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**“Dharma is to protect the Needy”**

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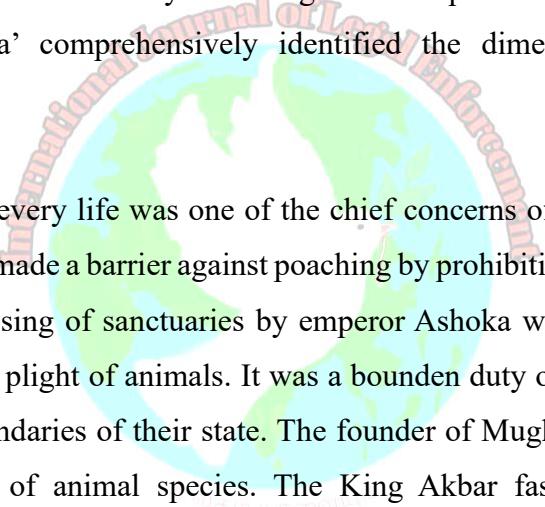
**JOURNEY OF WILDLIFE RIGHTS IN INDIA**

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## INTRODUCTION

The Isha Upanishad professes that, “the universe along with its creatures belong 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”. The trajectory of animal rights has its commencing point in Vedas and religious ideals. The concept of Sanatana Dharma addresses to respect the divinity in every living being. The Yajur Veda, Bridhasamiti Veda, Yajnavalkya Smrithi and great epics like Mahabharata, Ramayana have made immense contributions to the preservation of animals by emphasizing on the concept of coexistence. The Hindu mythology ensured the well-being of every species by associating them to the Gods and by idealising the concept of ahimsa. The classic treaty ‘Kautilya’s Arthashastra’ comprehensively identified the dimensions of environment protection.



The prosperity of every life was one of the chief concerns of rulers in ancient India. The then ruler Ashoka made a barrier against poaching by prohibiting the slaying of parrots, rhinoceros etc. The raising of sanctuaries by emperor Ashoka was also a definitive step towards improving the plight of animals. It was a bounden duty of the rulers to raise new forests around the boundaries of their state. The founder of Mughal Dynasty, Babur, was also a preservationist of animal species. The King Akbar fashioned Shikargah fruit orchards, parks and gardens for the welfare of animals. His religious ideology of complete tolerance reflected a concern towards his fellow creatures.

A change in perception towards the wildlife sprouted when the west stood in our soil. British era was an era of darkness not only for the homo sapiens but also for the flora and fauna. They plundered the natural resources and wildlife for mercenary needs. The foreigners enacted various legislations with respect to the environment. The Indian Forest Act 1878 ushered in the protection of forests. The then passed legislation, Elephant Preservation Act of 1879 was followed by the enactment of a series of statutes like World Birds Protection Act 1887, World Birds and Animal Protection Act 1912, Hailey National Park Act of 1936 under which the Hailey National Park was established(Jim Corbett

National Park). These laws to a great extent remained in the papers or were blind towards English men.

### EVOLUTION OF WILDLIFE RIGHTS: INDIAN PERSPECTIVE

The collapse of British rule in India swept away restraints including the restraints on hunting. The independent Indian Governments, in order to protect the crops from the animals, supplied guns to the farmers and this step wreaked havoc to the wildlife. Hunting fellow animals became an adventurous sport, wildlife trafficking became a money poaching industry, the unregulated industrial sector contaminated everything possible and wiped out many species of life. Though the Constitution of India directed the state to protect and preserve wildlife, the governments dealt with the issue at a slow pace.

The Part IV of the Constitution of India contains the directives to states to follow in their governance. Realising that a welfare state is not possible without the welfare of other living organisms, Articles 48<sup>1</sup> as well as 48-A<sup>2</sup> was added to improve the environment, forest, wildlife and animal husbandry. In addition to this, the Constitution also casts a duty on citizens, under Article 51-A(g)<sup>3</sup>, to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Though the Constitution imposes a duty upon both states as well as citizens, they are unenforceable by the courts of law.

Along with the Constitution, the International laws and conventions played an important role in the preservation of the environment. Article 51(c) of the Constitution directs the state to foster respect for international law and treaty obligations in the dealings of organised people with one another. But, India being a duelist nation, requires municipal statutes to give effect to any international covenant to which India is a party. This

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<sup>1</sup> The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving breeds, and prohibiting the slaughter of cows and calves and other milch and draught cows

<sup>2</sup> The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country

<sup>3</sup>

requirement triggered not only the enactment of various legislations, but also insertion of Article 48-A<sup>4</sup> to the Constitution. The United Nations Conference on the Human Environment held at Stockholm in 1972 paved the way for the Environmental Protection Act. Likewise, the Biological Diversity Act 2002 was enacted to implement the ideals contained in convention on Biological diversity, ratified by India in the year 1992 at Rio de Janeiro. There are legislations like Wild Life (Protection) Act 1972, Forest (Conservation) Act 1980 etc, are also influenced by the international laws. In addition, India possesses a role in International Whaling Commission (IWC), United Nations Educational, Scientific & Cultural Organization, World Heritage Committee (UNESCO-WHC). India also constituted a Wildlife Crime Control Bureau under Wildlife Protection Act 1972, to combat organized wildlife crime in the country.

Doubtlessly we can say that all these efforts went in vain as our environment is being dilapidated each and every second, and now it is crystal clear that all the laws to protect our mother nature are ineffective. Most often, our laws and the machinery constituted under these laws, remain as spectators rather than entering into the field. The Supreme Court of India has raised its concern with regard to rapid decline of India's wildlife, in *Sansar Chand v State of Rajasthan*<sup>5</sup>. This was not the first time the judiciary dealt with environmental issues. The adoption of living tree doctrine by our judiciary was always helpful to prevent the jungle eaters. This liberal approach opened the doors for the application of Public Trust Doctrine<sup>6</sup>, doctrine of absolute liability<sup>7</sup>, principle of exemplary damages, Polluter pays principle<sup>8</sup> etc to protect wildlife. These in fact paved the way for a comprehensive interpretation of the Indian Constitution. Initially, the opinion of the Courts were that, the preservation of wildlife is vital not only for the animals, but also to preserve the balance of the ecology and human race<sup>9</sup>. This approach got wider significance as the honourable Supreme Court recognised the "right to wholesome environment as the part and parcel of

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<sup>4</sup> 42<sup>nd</sup> Amendment 1976

<sup>5</sup> (2010) 10 SCC 604

<sup>6</sup> *Fomento Resorts and Hotels Ltd v Minguel Martins* (2009) 3 SCC 571

<sup>7</sup> *M C Mehta v UoI* (AIR 1987 SC 965)

<sup>8</sup> *Indian Council for Enviro-Legal Action v UoI* (1996) 3 SCC 212

<sup>9</sup> *Babu Lal v state* 1982 CriLJ 41

right to life guaranteed under Article 21 of the Constitution”<sup>10</sup>. An in depth analysis of the earlier attitude of the courts show that they appreciated the preservation of animals for the better future of humans. Animal rights were always recognised from the human rights perspective. The rights of animals was considered to be an interest of the general public and was given more emphasis than the right to practise any profession, or to carry on any occupation , trade or business. It was in the case of Ivory Traders and Manufacturing Association v UoI<sup>11</sup>The SC held that the Wildlife Protection Act 1972, which intends to protect wildlife, is not ultra vires to the Constitution, even though it puts restrictions upon the right guaranteed under Article 19(1) (g) of the Constitution. In the subsequent years, the development of animal rights was quite sluggish. The only major development was the constitution of National Green Tribunal due to the pressure from various judicial pronouncements<sup>12</sup> and the 186<sup>th</sup> law commission report. Apart from this, the realm of animal rights did not witness any milestone. In almost all judgements the aspect of environmental destruction and the act of disturbing ecology was lamented upon by the judges for the reason that it involves an unwarranted invasion to the fundamental rights of the citizens. In Court on its own motion v State of Himachal Pradesh<sup>13</sup>, it was held that environmental degradation would have an adverse impact upon the fundamental rights of citizens. This judicial attitude in fact made the fundamental rights of humans as a fort to protect the rights of animals. The duty to protect them arises from the very concept of fundamental rights guaranteed to the people of India.

The interpretation of fundamental rights in the light of Directive principles helped the court to remove the differentiation between Part III and Part IV of the Constitution. The duty imposed upon the state to preserve the wildlife is now almost absolute, as any failure results in violation of fundamental rights. Instead of remaining there, the courts dealt with the issue dynamically in Nagaraja’s case<sup>14</sup>. The analysis of judicial pronouncements from

<sup>10</sup> Subhash Kumar v State Of Bihar And Ors (AIR1991 SC 420)

<sup>11</sup> AIR 1997 Del 267

<sup>12</sup> M C Mehta v UoI (AIR 1987 SC 965); AP Pollution Control Board v M N Nayudu (1992)2 SCC 718; Indian Council for Enviro-Legal Action v UoI (1996) 3 SCC 212

<sup>13</sup> CWPIL No. 15/2010

<sup>14</sup> Animal Welfare Board v A Nagaraja (2014) 7 SCC 549

various High courts show that the journey towards conferment of personhood upon animals started much before the Nagaraja's case. In *Jumbo circus v Union of India*<sup>15</sup> The Kerala High Court took into account the plight of circus animals and posed before us a question: if humans are entitled to fundamental rights, why not animals? The honourable High Court also observed the practice of non conferment of rights upon animals as an anachronism which must be wiped out from its very root. An epoch making change occurred by the decision of *Animal Welfare Board v A. Nagaraja*<sup>16</sup>. In this case, the Supreme Court recognised the right of animals to have a dignified life including food and shelter. The Court also observed that, the rights guaranteed under section 3 and 11 of the Prevention of Cruelty Act, when read with Article 51(g) of the Constitution forms the magna carta of animals. With respect to rights of animals, Salmond opined that, the rights of animals are actually vested upon the public at large and considered that, animals are not 'persons', so as to vest rights. A contrary view was taken by the Uttarakhand High Court in *Narayan Dutt Bhatt v UoI*<sup>17</sup>. In this case the entire animal kingdom was declared to be legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person.

Yes, we are well armed with animal welfare legislations and the weapon of personhood conferred upon animals, in the fight against wildlife crimes but still India is among the countries that have rated high in animal cruelty index. According to the data that is retrieved from the official website maintained by MoEFCC and the National Informatics Centre, about 409 sqkm forest area have been given away since 2015 for developmental purposes and this would detrimentally affect the wellbeing of animals<sup>18</sup>. As per the UN World Wildlife Crime Report 2020, India serves as a major hub for illegal wildlife trade. The International union for conservation of Nature Red List and the state of India's bird population report invite our attention to the increased decline in bird's population<sup>19</sup>.

<sup>15</sup> AIR 2000 Ker 340

<sup>16</sup> (2014) 7 SCC 549

<sup>17</sup> 2018 SCC OnLine Utt 645

<sup>18</sup> <https://www.indiaspend.com/environment-vs-economy-indias-flawed-logic-that-exposes-it-to-covid-19-like-infections/> , Accessed on June 7, 2021

<sup>19</sup> [https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.stateofindiabirds.in/wp-content/uploads/2020/02/SOIB\\_Web-version\\_Final\\_.pdf&ved=2ahUKEwi0wPqg1oTxAhXrIbcAHcKWAKkQFjABegQIBhAC&usg=AOvVaw3zP2mCrnRnKyVscBDAviyw](https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.stateofindiabirds.in/wp-content/uploads/2020/02/SOIB_Web-version_Final_.pdf&ved=2ahUKEwi0wPqg1oTxAhXrIbcAHcKWAKkQFjABegQIBhAC&usg=AOvVaw3zP2mCrnRnKyVscBDAviyw) , Accessed on June 7<sup>th</sup>, 2021

Despite the stringent laws, our ecology is finding it hard to survive and they are often the victims of filthy deeds of men. This is mainly because of the weak strategies behind the process of implementation. Even though the enforcement agencies are under an obligation to strictly enforce the environmental laws<sup>20</sup> and the urgency in preservation of forests has been emphasised<sup>21</sup>, even now the enforcement of these laws rests in papers. Judiciary through a catena of cases have brought this issue into limelight. While in *Nellikka Achuthan v The Deshabhimani Printing and Publishing House ltd, Kozhikode*<sup>22</sup>, the court expressed its dissatisfaction in the implementation of Wild Life Protection Act, 1972, in *Gauri Maulekhi v UoI*<sup>23</sup> The Supreme Court criticised the non constitution of Societies for Prevention of Cruelty to Animals(SPCA) under SPCA Rules which was the machinery to be constituted within six months from 26.03 2001 . In *Narahari Jagadish Kumar v State of Andhra Pradesh*<sup>24</sup> The court vehemently said that, had the SPCAS been constituted as required, the effective implementation of Prevention Of Cruelty to Animals Act , 1960 would have been ensured and this would have dwindled the courage of man to organize events like cock fights etc. In this case the honourable court also took notice of the disinclination on the part of police officers to exercise their duty of arrest and search a person who is found to be engaged in the act of setting animals in fights against each other under the 1970 Act. Recently, the Telangana High court in the case of *K Chandra Sekhar v State of Andhra Pradesh*<sup>25</sup>, pointed out the poignant situation of the delayed constitution of SPCAS after a gap of 16 years and that too with the intervention of the judiciary. The banality of the governments towards the protection of ecology is clearly the violation of fundamental rights of people as well as the legal rights of other living beings. Without proper implementation, whatever be the written laws, they are good for nothing. In addition to this, our environment policy is decade old and realising that the current policy on preservation of environment is inefficient, the Supreme Court has in fact suggested for its modification in Re in the matter of the Protection of Forest,

<sup>20</sup> Indian Council For Enviro-Legal Association v UoI (1996) 3 SCC 212

<sup>21</sup> Dinesh Bothra v State of Rajasthan (Writ Petition (Pil) nNo. 10304/2010)

<sup>22</sup> AIR 1986 Ker 41

<sup>23</sup> WP (C) No. 881/2014

<sup>24</sup> Writ Petition (Pil) No. 320/2014

<sup>25</sup> Writ Petition No. 1458/2018

Environment, Ecology, Wildlife etc from Fire v UoI<sup>26</sup>. The fragile punishments prescribed under the prevention of cruelty Act 1960 and other animal welfare legislations have also contributed to the escalation of crimes against animals and the matter has reached a juncture requiring revision of punishments.

It is neither the lack of legislation nor the judicial approach that makes the situation worse. A nation like India may find it difficult to enforce all the laws simultaneously, but that is not excusable at all. Unless mother nature is preserved, soon there will not be any life to enforce any right. The fact that the Indian judiciary is playing an active role in the domain of protection of wildlife must be noted with ecstasy. It is by the liberal attitude of the judiciary that, now, when an animal is being killed or harassed a citizen is able to approach the court to enforce his fundamental right as well as the very right of animals. As it can be seen that, though the writ of continuing mandamus was evolved to quench corruption, it was later applied to many cases concerning environmental protection<sup>27</sup>. This writ has been successfully used in Mahendra Lodha v State of Rajasthan<sup>28</sup>, and under the continuous monitoring of the Rajasthan High Court, the traffic pollution has been considerably reduced. The same can be adopted so as to protect the wildlife. When the court holds the grip, it is not easy for the administrative bodies to sneak out and at the same time, the common men get the assurity that the authorities function properly. If properly used, the scope of continuing mandamus is very wide to preserve the life around us by keeping the administrative bodies under continuous surveillance of the judiciary. Another means to enhance accountability of these bodies is the dilution of Locus standi. Indian judiciary has already gone far in the dilution of locus standi through Public Interest Litigation and when it comes to the wildlife protection cases, the court should show more leniency. When a common man is coped with weapons to defend the ecology, it can be expected that, though not all, but many will stand to protect the rights of animals and plants.

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<sup>26</sup> Writ Petition (Pil) No. 54/20116

<sup>27</sup> Vellore Citizens Welfare Forum v UoI (1996) 5 SCC 647; T.N. Godavarman Thirumulpad v UoI (2014) 6 SCC 150

<sup>28</sup> RLW 2007 (2) Raj 1428

When we analyse the rights of animals, it can be seen that, ancient world did not give much importance to animal life. But when we realised that the animals are essential for our own sustenance, we recognised their rights so as to keep our rights alive. The environment thus came to be protected so as to protect human beings. This concept has now changed and the courts recognised the animals as legal persons who possess legal rights. By conferring rights to animals, their rights and life is more protected. Though the initial stand also protected the animal species, it had to depend upon human rights. In this situation, their rights are at mercy of human needs. Men were able to do whatever they wished to do upon his ecology until some other men claimed a violation of his rights. The emphasis is laid only on the rights of humans and not on the lives of animals and plants. Unless and until there is someone to prove that his fundamental rights are violated, the exploiters are free to continue their exploitation of forests. By the change in concept, now, the animals are treated as a legal entity distinct from humans and are conferred with legal rights. They have the right to lead a dignified life, which means that whatever human activity that affects the dignity of animals is violative of their rights even if the human rights are not violated. The enforcement of the rights becomes easy and the stringency in invoking the writ remedy can be easily tackled. There is no need to prove any violation of fundamental rights and the failure of state machinery and what all needed is to show that the animals' rights are infringed. Though, in either approach, the ultimate beneficiary is human kind, the animals are given respect in the latter approach. This jurisprudential approach is helpful for the future development of rights of ecology and better enforcement of those rights. Just like the deity or the corporation, the animals and plants call for a separate recognition apart from being a slave of homo sapiens.

It can be seen that, originally the Part IV of the Constitution was made unenforceable so as to reduce the burden on the states to implement the ideals contained in it in no time. But later this was changed and most of these principles were enforced by reading them with Part III of the Constitution. The pressure on the government to implement them, to a great extent, creates a headache due to the lack of funds. The states had often taken this plea as a ground to evade from the obligations under Part IV. So, as a shield, the court took a step further and ruled that, government agencies may not plead non availability of funds,

inadequacy of staff or other insufficiency to justify the non performance of their obligations under environmental laws<sup>29</sup>.

However it is impractical to knock the doors of courts when and where the wildlife is being haunted, because the Indian judiciary is already exhausted with towering cases. In addition to that, the intervention of the courts by enforcing the executive to execute the laws is continuously being criticised as judicial activism. Thus there are limits upon the judiciary not to transgress into the spectrum of other limbs of the state and respect the doctrine of separation of power. One of the ways in which the problem can be solved is by the constitution of Green Tribunals or green benches in every state and by conferring writ jurisdiction, especially the authority to issue continuing mandamus upon them. The existing vacancies in green tribunal should also be filled up as soon as possible. These steps will ensure better implementation of the environmental protection laws.

These alternatives cannot be suggested as a forever solution. It's high time that not only the state, but every human being should realise that the constitution speaks for humans as well as for rivers, forests, animals, birds, aquatic lives and the environment. It is the bounden duty of each and every citizen to preserve the ecology even if the duty is unenforceable in a court of law.

The development of National Legal Service Authority and other institutions under National Legal Services Act is a model that can be adopted in wildlife protection also. Spreading the importance of preserving the wildlife to the grass root level is not possible by any one machinery at the central or state level. The branches have to reach every nook and corner and they must possess the ability to enlighten the unknown. India being a nation based on unity in diversity, each machinery which is constituted under various laws for the protection of wildlife has to have a co-ordination. Together they have to formulate and execute action plans to secure the animal kingdom. Most importantly, the participation and co-operation of the general public is the key for every goal. Thus, the protection of wildlife

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<sup>29</sup> Dr. B L Wadehra v UoI ( AIR 1996 SC 1969)

is not always possible by building barricades around them, but is possible by educating humans. A man with no knowledge is nothing but a beast which kills for fun.

Being a citizen of India, we should not stick to the question of what your country can do for you, instead we should show the enthusiasm to ask what can I do for my country. Then only our nature will be nourished. Till then, however stringent or mighty be the laws of the land, it will be futile.

### CONCLUSION

So far now, Earth is the only planet which possesses life. Life on earth consists of innumerable varieties of species including human beings. It is the rhythm of nature that keeps life alive. Even a small jerk affects the whole balance of nature and it will end in total destruction of life. Even after knowing this fact, the so-called most intelligent animal, the human, is causing continuous deterioration. His deeds gave salvation to many species and many will get it soon.

Nature made man and man made laws to protect nature. Countless papers are used to print those laws and still none of them made any progress. When we ignore the life of our fellow beings just for our entertainment or selfish motives, we are actually digging our own grave yard. To hope for a better world where animals enjoy a dignified life, it is not the laws that need immediate change. It is the whole human kind who needs the change. However harmonious the law might be, unless we start to abide by it, they are of no use and the same is in the case of the environment also. The more we ignore these laws, the sooner our end will be. Though it cannot be said that our laws are most apt to protect life on earth, without proper implementation, they are only a bunch of meaningless words.