

A Case for Personhood for Non-Human Animals

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About Federation of Indian Animal Protection Organisations (FIAPO)

FIAPO is India's apex animal rights organisation. As the collective voice of the animal rights movement in India, FIAPO is the catalyst that protects the interests and rights of animals on local and national levels - through education, research, lobbying, mobilisation, networking, training and direct action. Created for the movement, by the movement, FIAPO is India's only national federation. It has over 83 members and over 200 supporter organisations across the country.

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Introduction

In the area of animal law, there is a growing debate as to what the legal classification of animals should be. Presently, within India's welfarist approach, animals are defined as property, (with limited instances of some rights being granted) and laws are designed to prohibit the unnecessary suffering of animals.

This document seeks to depart from the status quo and classify animals with legal personhood. The arguments for the same are compelling, recognising animals to have rights by looking at the current legal framework, recognising the sentience of animals and ultimately creating linkages between the rights of animals and human beings.



Should animals have rights?

The relationship between human and animals has developed culturally in a manner that regards animals not as equals, but as “things/property” allowing for the use of animals. When animals meet the criteria for a property status, they are by virtue of that status considered as objects under law. This objectification takes “personhood” out of how we regard animals, allowing humans to use animals contrary to the animals' interests.

The definition of rights excludes animals on the claim that only natural persons or legal personalities have rights, protections, privileges, responsibilities, and legal liability. However, this distinction stands to question in view of the following arguments that call for key fundamental rights for animals:-

- Animals are sentient beings capable of feeling pain and suffering
- Animals have inherent/intrinsic value
- There is not enough reason for 'morality' to be a defining factor while granting fundamental rights
- Speciesism as a concept is an anthropocentric view and doesn't embody the richness and diversity of life on earth

Furthermore, a closer look at the lives of animals reveals that many of the activities that are thought to be distinct to humans occur in animals as well. Most animals do demonstrate a certain amount of interest in maintaining basic welfare by making sure of their food and sleep, alongside other common social behaviors and interactions such as nurturing young ones, building kinship, altruism, hierarchies, grief and intellect.

These indicate- among other things – a growing need to recognize fundamental rights for animals.

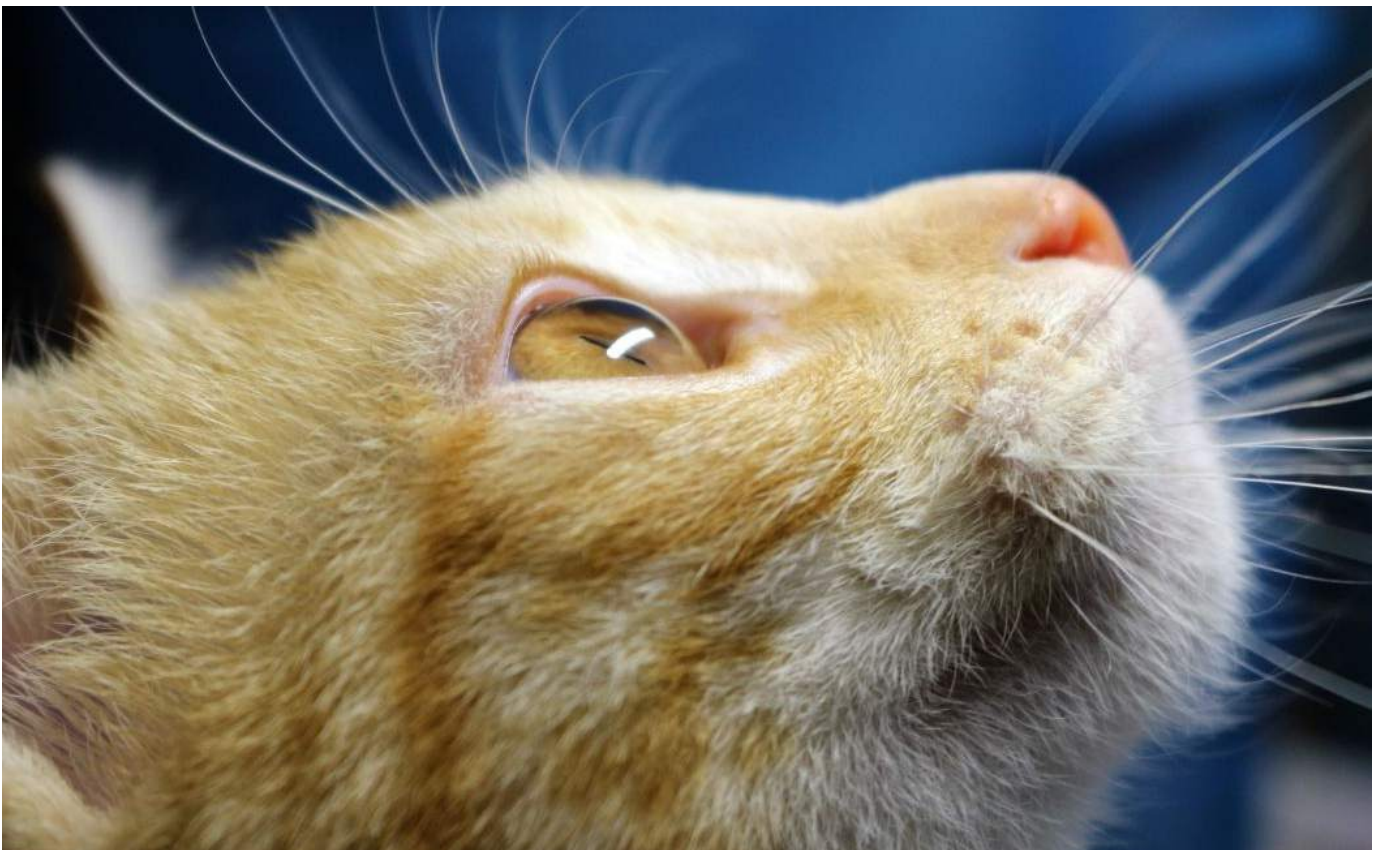


Animal Rights: An Overdue Change

Animals have been consistently exploited, used and abused for human needs and denied a dignified life. With no legal recognition of their rights, countless animals lead miserable and degraded lives with constant suffering. Like humans, animals are sentient living beings, they feel pain and suffer when they are hurt or deprived of their lives, families and freedom. They have social behaviours and interactions similar to humans such as nurturing young ones, building kinship, altruism, hierarchies and grief. At present, animals are considered as mere property under the law and such objectification of living beings sanctions use of such beings contrary to their interests.

We recognise that animals have inherent value and deserve to be treated with dignity. Their interests deserve equal moral and legal consideration. We believe that animals should not be commodified and should be a subject of rights. At the same time we realise that the legal status of animals as that of property requires reconsideration and change. Thereby, we strongly affirm that all animals must be entitled to the following legal rights:

1. Right to life with dignity
2. Right to bodily liberty, integrity and autonomy
3. Right against commercial exploitation, torture, cruel and degrading treatment
4. Right to physical and mental well-being
5. Right to interact and socialise with others of the same species
6. Right to a healthy environment and protection of natural habitat
7. Right to equal consideration of interests



A Brief History of Animal Rights

While the property status of animals has left little regard in their legal treatment, history does show signs of according a '**personhood**' status to animals in rare occurrences. A history of the same can be found below:

1981

The first US conviction for animal abuse against an experimental laboratory is achieved, after an undercover investigation by animal rights activists

1992

Switzerland amends its constitution to recognize animals as beings and not things

1999

New Zealand grants basic rights to five great ape species, banning their use in research, testing or teaching. This is considered the greatest legal success in the history of animal rights

2002

Germany amends its constitution to guarantee rights for animals, becoming the first EU country to do so

2015

A New York court considers whether chimps are legal persons





The Link between Human Rights and Animal Rights

The biological definition of human beings classifies human beings as animals, making it relatively simple to conclude that human rights are only a subset of the larger group of “animal rights” that should include rights for all sentient beings. However, humankind has had a long history of distinguishing and bestowing rights based on external traits without due deference to coherent arguments. Rights have historically not been granted on the basis of Color, Caste, Creed, Gender, Sexual Orientation, Nationality, Faith/Non-Faith, Political Beliefs, and/or Disability.

The movements to get rights for the disabled, for people with varied sexual orientation to be heard, or to end discrimination basis the color of your skin, have been tirelessly working towards making a change in the attitude of individuals and the society at large.

Culturally, we have progressed from many of these; however some of these still remain entrenched in different parts of the world. Peter Tatchell, a British human rights activist, argues speciesism to be analogous to homophobia, racism and misogyny, creating room for a possible tangible shift in the legal status of animals in the times to come.

Misconception, belief, culture are some of the eminent components that have affected movements in the past. To break the belief of the majority and alter cultures, which then brings about a change in ideologies of the masses, is the biggest challenge for any movement. But the success of these movements in the past proves that it is in fact possible, and may even be an eventual reality.

Noting that it is difficult to win a movement in isolation, a brief look into the history of human rights movements reveals that a lack of legal personhood for animals leads to a deprivation of rights for humans because of their interdependence.

Denying rights to animals ultimately does result in deplorable conditions for both human and non-human animals, thereby leaving the rights of both violated. Here are some examples of the interdependence of human and animal rights:

- 1) **Global Hunger:** Currently, there are over 800 million people who do not have enough to eat, while 90 million acres of land are currently used to grow corn to feed factory-farmed animals.
- 2) **Slavery:** Men who come to Thailand, America's second-largest seafood supplier, from bordering countries in search of work are tricked into lives of slavery on fishing boats, where captains subject them to horrific brutality. Those who resist are often murdered. This is one example of how denying the rights of animals have led to the downfall of human rights.

- 3) **Environmental Injustice:** Waste from factory farms pollutes air, contaminates streams and rivers, jeopardizes our water supply, and compromises the quality of life for families who live nearby.

- 4) **Child Labour:** Many factory farms hire underage and undocumented labour, working them overtime with no rights. Federal officials fined House of Raeford, one of the largest poultry processors in the country, when 2008 immigration raid uncovered more than 300 undocumented workers and six underage employees, including a 15-year-old girl, working 10-hour shifts slaughtering chickens.



The Legal View of Animal Rights in India

Landmark judgments in India have awarded animals with certain rights. A brief summary of the same is given below. For detailed legal definitions and doctrines used in awarding these rights, please refer to the Annexure 3 on Legal Definitions.

1. The following rights have been explicitly recognized by the Supreme Court:

- a) Right to live in a healthy and clean atmosphere
- b) Right of animal to not be inflicted with unnecessary pain or suffering
- c) Right to proper care
- d) Right to get protection from human beings against inflicting of unnecessary pain or suffering
- e) Right to get food and shelter
- f) Right to dignity and fair treatment
- g) Right, not to be beaten, kicked, over-ridden or over-loaded
- h) Inherent right to live

2) All animals are legal persons with right to life and bodily liberty

The Uttarakhand High Court has granted personhood to the entire animal kingdom including avian and aquatic. It noted that animals cannot be treated as mere property. [Narayan Dutt Bhatt v. Union of India (2018), Uttarakhand High Court]

3. Right to live peacefully without human interference

This judgment recognises the right of animals to non- interference into their lives and territories by humans and the government. [Nitin Singhvi v. Union of India (2017), Chhattisgarh High Court]

4. Right to fly and to not be caged (for birds)

[People for Animals v. Mohd. Mohazzim – Delhi High Court]
[Abdulkadar Mohamad Azam Sheikh v. State of Gujarat – Gujarat High Court]

5. Cows should have the status of legal entity

Jago Janta Society v. State of Rajasthan and Ors. (2017) [Rajasthan High Court]

Laws and Policies

- a) Ban on Dolphinariums: The Ministry of Environment and Forest noted that dolphins must be seen as 'non-human' persons.
- b) The Prevention of Cruelty to Animals Act, 1960: The law recognizes every dog need not have an owner.
- c) The Wildlife Protection Act, 1972: The Act recognizes that wild animals in general are not property.
- d) Constitution of India: Recognises the intrinsic value in all creatures.

Judgments

1) Animal Welfare Board of India v. A Nagaraja (2014) [Supreme Court of India]

The court recognized that Sections 3 and 11 of the Prevention of Cruelty to Animals Act, 1960 confers corresponding rights on the animals as against the persons in-charge or care, as well as AWBI, to ensure their well-being and to not be inflicted with any unnecessary pain or suffering or cruelty as provided by Section 11. The Apex Court opined that animals also have intrinsic value and worth. Stress was also laid on the protection of dignity of animals.

Emphasis was laid on the doctrine of *parens patriae*. The Court has 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.

The court recognized an animal's right to dignity, honour and fair treatment.

It was emphasized that the statutory rights possessed by animals by virtue of Section 3 and 11 of the PCA Act need 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 Article 51A(g)(h) of the Constitution, which is the magna carta of animal rights.

It was stated that animals also have honour and dignity which they cannot be arbitrarily deprived of, and their rights and privacy have to be respected and protected from unlawful attacks.

2) Narayan Dutt Bhatt v. Union of India (2018) [Uttarakhand High Court]

The Uttarakhand High Court declared the entire animal kingdom including avian and aquatic as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. The Court has also declared that “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.” The High Court in this judgment has stated that “The animals should be healthy, comfortable, well-nourished, safe, able to express innate behaviour without pain, fear and distress. They are entitled to justice.” It was also noted that animals cannot be treated as merely as property and that animals, including avian and aquatics have a right to life and bodily integrity, honour and dignity.

The Court recognised that “animals breathe like us and have emotions. The animals require food, water, shelter, normal behaviour, medical care, self-determination.” Reliance was placed on scientific evidence and works of various literary authors upon intelligence, high cognitive, emotional and social skills of animals – language, memory, altruism, culture, co-operation, foresight, self-awareness.

3) Nitin Singhavi v. Union of India (2017) [Chhattisgarh High Court]

This PIL was filed by the petitioner to seek release of a wild elephant named “Sonu” held in captivity by the authorities of Achanakmar Tiger Reserve in Bilaspur district of Chhattisgarh after catching the pachyderm from wild a year and half ago.

The Court observed that “it is part of principles and policies ingrained in Article 39 and Article 48A among the directive principles of the state policy, read along with the fundamental duties of the citizens in terms of Article 51A(g), **that we need to recognize that animals do have the rights, the enforcement and preservation of which depend largely upon the self-imposed or, otherwise enforced, restrictions that humans should maintain:** individually, collectively and through institution of governance; against invading the life and territories of animals.”

Thus, this judgement highlights the need of non- interference into the lives and territories of animals by humans and the government. An inference maybe draw that animals have a right to live peacefully.

4) Jago Janta Society v. State of Rajasthan and Ors. (2017) [Rajasthan High Court]

Rajasthan High Court recommended that cows too should be declared as the national animal of India. Keeping Article 48 and 51 A (g) of the Constitution of India in mind, the Court recommends **that cows should have the status of legal entity** and they should be declared as the national animal for its protection.

The Court appointed the Chief Secretary of Rajasthan Govt. and the Advocate General as persons in loco parentis (in the place of a parent) for preservation of cattle and to get cow the status of legal entity and declare it as a national animal.

5) Mohd. Salim v. State of Uttarakhand and others (2017) [Uttarakhand High Court]

The Court, in exercise of its parens patriae jurisdiction declared Yamuna and Ganga rivers and all their tributaries, (including streams, every natural water flowing with flow continuously or intermittently) as legal persons.

It was stated that recognition of an entity as an artificial/legal person is subservient to the needs and faith of the society. It was also highlighted that for a bigger thrust of socio-political-scientific development, evolution of a fictional personality to be a juristic person becomes inevitable.

The court acknowledged that the rivers are sacred and worshipped by Hindus, but also threw light on the physical and natural importance of the rivers: “They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea.”

The operation of this judgment has been stayed by the Supreme Court vide interim order dated 7th July, 2017 in a special leave petition moved by the State of Uttarakhand.

6) **Pet Lovers Association v. Union of India and Ors. (pending) [Supreme Court of India]**

This case is still pending before the Supreme Court. The legal question before the Supreme Court is whether birds have a fundamental right to fly. There have been no orders in this case so far.

The following two judgments have been challenged in this case:

a) **People for Animals v. Mohd. Mohazzim (2015) [Delhi High Court]**

It was held that birds have the fundamental right to "live with dignity" and fly in the sky without being kept in cages or subjected to cruelty. The judge stated that all birds have fundamental rights to fly in the sky and human beings have no right to keep them in small cages for the purposes of their business or otherwise.

b) **Abdulkadar Mohamad Azam Sheikh v. State of Gujarat [Gujarat High Court]**

The Court in this judgment declared that birds have a fundamental right to fly. "When everybody is talking about fundamental rights of the citizen, such as, right to live freely, right to food, right to move freely etc. a day has come to think about the rights of the birds and animals, because of such act even the birds have vanished and their numbers are in decrease."

It was held that every bird / animal has a right to move freely and as far as the birds are concerned, they have every right to move freely in the open sky / air and they cannot be kept in cages at all. To keep the birds in cages would be illegal confinement of such birds, against their wish which would be against the fundamental right of the birds to move freely.



Laws and Policies

1) Ban on Dolphinariums

In May 2013, the Central Zoo Authority and the Ministry of Environment and Forest Affairs put a ban on the establishment of Dolphinariums in the country. While considering this, the central zoo authority opined that cetaceans in general are highly intelligent and sensitive, and various scientists who have researched dolphin behavior have suggested that their unusually high intelligence; as compared to other animals means that dolphins should be seen as “non-human persons” and as such should have their own specific rights and it is morally unacceptable to keep them captive for entertainment purposes.

2) The Prevention of Cruelty to Animals Act, 1960

Animal Birth Control Rules, 2001: Section 3 of this Act classifies dogs into pet dogs and street dogs. According to Section 3(2), the owner of pet dogs shall be responsible for the controlled breeding, immunization, sterilization and licensing in accordance with these rules and the law for the time being in force within a specified local area.

Section 3(3) provides that the street dogs shall be sterilized and immunized by participation of animal welfare organizations, private individuals and the local authority.

By reading the above-mentioned provisions, it can be said that the law recognizes that every animal (street dogs here) need not have an owner.

According to Section 7(3) street dogs cannot be relocated from their territory after they are caught for sterilization. This implies that the law recognizes the territorial nature of dogs and sees them as more than just “things” and instills respect towards their natural behavior.

3) The Wildlife Protection Act, 1972

Section 11(3) provides that any wild animal killed or wounded in self defence of any person shall be Government property. Any wild animal (other than vermin) hunted or kept or bred in captivity in violation of the provisions of the Act or any rule or order made thereunder or if found dead or killed by mistake shall be considered to be Government property.

An inference may be drawn that wild animals in general are not owned by anyone and are not considered to be property. It is only in certain circumstances as mentioned in the Act like the ones mentioned above and also when a person is given permission by the Chief Wildlife Warden to own an animal, can they be considered as “property” or have an owner.

4) Constitution of India

Article 48(A) puts the onus on state to protect and safeguard the environment, wildlife and forests. Article 51A (g) this article states that it is the fundamental duty of every citizen of India to have compassion for all living creatures. Thereby, it may be implied that the Constitution of India recognizes the intrinsic value (as opposed to instrumental value) in all living creatures.

International Precedence

- The Association of Officials and Lawyers for Animal Rights argued that Sandra, a 29-year-old orangutan who's lived in Argentinian zoos for most of her life, is too intelligent to be considered an object or commodity. And unlike in the United States, the court actually agreed. It's not as if Sandra will be let out into the street or sent into the wild — she may have the basic rights of personhood, but no one is saying she can live as a human. And after a life in captivity, she probably wouldn't be able to survive in the wild. Instead, Sandra's "freedom" will be in a sanctuary, where she can live with others of her species and avoid gawking humans.
- Animals as beneficiaries of trusts and wills
- Custody of Companion Animals in Divorce Cases
- Legal personhood to selected lands and rivers in New Zealand: Although New Zealand has not formally adopted the Rights of Nature into statutory or constitutional law, the nation has acknowledged the inherent rights of nature by granting legal personhood to selected lands and rivers. New Zealand has granted legal personhood to the Te Urewera National Park and Whanganui River and its tributaries.
- In 2013, the Tūhoe people and the New Zealand government agreed upon the Te Urewera Act, giving the Te Urewera National Park "all the rights, powers, duties, and liabilities of a legal person." A Board was then established to serve as "guardians" of Te Urewera and to protect its interests. The stated purpose of the Act was to protect Te Urewera "for its intrinsic worth," including its biodiversity and indigenous ecological systems. As a result, the government gave up ownership of Te Urewera, and all decisions must serve the interests of and preserve the relationship of the Te Urewera and the Tuhoe people.
- Whanganui River and its tributaries granted legal status: Under the Tutohu Whakatupua Treaty Agreement, the river is given legal status under the name Te Awa Tupua. Te Awa Tupua is recognized as "an indivisible and living whole" and "declared to be a legal person." This treaty is especially important because it "recognizes the intrinsic interconnection between the Whanganui River and the people of the River (both iwi and the community generally)," and finds "the health and wellbeing of the Whanganui River is intrinsically interconnected with the health and wellbeing of the people." In March 2017, the Treaty settlement passed into law.

⁶Pet Animals: What happens when their humans die? | Gerry W Beyer | <http://bit.ly/2xySGoS>

⁷Knick-Knack, Paddy-Whack, Give the Dog a Home?: Custody Determination of Companion Animals Upon Guardian Divorce | Tabby T. McLain | <http://bit.ly/1RIJOwn>

- On 3rd November 2016, Argentine Judge María Alejandra Mauricio, ruled that a captive chimpanzee named Cecilia at the Mendoza Zoo is a “non-human legal person” with “inherent rights.” The Court granted Association of Professional Lawyers for Animal Rights’ (AFADA) petition for a writ of habeas corpus and ordered her transfer to a sanctuary within six months. The Nonhuman Rights Project (NhRP), the only civil rights organization in the United States working to secure legal rights for nonhuman animals, hailed Judge María Alejandra Mauricio’s November 3 ruling that a captive chimpanzee named Cecilia at the Mendoza Zoo is a “non-human legal person” with “inherent rights.”



Personhood for Elephants -Introduction

The Indian elephant (*Elephas maxima*) is a keystone species of the tropical forests in India and has been accorded the highest level of protection in India by the Wildlife Protection Act 1972. Elephants are an endangered species according to the IUCN (International Union for Conservation of Nature) red list.

To protect the elephant, their habitats and corridors, the Government of India launched the Project Elephant in 1992. Given the significance of the elephant, ecologically and culturally, the Elephant Task Force set up by the Ministry of Environment and Forests, Government of India in its report titled *Gajah: Securing the Future for Elephants in India* recommended that the elephant be declared a National Heritage Animal which happened on 21st October 2010.

Elephants as a species have several special characteristics, and are often considered to be more human-like than any other large mammal. They are extremely intelligent beings with memories that span several years. Elephant intelligence has been compared with that of primates and cetaceans. Scientists are of the opinion that elephants are self-aware and self-reflective. This document seeks to create a case for personhood for elephants.



Legal Definitions and Framework

According to the Wildlife Protection Act 1972 captive and wild elephants are defined as follows:

- a) Captive elephant – Asian elephant which is captured or bred in captivity
- b) Wild elephant – Asian elephant found wild in nature

Legal Framework for protection of wild elephants

1. Wildlife Protection Act 1972

- a. Asian Elephants (found in India) have been given the highest legal protection an animal can get in our country. They are categorized as a Schedule I species under the Wildlife (Protection) Act 1972.
- b. Ownership of elephants
 - According to Section 40 of the Act, no person can keep in his control, custody or possession an elephant or sell, offer for sale or otherwise transfer or transport any elephant without the permission of the Chief Wildlife Warden of the state.
 - Section 42 of the Wildlife (Protection) Act gives the power to the Chief Wildlife Warden to issue a certificate of ownership to a person who in his opinion is in lawful possession of such animal; provided that he is convinced that there are 'adequate facilities for housing, maintenance and upkeep of the animal'.
- c. Transfer/sale of elephants
 - Section 43(1) of the Wildlife (Protection) Act 1972 prohibits the transfer of captive elephants by sale or offer for sale or by any other mode of consideration of commercial nature.

2. Declaration of Wild Life Stock Rules 2003 under the Wildlife Protection Act 1972

According to Rule 12, any captive elephant in respect of which ownership certificate has not been granted or obtained should be treated as government property.

3. Kerala Captive Elephants (Management and Maintenance) Rules, 2012

These rules have been framed under Section 64 of the Wildlife Protection Act 1972 laying down specific standards for management of captive elephants in Kerala.

4. Tamil Nadu Captive Elephants (Management and Maintenance) Rules 2011

These rules have been framed under Section 64 of the Wildlife Protection Act 1972 laying down specific standards for management of captive elephants in Tamil Nadu.

Government Policies for Protection of Elephants

1. Project Elephant (Ministry of Environment, Forest and Climate Change)

i) Project Elephant (PE) was launched by the Government of India in the year 1992 as a Centrally Sponsored Scheme with following objectives:

- a) To protect elephants, their habitat & corridors
- b) To address issues of man-animal conflict
- c) Welfare of captive elephants

ii) Guidelines for care and management of captive elephants

The Guidelines for Care and Management of Captive Elephants, 2008 issued by the Ministry of Environment & Forests under the aegis of Project Elephant provide specific standards regarding issue of ownership certificates, housing, feeding, transportation and work load of elephants held in captivity. These Guidelines have been issued to the Chief Wildlife Wardens of all the states and union territories.

2. Elephant Task Force (Ministry of Environment, Forest and Climate Change) - Gajah Report 2010

Some of the recommendations of the Elephant Task Force in its 2010 report are as follows:-

- a) Eventual phasing out of the acquisition of elephants, already in captivity or wild-caught, for entertainment, commercial or other purposes by agencies, institutions or individuals. It has further recommended 'an end to new commercial acquisition of wild-caught elephants by agencies, institutions or individuals'.
- b) Amendment to the Wildlife (Protection) Act 1972 to prohibit the 'use of elephants in exhibitions, circuses, weddings, unregulated tourism, public functions, begging or for other entertainment'.
- c) Elephant should be declared as the national heritage animal.

The Elephant Task Force concluded that “captive elephants have specific needs for access to water, adequate nutrition and exercise. **They ideally need to interact with others of their own species. Elephants are a long lived and intelligent species with a developed sense of self and relationships with other elephant kin. The Task Force is convinced of the need to act decisively to improve the quality of care of captive elephants.**”

The report also recognized the sentience and intelligence of elephants. It said that compassion must not only extend to other humans but also to other living beings.

The report cited and referred to certain research articles and studies indicating the high cognitive skills of elephants. Some of these are as follows:-

- a) “Whether endangered or not, ivory comes from highly intelligent, social animals that are affected by death and are bound by close familial ties. This is demonstrated by a plethora of elephant studies.” (Varner, 2003)
- b) Whether through poaching or culling, ivory sourced from non-natural mortalities originates from the killing of sentient individuals. In a recent paper on elephant person-hood and memory, Varner concludes that elephants are “near-persons” based on biographical consciousness, Machiavellian intelligence and encephalization quotients among other traits. He argues that although “person” is normally considered synonymous with human beings, that “among ethicists, the descriptive component usually refers to certain cognitive capacities which may or may not be unique to human such as rationality, self-consciousness, or moral agency”.
- c) “Elephants exhibit remarkable physical vigour, unusual social complexity and significant cognitive abilities. Furthermore, it acknowledges that elephants are complex, self-aware individuals, possessing distinct histories, personalities and interests, and that they are capable of physical and mental suffering.” (Global Elephant Charter)

3. The Ministry of Environment & Forests has issued Memorandum dated 07.11.2013 in F. No. 2-31/2013-PE stating that Chief Wild Life Wardens do not have the power to issue 'No Objection Certificates' to the transfer of elephants for religious purposes. According to the Memorandum, transfer in the garb of religious purposes would go against the spirit of the prohibition under Section 43 of the Wildlife (Protection) Act 1972.

4. The Government of India declared elephant as the national heritage animal of India vide gazette notification dated 21st October 2010 based on the recommendation of the Elephant Task Force in order to accord the species due pride of place for its central role in the country's diverse ecosystems as much as a symbol of cultural diversity.



Judgements and Orders regarding Elephants in India

a) **Dr. Manilal Valliyate v. State of Maharashtra and others** [Bombay High Court]

Sunder, a captive elephant held by a temple in Kolhapur district in Maharashtra, was subjected many years of cruel treatment by its mahout. A criminal complaint was filed in the local police station. In view of Sunder's best interest, the Hon'ble High Court of Bombay directed that the elephant be set free and relocated to Wild Life Rescue and Rehabilitation Centre, Bengaluru.

The Court **acknowledged that elephants are highly cognitive and intelligent animals.** It also opined that “**Laws being man-made, there is likelihood of bias towards the man and the rights of animals have been treated as subservient.** It is the duty of the Court to ensure that the balance exists in the system.”

b) **CUPA and others v. Principal Secretary to Govt. (Environment and Ecology) and others** [Karnataka High Court]

The hon'ble Court directed the Karnataka Government authorities to formulate guidelines for prohibiting the use of elephants in any form of begging, performance or procession.

This is a significant step in ending the use of elephants by humans for their own purpose.

c) **Wildlife Rescue and Rehabilitation and others v. UOI and others** [Supreme Court of India]

The writ petition in this case highlights the following 4 issues pertaining to captive elephants–

- i) Cruel treatment suffered by elephants in captivity that is in violation of constitutional and statutory provisions
- ii) The illegal sale and transfer of elephants under the guise of gift or donation
- iii) The illegal use of elephants in commercial and/or religious activities
- iv) The poor conditions of housing and upkeep that the elephants are subjected to.

One of the main issues in this case is the **ownership of elephants.** Following fundamental issues have been raised in this case:-

- i) After the Wildlife Protection Act has come into force, whether any person can keep an elephant in his custody as the owner?
- ii) Assuming there is no prohibition for keeping an elephant, what Rule should govern the upkeep of the animal?
- iii) Who are the authorities to regulate the health, upkeep and manner in which the elephants are to be treated and used?

The case is still pending before the Supreme Court and will largely affect the issue of ownership of elephants. As of now an interim order has been passed directing the state governments to not issue any ownership certificate to any persons in possession of elephants. The persons who are in possession of elephants cannot transfer the elephants outside the state or part with the elephants by way of transfer in any manner.

Research Supporting Animal Sentience – Annexure 1

- The science of animal sentience underpins the entire animal welfare movement and there is scientific proof that animals really are not that different from humans.
- The most basic way of experiencing the world is through feeling or sensation. 'Sentience' is defined as the ability to have perceptions and sensations. A 'sentient animal' is an animal that is aware of his/her surroundings and of what happens to him/her and is capable of feeling pain and pleasure, at the least. The current scientific consensus is that all vertebrate animals, at least, are capable of feeling pain and experiencing distress.
- Demonstrating objectively what animals are capable of is the key to achieving a positive change in attitudes and actions towards animals, and a real, sustainable difference for animal welfare. (Animal Sentience: Where are we and where are We Heading? Helen Proctor)
- The database of research on animal sentience is strong and rapidly growing. Scientists know that individuals from a wide variety of species experience emotions ranging from joy and happiness to deep sadness, grief, and post-traumatic stress disorder, along with empathy, jealousy and resentment.



Biological Arguments – Annexure 2

Both scholarly and popular work on animal behavior suggests:

- Many species of non-humans develop long lasting kinship ties.
- Orangutan mothers stay with their young for eight to ten years and while they eventually part company, they continue to maintain their relationships.
- Less solitary animals, such as chimpanzees, baboons, wolves, and elephants maintain extended family units built upon complex individual relationships, for long periods of time.
- Meerkats in the Kalahari desert are known to sacrifice their own safety by staying with sick or injured family members so that the fatally ill will not die alone.
- Canids and primates are particularly adept at it, yet even chickens and horses are known to recognize large numbers of individuals in their social hierarchies and to maneuver within them.
- Coyotes, elephants and killer whales are also among the species for which profound effects of grief have been reported.
- Dolphins are extremely intelligent mammals with a highly-developed social structure. Recent research shows that dolphins call each other by name and can remember the unique name whistles from old "friends" heard just one time 20 years ago.
- A number of high-profile and controversial studies took place where researchers tried to prove intelligence by attempting to communicate with primates kept at research facilities. These included Kanzi, a bonobo that can reportedly communicate by using lexigrams (symbols representing words); Koko, a gorilla which uses sign language, and Ayumu, a chimpanzee that exhibits an amazing memory (it is shown the numbers one to nine on the computer screen, and given just a fraction of a second to remember their random location. The chimpanzee can tap the numbers in the correct order).
- Darwin reported this in *The Descent of Man*: "So intense is the grief of female monkeys for the loss of their young, that it invariably caused the death of certain kinds" (1871: 40).
- Jane Goodall's report of the death of the healthy 8 year old chimpanzee Flint just three weeks after the death of his mother Flo also suggests that sorrow can have a devastating effect on non-human animals (see Goodall 2000: 140–141 in Bekoff 2000).
- A number of high-profile and controversial studies took place where researchers tried to prove intelligence by attempting to communicate with primates kept at research facilities. These included Kanzi, a bonobo that can reportedly communicate by using lexigrams (symbols representing words); Koko, a gorilla which uses sign language, and Ayumu, a chimpanzee that exhibits an amazing memory (it is shown the numbers one to nine on the computer screen, and given just a fraction of a second to remember their random location. The chimpanzee can tap the numbers in the correct order).

Legal Definitions – Annexure 3

1) Personhood

Personhood is the status of being a person. A person is a legal entity that is recognized by law as subject of rights and duties. The Supreme Court in *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others* (2000), has defined a person as any entity (not necessarily a human being) to which rights or duties may be attributed.

There are two kinds of persons –

- a) Natural persons – Human beings are natural persons. They possess the status of personhood since birth. According to *Corpus Juris Secundum*, Vol LXV, Page 40 as referred to by the Supreme Court in *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others*– “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.”

- b) Legal or artificial person – These are created by law and is also a legal fiction. Legal persons are entities to whom personality is attributed by law by way of fiction where it does not exist in fact. As referred to by the Supreme Court in *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others* *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.” For example, companies, registered trade unions, corporations are artificial persons.

One of the most important attributes of personhood is the capacity to sue and to be sued.

In India, there is no formal recognition of animals as persons in law. In fact, the animals are considered as property that can be “owned” by humans. For example, in the Indian Penal Code, Sections 428 and 429 (which refer to killing or maiming an animal) fall under the chapter titled “Offences against property”. This implies that animals are the property of humans.

2) Rights

A right is an interest which is recognized and protected by law. As it is recognized by law, the possessor is entitled to have it. As it is protected by law, the possessor can enforce it by an appropriate action in a Court.

⁸Corpus Juris Secundum is an encyclopedia of US state and federal law. This encyclopedia has been referred to by the Indian Courts in numerous cases and is a reliable source.

a) Fundamental rights

In the Indian context, fundamental rights refer to those human rights (inherent rights of a human being, rights which a being possesses by virtue of being a human) which are protected by the Constitution of India. The Supreme Court of India is the guardian of these rights.

The fundamental rights are enshrined in Articles 14 to 32 under Part III of the Constitution of India. Some of the fundamental rights are:-

- Right to equality
- Right to life and personal liberty
- Right to freedom of speech and expression
- Right to practice any profession or to carry on any occupation, trade or business
- Right to education
- Right to freedom of religion

b) Natural law (natural rights)

A political theory that individuals have basic inherent rights given to them by nature or God that no individual or government can deny.

c) Rights in Rem

Rights residing in persons availing against other persons generally. For example, right to life and limb, violence, fraud etc.

d) Rights in personam

Rights which avail against a particular individual or a determinate class of persons. For example, a right which a person may obtain under a contract.

3) Sentience

Capacity to feel, perceive or experience. To say that animals are sentient is to state explicitly that they can experience both positive and negative emotions, including pain and distress. The anti-cruelty and welfare laws in India (such as the Prevention of Cruelty to Animals Act, 1960) implicitly hint at the fact that animals are sentient beings. However, there is no explicit recognition of animal sentience. Few countries like New Zealand have explicitly recognized animals as sentient beings.

4) Property

Generally, property is any physical or virtual entity that is owned by an individual or jointly by a group of individuals.

5) Living property

Briefly, the idea of this concept is to recognize rights of the animals while retaining their status of that of property by creating a separate category of property under which animals would fall.

A premise of this concept is that it is ethically acceptable to continue to have animals within a property status. This premise is contrary to the beliefs of a number of animal rights activists, particularly those who identify themselves as abolitionists. Among these individuals, the first order of business is the elimination of the property status of animals, and then making animals (or some subset of animals, such as primates) legal persons. David Favre rejects this path forward and believes that positive human communities can include animals that are owned and used by humans.

In the research article written by him, David Favre provide a comprehensive contrary view of the opinion that animals will not be able to receive legal rights so long as they remain the property of humans and has provided a scheme of legal rights which the animals can possess.

The article develops the proposition that non-human animals can possess and exercise legal rights. This proposal is supported by the fact that the legal system already accommodates a number of animal interests within our criminal anti-cruelty laws and the civil trust laws. To make a more coherent package of all the animal related public policy issues, it is useful to acknowledge the existence of a fourth category of property, living property. Once separated out from other property, then a new area of jurisprudence will evolve providing legal rights for at least some animals. This article establishes why animals should receive consideration within the legal system, which animals should be focused upon, what some of the legal rights might be and how the traditional rules of property law will be modified to accommodate the presence of this new category of property.

¹⁰On May 5, 2015, the New Zealand Parliament unanimously passed the Animal Welfare Amendment Act (No. 2) 2015, which includes an amendment to the long title of the principal legislation, the Animal Welfare Act 1999, in order to specifically recognize animals as sentient.

<http://www.legislation.govt.nz/act/public/2015/0049/latest/whole.html#DLM5174807>

¹¹This concept has been proposed by David Favre, Professor at Michigan State University College of Law

¹²<https://www.animallaw.info/article/living-property-new-status-animals-within-legal-system>

6) Speciesism

Speciesism means prejudice or discrimination based on species of a living being. It means that species is in itself a reason for treating some beings as morally more significant than others. In the context of exploitation of animals, speciesism is the assumption of human superiority.

7) Doctrine of *parens patriae*

In Latin, *parens patriae* means “parent of the country”. It refers to the power of the state to intervene against an abusive or negligent parent, legal guardian or caretaker, and to act as the parent of any child or individual who is in need of protection. For example, some children, incapacitated individuals, and disabled individuals lack parents who are able and willing to render adequate care, thus requiring state intervention.

This doctrine was highlighted by the Supreme Court in *Animal Welfare Board of India v. A Nagaraja and Ors* (2014) with respect to animals. It was stated that it the Court's duty under this doctrine to take care of the rights of the animals. The apex court, by reading into the provisions of Sections 3 and 11 of the PCA Act along with Article 51A (g) of the Constitution of India, has listed down a few rights guaranteed to the animals. These are:-

- Right to live in a healthy and clean atmosphere
- Right to get protection from human beings against inflicting unnecessary pain or suffering
- Right to get food and shelter
- Right to dignity and fair treatment
- Right, not to be beaten, kicked, over-ridden or over-loaded
- Inherent right to live





FIAPO is India's apex animal rights organisation. As the collective voice of the animal rights movement in India, FIAPO is the catalyst that protects the interests and rights of animals on local and national levels - through education, research, lobbying, mobilisation, networking, training and direct action. Created for the movement, by the movement, FIAPO is India's only national federation. It has over 80 members and over 200 supporter organisations across the country. To support the interests and rights of animals, visit fiapo.org.

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