

DO ANIMALS HAVE A RIGHT UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA? – COMMENT ON *ANIMAL WELFARE BOARD OF INDIA* CASE

Dr. Uday Shankar*

Introduction

The idea of a constitution emanated from the need of controlling arbitrariness, despotism and highhandedness of the ruler. The ruler needs to commit to welfare of the people which gets reflected in a foundational document of a country. The people designed a framework to allocate limited power to the ruler and inalienable rights for themselves to enjoy protection against every possibilities of abuse of power by the government. The framework prescribed a governance model and a set of rights to limit the power of the government.

A detailed set of rights are also entrenched in the Constitution of India, 1950 for ensuring autonomy and well-being to citizens and non-citizens. The rights have their genesis in independence movement and values of the Indian society. The Constitution guaranteed seven basic rights, in 1950: the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property, and right to constitutional remedies. These rights were placed in a separate chapter of the constitution under the heading of 'Fundamental Rights'.¹ These rights are made enforceable in court of law.² In addition to this chapter, a chapter entitled as 'Directive Principles of State Policies'³ has been placed laying down detailed guidelines to the state. Some of the provisions therein are in the nature of social and economic rights and others are policy prescriptive.⁴ The rights enumerated under this chapter are not enforceable in court of law.⁵ The rights are so inherent in human's nature that without which they

* Assistant Professor, Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, Kharagpur, West Bengal, India.

¹ INDIA CONST. Part III. Right to Property has been removed from the Part III of the Constitution through 44th Constitution Amendment Act in the year 1977.

² INDIA CONST. arts. 32 & 226.

³ INDIA CONST. Part IV.

⁴ *E.g.*, Article 51 states the state to endeavor to promote international peace and security.

⁵ INDIA CONST. art. 37.

cannot live as human beings.⁶

Various rights scripted under the Constitution enlist selected human rights which are guaranteed to human beings due to the fact of being. Anthropogenic characteristics of the Part III and Part IV of the Constitution raise a question on the recent judgment by the Supreme Court in *Animal Welfare Board v. Union of India*⁷ where animated quality of 'right to life' under Article 21 has showered benefit on non-human viz., animals. The paper analyses the nature of the rights provided under the Constitution, further it identified right-holder of individual rights laid down therein. The paper concludes with the examination of the constitutional basis of the judgment of the Supreme Court in *Animal Welfare* case.

Right-holder under the Constitution of India

Right holder carries constitutionally guaranteed right which prevent others, including the state, to act contrary to the inalienable interest. If we are not being treated in a dignified or humane manner we must exercise our right. It is therefore clear that we need human rights because of human moral nature. It is within each human beings nature to want to be treated with dignity, which means leading dignified lives as human beings. The declaration of fundamental rights in the Indian Constitution is to safeguard the inalienable interest of citizens and non-citizens of the country.

“The fundamental rights have been provided in different forms. In some cases, there is an express declaration of right, for example, Articles 25, 26, 29(1), 30(1) and 32, whereas in others they are declared as prohibitions without any reference to any person or body to enforce them, for example, Articles 18(1), 23(1), 24, 28(1). Some of these rights take specific forms of restriction on state action, for example, Articles 14, 15, 16, 20, 21, 22(1), 27 and 28 and yet at the same time quite a few of them require state action, for example, Articles 15(4), 15(5), 16(3), 16(4), 16(4-A), 16(4-B), 16(5), 22(7), 23(2), 25(2) and 30(1-A). A few of them are expressly guaranteed against private action such as Article 15(2), while other imply such guarantee against private action such as Articles 17, 20, 23, and 24. Some of them are in the form of positive declaration and simultaneously providing imposition of restrictions

⁶ Keshavananda Bharti v. State of Kerala, A.I.R. 1973 S.C. 1461, Sikri, CJI, observed: “I am unable to hold these provisions to show that rights are not natural or inalienable rights. As a matter of fact India was a party to the Universal Declaration of Human Rights.... and that Declaration describes some fundamental rights as inalienable.”

⁷ *Animal Welfare Board of India v. A. Nagaraja*, MANU/SC/0426/2014.

on these rights for example, Articles 19(1) and 19(2) to 19(6). Also Article 21A provides for the right to education in such manner as the state may be law determines.”⁸

Also some rights are available only to citizens such as Articles 15, 16, 19, 25, 29 and 30, whereas some rights are available to citizens as well as non-citizens such as Articles 14, 21 and 32. Article 26 is available to group of citizens who constitute religious denomination.

The schema of fundamental rights is not uniform, but they seek to protect the rights of human beings as individuals or group of individuals grouped as citizens or non-citizens in case of infringement of them. Venerable existence of inhabitants of this country is a goal set behind the enumeration of these rights in the foundational document of the nation.

Right of Animals under Article 21: Debate Raised

Amongst all the fundamental rights, Article 21 has influenced the development of landscape of human rights in India, the most. In order to draw the content of ‘life’ under Article 21, the court identifies every basic requirement for guaranteeing dignified life of human being as part of the celebrated provision of the Constitution and made it integral part of the rights framework.⁹ A new dimension has been added to the interpretation of ‘right to life and personal liberty’ by introducing ‘negative’ as well as ‘positive’ obligation on the state which covers not only ‘duty to restraint’ but also of ‘duty to facilitate entitlements’.¹⁰ For determining the constituent of the ‘right’, the judiciary has always looked for such facets of ‘life’ which is essential for humane existence in contrast with animal.¹¹

In *Animal Welfare Board of India* case, an issue of seminal importance with regards to rights of animals under the Indian

⁸ MAHENDRA P. SINGH, CONSTITUTION OF INDIA, A42-A43 (Eastern Book Company 11th ed.).

⁹ For example, right to shelter, right to livelihood (*Olga Tellis v. Bombay Municipal Corporation*) A.I.R. 1985 S.C. 2039, right to health (*Parmanand Katara v. Union of India*) A.I.R. 1989 S.C. 2039, right to pollution free environment (*Shubash Kumar v. Union of India*, A.I.R. 1991 S.C. 420), right to reputation (*Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni*, MANU/SC/0184/1982), right to shelter (*Shantisar Builders v. Narayan Khimlal Tomate*, A.I.R. 1990 S.C. 630).

¹⁰ See T.R. Andhyarujina, *The Evolution of Due Process of Law by the Supreme Court in SUPREME BUT NOT INFALLIBLE—ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 193-213* (B.N. Kirpal et al. eds., OUP 2000).

¹¹ In *Maneka Gandhi v. Union of India*, the court observed that: “The expression ‘life’ in Article 21 does not connote merely a physical or animal existence. Right to life includes right to life with human dignity.”

Constitution, with reference to the Prevention of Cruelty to Animals Act, 1960, in connection with Jallikattu/Bullock-cart race has been raised. The appellant, Animal Welfare Board, was a statutory body established under the Prevention of Cruelty to Animals Act, 1960 (hereinafter PCA) for the promotion of welfare and protecting the animals from being subjected to unnecessary sufferings and pains made a submission for the ban of the practice of Jallikattu, inter alia, on the ground of violation of Sections 3 and 11(1) (a) and (m) of the Act read with 51A(g) and 21 of the Constitution. On the other side, it was argued that the Act does not prohibit the infliction of all forms of pain or suffering. For examining the rival contentions, the court considered well-being and welfare of animals as a decisive factor for determining the issue at hand. The practice of Jallikattu was examined against the provisions of the Act and was clearly found that the conduct of human beings towards the animal was contrary to the scheme of the Act. The court has refused permission to inflict pain and suffering to the animals in the name of religious or traditional practices. The idea of 'species best interest' underlying in the Act guided the court to provide complete protection to the animals from torturous practices employed by human beings.

In response to the submission on constitutional provisions, the court emphatically relied Article 51A(g) of the Constitution which cast fundamental duties on every citizen to have 'compassion for living creatures'. Citizens of the country are duty bound to show respect for animate world.¹² The duties impose an obligation upon the legislature to keep them in mind while framing laws for welfare of 'living creatures' for regulating the conduct of human beings. Also, a similar obligation is cast on the judiciary to read these duties to give purposeful meaning to laws enacted for welfare of living creatures.¹³ The court, in apt manner, took support of the fundamental duty to control the behaviour of human being to use other living creatures: "All living creatures have inherent dignity and a right to live peacefully and right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering etc. Human life, we often say, is not like animals

¹² State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors, MANU/SC/1352/2005.

¹³ Above, *AIIMS Student Union* case, the court stated that: "In case of doubt, peoples' wish as expressed through Article 51A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The court further held that the state is, in a sense, 'all the citizens placed together' and, therefore, though Article 51A does not expressly cast any fundamental duty on the state, the fact remains that the duty of every citizen of India is, collectively speaking, the duty of the state."

existence, a view having anthropocentric bias, forgetting the fact that animals have also got intrinsic worth and value.”¹⁴

However, whether a duty upon a citizen corresponds to any right on ‘living creature under Article 21 of the Indian Constitution’?¹⁵ The court, in reference to ‘right to life’, 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, fall within the meaning of Article 21 of the Constitution (emphasis supplied). So far as animals are concerned, in our view, ‘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...Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well...Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights is insignificant, since laws are made by humans.”¹⁶

Justice Radhakrishnan stressed the point that until now the rights that we as a nation bestowed upon animals were merely statutory rights and the time had come for animal rights to be elevated to the status of fundamental rights in the Indian constitution. All animals, all living beings have the right to five freedoms:

1. Freedom from hunger, thirst and malnutrition;
2. Freedom from fear and distress;
3. Freedom from physical and thermal discomfort;
4. Freedom from pain, injury and disease; and
5. Freedom to express normal patterns of behaviour.

¹⁴ *Id.* at 7.

¹⁵ The court refuses to borrow Hohfeldian matrix of right-duty correlation in the context of Article 51A by declining corresponding right on state against the duty of citizens. See *AIIMS Students Union v. AIIMS*, MANU/SC/0480/2001. Also see *Hohfeldian Analysis–Application of, by the Indian Judiciary: A Lawyer’s Perspective*, (2012) 10 S.C.C.-J.17.

¹⁶ *Id.* at 7 ¶ 62.

If animals are given ‘right’ under ‘right to life’ provision, then how it will be enforced against the other right-holder viz., human beings. The interpretation raises tongue-tied proposition of ‘*right v. right*’ instead of ‘*right v. duty*’ which is inevitable for realization of the right. It is also a well-settled position that the guarantee of fundamental rights under Part III of the Constitution is only as against ‘the state’ as defined under Article 12.

Rights of Animals under Article 21: Debate Unaddressed

The pronouncement ignited a debate on the ‘possessor of the right’ in a right-based legal framework. Who shall be right-holder is not simply emotive one, as individuals possess rights *not* because we ‘feel’ that they should, but because of a rational inquiry into the nature of man and the universe. Man is a rational and social animal. No other animals or beings possess this ability to reason, to make conscious choices, to transform their environment in order to prosper, or to collaborate consciously in society and the division of labor.¹⁷

If the purport of considering animal as a right holder would mean granting legal protection to animal and prevent exploitation from the hands of human beings then a legal instrument to regulate the conduct of human beings towards animals would serve the purpose. In fact, a legal protection within a statutory framework distinguished from right-framework under Part III of the Constitution for animals is non-controversial and widely accepted. Almost everyone agrees that people should not be able to torture animals or to engage in acts of cruelty against them. And indeed, state law contains a wide range of protections against cruelty and neglect.¹⁸ The statutory framework goes well beyond prohibiting beating, injuring, and the like, and impose affirmative duties on people with animals in their care.

But, if the apex court intends to broaden the meaning of ‘life’ under Article 21 to guarantee respectable existence to animals then whether it would require explicit reference of ‘a new right holder’ under the Constitution.¹⁹ It is true that the basis of identifying ‘right-holder’ in terms of ‘rationality’, ‘intelligence’ or ‘duty-holder’ characteristics of human beings can be contested by giving reference of lunatics or infants who are irrational or cannot perform duties, but

¹⁷ Murray N. Rothbard, *The Ethics of Liberty*, available at <http://mises.org/rothbard/ethics/twentyone.asp> (last visited July 3, 2014).

¹⁸ Cass R. Sunstein, *The Rights of Animals: A Very Short Primer* (The Chicago Working Paper Series Index) available at <http://www.law.uchicago.edu/Lawecon/index.html>, (last visited June 30, 2014.)

¹⁹ In 2002, Germany became the first European nation to vote to guarantee animal rights in its Constitution, adding the words “and animals” to a clause that obliges the state to respect and protect the dignity of human beings.

they possess right by virtue of the fact of being. Also, there will always be some humans who don't fit the criteria used to justify animal exploitation, the only true distinction between humans and non-human animals is species, which is an arbitrary line to draw between which individuals do and don't have rights.

Conclusion

The real intent of a provision must not be stretched to a point through a tool of interpretation where it refuses to yield original accomplishment and become victim of open-ended quality. For animals, the real question lies in welfare and anti-cruelty towards them. If these aspects are adequately addressed through a statutory framework then it is unnecessary to employ 'right to life' under Article 21 for guaranteeing welfare of them as it would only be of decorative value. Various constitutional provisions can render necessary support to strengthen the legal framework and impose a duty upon individuals and lawmakers to commit for welfare of animals.

The interpretative tool to express the meaning of the text of the Constitution needs to be governed within the mandate given by the Constitution makers. The judiciary must be discouraged to inject a meaning in a text without necessary legal justification. Clear and precise judgment serves as a valuable guide, capable of being understood by the subordinate courts. "A judge's time is valuable. It should be employed in deciding cases and not in arguing them at inordinate length. The law reports contain numerous instances of long and involved judgments written by honourable judges. Even the judges of the Supreme Court are tempted to do this."²⁰



²⁰ LAW'S DELAYS AND LAWS REPORTING (1969) 1 S.C.C.-J. 7.