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Case Analysis of Karnail Singh vs. State Of Haryana

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ABSTRACT

The Indian Constitution through Fundamental Duty, which was added by an amendment in 1976, prescribes to have “compassion for living creatures”. In order to use this particular notion in actual legal practice, various judgments, provides a glimpse of the current debates in India and across globe that address the relationships between humans and animals together with animals status in present legal regime. In The judgment in hand explicitly mentions ‘compassion’ towards animal kingdom covering diverse issues, concerning stray dogs, trespassing cattle, birds in cages, bull races, cart-horses, animal sacrifice, etc. This even collates a discourse on compassion as an emotional and moral attitude, and also about legal rights, essentially the right not to suffer unnecessary pain by virtue of human conduct. In the present judgment, various prominent religious figures such as the Mahavira, Buddha etc., are given special mention, perhaps not so much in reference to their religion, but rather as historical icons on the same footing as Mahatma Gandhi of an idealized intrinsic Indian compassion that is devoted towards other living creature. Along with this various jurist has also been referred to in order to deduce the conclusion that how come an animal kingdom be covered under the ambit of juristic person.

I. BACKGROUND OF THE CASE

This case is a revision petition instituted against the judgement dated 01.02.2013 rendered by the Additional Session Judge, whereby the conviction imposed upon the petitioner was reduced from 2 year to 6 month. Furthermore enumerating the fact of the case which arose in 2004 that when secret information was received by ASI Azad Singh and other police officers regarding export of the cows to the state of Uttar Pradesh in truck and further information regarding the truck being at the Meerut, a police picket was laid down near Yamuna bridge before Haryana-Uttar Pradesh boundary, from where the cows were recovered from truck and driver as well as conductor was apprehended. An opinion on that case was given in 2013, then a revised petition was submitted to this court, and several years later this opinion was given. Much of the 100 pages did not deal with the events of the case which took place rather increased its purview and dealt with the jurisprudence of animal rights. The ultimate holding

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of the judge directed a state agency to enforce a number of very specific standards for the transportation of animals. The Punjab and Haryana High Court declared, in this unprecedented judgment, that animals and birds have legal rights, just as humans. It further declared citizens as the “guardians of the animal kingdom” with a duty to ensure their welfare and protection. Justice Rajiv Sharma, in this particular verdict said, “All the animals have honour and dignity. Every species has an inherent right to live and is required to be protected by law. The rights and privacy of animals are to be respected and protected from unlawful attacks. 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, well nourished, safe, able to express innate behaviour without pain, fear and distress. They are entitled to justice. The animals cannot be treated as objects or property, human beings ought to extend their affection towards animal kingdom at large.

II. LAW INVOLVED AND RULING

LAW INVOLVED

In total there was transportation of about 29 cows in two trucks from one province to another in violation of restrictions on the export of cows for meat slaughter attracting the offence under §²4-b and §³8 of the Punjab Prohibition of Cow Slaughter Act, 1955. The prosecution examined witnesses and the statements of the accused were recorded under §⁴313 of the Code of Criminal Procedure, 1973. Thereafter the petitioner were convicted and sentenced to undergo imprisonment and paid the fine under §⁵4-b and §⁶8 of the Punjab Prohibition of Cow Slaughter Act, 1955. An appeal was made by the petitioner which was dismissed but the punishment was reduced from two years to six months

The learned counsel for the state vehemently supported the prosecution case as it was found that petitioners were not in possession of any export permit. It was also submitted that the cows were packed in a cruel and brutal manner without following the rules as laid down under Rule⁷ 94 of Haryana Motor Vehicles Rules, 1993.

Ruling

² Punjab Prohibition of Cow Slaughter Act, 1955, § 4-b.

³ Punjab Prohibition of Cow Slaughter Act, 1955, § 8.

⁴ Criminal Procedure Code 1973, § 313.

⁵ Punjab Prohibition of Cow Slaughter Act, 1955, § 4(b).

⁶ Punjab Prohibition of Cow Slaughter Act, 1955, § 8.

⁷ Haryana Motor Vehicles Rules 1993, Rule 94.

On 31st May 2019, Hon'ble High Court of Punjab and Haryana *Karnail Singh and Ors. v. State of Haryana*⁸, recognised all the animal in animal kingdom inclusive of aquatic and avian species, as legal entities. All citizens of the state of Haryana were declared persons *in loco parentis* (in place of a parent), which will enable them to act On 31st May 2019, the Hon'ble High Court of Punjab and Haryana, in the case of *Karnail* as guardians for all nonhuman animals within the state of Haryana. This decision is the latest in a trend where courts are adopting eco-centric rather than anthropocentric views on legal issues concerning the protection of animals and the environment. The court also reiterated the Nonhuman Right Project (NhRP) argument that legal personhood has not and should not be restricted to human beings. Before giving the concluding statement regarding the status of the legal entity to animals, detailed twenty eight mandatory guidelines were issued for the welfare of the animal kingdom which included 'direction for not exceeding the load while driving vehicle, not to harness any animal for purpose of drawing vehicle at the high temperature, ban on instruments like spike sticks, to use fluorescent reflectors, giving right to way to the animal cart, Transporting animals as per Rule⁹ 56 of the Transport of Animals Rules, 1978 along with Rule¹⁰ 93 of the Haryana Motor Vehicles rules, 1993, Right of Way given to the non-mechanical device Issue certificate of the unladen weight of the vehicle by Municipality to avoid cruelty to animals etc.

BASIS FOR THE RULING

This particular decision relies on a 2014 decision issued by the Supreme Court of India, *Animal Welfare Board of India v. Nagaraja and Ors.*¹¹, which inter alia extended to animals Art.¹²21 of the Indian Constitution, conferring the right to live, a life of intrinsic worth, honour and dignity with the aim of preventing animals from arbitrarily and unlawfully being deprive of their rights, so whenever the animals are referred "life" means something more than mere survival or existence or instrumental value for human being. The High Court of Punjab and Haryana is the second High Court in India to confer personhood to animals. Moreover, Justice Rajiv Sharma—the judge who presided over the matter in the High Court of Punjab and Haryana—was also a member of the bench of the Uttarakhand High Court which conferred personhood to animals in 2018 in the case of *Naryana Dutt Bhatt v. Union Of India & Ors.*¹³ This decision in hand referred to other cases and legal principles that grant

⁸ *Karnail Singh and Ors v State of Haryana*, (2019) SCC OnLine P&H 704.

⁹ Transport of Animals Rules, 1978 R. 56.

¹⁰ Transport of Animals Rules, 1978 R. 93.

¹¹ *Animal Welfare Board of India v Nagaraja and Ors* 2014 (7) S.C.C. 547.

¹² INDIA CONSTI. art. 21.

¹³ *Naryana Dutt Bhatt v Union of India & Ors* 2018 SCC OnLine Utt 645.

personhood to **Hindu idols**¹⁴ (capable of holding property and being able to be taxed through its Shebaites who entrusted with the possession and management of the property), undoubtedly **corporation** are treated as juristic person but along with it even **registered trade union** and **friendly societies**¹⁵, **holy scriptures**, and **rivers**. In so doing, the Court acknowledged that the concept of legal personhood has evolved with scientific discovery, evolving standards of morality, and human experience to not only includes all humans, but also nonhumans.

The court rightly recognized that it's a moral duty and legal obligation under the doctrine of *Parens Patriae* that conditions the power of the state to act as guardian for those who are unable to care for themselves, such as children or disabled individuals, so herein same principle has been applied by the court to protect the rights of animals and that the courts are uniquely positioned to change animals' legal status based on changing morality and existing legal principles. Further strengthening the argument emphasises has been payed upon Art.¹⁶51-A of the Constitution of India, which states that it is the fundamental duty of all citizens to have compassion for living creatures in addition to it Art.¹⁷48-A of the Constitution of India was also referred which requires the State to protect and improve the environment and to safeguard the forests and wildlife of the country. In case of violation or non-compliance these articles are not justifiable i.e. without any legal sanction; instead these are subject to trial in a court of law, wherein these courts interpret the law through an eco-centric lens.

Additionally, the removal of the right to property as a fundamental right has also allowed the court to place the basic rights of animals, in particular circumstances, above the right of individuals to own and use animals as matter of thing or rather their property for their personal gain.

THE IMPACT OF RELIGIOUS SENTIMENTS AND CULTURAL BELIEF

The present case that was brought before the court of law dealt with the issue which is highly controversial as it relates to the issue of cows being transported in contravention to the §¹⁸11 of Prevention of Cruelty to Animals Act, which defines the ambit for what to be considered as cruelty to animals and its subsidiary rules. As it is a known fact that issue of cow welfare is highly disputed in India, not just between different religious groups and social phylum but also between animal rights and welfare organisations. Though Hon'ble High Court recognises

¹⁴ Yogendra Nath Naskar v Commission of Income Tax, Calcutta 1996(1) SCC 555.

¹⁵ PATRICK JOHN FITZGERALD, SALMOND ON JURISPRUDENCE 305 (12th Ed. 1966)

¹⁶INDIA CONSTI. art. 51-A, amended by The Constitution (Forty Second Amendment) Act, 1976.

¹⁷INDIA CONSTI. art. 48-A.

¹⁸ Prevention of Cruelty to Animals Act, 1960, § 11.

Hindu Religious values but neither does it confine itself to the scripture that refer solely to cow welfare nor does it solely value Hindu religious ideologies.

Around 1500-600 BC it was stated in Isha Upanishad that no any species should encroach upon the rights and privileges of other species. The concept of Ahimsa or non-violence is engrained in Indian culture. Not only are references to Ahimsa found in other Hindu religious books like the Vedas, Upanishads, Smritis and Puranas, but the concept of Ahimsa is central to both Buddhism and Jainism, which is widely practiced in India.

Mahatma Gandhi, who is considered to be the father of India, also placed high value on the compassionate treatment of animals. As he has stated, “The greatness of a nation and its moral progress can be judged by the way its animals are treated.” In furtherance of these values, Justice Sharma wrote: “In Hindu Mythology, every animal is associated with god. Animals breathe like us and have emotions. The animals require food, water, shelter, normal behaviour, medical care, self- determination.”

The idea that animals are beings with intrinsic worth, who have the right to a life with dignity and the right to self-determination, stem not just from developments in science, but also cultural and religious beliefs that have persisted and evolved in India since as early as 1200 identifiable. The court has granted personhood to all animals, but it hasn't clearly illustrated the rights that will accompany personhood. This can be developed through future litigation. Further, this personhood is limited to two states within the country; further litigation will be BC.

INTERNATIONAL APPROACH TO HUMAN WELFARE.

There has been slow transformation in approach from anthropocentric one to more nature's right centric in international environmental law, animal welfare law etc. Further environmentalist noticed three stage for the development of international environment law, *firstly, for human's self-interest reason for environmental protection*, (for instance, so to ensure the health of whaling industry rather than conserving or protecting the whale species at large)¹⁹. *Secondly*, for the sake of **international equity** (beyond the requirement of the present generation to also meet the needs of future generation of human beings). *Thirdly, nature's own right* (every form of life is unique, warranting respect regardless of its utility to man)²⁰

¹⁹ Convention for the Regulation of Whaling (1931).

²⁰ UNEP Biodiversity Convention (1992).

III. RIPPLE EFFECT OF THE CASE

Together, these decisions constitute significant strides in the nonhuman rights movement within India. They focus on well-known theories in Indian and Western Jurisprudence and also factor in indigenous cultural beliefs that support nonhuman animal personhood and recognize the intrinsic right of animals to exist for them. At the same time, the broad language means the tangible benefits to individual animals and particular species are not easily required either in other High Courts or at the Supreme Court to ensure personhood is granted to all animals within the country. It is our hope that lawyers across India will continue the fight in court for animal personhood, so the rights of all animals across the country can be recognized and secured, with clear impacts on the lives of individual animals.

IV. CONCLUSION & SUGGESTION

Over years many precedents have been established wherein different entities have been recognised as juristic person, a pertinent example is the case of “computer raped by telephone” which was widely covered by the media. This was the first case where the world witnessed that a machine was being treated like a legal person.²¹ In United States legislations have been passed by four states to treat self-driving cars as traditional drivers.²² Nevada was the first state to pass such legislation.²³ The law would consider these self-driving cars as traditional human drivers and hold them accountable for any accident caused or any other liability arising from their acts. Sophia, an artificial intelligent robot developed by David Hanson has already been granted citizenship by Saudi Arabia making it a first robot ever to have a nationality and setting precedents for others to follow. South Korea has introduced what is called as robot tax which is akin to the income tax paid by a natural person.

As it is a known fact that concept of juristic person is brought forth out of necessities in the human development. Recognition of an entity as juristic person- is for sub serving the needs and faith of society.²⁴ 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.²⁵ Moreover taking about companies and corporations in India that are included in the definition of ‘person’ and after the landmark

²¹ Ward v. Superior Court of California 3 C.L.S.R. 206 (1972).

²² Thomas Halleck, *Google Inc. Says Self-Driving Car Will Be Ready by 2020*, INTERNATIONAL BUSINESS TIMES, (Jan. 15, 2015), accessed on 25 August 2019.

²³ Alex Knapp, *Nevada Passes Law Authorizing Driverless Cars*, FORBES (June. 22, 2011) accessed 26 August 2019.

²⁴ Shiromani Gurudwara Prabandak Committee, Amritsar v. Shri Somnath Dass & Ors. A.I.R. 2000 SC 1421.

²⁵ G.W. PATON, A TEXTBOOK OF JURISPRUDENCE 349- 350 (4th Ed. 1972).

judgement of Standard chartered bank case it was held that company is liable to be prosecuted and punished for criminal offences.²⁶ So after this particular judgement question arises that whether entire animal kingdom will fall under §²⁷ 11 of IPC and would be considered legal person capable of committing criminal offences, if yes this would definitely attract queries who shall be liable for the offence committed by them for instance Criminal Trespass whether it be owner of the animal if yes then what will happen in the case of stray animals (one with no owner). Another aspect which needs to be addressed is what about the offence wherein corporeal punishment is attracted. Though *with this decision, India takes another big step forward in the global struggle for recognition and protection of nonhuman rights but surely before practising this particular decision in reality there is lot left to ponder upon and need of the hour is to have a proper legislation framed with respect to this issue so as to recognise the nonhuman rights more vehemently.*

²⁶ Standard Chartered Bank v Directorate of enforcement, (2005) 4 S.C.C. 530.

²⁷ Indian Penal Code, 1860, §11.