ahimsa. Although the Aryans were not vegetarians, the concept of non-killing appears in the earliest literature. The Rig Veda (10.87.16), condemns all forms of killing, even for food, preferring vegans to drinkers of milk: The yatudhana who fills himself with the flesh of man, He who fills himself with the flesh of horses or of other animals, And he who steals the milk of the cow:

Lord, cut off their heads with your flame.

The Yajur Veda says that service to animals leads to heaven: ‘No person should kill animals helpful to all and persons serving them should obtain heaven.’ According to the Atharva Veda, the earth was created for the enjoyment of not only human beings but also for bipeds and quadrupeds, birds, animals and all others creatures. The emergence of all life forms from the Supreme Being is expressed in the Mundakopnishad from Him, too, gods are produced manifold, The celestials, men, cattle, birds.

These ideas led to the concept of ahimsa or non-violence. Much later, the Manusmriti says, ‘He who injures innocent beings with a desire to give himself pleasure never finds happiness, neither in life nor in death.’ The Shrimad Bhagavatam says that a cruel person who kills others for his existence deserves to be killed, and cannot be happy, either in life or in death. The consequences, according to the Yajunavalkya Smriti are that ‘the wicked person who kills animals which are protected has to live in hellfire for the days equal to the number of hairs on the body of that animal.’

In the later Puranas, killing animals and eating meat were considered to be such heinous sins that neither prayers nor pilgrimages or bathing in holy rivers would absolve of it.

Although Sanatana Dharma did not require its adherents to be vegetarians, vegetarianism was recognized as a higher form of living, a belief that continues in contemporary Hinduism where vegetarians is considered essential for spiritualism. Around the sixth century BCE, two great religious preachers were born, who took the Upanishadic philosophy of good conduct and non-killing to the people in the common language:

Mahavira the Jina (Victor), and Gautama the Budha (wise).

The name traditionally used for Hinduism.

Both emphasized that ahimsa or non-violence was essential for a good life.

Mahavira (599-527 BCE) and Jainism

Mahavira (‘Great Hero’) was born as Prince Vardhamana, son of Siddhartha, Raja of Kundalpara, and Queen Trishala or Priyakarni, in 599 BCE. He abandoned home in 569 BCE to become a monk.

He attained enlightenment in 557 BCE and attained nirvana in 527 BCE. Queen Trishala had fourteen auspicious signs before she gave birth to Vardhamana, foretelling the advent of a great soul. These symbols included the elephant, bull, lion, and a pair of fish. Which denote great spirituality in Jainism.

Mahavira was not the founder of Jainism: he was the twenty-fourth and last

Tirthankara who revised the Jaina doctrines and established the central tenets of Jainism of Jainism.

Ahimsa paramo dharmah: ‘Ahimsa (non-violence) is the highest religion’ is a tenet basis to Jainism.

Violence is the root cause of all crises. Ethical discipline is important and sacred. To liberate oneself, Mahavira taught the importance of right faith, right knowledge and right conduct, which includes nonviolence (ahimsa)- not to cause harm to any living being.

Jainism is basically an ethico-metaphysical system. In comparison to Hinduism and Buddhism, ahimsa is the prime Tirtha means ford, a means of crossing over, and denotes a spiritual guide or philosophy which enables one to cross over the ocean of recurring births in this world. Kara means the one who makes, and the word Tirthankara means 'one who crosses the sacred ford', or a Jain saint. According to Jainism, ahimsa is not the mere causing of violence; it is the 'severance of any of the vitality in a mobile or immobile being'. Ahimsa, as viewed by Jainism, is very comprehensive and takes into consideration the welfare of all beings on earth. Keeping anything in confinement, without consideration for its freedom to exist or live, is bandhana (captivity). Rearing animals without adequate shelter, air, light, space and food is atichara (bad conduct). Keeping animals, including dairy animals, tied with ropes or chains throughout the day is violence. The simple prayer of the Jainas is 'Let the law of the Jaina give all happiness to all the living beings of the world. All beings desire to live. They like pleasure, hate pain, shun destruction, like to live long. To all, life is dear (Ramanujam 2006).

As the images of all the Tirthankaras are identical, their pedestals contain the animal emblem of each, which is the sole means of identification. They include

- Rishabhanath (Adinatha)- Bull
- Ajitanatha- Elephant
- Sambhavananatha- Horse □ Abhinandanatha- Monkey
- Sumatinatha- Curlew or red goose
- Padmaprabha- Lotus
- Suparashvanatha- Swastika
- Chandraprabha- Moon or crescent
- Suvidhinatha (Pushpadanta)- Crocodile
- Shitalanatha- Pipal tree
- Shreyamsunatha- Rhinoceros
- Vasupujya- Buffalo (female)
- Vimalanatha- Boar
- Anantanatha- Hawk or bear or porcupine
- Dharmanatha (Vajranatha)- Thunderbolt
- Shantinatha- Deer or tortoise
- Kunthunatha- Goat
- Aranatha- Fish
- Mallinatha- Water jar
- Munisuvrata – Tortoise
- Naminatha- Blue lotus or Ashoka tree
- Neminatha- Conch
- Parshvanatha- Snake
- Mahavira- Lion

Gautama Buddha (563-483 BCE)

The eightfold path taught by the Buddha emphasized the importance of abstaining from activities that bring harm to other living beings and non-killing. The Boddhisattva is one who is full of maitri (friendship) towards all animals, for the aspires to achieve Buddha-hood. Said the Buddha, 'As a mother would be very good towards her only child, her well-beloved son' so too you should be very good towards all creatures everywhere and to everyone' (Dwivedi, 1989) The Buddha himself sought refuge from his bickering disciples by living among the animals who werved him devotedly. The Jataka tales hold up the noble qualities of various animals as examples to emulate.

The Dhyani Buddhas and their vehicles are

- Amitabha- peacock
- Akshobhya- Elephant
- Raktayamari- Buffalo
- Vairochana- Lion or Dragon
- Marichi Ashokakanta- Pig
- Arya Marichi- Pig
- Marichi Pichuva- Chariot of Seven Pigs
- Dashabhujasita Marichi- Chariot of Seven Pigs
- Amoghasiddhi- Eagle
- Ratnasambhava- Lion

The aspects of Boddhisattava Manjushri with animal vehicles include

- Manjughosha- Lion
- Vagishvara- Lion
- Manjuvara- Lion
- Vadirata- Tiger

The aspects of Boddhisatta Avalokiteshvara with animal vehicles include

- Simhanada- Lion
- Hariharivahana- Lion and eagle □ Vajradharma- Peacock.”

Following animals are sacred to Hindus:-

- Blackbuck and Blue bull are considered as sacred.
- The antelope is also the vehicle of Soma. The antelope first appears as the vehicle of Vayu, the Wind, and the steed of the Maruts, the storm deities and the sons of Rudra and Diti.
- Jambavan the bear appears in the Ramayana.
- The boar is associated with rain and is believed to dig the earth before the onset of the monsoon.
- In the Rig Veda, the bull was the symbol of strength and power.
- The domestic cat is the vehicle of goddess Shashthi, a goddess of fertility who is popular in West Bengal and Maharashtra.
- The cow occupies a special place in Hindu culture. She symbolizes dharma, the Law of Righteousness.
- The crane is a symbol of long life.
- The crocodile is the symbol of prosperity.
- Even crow occupies a special place in Hindu religious rituals. It is usually identified with departed souls or ancestors.
- Cuckoo is a symbol of fertility, fun and good times.
- Donkey is the vehicle of Shitala Devi, the goddess who is invoked to ward off smallpox, even as her anger can bring it on.
- The dove is associated with Yama, the god of death.
- The Indian flying fox, better known as the fruit bat, is the only species of bat that is regarded as sacred.
- The vehicle or vahana of Agni is goat.
- The lion is a symbol of power and majesty. He is regarded as the king of the animals in literature and art. It is the symbol of royalty and royal power. The state emblem of contemporary India is adopted from the famous lion capital of Ashoka's Pillar at Sarnath.
- Mouse is the vehicle or vahana of Lord Ganesha.
- Peacock is the vehicle of Lord Kartikeya.
- Rooster is the symbol of the sun. □ Vishnu Durga rides the Lion.

88. Jainism is one of the oldest religion. It preaches “ahimsa”. Jains avoid even honey since it involves violence towards bees. According to Lord Mahavira, “To kill any living being amounts to killing one’s self. Compassion to others is compassion to one’s own self. Therefore, one should avoid violence like poison and thorn.”

89. Mahatma Gandhi has said, “The greatness of a nation and its moral progress can be judged by the way its animals are treated.”

90. His Holiness, the Dalai Lama has said, “Environmental damage is often gradual and not easily apparent, and by the time we become aware of it, it is generally too late.” His Holiness has also said, “Mothers in society are the first lamas, or gurus, of compassion; our spiritual lamas come later in life. Our mothers teach us the power and value of compassion right from our birth.”

91. In a well-researched article, “Personhood, Animals and the Law”, author Christine M. Korsgaard has discussed the concept of conferring status of personhood on the animals as under:-

“But it may be argued that those who make this proposal are ignoring something important about the concept of a person. It has generally been assumed that “personhood,”

whatever it is, is, or is based on, an attribute that is characteristic of human beings, and not of the other animals. In the philosophical tradition, the most common candidate for the attribute that establishes “personhood” is rationality, but understood in a specific sense. Rationality is sometimes loosely identified with the ability to choose intelligently between options or to solve problems by taking thought, but those are attributes that human beings arguably share with many other animals. The more specific sense of “rationality” refers to a normative capacity, a capacity to assess the grounds of our beliefs and actions, and to adjust them accordingly. On the side of action, for instance, it is the capacity to ask whether something that would potentially motivate you to perform a certain action is really a reason for doing that action – and then to be motivated to act in accordance with the answer that you get. Rationality, in this sense, is normative self-government, the capacity to be governed by thoughts about what you ought to do or to believe.

In fact, even some thinkers who would deny that rationality is the distinctive characteristic of humanity would still agree that normative selfgovernment is both definitive of personhood and distinctive of humanity. In the empiricist tradition, the tradition of Locke, Hume, and Hutcheson, it has been common to attribute to human beings, and human beings alone, a capacity to form so-called “second-order” attitudes – for instance, attitudes towards our own desires – that make them liable to normative assessment. Though I may desire to do something, I may also disapprove of that desire, and reject its influence over me. According to empiricists, second order attitudes are what make human beings subject to an “ought.” So many philosophers have agreed that it is in virtue of normative self-government that human beings count as persons in the legal and moral sense.

Certainly, if something along these lines is correct, it is natural to think that only human beings can have obligations. In order to have obligations, you need to be able to think about whether what you are doing is right, and to adjust your conduct accordingly. This requires a highly developed “theory of mind,” as ethologists call it. An animal has a theory of mind when the animal knows that animals (herself included) have mental attitudes, such as beliefs and desires. But in order to be rational in the sense I just described, an animal must not only know that she and other animals have mental attitudes. She must also know that her attitudes are connected in certain ways – for instance, that she is inclined to perform a certain action because she has a certain desire. To ask whether you have a good reason for doing what you propose to do, or whether it is right, is to think about and evaluate that connection, and it seems likely that only human beings can do that.

But it is a much harder question whether being rational in this sense is necessary for having rights, and that is the question most pressing from the point of view of those who seek legal protections for animals. The traditional distinction between persons and things groups the ability to have rights and the liability to having obligations together. One common view about why that should be so is that rights are grounded in some sort of agreement that is reciprocal: I agree to respect certain claims of yours, provided that you respect certain similar claims of mine. The view of society as based on a kind of social contract supports such a conception of rights. But in fact our laws do not merely protect those who as citizens are involved in making its laws: rather, they protect anyone who shares the interests that the laws were made to protect. So for instance, foreigners on our soil have rights not to be robbed or murdered, regardless of the fact that they are not parties to our own social contract. The laws that we make against murder and robbery are intended to protect certain human interests that foreigners share with citizens, and that is sufficient to give them the relevant rights. Of course, foreigners on our soil can also be made to conform to our laws – reciprocity can be required of them. But when we speak of universal human rights, we speak of interests that are shared by every human being and that we think ought to be protected, not merely of the interests protected under some actual social contract. So it makes sense to raise the question whether the other animals share the kinds of interests that our laws – either legal or moral – are meant to protect.

What is distinctive of animal life is the way that it functions, which is by means of perception and action. Through perception, an animal forms some sort of representation of her environment. As a result of instinct, learning, and in the case of some animals, intelligent thought, objects in the animal’s environment are represented as desirable or aversive in specific ways: as something to eat, or to flee from, or to mate with, or to take care of. Or some sort of practical representation may arise from within, as when you get hungry and find yourself irresistibly thinking about a sandwich. The animal then acts in accordance with these practical representations. The practical representations serve, though very imperfectly of course, to enable an animal to get what is good for her and avoid what is bad for her. In other words, when animals evolved, a kind of entity came into existence which actually experiences the goodness or badness of its own condition, or at least of some aspects of its own condition, in a positive or negative way – as something desirable or aversive. An animal experiences its own good or ill.

So the way in which things are good or bad for animals is distinctive in that it is both non-derivative and capable of being experienced. We can describe these things by saying that animals have interests, or that there are facts about their welfare. Although our own welfare is more complex than that of the other animals, it is because we are animals, not because we are human beings or persons, that we ourselves have interests or a welfare. Animal rights advocates argue that having a welfare or interests is sufficient to ground rights. We should ask on what basis we claim rights for ourselves, and demand respect for them from each other, if it is not that we ourselves are beings with interests or a welfare?

Well, here is one possible answer. Immanuel Kant, who made the concept of a person central to his ethics, argued that a person is an end in himself, to be valued and respected for his own sake, and never to be used merely as a means. Kant claimed that the basis of that value is the capacity for rational choice, or autonomy. He also claimed that it is because of our autonomy that human beings have rights. Because human beings are rational beings, Kant argued, human beings, unlike the other animals, are able to choose our own way of life. We reflect about what counts as a good life, decide the question for ourselves, and live accordingly. In the liberal tradition, with its strong emphasis on toleration, and its antagonism to paternalism, this kind of autonomy has often been regarded as the basis of rights. We have the basic rights of personal liberty, liberty of conscience, and freedom of speech and association, because each of us has the right to determine for himself or herself what counts as a worthwhile life, and to live that life, so long as the way we act is consistent with a like right for everyone else. Because the other animals do not choose their own way of life, they do not have rights grounded in this kind of autonomy.

But this response is not wholly satisfactory. I think we do have specifically human rights grounded in our autonomy. But the trouble with leaving it at that, is that what makes it important to us that our rights should be respected is not just that we value our autonomy. It is also that we value, to speak almost circularly, our welfare, our interests, or our good. Rights grounded in autonomy may often give us an indirect way to protect what we regard as our good. If someone cannot interfere with your freedom of speech, for example, he cannot interfere with your saying your prayers. It is in part because you care about saying your prayers, and not just because you care about your autonomy, that you care about your right to say them. This is where it becomes clear that there is a problem with dividing the world into persons and things. The other animals, who do not have autonomy, are left with no legal means of protecting their interests or their welfare. If they have no rights, they are not persons, and that leaves them to be things. But animals are not mere things, since they are beings with interests and lives of their own. Insofar as they come within the purview of human laws at all, it is because they are a subject population, and the only way to afford any effective protection for their welfare is through human laws.

It is worth emphasizing that last thought. The idea of animal rights sounds silly to some people, because it seems to suggest an insane desire to moralize nature: to imply that we should declare predation to be murder and to make it illegal, or perhaps to turn battles over territory into property disputes that get settled in court. But an advocate of animal rights need not be in favor of our trying to protect nonhuman animals from each other. Rather, the point is to protect them from us, from human beings. The reason only the law can do that effectively is because in a sense, the law is the reason why many of the other animals are so completely at our mercy. What I mean is this: it is not just because we are individually smarter than the other animals that human beings are able to do as we will with them. It is because human beings are so cooperative and therefore so organized. And the way that we organize ourselves is by making laws, which set the terms of our interactions and so unite us into an effective whole. If the law says it is permissible for a person to inflict torments on an animal in order to test a product, for instance, then there is nothing anyone can do to protect that animal. So it is one of those cases – and there are certainly others – in which the only thing that can afford protection against the power of the law is the law itself.”

92. Similarly, Jane Nosworthy, in the article “The Koko Dilemma: A Challenge to Legal Personality”, has discussed the entire concept of conferring with the personhood/personality on the animals as under:-

The concept of legal personality has developed to embrace all human beings, as well as a variety of non-human entities. Can this concept evolve further in response to societal change? Can legal personality be extended to animals? In the author's view, there is nothing inherent in the concept of legal personality which prevents its extension to animals. The author considers the past and present legal status of animals, and the possibility of altering animals' current status as legal ‘nonpersons’, contending that not only is such change possible, but would be beneficial.

Imagine if you will...

This is a description of a remarkable being.¹ This being understands spoken English and communicates in sign language, employing a vocabulary in excess of one thousand words. She is also learning to read. She has been observed making faces at herself in front of a mirror. If she has misbehaved, she has been known to lie in order to avoid the consequences of her behaviour. She paints and draws, and enjoys imaginary play, alone or with others. She laughs at jokes. Sometimes, if hurt or frightened or left alone, she cries or screams. She can talk about her feelings and about what happens when one dies. She grieves for her cat, who died in a car accident.

This being's name is Koko, and she is a gorilla. Clearly, she is not a human being. Could she be a person?

Bioethicist Peter Singer is among those who would argue that Koko is as much a person as she is a gorilla. This paper explores some issues related to the extension of personhood to include nonhuman animals like Koko. In particular, it focuses on the question of whether there is anything inherent in the concept of legal personality which prevents its extension to animals. Consideration of this question

requires examining what it means to be a 'person', and to possess legal personality. This paper considers the current legal status of nonhuman animals and whether their status as legal 'nonpersons' can be altered - and, if it can, whether it is desirable to confer the status of 'person' upon nonhuman animals. The central contention of this paper is that such change is possible and would be beneficial.

Who - or what - is a person?

At the outset, it is necessary to consider what we mean by our use of the term 'person'. In particular, we must examine the meaning of the term in legal parlance in order to understand what it means to say that something 'is a legal person' or 'has legal personality'. The dictionary definition of 'person' exposes the variety of meanings which the word potentially may bear. Both the Macquarie Dictionary and the Concise Oxford Dictionary begin with a descriptive definition of 'person' as an individual human being. In common usage we assume, unless told otherwise, that 'person' is employed as a synonym for 'human being'. The corollary of our instinctive identification of 'person' with 'human' is that we tend to view the terms 'person' and 'animal' as representing mutually exclusive categories. This aspect of human thought is highlighted by the Macquarie Dictionary's further definition of 'person' as "a human being as distinguished from an animal or thing". We see ourselves primarily as human beings, rather than as human animals. Thus, although we may be aware that, strictly speaking, it is inaccurate to define 'person' (in the sense of 'human') in contradistinction to 'animal', innate anthropocentrism probably has a good deal more to do with our thinking in this regard than does scientific accuracy. On the whole, we are untroubled by our assumption that 'person' is the equivalent of 'human', and the opposite of 'animal'. Indeed, we may well be unaware that we hold this assumption until we are challenged by the suggestion that an 'animal' might also be a 'person'. Since our thinking is predicated on the perception that those terms are mutually exclusive, our immediate reaction to this suggestion is likely to be negative. Yet if we consider some of the other potential meanings of 'person', we find that the term has meanings beyond mere synonymy with 'human being'. We are offered a 'philosophical' definition of 'person' as "a self-conscious or rational being". Additionally, the etymology of the word is reflected in definitions of 'person' as a character, role or guise assumed either in a play or story, or in real life. 'Person' derives from the Latin *persona*, which originally described the mask worn by an actor, appropriate to the role played by that actor on stage in the ancient theatre. This was the aspect of the term 'person' which was carried over into the legal world and its concept of the 'legal person'. In the words of Ernest Barker, "just as the parts in a play are created and assigned by the dramatists, so ... personae in law are created and assigned by similar agencies" in the state. It is important to establish what is meant by the use of the term 'legal person'. Although it has no fixed definition, it is commonly described in terms of an entity possessing certain legal rights and freedoms, and bearing certain legal duties and obligations. In this vein, the CCH Macquarie Dictionary of Law defines the legal person as "a body with individual legal powers, privileges, rights, duties or liabilities, whether a natural person (a human being) or an artificial person (eg a corporation or an accounting entity)". Similarly, J. A. C. Thomas posits that "[i]n modern legal systems, the term 'person' denotes an entity capable of bearing rights and duties". Alexander Nekam suggests that 'legal person' is a classificatory term used to designate "anything to which rights are attributed in a legal system." Thus personality, in a legal sense, may be described as "the quality of being a possible subject of rights and duties". It is evident that jurists generally view the possession of legal rights as a key constitutive element of legal personality. Although some would argue that "there is no generally accepted conception of what it is to have a 'legal right'", Professor Christopher Stone has attempted to delineate what it means to be the holder of legal rights, and hence to possess legal personality. Stone suggests that "an entity cannot be said to hold a legal right unless and until some public authoritative body is prepared to give some amount of review to actions that are colorably inconsistent with that 'right'." Were this the sole threshold criterion, however, we might say that "all public buildings ... have legal rights". Thus Stone argues that three additional criteria must be satisfied in order for something to be said to be a 'holder of legal rights'. It is necessary that "the thing can institute legal actions at its behest; that "in determining the granting of legal relief, the court must take injury to it into account"; and that "relief must run to the benefit of it. Stone's 'additional criteria' may be seen as the procedural requirements of legal personality. They do not provide us with any insight into which particular rights and duties are possessed by a particular legal person, nor do they expose the substance of those rights and duties. Those matters are determined by the nature of the particular legal person and its concomitant capacities. Rather, satisfaction of the criteria offers an entity basic legal existence, thus enabling it to enter into legal relations with other legal persons and providing it with a measure of visibility in the eyes of the law. In this way, legal personality "[goes] towards making a thing count jurally - to have a legally recognised worth and dignity in its own right, and not merely to serve as a means to benefit [the contemporary group of rights-holders]". To Stone, this is the fundamental benefit of conferring legal personality upon an entity. We will return to this powerful argument in due course.]

"Sentimental Property" : The current position of nonhuman animals in law We might ponder for a moment whether Orwell's enigmatic statement that "[a]ll animals are equal, but some animals are more equal than others" is not more or less apt to describe the differential treatment accorded to human and nonhuman animals in our legal system. Human and nonhuman animals are clearly not equal. While all human animals are legal persons, nonhuman animals fall into the category of property. Since our system regards legal persons as the only entities capable of possessing rights, nonhuman animals can never possess rights in the manner envisaged by Professor Stone. Instead, they have an extremely limited legal existence as the objects of rights held by legal persons. Nonetheless, animals appear to fall into an unusual category of property. An American judge, for example, commented that a pet animal "is not just a thing but occupies a special place somewhere in between a person and a piece of personal property." Another judge described pet animals as a form of "sentimental property". Such comments reflect our understandable discomfort with treating living animals, especially those whom we observe

exhibiting 'humanlike* qualities or to whom we have an emotional attachment, in the same way as we would treat other forms of property. We are reminded of the indirectness of this protection by Dr Philip Jamieson's analysis of Australian animal welfare legislation in terms of Professor Stone's criteria for the possession of legal rights. In regard to standing, Jamieson notes that animal welfare legislation does not enable animals to institute legal proceedings at their own behest. Since the legislation creates offences of a criminal nature, it is concerned predominantly with the punishment of the offending legal person and with "protecting the community from similar transgressions by the wrongdoer in the future". The court is unlikely to consider the animal's injury as an important issue in itself, except in the context of determining the gravity of punishment to be imposed on the wrongdoer. Finally, the legislation does not provide for relief running to the animal's benefit. The statutory 'remedies' relate only to the potential imposition of fines and imprisonment upon the legal persons convicted of an offence under the statute. According to Esther Cohen, the mediaeval jurists did not purport to try animals on the basis that they possessed reason, understanding or malicious intent. In this sense, animals were equated with "perpetual minors". Yet it appears that in passing judgment on animal culprits, the mediaeval courts frequently resorted to anthropomorphic language imputing malicious intent to the convicted animal, as though the punishment required some sort of justification.³⁶ Thus a sow was said, for example, to have been "taken en fragrant delit, having committed and perpetrated ... murder and homicide".

Mediaeval jurists believed that the right of humans to try animals stemmed from the superiority and 'legal lordship' of humankind over nature. Since animals were subject to humankind, the jurists reasoned that they must also be subject to the human judicial system. Further, mediaeval jurists appear to have felt that if animals were subject to human justice, they were as deserving as humans of the full measure of justice.

The apparent logic of this belief had some odd, and sometimes brutal, ramifications. Evans reports that animals were sometimes "put to the rack to extort confession" much like a human criminal, not because the judges expected that a confession would be forthcoming, but because they wished to observe the forms prescribed by the law, and "to set in motion the whole machinery of justice before pronouncing judgment".

However, mediaeval jurists' desire to accord justice to accused animals also meant that the secular trials "followed the inquisitorial procedure strictly according to human rules". In a case of homicide, for example, "the crown or town authorities prosecuted the case, presenting the complaint and summoning the witnesses." Accused animals, though rarely (if ever) brought into court, were even confined in the same prisons as human defendants and subjected to similar forms of capital punishment, including hanging, burning or burial of the 'culprit' alive.

Modern eyes are quick to criticise such mediaeval practices and to attribute them to "the common superstition of the age". Our abhorrence of the brutality of mediaeval criminal law and procedure is understandable. Nonetheless, it is arguable that there is a sense of fairness in trying an animal for a so-called crime, such as the infliction of injury upon a human being, which our modern methods of dealing with 'dangerous' animals appear to lack. Although animals were still put to death summarily on occasion in mediaeval times, such behaviour was generally disapproved of by mediaeval jurists.

The concept of trying an animal that injures humans or other animals before 'putting it down' in order to protect the community is foreign to our apparently enlightened society. This is not to suggest that mediaeval law provided the epitome of animal justice, for there is an obvious inequity in its treatment of animals as duty-bearing, "sentient, punishable beings" for the purposes of the criminal law, and as rightless chattels in every other respect.⁴⁸ Rather, the mediaeval example forces us to question the justice of our modern system's treatment of animals, and also serves to highlight the possibility of regarding animals as more than mere property. For if the mediaeval jurists could treat animals essentially as persons with a very limited capacity (limited to the ability to perform legally punishable acts)⁴⁹, is there any reason why we cannot treat them as legal persons?

Is there a legal barrier to the extension of legal personality to animals?

It has taken centuries to reach the point where the law considers all human beings to be legal persons. As Professor Stone points out, "persons we presently regard as the natural holders of at least some rights" previously had none. In colourful style, Stone also comments that:

"We have been making persons of children although they were not, in law, always so. And we have done the same, albeit imperfectly some would say, with prisoners, aliens, women (especially of the married variety), the insane, Blacks, foetuses, and Indians."

Even the attribution of rights to individual human beings is a relatively recent development in the history of the law. In ancient times, the family or a similar social group was the usual centre of rights. As recognition of the individual as a subject of rights grew, legal personality was restricted for a long time to individuals occupying a particular social position (for example, the paterfamilias as head of the family in Roman times), or individuals possessing other particular attributes. The history of the gradual extension of the concept of legal personality to include all human beings, as well as a variety of nonhuman entities like corporations, reminds us that the concept of legal personality is a legal fiction, in the sense that it is an artificial construct of the law. The law can "choose which persons to create or recognise" just as it can choose "which rights or other relations to create or at least recognise". Thus, Nekam asserts that anything "can become a subject – a potential center - of rights, whether a plant or an animal, a human being or an imagined spirit". What is required for an entity to become the subject of rights is for the community, and hence the community's lawmakers, to choose to regard it as such. The corollary of this is that if the community does not choose to regard an entity as a subject of rights, it will not become a subject of rights, "whether human being or anything else."

Legal persons are created as part of the "artificial world" of legal concepts, to serve certain purposes. It has been said, for example, that legal persons are "mathematical creations" devised to simplify legal processes. Much as mathematicians employ algebraic symbols to simplify mathematical calculations,

the concept of the legal person provides the jurist with a basic unit or entity for use in the creation of legal relationships. Beyond this, however, it is suggested that beings or objects are endowed with legal personality as a form of community recognition that the entity in question is “a unit [with] interests which need and deserve social protection”. Thus, the key to the concept of legal personality may, as Nekam argues, be seen to lie in the question of whether the community values a particular being or object enough to make of it a subject of rights - that is, a legal person.

It is clear that Nekam does not predicate the conferral of legal personality upon a being or object on the possession of human personality by that being or object. The legal person is “for the logic of the system ... just as much a pure ‘concept’ as ‘one’ in arithmetic” and “just as independent from a human being as one is from an ‘apple’”. Legal personality “is not the same as human personality”. Nekam reports that in modern legal systems, legal rights have been accorded to the dead, and even to “spirits”, “gods”, “devils” and “idols”.

In the modern context, corporations are the prime example of a nonhuman legal person. Although the legal treatment of corporations frequently is coloured by anthropomorphic overtones, it is easier to conceptualise the artificial nature of legal personality in the case of a corporation, than in the case of a human legal person. The routine use of the term “artificial person” to describe a corporation is a constant reminder that the corporation is the offspring of legal creativity. However, our use of the term “natural person” in relation to human legal persons tends to serve as a constant, erroneous suggestion that legal personality is “a characteristic inherent in the nature of [human beings]”. It should be remembered that even the application of the word ‘person’ to human beings “was at first metaphorical”, for ‘person’ derives from *persona* - a word which did not originally mean ‘human’.

Bearing in mind that we have established there is no necessary requirement that a legal person possess human personality, we should note that there is one sense in which there is always a “necessary connection between every right established [which, in order to exist, must be attached to a legal person] and some human being”. As Nekam points out, every right needs “somebody to dispose of it” and “every interest to be protected” requires “somebody to look after it”. These functions are performed by the “administrator” of the rights and interests, who must have “will” in order to carry out these functions. Nekam concludes that since only humans have “will”, an administrator must always be a human being. Thus, since the rights and interests of every legal person require an administrator to exercise and protect them, and since, according to Nekam, only a human can become an administrator, there is always a certain connection between legal persons and human beings.

However, it is only coincidental that the concepts of the beneficiary of rights and the administrator of those rights “overlap” in the case of the “normal adult person” (presumably by this Nekam means the legal person with full capacity, who is typically an adult human being). If the distinction between the beneficiary of rights and the administrator of that beneficiary’s rights is not carefully maintained, we will find ourselves confusing the two, and thus assuming that because the administrator of rights must be a human being, able to interact with the courts and the legal system, then the beneficiary of the rights must automatically be human also.

The question of whether or not new legal persons can be created thus appears a moot point. It seems, as Lawson argues, that there is probably no “limit in logic ... to the number of legal persons that may be interpolated at any point in human relations”. In other words, there is nothing inherent in the concept of legal personality which prevents its extension to animals.

The real question relates to whether an entity will be considered by the community and its lawmakers to be of such social importance that it deserves or needs legal protection in the form of the conferral of legal personality. Nekam suggests that this decision is based upon the community’s “emotional valuation” of the entity’s need for legal protection. This is essentially what Lawson refers to as the policy factor inherent in the question of whether new legal persons should be created.

The importance of the policy factor in relation to the extension of legal personality to animals must not be underestimated. Lawson suggests that the legislature probably needs to be involved in the extension of legal personality to new entities. This seems likely to be the case in regard to animals. Although on the whole judges appear more willing than ever before to engage in creative interpretation of the law, they are unlikely to be keen to forge too far ahead of the legislature in regard to the extension of rights to animals, which would no doubt be seen as a contentious social issue best dealt with by the legislature. Unfortunately, seeking legislative conferral of personality on animals is effectively a Herculean challenge, as legislative measures frequently lag behind societal changes. Gary Francione makes the cynical, yet pragmatic, point that when “an economic system finds it advantageous”, as with the extension of legal personality to corporations, “its notion of ‘personhood’ can become quite elastic”. Conversely, legislative change can become “enmired indefinitely” if opposed by powerful vested interests. Those with direct vested interests in maintaining animals’ current legal status as property might range from multi-national pharmaceutical companies who rely on a supply of animals to use as subjects in drug development and testing, to farmers who sell eggs produced by ‘battery hens’.

Yet the failure of an attempt to legislate for the “enfranchisement of animals” might not be solely attributable to the opposition of such vested interests. In spite of the efforts of animal rights’ activists to raise public awareness of animal rights’ issues, it is conceivable that public interest in the issue of the extension of legal personality to animals would be minimal. It is equally conceivable that the community might actively oppose legislative action to make animals ‘persons’. Such opposition would probably be fatal to the animal cause, for as Bernard Rollin notes, legislative change in favour of animal rights has little chance of success unless “public opinion can be galvanised on its behalf”. For this reason, it seems that we must play upon human emotions in order to obtain the community’s support for the legislative conferral of legal personality on animals. The general disapproval of anthropomorphism expressed by many of those engaged in philosophical discussion of animal rights may need to be tempered by pragmatism in order to maximise community support for the extension of

personality to animals. Human weakness for animals who exhibit 'human-like' behaviour, such as the use of language by apes, can be used to animal advantage by arousing empathy in human observers. Peter Singer appears to be attempting to exploit this facet of human nature by employing John Locke's definition of a person in his argument in favour of the extension of personhood to include nonhuman animals. Locke defined a 'person' as a "thinking intelligent being that has reason and reflection and can consider itself as itself, the same thinking thing, in different times and places". The intelligent, self-aware, rational being embodied in Locke's definition bears a striking resemblance to the legal person of full capacity in our legal system. This person is typically a 'normal' human adult, whom the law characterises as an "intellectually sophisticated, autonomous [agent]". Singer argues that the scientific study of animals provides plenty of evidence to suggest that animals like Koko fit Locke's definition of a 'person'. He claims that the "evidence for personhood" is currently most conclusive for the great apes—gorillas, chimpanzees and orangutans. These animals' (potential) use of language appears to form an integral part of the "evidence for personhood", for their ability to communicate using sign language enables researchers to attempt to discern, for example, the degree to which they may be said to be self-aware. Our present inability to communicate effectively beyond the level of intuition with other animals seems to prevent the conclusive formulation of "evidence for personhood" in relation to them. Nonetheless, Singer argues that "whales, dolphins, elephants, monkeys, dogs, pigs and other animals may eventually also be shown to be aware of their own existence over time and capable of reasoning". In a sense, this assertion begs the question of whether a being must demonstrate self-awareness, or self-consciousness, and the capacity to reason in order to be eligible for the attribution of legal personality. As noted above, the typical bearer of the full complement of legal rights and duties in our system is a human adult endowed with rationality, sanity and autonomy. Clearly, however, there are far more legal persons in existence than there are so-called 'normal human adults' in the community. Apart from nonhuman legal entities like corporations, we must fit into the personality equation, among others, fetuses, children, insane adults, adults suffering from other forms of mental illness, intellectually disabled humans and humans in comas. The fact that none of these 'persons' possess the same degree of rationality and autonomy as the characteristic (some would say caricatured) legal person discussed above might be an overwhelming problem, were it not for the variability of legal capacity. It is not a precondition of legal personality that every legal entity possess a 'complete set' of legal rights and obligations. Within the human community of legal individuals, different individuals possess different rights and bear different obligations - yet all remain legal persons. Children, for example, have limited rights and obligations because they are not thought capable of exercising the same level of reasoning and understanding assumed of normal adults. Thus the concept of the legal entity is a relative one. Legal personality does not require that an entity "have certain minimum rights attributed to it". It is not an 'all or nothing' approach. We can attribute to a legal entity as little as a single right or obligation, or a wide variety of rights and obligations. Arguing that animals should become legal persons, and thus have legal rights, does not equate to a demand that animals should possess every conceivable legal right, or even that animals should have the same rights as human beings. Nor is it necessary that all animals possess identical rights. Clearly, the conferral of legal personality on animals would necessitate a careful consideration of which rights and/or obligations would be appropriate to extend to particular animals. It is equally clear, however, that although there is an advantage inherent in being the legal person of full capacity, because this person's interests are those best served by our modern legal system, that advantage does not translate into a requirement that all legal persons possess, or be capable of possessing, the full complement of legal rights and duties. Therefore, it seems that Singer's use of the Lockean model of the person, with its focus on reason, intelligence and self-awareness, is in fact a double-edged sword. It helps make his argument as palatable as possible for his human audience by emphasising the fact that animals may possess, though to a lesser degree than humans, qualities such as intelligence, rationality and self-awareness - qualities which we commonly view as 'human' qualities. The inherent danger in Singer's focus on such attributes is that he sets an unnecessarily high standard for admission to the community of persons, which could impede the inclusion of animals other than the great apes. In response to this potential criticism, Singer has argued that reformers "can only start from a given situation, and work from there", as the alteration of the status quo can only be brought about in stages, with each small progression functioning as a point of transition to the next stage. Yet without denying the pragmatism of this argument, it is disturbing to note that a consistent application of Singer's standard could require the withdrawal of legal personality from a number of human persons, such as anencephalic babies, or those who are severely intellectually disabled, or in an irreversible coma. Singer rightly points to the illogicality of including such humans in the community of legal persons, while excluding animals "with equal or superior characteristics and capacities". However, attempting to resolve this logical inconsistency by adopting criteria for personhood based on Locke's definition of the person would constitute a serious assault on the progress made in relation to the human rights of humans like those mentioned above. It is suggested that this is an unacceptable price to pay, in both moral and political terms, for the extension of legal personality to animals. Arguably it would amount to the replacement of the bias inherent in the concept of legal personality which favours members of the species *Homo sapiens*, with an intellectual bias in favour of beings possessing qualities such as intelligence, rationality and self-awareness. Yet it may not be necessary to pay this price, for, strictly speaking, the law does not impose Singer's standard upon those to whom it extends legal personality. The concept of legal personality makes allowances for persons possessing varying degrees of intelligence, rationality and self-awareness through the gradation of capacity. It may be appropriate for animal legal persons to have similar capacity to that of young children, including limitations on criminal liability and contractual capacity. It is important that they are able to initiate legal proceedings to restrain or to seek compensation for the infringement of their rights. No doubt the substantive content of animals' new legal rights would be the subject of extensive debate. It suffices to note here that those

rights are likely to be limited to basic rights such as the right to freedom from cruel treatment and the infliction of torture or unnecessary suffering, and potentially, though not necessarily, the right to life.

Arguments for the extension of legal personality to animals

We have established that there is nothing inherent in the concept of legal personality preventing its extension to animals. We will see that there are also good reasons why we should extend legal personality to animals.

Central to this argument is Stone's assertion that legal personality plays an important part in "making a thing count in the eyes of the law. The conferral of legal personality upon rightless objects or beings carries with it legal recognition that those objects or beings have "worth and dignity" in their own right". Until we attribute personality to a rightless entity, we are likely to be unable to conceive of it as "anything but a thing for the use of 'us' - those who are holding rights at the time." Thus it is suggested that the inclusion of animals in the community of legal persons will dignify them by forcing humans to see and value animals for themselves, rather than seeing them simply as the object of property rights, or as something for humans to 'use and abuse'.

The paradox is that we may be loathe to extend legal personality to animals because we find it difficult to value animals for what they are - but we may continue to have difficulty seeing animals' intrinsic worth and dignity "until we can bring ourselves to give [them] 'rights'". As Stone observes, extending rights to new entities always appears "unthinkable" until the change is actually effected, as we tend to suppose "the rightlessness of rightless 'things' to be a decree of Nature, not a legal convention acting in support of some status quo."

Attempting to alter the status quo is never easy. Yet persistence is of the essence, for as Singer highlights, the term 'person' is far from being a "mere descriptive label". In fact, it "carries with it a certain moral standing" which is needed to force us to think of animals as deserving of the basic rights we take for granted. The law's attitude towards animals could be said to amount to a policy statement about human society's regard, or disregard, for animals. Thus were the law to bring animals in 'out of the cold*', where they languish as rightless beings, the objects of rights held by legal persons, and draw them under the umbrella of legal personality, it would ideally encourage the development of more respectful and less exploitative social attitudes towards animals.

The shelter of the legal umbrella would also provide more effective protection of animal interests than is available under current animal welfare law. As legal persons, animals could be recognised as parties to legal actions, because they would have the independent standing that they currently lack. There is no conceptual problem with the fact that animals' inability to speak means that they would require human legal persons to act as their representatives and to interact with the courts and the legal system on their behalf. As I noted above, it is quite acceptable for a legal person's rights and interests to be exercised and protected by another legal person acting as the "administrator" of those rights. Infants are a prime example of legal persons whose rights and interests must be administered by another legal person, usually a parent or an appointed guardian.

In practical terms, a human legal person of full capacity, concerned with the wellbeing of the animal and willing to represent the animal on a legal level, could be appointed by the court as the guardian and legal representative of that animal. Appropriate guardians might include animal welfare bodies, like the RSPCA, or individuals with a particular interest in, or familiarity with, the animal concerned. The guardian could represent the interests of an individual animal or a group of animals. For example, guardians might represent the rights of grain-destroying cockatoos to a humane death, rather than cruel clubbing, the rights of circus animals to freedom from suffering caused by unnatural captivity, or the rights of marine animals and birds to prevent the indiscriminate killing caused by the use of nets in long-line trawling.

The advantage of this approach is that it would require a court to take the animals' interests directly into account as parties to the legal action, rather than as the object of rights. This is not to intimate that the animals' interests must prevail over those of other legal persons. Rather, this approach would require the court explicitly to acknowledge the animals' interests, as it must acknowledge those of other legal persons party to the proceedings, and weigh their interest against those of the other parties.

This scenario is not far-fetched. The community is already vocal in its disapproval of practices such as long-line trawling, which results in the unnecessary deaths of large numbers of marine animals in the trawler's nets. The prospect that society will demand that the next step be taken may not be far away.

On balance, we must consider whether making animals 'legal entities', and hence offering them legal rights, really will procure better protection for animal interests. Steve Sapontzis argues that although "rights" constitute our "most powerful moral and legal concept", they are best suited to "the capacities and conditions of intellectually sophisticated agents" - that is, to the legal person of full capacity. He suggests that we should employ "concepts suited to the capacities and conditions" of animals, rather than "automatically demanding legal rights for nonhuman animals to (or against) those things which (can, will, would) have an impact on their basic interests". This appears to include strengthening the position of interests which do not amount to legal rights when those interests come into conflict with legal rights, for example, by not allowing the legal rights automatically to override the protected interests. The argument appears promising, but the fact that Sapontzis offers no concrete examples of what he calls, in tantalising fashion, "concepts suited to the capacities and conditions" of animals, suggests that they are difficult to formulate. For now, at least, the extension of legal personality to animals remains the best option for greater protection of animal interests. Some final thoughts

The concept of legal personality, as we have seen, is a construct of the law. As such, it can be extended to animals, or to other objects or beings, if the law so chooses. Ultimately, the question of whether legal personality will be bestowed on animals depends on whether human beings are prepared to acknowledge that animals need and deserve full legal protection for their rights and interests. The

multiplicity of animal beings with whom we share our world deserve to be treated not as means to human ends, but as ends in themselves. Having arrogated to ourselves complete power over our animal kin, their liberation rests in our hands.

93. A corporation is a legal entity as per the *Corpus Juris Secundum*, Volume 18. It is stated as under:-

“A corporation is a legal entity, separate and distinct from its shareholders, officers, and directors, and generally, from all other corporations with which it may be affiliated. It possesses a legal identity separate and distinct from its owners, regardless of whether such owner is another corporation, a group of individuals, or a single individual. The doctrine of corporate entity is clearly one of substance and vitality and, as discussed *infra* § 9, is to be ignored with caution only when circumstances clearly justify it. Indeed, it has been said that one of the purposes of incorporating a business is to create a separate legal and financial entity.

A corporation, as an independent legal entity, conducts business in its own right and on its own credit, through its agents and employees. It is unaffected by the personal rights, obligations, and transactions of its stockholders, either before or after incorporations. Its independent identity affords it a perpetual existence, unaffected by the death or incapacity of its owners or members.

Debts and obligations of the corporations are generally chargeable to the corporation as a separate entity rather than individually against the shareholders, officers or directors. Legal title and ownership of corporate property is vested in the corporation and the corporation is generally accorded a separate identity for tax purposes.

Since the legal rights of the corporation are entirely, distinct from those of its officers or shareholders the assertion of legal rights and claims in a lawsuit must be by the corporation rather than its officers or shareholders.”

94. The obligations of human species towards animals are discussed in *Corpus Juris Secundum*, as under:-

“In *Corpus Juris Secundum*, Volume III, page 1087, it is stated “that the wild animals at large within its borders are owned by the State in its sovereign as distinguished from its proprietary capacity and neither such animals nor any part thereof are subject to private ownership except insofar as the State may choose to make them so.”

In *American Jurisprudence*, Volume II, page 694, the following passage occurs “in the United States the ownership of wild animals and fish not reduced to actual possession by private person is in the People of the State in their collective sovereign capacity, or in the State as representing all the people.”

95. In 292 U.S. 435 (1934), in the case of “*New Colonial Ice Co. vs. Helvering, Commissioner of Internal Revenue*”, learned Judge of the Hon’ble Supreme Court of the United States has held as under:-

“As a general rule a corporation and its stockholders are deemed separate entities and this is true in respect of tax problems. Of course, the rule is subject to the qualification that the separate identity may be disregarded in exceptional situations where it otherwise would present an obstacle to the due protection or enforcement of public or private rights. But in this case we find no such exceptional situation- nothing taking it out of the general rule. On the contrary, we think it a typical case for the application of that rule.”

96. It is the fundamental duty of all the citizens under Article 51-A of the Constitution of India to have compassion for living creatures. It should be the endeavour of the State under Article 48 of the Constitution to organize agriculture and animal husbandry on modern and scientific lines

and take steps for preserving and improving the breeds. The State Government is required to protect and improve the environment and to safeguard the forests and wild life of the counter as per Article 48-A of the

Constitution of India.

97. The maximum weight prescribed under Rules 3 and 4 of the Prevention of Cruelty to Draught & Pack Animals Rules, 1965 is prima facie excessive. In India, by and large, the weather remains dry. It causes immense stress to the animals to drive vehicles by carrying maximum load, as prescribed under the Rules, 1965 in dry conditions. The need of the hour is to have the expert's opinion whether the maximum load prescribed under Rules 3 and 4 of Rules, 1965 is reasonable or not.

98. Their Lordships of the Hon'ble Supreme Court in "A. Nagaraja's" case have held that Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animals life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. "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 or dignity. All the animals have honour and dignity. Every species has an inherent right to live and are required to be protected by law. The rights and privacy of animals are to be respected and protected from unlawful attacks. Their Lordships have evolved the term "species' best interest." The Corporations, Hindu idols, holy scriptures, rivers have been declared legal entities and thus, in order to protect and promote greater welfare of animals including avian and aquatic, animals are required to be conferred with the status of legal entity/ legal person.

The animals should be healthy, comfortable, wellnourished, safe, able to express innate behavior without pain, fear and distress. They are entitled to justice.

99. Accordingly, the writ petition is disposed of by issuing the following mandatory directions:-

- A. The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Uttarakhand are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.
- B. The Nagar Panchayat, Banbasa is directed to regulate the plying of horse carts/tongas from Banbasa to Nepal by issuing licenses to the owners by charging reasonable fee within one month from today.
- C. The State Government is directed to ensure the medical examination of all the animals including horses entering from Nepal to India as well as horses moving from Indian border to Nepal to check infectious and contagious diseases by setting the veterinary check-posts on the border.
- D. The worthy Vice Chancellor of the G. B. Pant University of Agriculture and Technology is directed to constitute a Committee presided by the HOD, Veterinary Sciences and the two senior most professors to undertake the research/study to find out whether the maximum weight prescribed under Rules 3 and 4 of the Prevention of Cruelty to Draught and Pack Animals Rules, 1965 is reasonable or not, within twelve weeks from today. The Committee shall submit the report to the Vice Chancellor of the University. The Vice Chancellor shall send the same to the Chief Secretary to the State of Uttarakhand for making suitable amendment in Rules 3 and 4 of the Rules, 1965 and till then, the State Government is directed to ensure that the draught animals do not carry load while driving vehicles more than prescribed as under:

1

2

3

Small bullock or Two-wheeled vehicle- 750 kilograms small buffalo

(a) if fitted with ball bearings

(b) if fitted with pneumatic 500 kilograms tyres

- (c) if not fitted with 350 kilograms
pneumatic tyres
2. Medium bullock or Two-wheeled vehicle- 1000
medium buffalo kilograms
- (a) if fitted with ball bearings
- (b) if fitted with pneumatic 750 kilograms tyres
- (c) if not fitted with 500 kilograms
pneumatic tyres
3. Large bullock or Two wheeled vehicle- 1400
large buffalo kilograms
- (a) if fitted with ball bearing
- (b) if fitted with pneumatic 1000
tyres kilograms
- (c) if not fitted with 600 kilograms pneumatic tyres
4. Horse or mule Two-wheeled vehicle- 500 kilograms
- (a) if fitted with pneumatic tyres
- (b) if not fitted with 300 kilograms pneumatic tyres
5. Pony Two-wheeled vehicle- 350 kilograms
- (a) if fitted with pneumatic tyres
- (b) if not fitted with 250 kilograms
pneumatic tyres
6. Camel Two-wheeled vehicle 250
kilograms.

E. The State Government is directed to ensure that no animal shall carry weight or load in excess of the weight prescribed as under:-

	1	2
1.	Small bullock or buffalo	75 kilograms
2.	Medium bullock or buffalo	100 kilograms
3.	Large bullock or buffalo	125 kilograms
4.	Pony	50 kilograms
5.	Mule	150 kilograms
6.	Donkey	35 kilograms
7.	Camel	200 kilograms

F. It is also made clear that where the route by which a vehicle is to be drawn involves an ascent for not less than one

kilometer and the gradient is more than three meters in a distance of thirty metres, the weight shall be half of what is specified by this Court. It is also made clear by way of abundant precaution that the weight specified in the direction made

hereinabove, shall be inclusively the weight of the vehicle.

- G. The State Government is directed to ensure that throughout the State of Uttarakhand, that no person in charge of any vehicle drawn by any animal allows more than four persons, excluding the driver and children below 6 years of age to ride the vehicle.
- H. The State Government is directed to ensure that in any area where the temperature exceeds 37°C (99°F) during the period between 11.00 am and 4.00 p.m. in summers and when the temperature is below 5°C between 5 a.m. to 7 a.m. and between 10 p.m. to 5 a.m. in winter season no person is permitted to keep or cause to be kept in harness any animal used for the purpose of drawing vehicles.
- I. The use of spike stick or bit, harness or yoke with spikes, knobs or projections or any other sharp tackle or equipment is banned throughout the State of Uttarakhand to avoid bruises, swelling, abrasions or severe pain to the animal.
- J. All the Municipal Bodies shall issue certificates of unladen weight of vehicles to avoid cruelty to animals.
- K. The owners of bullock carts, camel carts, horse carts, tonga are ordered to put fluorescent reflectors in the front and back of the carts. The animals shall also be covered with stripes of fluorescent reflectors for their identification at night.
- L. All the Municipal Bodies throughout the State of Uttarakhand are directed to provide shelter of suitable size to horses, bullocks and camels driving vehicles.

- M. The State Government is directed to ensure that all the cattle i.e. cow, bulls, buffalos and calf are transported in goods vehicle as per Rule 56 of the Transport of Animals Rules, 1978 by providing special type of tail board on padding around the sides. The ordinary goods vehicle shall be provided with antislipping material such as coir matting or wooden boards on the floor and the superstructure. No goods vehicle shall carry more than six cattle. Each goods vehicle shall be provided with one attendant. The goods vehicle shall not be loaded with any other merchandise. The cattle should preferably face the engine to prevent them from being frightened or injured. The same instructions shall be followed by the Railways authority as per Rules 47-55 of the the Transport of Animals Rules, 1978. The horses, mules and donkeys shall also be transported as per Rules, 57 to 53 of the Transport of Animals Rules, 1978. The sheep and goats shall be transported as per Rules 64 to 75 of the Transport of Animals Rules, 1978. The poultry shall be transported as per Chapter VII and the Rules 76 to 84 of the Transport of Animals Rules, 1978. The animals should be separated by means of wooden ballies or MS pipes in such a way not more than 6 cattle can be transported in the vehicle. A ramp should be fixed to the vehicle on the rear side which can be folded upwards and it should have a width of 1.5 meters and inclination of 30 degrees when it is landed on the ground. The ramp should take the weight of the animals. A First-Aid Box filled with the medicines, as provided under the Rules shall be carried in the vehicle transporting the animals.
- N. The State Government is directed to appoint Veterinary Officers as per Section 3 of the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 and also to declare controlled areas and free areas to prevent, control or eradicate any scheduled disease by notification.

- O. The State Government is directed to enforce the provisions of the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 to prevent the animals from infectious and contagious diseases in letter and spirit.
- P. No animal including cows, buffaloes, calves, horses, ponies, mules, donkeys, foal, goats and sheep, kids and lambs, pigs, piglets shall be transported on foot beyond the period specified in Rule 12 of the Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, 2001.
- Q. The animals shall be transported on foot only when the temperature is between 12°C to 30°C. The animals should be provided water every two hours and food in every four hours. The animals should not be made to walk more than 2 hours at a stretch.
- R. The State Government is directed to ensure that every animal to be transported should be healthy and in good condition. A certificate of veterinary doctor in respect of each animal to be transported is made compulsory as per Rule 4 of the Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, 2001.
- S. No new born animal of which the navel has not completely healed, diseased, blind, emaciated, lame, fatigued, or having given birth during the preceding seventy-two hours or likely to give birth during transport are ordered not to be transported on foot. There should be watering arrangements enroute during transport of such animals on foot. There should be sufficient feed and fodder arrangements during transportation of animals.
- T. The animals while transported shall not be tied by its nose, or legs or any other part of the body except by

its neck. The animals, if at all, are to be tied during transportation shall be tied with rope covered with suitable cushioning.

- U. All the police officers throughout the State of Uttarakhand are directed to ensure the due implementation of directions D and E by taking the owner/incharge of the animal to the nearest weighing bridge to determine the weight of the load.
- V. The State Government is directed to ensure that no animals shall be transported on foot on hard cement, bitumen-coated or metalled roads, steep gradients or hilly and rocky terrain, irrespective of weather conditions (summers and winter), as per Rule 30 of the Rules of 2001.
- W. All the police officers are directed to enforce the provisions of Rule 14.
- X. The State Government is also directed to constitute societies for prevention of cruelty to animals in each district, if not already constituted.
- Y. The State Government is directed to appoint infirmaries for the treatment and care of animals in respect of which offences have been committed.
- Z. The cost of transporting the animal to an infirmary or pinjrapole, shall be paid by the owner of the animal.
- AA. The Director Animal Husbandry to the State of Uttarakhand is directed to ensure proper treatment of stray cattle and animals, throughout the State of
Uttarkhand by the duly qualified doctors.
- BB. All the Veterinary doctors throughout the State of Uttarakhand are directed to treat the stray animals brought to them by the citizens, in case, it is not possible to bring the sick animal/cattle to the Veterinary doctor, he/she shall personally visit and attend the stray cattle/animal without delay.

CC. All the Municipal bodies, throughout the State of Uttarakhand are directed to make sufficient provisions for housing the stray cattle and to provide them food/fodder and water.

DD. Since the carts driven by animals have no mechanical devices, they should be given the “Right of Way”. All the Police Officers throughout the State of Uttarakhand are directed to ensure compliance of this direction to avoid inconvenience to the animals.

100. Pending application, if any, also stands disposed of.

(Lok Pal Singh, J.)

(Rajiv Sharma, J.)