



Himachal Pradesh National Law University, Shimla (India)

HPNLU LAW JOURNAL

Journal Articles

ISSN:2582-8533

HPNLU Law Journal

Volume I (2020)

ARGUMENTS FOR ANIMAL RIGHTS: Prohibiting Animal Sacrifice as a Form of Cruelty

Vanshika Thakur

DOI: <https://doi.org/10.70556/hpnlulj-v1-2020-03>

This article can be downloaded from: <https://hpnlulj.ac.in/journal-level-3.aspx?ref-id=9>

Recommended Citation:

Vanshika Thakur, Arguments for Animal Rights: Prohibiting Animal Sacrifice as a Form of Cruelty, I HPNLU L. J. 35 (2020). <https://doi.org/10.70556/hpnlulj-v1-2020-03>

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ARGUMENTS FOR ANIMAL RIGHTS: Prohibiting Animal Sacrifice as a form of Cruelty

Vanshika Thakur*

[Abstract: In this Article, I argue that there has emerged sufficient basis under rights jurisprudence which can justify adoption of a larger and general policy and law with respect to animal rights. The following sections of the paper include a preliminary discussion on whether animals are capable of having rights, followed by a systematic analysis of philosophical and legal dimensions of the same. An account of the brief history of animal rights movement is also given. Subsequently, the central theme of the paper, animal sacrifice-cruelty is discussed in the context of the judgment of the High Court and whether it can be considered as a landmark step in the recognition of animal rights.]

I

Introduction

There is a growing consensus that the legal and social system should afford protection to animals and prevent cruelty against them. However, the basis of such discourses is less legal and more social, moral and ethical. There is an extraordinary amount of polarization on the question of animal rights. On the one hand there are activists such as Ingrid Newkirk, founder of 'People for the Ethical Treatment of Animals (PETA)', who believes that, 'when it comes to pain, love, joy, loneliness, and fear, a rat is a pig is a dog is a boy. Each one values his or her life and fights the knife.' They argue that animal suffering¹ matters and legitimate steps must be taken to reduce it. On the other hand, are theorists, for example, Richard Epstein, who hold the view that recognition of 'rights of animals to bodily integrity will not happen, and it should not happen.'²

* Student of Seventh Semester, Himachal Pradesh National Law University, Shimla.
Email: jamvanshikathakur@gmail.com.

¹ According to the PETA, all animals have the ability to suffer to the same degree and manner as humans do. They feel pain, pleasure, fear, frustration, loneliness, and motherly love. See, People for the Ethical Treatment of Animals, *Why Animal Rights*, para 2 (2020) available at: <https://www.peta.org/about-peta/why-peta/why-animal-rights/> (last visited Apr. 20, 2020).

² Richard Epstein, ANIMALS AS OBJECTS, OR SUBJECTS, OF RIGHTS 25 (2002).

In a world that is characterized by lethargic application of even universal human rights,³ naturally, animal rights as a concept is an alien idea. The practice of sacrifice constitutes the highest form of cruelty against animals. The practice of animal sacrifice has been prohibited by the High Court of Himachal Pradesh ruling on the petition filed by Petitioner and animal rights activist Sonali Purewal.⁴ According to the petitioner, this practice (animal sacrifice) is not in conformity with Article 51-A(h) of the Constitution of India. According to the petitioner, this practice is prevalent in Chamunda Devi temple in Kangra District, *Hadimba Devi* temple in Manali, *Chamunda Nandi Keshwar Dham* in Kangra, Malana in Kullu District, *DodraKwar* (Mahasu), Shikari Devi temple in Mandi District and *Shri Bhima Kali* Temple in Sarahan, *Ani* and *Nirmand* in Kullu District, Shilai in Sirmaur District and *Chopalin* Shimla District.⁵ In this paper, we will attempt to examine the basis of such judgments and policies, within the conceptual framework of legal rights in favor of animals. We shall argue that there has emerged sufficient basis under rights jurisprudence which can justify adoption of a larger and general policy and law in this regard. The following sections of the paper include a preliminary discussion on whether animals are capable of having rights, followed by a systematic analysis of philosophical and legal dimensions of the same. An account of the brief history of animal rights movement is also given. Subsequently, the central theme of the paper, animal sacrifice-cruelty is discussed in the context of the judgment of the High Court and whether it can be considered as a landmark step in the recognition of animal rights.

II

Animal Rights Movements: A Brief History

In ancient human communities, animals were put to trial like human beings.⁶ However, with the development of the modern legal system and the concept of natural rights, popularized by Hobbes, Locke and Rousseau everything (on earth) with the exception of human beings became objects, while rights are only ascribed to human beings who can demand their enforcement by the state. According to the

³ Human Rights Watch, *World Report 2019*, available at: https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf (last visited Apr. 25, 2020).

⁴ *Ramesh Sharma v. State of Himachal Pradesh*, 2014 SCC Online HP 4679.

⁵ *Id.* at para 2.

⁶ Cows, dogs etc. were tried for criminal offences against humans even in ancient Europe including India. In India, tress, land etc. were seen as objects that could be punished for a wrong according to the law of land. See Walter Woodburn Hyde, *The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times*, Univ. Penn. L. Rev. 708 (1916).

United Nations' Universal Declaration of Human Rights (UDHR), human rights include, 'the right to life, liberty, security of person, an adequate standard of living, to own property etc. among others.⁷ These rights are different from animal rights because we have the power to ensure that other humans have access to food and housing, are free from torture, and can express themselves. On the other hand, it is not in our power to ensure that every bird has a nest or that every squirrel has an acorn. One of the components of animal rights is to allow the animals to live in their habitat free from any form of cruelty perpetrated by human beings.

Animal rights movement has had diverse history. It spans from the social ridicule of the people wearing animal fur to the banning of the use of animals in circuses to promoting veganism all over the world and to the constant attempts of producing lab-grown meat to save animals. The foundations of animal rights movement were laid by Peter Singer who first argued that animals were sentient and could suffer pain. He made strong arguments in his book *Animal Liberation*⁸ which is considered the bible of animal rights movement. Jeremy Bentham (founder of the philosophy of modern utilitarianism) wrote of animals, '*the question is not, Can they reason?, nor, Can they talk? but, the real question is, Can they suffer?*'⁹ Given that animals can suffer, Singer argues that humans have a moral obligation to minimize or avoid causing such suffering, just as they have an obligation to minimize or avoid causing the suffering of other humans¹⁰.

III

Are Animals Capable of Possessing Rights?

In his research titled 'Rights', H. J. McCloskey sets out two requirements for any person/ legal personality to possess rights: 'the being can possess things or the being can possess interests'. Therefore, a right can be simply understood as an

⁷ UN General Assembly, *United Nations Declaration of Human Rights*, 10 December 1948, 217 A (III) available at: <https://www.un.org/en/universal-declaration-human-rights/> (last visited Apr. 20, 2020).

⁸ Peter Singer, *ANIMAL LIBERATION* 86 (2002).

⁹ Jeremy Bentham, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* 144 (1948).

¹⁰ Peter Singer compared the moral worth of animals to human infants and empathetic arguments in favor of animal's right to life. He also argues that it is the thinking capacity of non-humans that warrants such an interpretation. See Peter Singer, *PRACTICAL ETHICS* 74 (2011).

interest recognized as well as protected by law.¹¹ Similarly, in another paper titled, 'the Rights of Animals and Unborn Generations', Joel Feinberg, establishes how animals have interests which must be protected.¹² Take, for example, the deceased masters who leave their properties in the name of their pets. Such animals can claim their 'rights' through the vicarious actions of a human proxy such as is the case of the mentally feeble and the minor. Further, trustees of a fund, willed to a dog or other such pet animals, are more than a mere custodian. Moreover, it is their job to look after the interests of the animals. So, if the animal has interests that means it can bear rights as the animal itself is the beneficiary of the trustee's services.

In opposition to the above arguments, it is argued that an animal is a dumb, brute and non-sentient creature, and therefore cannot claim rights. Due to its intellectual incompetence it is unable to act or think rightly, discharge or breach duties so animals cannot have rights because they cannot have duties. In other words, they cannot be 'moral agents'.¹³ The one who possesses a right must claim it or get it enforced through the channels of the legal machinery. But, John Feinberg says, it is not required for somebody who has a right that she also ought to be capable of setting the legal machinery in motion. Feinberg quotes W. D. Lamont who opines, that 'the ability to understand what a right is and the ability to set legal machinery in motion by one's own initiative are not necessary for the possession of rights. If that were the case, then neither human idiots nor babies would have any legal rights at all'.¹⁴

Feinberg also points out the difference between, 'duties regarding animals' and 'duties to animals. Thus, the laws that are made just to appease the ever-so-compassionate animal zealots are not necessarily a recognition of animal rights. He says 'if we conceive our duty to be one of obedience to authority, or to one's own conscience merely, or one of consideration for tender human sensibilities only, then we might still deny that animals have rights.....But if we hold not only that we ought to treat animals humanely but also that we should do so for the animals' own sake that such treatment is something we owe animals as their due something that can be claimed for them, something the withholding of which would be an injustice and a wrong, and not merely a harm, then it follows that we

¹¹ H. J. McCloskey, *Rights* 15 (59) PHIL. Q. 126 (1965).

¹² Joel Feinberg, *The Rights of Animals and Unborn Generation* in PHILOSOPHY AND ENVIRONMENTAL CRISIS 43-68 (William T. Blackstone ed. 1974)

¹³ The conventional view is that animals are not moral agents i.e. they lack an ability to distinguish a right from a wrong action. Instead they are viewed as moral patients i.e. they are owed obligations and do not owe obligations. See Kyle Johannsen, *Are Some Animals Also Moral Agents?* *Animal Sentience* 189 (2019).

¹⁴ *Supra* note 12 at 47.

do ascribe rights to animals.¹⁵ Thus in a cognitive sense, rights of animal does exist.

Ascribing Rights to Animals

As we flip through the pages of history, we come across a third century CE Roman jurist Hermogenianus who opined that 'all law is established for man's sake' (*Hominum causa omne jus constitum*). Similarly, in P.A. Fitzgerald's imagination 'all the law is made for men and allows no fellowship or bonds of obligation between them and the lower animals'. Consequently, all that animal rights movements have been able to do is get animals recognized as 'legal things' but it is far from being a 'legal person.'¹⁶

Legal persons have rights of their own but the same cannot be said for legal things. These are mere things over which legal persons may exercise property rights. Presently, this status as legal things affords animals the indirect protection of laws intended to preserve social or moral rights of animal owners, such as criminal anticruelty statutes or civil statutes that permit owners to obtain compensation for damages inflicted on their animals. This sort of law presently defines the field of 'animal law,' which is much broader than animal right. However, a legal thing can become a legal person in similar ways in which human slaves were freed. Animals will, then, possess its own legal rights and remedies.

Reducing Animal Suffering through Legislations

There is a general agreement that all beings, including animal beings, have an inherent right to live, a life free of suffering. But arguments fizz out when it comes to animal-derived benefits such as using them as food, for fur and leather or as milking cattle, as zoo animals, for entertainment etc. Gary Francione, a prominent animal rights activist, would argue that *animals should have the right not to be treated as our property* and that in these utility-deriving activities, humans subject animals to unimaginable amounts of sufferings.¹⁷

Modern animal rights movements are based on the ideology¹⁸ that it is our prejudice that forces us to deny others the rights that we expect for ourselves. Arguments, for example, 'if you wouldn't eat a dog, why eat a pig?' are presented

¹⁵ *Supra* note 12 at 56.

¹⁶ P. Fitzgerald, *SALMOND ON JURISPRUDENCE* 301 (12th edn. 1966).

¹⁷ Gary L. Francione, *ANIMALS PROPERTY OR PERSONS?* 30 (2004).

¹⁸ Modern day animal rights movement is based on the ideology that animals would have the right to live free of human use and exploitation i.e. a vegan world where animals are no longer used for food, clothing, recreation etc.

in support. Activists believe dogs and pigs have the same capacity to feel pain, but it is prejudice based on species that allows us to think of one animal as a companion and the other as dinner.¹⁹ Animal rights activists argue that because animals are sentient, the only reason humans are treated differently is speciesism.²⁰ They argue that there is no reason, morally, to distinguish between humans and animals.

As a rejoinder, opponents of animal rights would fervently bring up functionalist arguments of a natural balance of our ecosystem with respect to food-chain (“will a tiger ever stop eating a goat?”), and the utilitarian views for the use of animals in biomedical-research that benefits the human race (development of vaccines, antidotes etc.). They swear by laws that are already in place to minimize animal suffering. For instance, the Prevention of Cruelty to Animals Act, 1960, (hereinafter PCA) which was enacted to prevent unnecessary cruelty towards animals and to minimize suffering. The underlying ideology of the PCA is ‘human dignity’; that human beings are dignified only they don’t unleash cruelty on animals. No wonder the recent trend of cruelty free products that sell fast off the shelves due to their appeal to both our minds and souls. It is therefore, in human interest to treat animals with kindness!

Cruelty towards animals has been made a punishable offense under Section 429 of the IPC (Indian Penal Code) and Section 11 of the PCA. Under the law, imprisonment of up to five years and/or fine can be imposed. Even animal testing is illegal under ‘The Drugs and Cosmetics Act, 1945 (Rules 148 C and 135 B). There is also a Wildlife protection Act, 1972, in place. To sum it all, animals can be used for their utility but the courts have made sure that laws are in place to minimize the suffering of such animals.

IV

Animal welfare vs. Animal Rights

The concept of ‘Right’ should not be understood as mere prevention of harm. If it is limited to that, then, by definition the existence of the above laws reflect the existence of animal rights. That is a narrow view. A line of distinction must clearly

¹⁹ People for the Ethical Treatment of Animals, *Supra* note 1.

²⁰ Speciesism means an arbitrary distinction based on the incorrect belief that humans are the only species deserving of moral consideration. According to Peter Singer the idea that human life is superior is flawed, just because non-humans can’t speak for themselves shouldn’t make it acceptable for humans to exploit them for their needs. *Supra* note 10.

be drawn between animal welfare and animal rights. While welfare focuses on minimizing animals' suffering, animal rights presupposes that animals are individuals who are entitled to justice. Statutes making cruelty to animals a crime, are common, imposing legal duties on people to not mistreat animals. However, are animals the beneficiaries of those duties, possessor of rights correlative to them?²¹

In the above context it is appropriate to discuss various religious practices involving barbarity towards animals that the courts have banned over the course of time. Whether such kind of judicial exercise amount to recognition of rights of animals is the main theme of the paper.

Supreme Court in *Animal Welfare Board of India v. A Nagaraja*²² made it clear that animals too possess certain basic rights like rights against cruel treatment. It declared *Jallikattu* (bull fighting and cart racing) to be illegal and also struck down the Tamil Nadu Regulation of Jallikattu Act, 2009, a state law, that permitted Jallikattu.²³ The decision caused a lot of public uproar on the ground that the judgement interfered with the age-old traditions of people.

The Tripura High Court, in *Subhash Bhattacharjee v. State of Tripura*²⁴ banned animal sacrifice in religious places. The court ruled that the tradition of animal sacrifice lacks "essence of economic, commercial, political or secular character" and cannot be protected under Article 25(1) of the Constitution. The right to freedom of religion and religious practices is subject to public order, health and morality. Animal sacrifice was held to be violative of Article 21- right to life was broad enough to extend to animal lives too. Religious practice cannot, thus, override the provisions of PCA.

²¹ John Fienberg, *Supra* note 11.

²² *Animal Welfare Board of India v. A Nagaraja*, (2014) 7 S.C.C. 547.

²³ Jallikattu is a Tamil word derived from 'Callikattu', where 'Calli' means coins and 'Kattu' means a package. Jallikattu refers to silver or gold coins tied on the bulls' horns. People, in the earlier time, used to fight to get at the money placed around the bulls' horns which depicted as an act of bravery. Later it became a sport conducted for entertainment in which a fast moving bull was collared with ropes around its neck and subjected to all forms of cruelty. Pronouncing its verdict in favour of Animal Welfare Board of India, the apex court also noted that the penalties for cruelty to animals under The Prevention of Cruelty to Animals Act, 1960 were weak and that the act required modification.

²⁴ *Subhash Bhattacharjee v. State of Tripura*, Writ Petition(C) (PIL) No.2/2018, available at: <https://indiankanoon.org/doc/58095629/> (last visited Apr.20, 2020).

In a landmark judgement, *Ramesh Sharma v. State of Himachal Pradesh*²⁵ the High Court of Himachal Pradesh, ruled that:

‘No person will sacrifice any animal in any place of worship. It includes adjoining lands and buildings’²⁶ The Court observed: ‘..thousands of animals are sacrificed every year in the name of worship. Sacrifice causes immense pain and suffering to innocent animals. They cannot be permitted to be sacrificed to appease a god or deity in a barbaric manner’.²⁷ The bench further observed: "Whether animal sacrifice can be termed as religious practice or not is a grey area. Faith, rituals and their continuation must change in the modern era. People are required to be sensitized on this issue by the government’.²⁸

The 2014 judgement, caused public protest and dissatisfaction. While the *Hidimba*²⁹ deity endorsed the judgement, most people refused to abide by it resenting the Court’s interference with traditions. Taking cognizance of holding *JagatiPuch*,³⁰ the convention of oracles, in Naggar in Kullu district in September 2014, to decide whether the ban on animal slaughter is acceptable or not, the Court observed, "the extra-Constitutional bodies have no role. The bench noted that superstitions had no place in the era of reasoning and moreover these rituals do not form the essential part of Hinduism. “It may be religious practice but definitely not an essential and integral part of religion”³¹ Examples of barbarity of the practice were cited as arguments such as, it takes 25 minutes to kill a buffalo and sometimes it may run away injured in an attempt to save itself. The animals are mercilessly beaten up and chilies are thrown into their eyes. The Court ruled that animals were a creation of god just like humans and they must be treated with dignity.³²

V

Analysis of the Judgements

²⁵ *Supra* note 4.

²⁶ *Id.* at para 85 p.108.

²⁷ *Id.* at para 9 p.10.

²⁸ *Id.* at para 83 p.105.

²⁹ Goddess residing in Manali also known as the wife of *Bheema*, one of the five Pandavas from Mahabharata.

³⁰ At the *Jagati Puch*, which is held only in extraordinary situations, the invitation is sent to oracles who speak for the gods - and they publicize what they claim to be divine verdicts.

³¹ *Id.* at para 42 p.53.

³² *Id.* at para 75 p.98

When we assess of the above judgements, we notice that the judges have invoked citizens' fundamental duties, Article 51A (h)³³ to be rational and scientific. They are basically directions to governments to sensitize people about the Constitutional values and the importance of love, humanism, and compassion towards all animals and birds.

We have already established how animal welfare is not identical with animal right. While anti-cruelty and animal conservation legislation in India is based solely on animal welfare, there has been little or no progress towards recognizing and protecting animals' rights. Courts continue to interpret animal welfare laws in the context of Constitutional Rights and Duties. The above court judgements appeal to the public morale of reducing animal suffering. It is another case of appeasement to the animal-loving masses and thus brushing away the complex question of animal rights. The courts have held animal sacrifice as barbaric and rudimentary not appealing to reason or scientific temper or reason. However, as Malinoski argues, 'there are no people however primitive without religion and magic. Nor are there, it must be added at once, any savage races lacking either in the scientific attitude or in science, though this lack has been frequently attributed to them'.³⁴ So animal sacrifices do have a rational behind them.

There is lack of relevant and reliable information, we shall have to largely draw upon our own experience as a witness to the practices of animal sacrifice for the clan goddess referred to as *kulh-devi*.³⁵ As a family ritual, every four years, the members of the *Kulh*³⁶ gather to worship the clan-goddess and please her with a goat sacrifice. The goddess is a reincarnation of *Kaali*, who is a hot-headed Goddess³⁷ and therefore animal sacrifice is an important ritual as part of worship of such a deity.

³³ Indian Const art.51.

³⁴ Bronislaw Malinoski, *MAGIC, SCIENCE, AND RELIGION AND OTHER ESSAYS* (1954).

³⁵ Every clan has a clan deity- a god or a goddess known as Kulh Devta and Kulh Devi respectively. Even before the Gods of great tradition in the Hindu Pantheon are worshipped, in Himachal the Clan gods are worshipped before. The deity's permission is sought before any important work that is to be taken up, for marriage in the family and other important occasions. A sacrifice of goat or a sheep is made to please the deities, the nitty-gritties of which I realised only when I got a chance to witness the process myself.

³⁶ *Hindi* for Clan.

³⁷ The deities of the Hindu pantheon are distinguished as hot and cool deities according to their temperaments, in the Great Tradition *Kaali* (also known as Mahakali is the goddess of destruction and power) would be considered as a hot goddess and *Saraswati* (Goddess of knowledge, music and art) will be considered as a cool goddess. Animal Sacrifice is a ritual that is witnessed most prominently in the worship of hot deities.

Even in the animal sacrifice, remote traces of *ahimsa*³⁸ are seen when one looks at the sophistication of the process. The goat is not beheaded until the Goddess accepts it. This acceptance is made clear when the priest or the eldest member of the family pours water on the sacrificial animal's back and the animal shakes its head and body as a response. This means the deity has gladly accepted the sacrifice. Sometimes when this does not happen, that indicates the deity is angry and then the medium known as the *Chela*³⁹ is beckoned to help communicate with the deity. It is also made sure that the animal does not suffer as beheading is an instant exercise. The meat is cooked and distributed as *Prasadam* to all the members of the clan and the neighbors. It is especially taken care that *prasadam* is not given to the family from whom the goat or the animal was bought, as it is considered disrespectful for such a family to be offered *prasadam* and they are believed to be mourning the animal's loss.

Thus, to call such practices to be devoid of sensitivity would be a superficial analysis. The sensitivity, however, is aimed at the fellow humans and their comprehensible feelings as opposed to the dumb animals. Yet, the practice, as we have seen, is not devoid of some sense of consent and sensitivity. The sacrifice is supposed to be good for the animal, since, in the Hindu faith it is believed that the soul never dies and it changes form, a soul is stuck in the cycle of births and deaths (also known as *yuniyan*) and after almost around eighty-four lakh birth and deaths, in different life forms, does a soul get to be born in a human form. Sacrificing an animal at a sacred place releases it from the many *yuniyan* and the victim gets life, heaven and immortality and the sacrificer also gets the same rewards.

At this stage we must differentiate between Ritual slaughter and Animal Slaughter. Animal Slaughter is the practice of slaughtering livestock for meat/food. The Animal Slaughter involves a prescribed practice of slaughtering an animal for food production purposes. This differs from animal sacrifices that involve slaughtering animals, often in the context of rituals, for purposes other than mere food production. Animal sacrifice is the ritual killing and offering of an animal usually as part of a religious ritual or to appease or maintain favour with a deity.

The cases, discussed above, prohibiting animal sacrifice in religious places while animal slaughter for food production is still allowed like the slaughter on

³⁸ According to Lexico, *ahimsa* is a noun (in the Hindu, Buddhist, and Jainist tradition) respect for all living things and avoidance of violence towards others, available at: <https://www.lexico.com/definition/ahimsa> (last visited 20 Apr., 2020).

³⁹ He or she is a person who goes into a sub-conscious meditative state while kneeling down before the deity and then conveys the word of the deity. Each deity, each clan/*Kulh* has an assigned *Chela* who specifically acts as a medium for a particular god or goddess.

Id-ul-Adha etc., appears to be questionable. Courts have even deliberated on the practise of slaughter in Islam and have found the practise to be non-essential to Islam and states are free to enact suitable controlling legislations on the issue.⁴⁰

VI

Is Prohibiting Ritual Slaughter a Step Towards Recognition of Animal Rights?

The Indian courts has banned animal slaughter at religious places terming them as rudimentary, irrational and inhumane but slaughter for food production, however, is still allowed.⁴¹

Rights have a universal appeal. We can't pick and choose individuals to whom rights are or are not available. This is, primarily, arbitrary and hence antithetical to the very concept of the right. The same must apply to animals as well. If buffalos need to be protected, dogs need to be saved from sufferings, why not rabbits, sheep or fish? Thus, to hail the prohibition of animal sacrifice as an important development in realization of animal rights is an overstatement. This is what, Juel Fienberg refers to as "laws not to ascribe rights to animals but to cater to our own tender feelings".⁴² Do our courts actually recognise the rights of animal or is it a mere appeasement to the majority of people who consider such practises barbaric?

It is, in our opinion, a case of "judicialization of religion" by the courts. Judicialization is a recurrent phenomenon in democracies to devitalize normative conflicts. Where challenges of heterogeneity of religions are faced, most people can never come to terms with the practices of co-existing faiths. They may seem barbaric and insensitive to the majority that does not identify with them. Moreover, the rapid march towards a scientific rationality has brought a lot of religious practices under the scope of 'reforms' by an active judiciary.

⁴⁰ The question is settled by the Supreme Court. See *Mohd. Hanif Quareshiv. State of Bihar* (AIR 1958 SC 731), *State of West Bengal v. Ashutosh Lahiri* (A.I.R. 1995 S.C. 464). *Mirzapur Moti Kureshi Kassab v. State of Gujrat* (2005) 8 S.C.C. 534.

⁴¹ In 2011 Uttrakhand HC division bench of acting chief justice Rajiv Sharma and justice Manoj Kumar Tiwari responded to the PFA's petition and issued the directions that no animal could be sacrificed inside any temple, or in an open space, or any public street, but only in slaughterhouses. Animals could be killed to provide for food and not with the object of pleasing the deities.

⁴² *Supra* note 12 at 45.

The arguments that the courts should not interfere in the personal laws and that the Constitution of India provides freedom of religion to all⁴³ and that applies to religious practices too, but the refers to “public morality, public health and safety”, and held that such actions can be taken and are Constitutionally permissible. The twenty first century has seen increased judicialization and interference by the judiciary, be it the case of Triple Talak⁴⁴ or Sabrimala issue⁴⁵ or the case of two Kulludities- *Shringa Rishi* and *Balu Nag* feuding for supremacy in the Apex court.⁴⁶

Has the Supreme Court done mere lip-service to the cause of animal rights by prohibiting animal sacrifice continuing in line of its increased judicialization or does it have any real consequences for the development of common, universal animal rights? For actualizing it, one needs to explore the common denominator for the existence of animal rights. Universality of such rights simply means that if rights are available to animals, that suffer as religious offerings, rights must be available to animals that suffer as an industrial resource too. And at this juncture, it is safe to say, that the journey is a long one!

VII

Conclusion

After the prohibiting, ritual sacrifice, the animal slaughter has come as an exception. Why this is so? Because that serves a purpose for us humans: supply of food. Can rights be extended or even imagined for the animals that we derive utility from: fur, food, milk, etc.? What happens to the industries then? Will the capitalist markets that depend on these animals, the silk industry or fashion industry in general, the pisciculture, zoos, ocean-tourism etc., ever stand up by it? By rights, a broader understanding of the concept is meant, as discussed above, it is different from any animal-welfare laws already in place. It accounts for their free movement, right against physical/mental trauma etc., and not just physical minimization of sufferings.

This can easily be understood taking the example of slavery. When people owned slaves, it was hard to even imagine how rights should be ascribed to such slaves.

⁴³ Articles 25-28, Constitution of India.

⁴⁴ *Shayara Bano v. Union of India* (2017) 9 S.C.C. 1.

⁴⁵ *Indian Young Lawyers Assn. v. State of Kerala*, A.I.R. 2018 S.C. Supp 1650.

⁴⁶ Daniela Berti, *Plaintiff Deities: Ritual Honours as Fundamental Rights in India* in *FILING RELIGION, STATE, HINDUISM, AND COURTS OF LAW* 71-100 (Daniela Berti, Gilles Tarabout, and Raphaël Voix, eds., 2016).

They were considered property and utility to be derived out of them and their services. The dependent world naturally opposed the cause for their basic rights. But social movements coupled with strict legal actions led to legislations banning such practices. This resulted in a welcome change and now one can't even fathom promoting a practise that is in any way resembling slavery. Does that mean slaves didn't have rights until the people asked for them and courts granted them? Each one of us, inherently, have some basic rights. The courts can only recognise them and provide a mechanism to enforce them. Thus, this shouldn't be a far-fetched thought when it comes to animals and their basic rights.

Court decisions can sensitize people towards the concept of such rights. But as we have seen, no successful such attempt has been made. The courts insistence on the judicialization of religion would not, in our opinion, serve the cause for animal rights. If the essence of religion, say Hinduism, for example, the idea of animal dignity and recognition of its sufferings is entrenched in it, as its core values, be it the animal deities like Hanuman, Ganesha or their mounts in form of rats, peacocks etc., or the practice of waiting for the goddess to give a signal through the animal's body⁴⁷ in order to proceed with slaughter. Scriptures teach *ahimsa* towards all living things. Cow is considered the abode of all gods and highly revered in the Hindu tradition. The legal machinery could be built on these values but instead through the incessant judicialization, all that is tried to be achieved, is mocked. These exercises do little towards the cause of universal animal rights.

⁴⁷ The priest or the eldest member of the family pours water on the sacrificial animals back and if the animals shakes its head and body after it means the deity has gladly accepted the sacrifice. Sometimes this doesn't happen that either indicates the deity is upset or it wants something else as a sacrifice. Sometimes the deity may refuse the sacrifice totally and ask for other *prasadam* like coconut or fruits etc.