

**THE LIMITS OF ANIMAL RIGHTS:
EXPLORING THE CASE FOR MULTISPECIES JUSTICE**

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ABSTRACT

The discourse of animal rights has been gaining currency within the rights canon as a result of sustained advocacy, activism and scholarship. Emerging from a commitment to justice for animals, the exponents view animal rights as a corollary of human rights based on the presumption of the extendibility of legal entitlements to non-humans. In this backdrop, this paper offers insights into the status and limitations of the animal rights framework and the possibility of alternative approaches to justice. For the purpose of analysis, relevant legal provisions as well as religious, cultural, and social articulations of the human-animal relationship primarily in India, and a few neighbouring countries, have been examined. The paper argues that the rights framework is insufficient to realise animal interests, especially in the light of the climate crisis, which demands ethical responsibility towards the ‘more-than-human’. It suggests that multispecies justice as a constitutional principle can be incorporated within all human intervention; as the evolving idea of ‘One Health’ affirms; and an ecological balance can be maintained without placing a disproportionate burden on marginalised human groups.

Keywords: Animal rights, animal rights in India, climate crisis, justice, multispecies justice.

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I. Introduction

IN ‘THE LIVES of Animals’ or a series of two lectures delivered by J.M. Coetzee through a fictional story, the character of Elizabeth Costello decries the “crime of stupefying proportions”

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that she finds her colleagues and fellow human beings incomprehensibly complicit in with a “willful ignorance” that she simply cannot accept¹. She states, in no uncertain terms, “we are surrounded by an enterprise of degradation, cruelty and killing which rivals anything that the Third Reich was capable of, indeed dwarfs it, in that ours is an enterprise without end, self-regenerating, bringing rabbits, rats, poultry, livestock ceaselessly into the world for the purpose of killing them.”² Despite the contestability of the Holocaust analogy, the comparison between the massive, global, techno-rational regime that routinely subjects animals to systematic exploitation in factory farms, slaughterhouses, laboratories, places of entertainment and elsewhere and the organised oppression of marginalised groups of human beings is often made to bring attention to the former. This is also a time when a warming planet in the throes of a catastrophic climate crisis is witnessing species extinction, the loss of natural habitat and biodiversity on an unprecedented scale due to the impact of human activities; earning the moniker of the ‘Anthropocene’, a human-induced geological age in itself.³

These circumstances have precipitated in popular agitations, lobbying efforts, policy innovations and reforms, legal theorisation, academic intervention as well as fictional creations that seek to engage with the question of ‘the animal’. In Derrida’s view, ‘the animal’ is an abstraction that carries out epistemic violence against the phenomenal diversity of species that it comprises and the individual animal itself.⁴ The consideration of the question of the animal is one that is difficult to extricate from the essential dualism between the Cartesian sovereign, rational, autonomous subject and the automata-like object⁵. ‘The human’, far from being a given category in all its universalisable particularity, has been constructed, secured and consolidated in its distinction from ‘the animal’ other. Therefore, the animal, the non-human or the other-than-human has always functioned as the constitutive other for humanity, that in its abjection is necessary to uphold the human who has transcended nature to be capable of formulating culture and law. When Arendt draws upon Aristotle’s philosophy of the *polis* or the political community, the underlying belief in

¹ J.M. Coetzee, *The Lives of Animals* 69, 64 (Princeton University Press, 2016).

² *Id.*, at 21.

³ M.R. Allen, *et.al.*, “Framing and Context”, in Valérie Masson-Delmotte, Panmao Zhai, *et.al.* (eds.), *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming* 54 (IPCC, 2019).

⁴ Jacques Derrida, *The Animal That Therefore I Am* 23-51 (Fordham University Press, 2009).

⁵ Kelly Oliver, *Animal Lessons: How They Teach Us to Be Human* 26 (Columbia University Press, 2009).

the natural capacity of human beings for political speech and action is revealed.⁶ It was the declaration of Marx that, “conscious life activity distinguishes man immediately from animal life activity” such that human life itself along with nature that is the inorganic body of humans is objectified in free production by the Homo Faber, the only species-being⁷. Human subjecthood and society is thus built on the basis of assimilating the animal other and then disavowing the intrinsic dependence.

II. Exploring the Case for Animal Rights

Two of the most dominant approaches within animal protection activism are the animal welfare principle and the animal rights framework. The former finds as its impetus the need to mitigate the ‘unnecessary’ exploitation of animals. The priority is the prevention of cruelty towards animals or curbing the worst excesses that are perpetrated by using the instrument of law or any other means such as non-governmental action. Underpinning the welfarism that motivates many committed activists, apart from the acknowledgement that ‘speciesism’ privileges the human species and is a form of discrimination and a denial of ethical equal consideration towards animals, is perhaps an anxiety that the brutality of humans in their exploitation of animals brings them closer to ‘animality’ in all its connotations of irrationality and violence.

Peter Singer, in his enunciation of what animal ‘liberation’ entails, explains how all sentient creatures are equal but the interests and capacities of different species vary, which is why human existence ultimately carries greater significance.⁸ It follows from this presumption that the death of a human being is a harm that cannot be equated with the painless killing of an animal like a fish or a bird that does not possess a similar capacity for self-awareness, consciousness, recognition of the possibilities of life and the finality of death and so on as the place of those creatures can be occupied by others of the species without a net disadvantage to their pleasure and the enjoyment of a good life⁹.

⁶ Hannah Arendt, “The Perplexities of the Rights of Man”, in Timothy Campbell, Adam Sitze (eds.) *Biopolitics: A Reader* 107,108 (Duke University Press, 2013).

⁷ Karl Marx, “Estranged Labor”, in *Economic and Philosophical Manuscripts of 1844* 31 (1932).

⁸ Peter Singer, *Animal Liberation* 28-38 (Random House, 2015)

⁹ Peter Singer, “Reflections: Peter Singer”, in *The Lives of Animals* 85-92 (Princeton University Press, 2016).

The extension of rights to animals is a project that incorporates the ethical concerns of the welfarists but moves beyond it as it is premised upon the assumption that sentient animals can also be conferred personhood in the legal sense. There are many who support Tom Regan's argument that sentient animals that are most like humans are also subjects of lives and thereby have interests, experiences, preferences and expectations¹⁰. An association is drawn between "non-controversial humans" and animals that possess similar qualities of consciousness, autonomy and memory as persons with inherent value; who are deserving of rights¹¹. Another suggestion has been the status of non-personal subjects of law for sentient animals who are not juristic or natural persons as they are commonly understood but who also are not things in the manner of being property.¹²

The conferring of personhood is a recognition of the moral standing of those animals that hold subjective interests which must be encapsulated within the law so as to guarantee to them a right to be taken into account or to have their interests considered in all decisions that have the potential to affect them. Rights for animals do not have to remain limited to the negative right to not be harmed and can also include positive rights that facilitate the realisation of their interests and their ability to lead a better life. In the view of animal rights activists, right hood is a legal entitlement that would preclude the arbitrary repression of basic animal interests for the sake of human preference, convenience or perception of a greater good.¹³ Although the method of resolution of conflicts and the degree of permissible compromise is far from being a settled question, the achievement of legal personhood and rights can be perceived as a net gain as it could be the normative and instrumental basis of bringing about an end to animal slaughter for human consumption, scientific experimentation, hunting, confinement and several other forms of evident abuse.

¹⁰ Tom Regan, *The Case for Animal Rights* 119 (University of California Press, 1985).

¹¹ Kelly Oliver, *Animal Lessons: How They Teach Us to Be Human* 28, 29 (Columbia University Press, 2009).

¹² Tomasz Pietrzykowski, "The Idea of Non-Personal Subjects of Law" in Visa A.J. Kurki, Tomasz Pietrzykowski (eds.) *Legal Personhood: Animals, Artificial Intelligence and the Unborn* 49-68 (Springer International, 2017).

¹³ G.L. Francione, "Ecofeminism and Animal Rights- A Review of Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals", in *Animals As Persons: Essays on the Abolition of Animal Exploitation* 186-209 (Columbia University Press, 2008).

III. Animals in India and its Neighbouring Countries: A Case Study

Animals have forever had a space in the religious and cultural practices of the people. And it is quite evident that such beliefs and practices feed into various channels, including the domain of law. This section examines the cultural narratives around animals, welfare and conservation in India and some of its neighbouring countries and examines the legal-constitutional provisions about the same. It is then followed by a discussion and critique of the language of the existing frameworks.

A. Examining Cultural Perspectives on Animals and Related Issues

Flora and fauna in India and its neighbouring countries are an integral part of the natural and cultural heritage of the region. The special place accorded to animals in the region's religious narratives or in the folklores has provided a cultural context for the conservation of animals or otherwise. The cultural beliefs have shaped the practices that deified some animals, disdained some and overall provided the cultural context for talking about animals, their welfare and rights within the region in question. Institutionalized cultural practices have helped in animal conservation in the region. For example, the local mythology around the Rhesus Macaques (*Macaca mulatta*) of Nepal's Swayambhunath Stupa (a UNESCO World Heritage Site dubbed as 'monkey temple') sees these species as an embodiment of Bodhisattva Manjushri's head lice led to active conservation efforts for the animal.

Similarly, the traditions in an Assamese temple helped the Black Softshell Turtle (*Nilssonina nigricans*) to revive from extinction.¹⁴ Some animals like Indian Cobra (*Naja Naja*) are considered sacred and worshipped with milk at snake burrows on festivals like 'Naga Panchami' (the 5th Lunar Day dedicated to Snake or snake-deities) or while others like the Asian Elephant (*Elephas maximus*), considered to be the embodiment of Lord Ganesh in India are also considered an essential part of Sri Lankan traditions. Consequently, apart from their conservation through their association with temples, Buddhist practices or festivals (Thrissur Pooram in India or Kandy Esala

¹⁴ Agence France-Presse, "Assam temple helps nurture 'extinct' turtle back to life" *Hindustan Times*, Jun. 11, 2019. available at: <https://www.hindustantimes.com/it-s-viral/temple-in-assam-helps-nurture-extinct-turtle-back-to-life/story-uuDcjBpd4M5aQC2XBUd8wN.html>. (last visited on May 21, 2022).

Perehera in Sri Lanka), elephants in India are given the status of the National Heritage animal and are legally conserved under the Wild Life (Protection) Act, 1972 while 30 Elephant Reserves are allotted for its conservation. On the other hand, animals like the primate Slender Loris in Sri Lanka are considered inauspicious or bringing ill-luck or are considered witches and sometimes killed at sight.¹⁵ A study that reported on Slender Loris (*Loris tardigradus*) trade in Sri Lanka concluded that the near absence of domestic and international trade of Loris in Sri Lanka, when it is highly prevalent in other neighbouring countries like Indonesia and Cambodia is believed to be attributed to the prevalence of Buddhist religion and local folklore around it, despite negative, that sees these primates as flagship species representing the rainforest strip of Sri Lanka.¹⁶ Thus, the general and specific attitudes to animal species are deeply embedded in linguistic, religious and cultural traditions in these countries.

The region's home-grown religions like Jainism, Buddhism and Hinduism are linked with doctrines like vegetarianism and *Ahimsa* (non-violence, non-injury). The Jain maxim, "*ahimsa paramo dharma*" sees non-violence, non-injury as the most virtuous element in their path of liberation.¹⁷ Notably, the consumption of figs (*ficus* species) is also prohibited within Jaina practices, as fig-wasps (of family *Agaonidae*) spend their larval stages inside these fruits owing to their symbiotic relationship. Additionally, the concept of '*Tsethar*' or saving/preserving lives, the values of compassion, love, benevolence and non-violence in Bhutanese Vajrayana Buddhist culture, have been institutionalised into the nation's unique Gross Happiness Index that transcends the narrow development agendas and encompasses the holistic well-being of all.¹⁸ Apart from it, the emphasis on cow protection inspired by Gandhian tradition and Hinduism resulted in the emphasis of India's Directive Principles of State Policy of Indian Constitution in article 48, which directs the State to "take steps for preserving and improving the breeds, and prohibiting the

¹⁵ K.A.I. Nekaris, C.R. Shepherd, *et.al*, "Exploring cultural drivers for wildlife trade via an ethnoprimateological approach: a case study of slender and slow lorises (*Loris* and *Nycticebus*) in South and Southeast Asia", 72 (10) *American Journal of Primatology* 887-886 (2010).

¹⁶ *Ibid.*

¹⁷ Brett Evans, "Engaged Jain Traditions and Social Nonviolence: Ethnographic Case Studies of Lay Animal Activists and Service-oriented Nuns" 64(2) *Cross Currents* 202-218 (2014).

¹⁸ Dendup Chopel, Sangay Thinley, *et.al*, "Animal Wellbeing: The Concept and Practice of Tsethar in Bhutan", Centre for Bhutan Studies Buddhism Conference, held in Bhutan on May, 2012, *available at*: <https://www.bhutanstudies.org.bt/publicationFiles/ConferenceProceedings/BuddhismConference2012/7.Buddhism2012.pdf> (last visited on May 13, 2022).

slaughter, of cows and calves and other milch and draught cattle.”¹⁹ Cow protection initiatives have taken the form of legislation in the Indian states of Karnataka and Gujarat, among others.

In another instance, the Sikh community of parts of South Asia follow religiously-sanctioned, humane slaughter through the practice of *jhatka*. This instance shows how the tenets of animal welfare, of reducing perceptible pain of animals when they are used for consumption purposes, are embedded into the cultural and religious beliefs of the region. The indigenous or *Adivasi* traditions, as they are called in India, have embedded in them the values of harmonious existence with nature. It is widely a acknowledged fact that the wisdom, knowledge, conservation practices and lifestyles of the indigenous communities are sustainable and respectful to the larger ecosystem. It is in this acknowledgement of indigenous knowledge, their rights and cultural practices that in, 2007, the United Nations General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples.²⁰

Similarly, the United Nations Educational, Scientific and Cultural Council (UNESCO) is running a programme called LINKS (Local and Indigenous Knowledge Systems) to preserve and document these indigenous knowledge systems for posterity.²¹ In this light, a shining example of co-dependence and mutual co-existence can be cited from the *Gond* tribal community of Telangana, India. In the Kawal Tiger Reserve of Telangana, the Gonds have been instrumental in the conservation of the Royal Bengal Tiger (*Panthera tigris*), also the national animal of India, possibly due to their deep reverence for the tiger, terming it *Dhuvval* or being God-like.²² In India, a legal jurisprudence has evolved that allows the state to intervene, legislate, restrict, or regulate religious practices like animal sacrifices which are seen to be ‘deleterious’ to the well-being of the community at large.²³

¹⁹ The Constitution of India, art. 48.

²⁰ The United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, Sep 13, 2007, available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (last visited on April 30, 2022).

²¹ UNESCO, “Local and Indigenous Knowledge Systems (LINKS)”, available at: <https://en.unesco.org/links> (last visited on May 21, 2022)

²² S. Harpal Singh, “The tiger is safe among a few tribes”, *The Hindu*, Jun 21, 2017.

²³ *Sardar Syedna Taher Saifuddin v. The State of Bombay*, 1962 AIR SC 853.

At this juncture, it should also be noted that despite welfare, care and compassion for animals being intrinsic to religious and folk culture, such principles are seldom upheld. Even within various world religions and cultures, a fundamental convergence is on the point of human superiority over animals and other non-human entities.²⁴ They profess that human are superior in the hierarchy of God's creation. Similarly, religious rituals and ancestral tribal traditions are time and again used to justify practices like animal sacrifices to appease Gods. Further, animals are abused, mistreated, overpowered or sometimes killed during animal sports such as bull and cock fights for human entertainment and during local and regional festivals. While the perpetuation of animal subjugation in the name of religious and cultural sanction is regrettable, it would be reductionist to state that these practices are of no use to further animal interests. The importance of cultural and religious jurisprudence and significance can help in framing an alternative context of justice for animals that is not rooted in the 'individualistic' animal rights regime while also appreciating and incorporating the regional wisdom of cultural practices, religious contexts and indigenous populations.

In the landmark case in India, the Supreme Court has banned the bullfighting festival of *Jallikattu* in the *Animal Welfare Board of India v. A. Nagaraja*,²⁵ citing that bulls (*Bos Indicus*) are not 'performing animals' and has invoked a cultural counter justification in the Tamil traditions of 'Yeru Thazhuvu', which asks to embrace bulls and not to overpower them to showcase human bravery and since mythologically bulls ('Nandi') are worshipped as the vehicle of Lord Shiva. Further, animal sentience is reiterated in the judgement: "pain and suffering are biological traits, not limited to humans." Thus, folklore, linguistic traditions, and religious views about animals create the context for animal welfare or abuse. As Louis Caruana SJ argues, though the religious language is ridden in human superiority, it also ordains and creates obligations for humans, being superior, to care for God's creation, in the position of a trustee.²⁶ As a corollary, cultural aspects also set the tone for situating animal interests and conservation discourse. Therefore, important concepts like trusteeship and stewardship, which are enshrined in these practices, can be useful in addressing the quest for animal justice. This is to argue that a holistic framework to answer the

²⁴ Louis Caruana SJ, "Different religions, different animal ethics?", 10 (1) *Anim. Front.* 8–14 (2020).

²⁵ *Animal Welfare Board of India v. A. Nagaraja* (2014) 7 SCC 547.

²⁶ *Id.*, at 24.

animal interests' question cannot overlook the regional, local, religious and cultural phraseology and cannot be delinked from such practices.

B. Understanding the Existing Legal Framework for Animal Welfare and Rights

To understand the current status of animals in India, it is necessary to analyse the relevant constitutional provisions, legislation and statutes, and judgments by the respective courts. Many constitutions across the world provide for the protection of nature, including the protection of animals within it. These protections take the form of obligations on citizens and the state. According to the Indian Constitution, "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures" as enshrined in article 51-A(g).²⁷ Besides, article 48A obligates the states to "protect and improve the environment and to safeguard the forests and wildlife of the country". Similarly, Nepal's Constitution considers the aim: "to conserve, promote, and make sustainable use of, forests, wildlife, birds, vegetation and biodiversity" as a part of its Obligations of the State²⁸. These constitutional provisions are acted upon by making laws and rules.

While some statutes deal with prohibiting 'animal cruelty' and harm in general, others are specific rules for the protection of wild animals. Most laws deal with the 'prevention of cruelty to animals', where 'animal' is defined as any living creature other than human beings. For example, the Prevention of Cruelty to Animals Act, 1960, is a comprehensive law in India covering welfare of most of the animals. It provides guidelines for the treatment of different forms of animals, such as domesticated animals and provides penalties for violation of the rules. Similar legislation also exists in Pakistan and Bangladesh. An important feature of these laws is that they are prohibitory in nature. This implies that the laws have provisions that prescribe certain 'dents' in order to protect animals. Further, they place animals in different categories and each category has specific rules governing human conduct towards that category of animals. For example, a close reading of the Prevention of Cruelty to Animals Act, 1960 proves that at least five categories are made with

²⁷ The Constitution of India, art. 51-A(g).

²⁸ The Constitution of Nepal, 2015, Part 4: Obligations, Directive Principles and Policies of the State 35: Policies of the State, paragraph 5.

regards to animals. These include- animals ‘owned’ by human beings, performing animals, animals as exhibits in zoos, animals in experimentation, and milch animals.

The brief discussion on legal protections for animals in South Asia might project a rosy picture that is in contrast to reality. Like in the case of other laws, a problem of implementation exists with the animal welfare legislation. Conformity to the laws is relatively low, and the offences are not recorded diligently. For example, India has a livestock population of 535.78 million, accounting for the largest in the world according to the 20th Livestock Census.²⁹ Being a monsoon-dependent country, draught animals used in farming are idle in the non-agricultural season of around 200 days and are often ill-fed, grossly neglected during such periods. Rahman (2017) further notes that the implements and carts in usage are often cruel and painful.³⁰

Despite Prevention of Cruelty to Draught and Pack Animals Rules, 1965, these offences often go unpunished. There is a problem with the laws themselves- most of them are archaic and need revision to make punishment more stringent. For instance, the Indian Penal Code provision of sections 428 and 429 that punish the committing of mischief by killing, poisoning, maiming or rendering useless any animals or animals, shall have a fine of mere 50 Indian Rupees, less than a dollar, when committed at first instance.³¹ Further, scholars point out that animal cruelty prevention legislations lack teeth and substantiveness in their language, often unable to keep up with the times.³² More importantly, the laws are problematic as they are built on the assumption of human superiority and centrality. The constitutional provisions call for the protection of animals, but only because they are considered valuable to the human population. The Indian Constitution invokes compassion for the living creatures, but compassion is used in a narrow sense as “it is subjected to human *needs*”³³. Some constitutions and court laws also outrightly mention

²⁹ 20th Livestock Census, India, *available at*: <https://vikaspedia.in/agriculture/agri-directory/reports-and-policy-briefs/20th-livestock-census> (last visited on April 15, 2022).

³⁰ S. Abdul Rahman, “Animal welfare issues and perspectives in developing countries”, *available at*: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.523.9412&rep=rep1&type=pdf> (last visited on April 15, 2022).

³¹ Shohom Roy, “Understanding the legality of animal sacrifice in India”, *Blog-I Pleaders*, *available at* <https://blog.ipleaders.in/understanding-legality-animal-sacrifice-india/> (last visited on April 15, 2022).

³² Kushal Choudhary and Ayushi Sinha, “Animal Rights in India: A Mirage of Law?” 1(1) *Indraprastha Law Review*. 1-12 (2020).

³³ Gilles Tarabout, “Compassion for Living Creatures in Indian Law Courts” 10(6) *Religions* (2019).

that the conservation of nature and animals is necessary, keeping in mind the needs of the future generations or intergenerational equity among humans.³⁴ From their framing, it is evident that the provisions are human-centric and there is little to no space for the interests of animals.

Most of the laws seek to primarily address the problem of ‘animal cruelty’. An oft-repeated line in the laws is preventing the ‘unnecessary pain and suffering’ of animals. However, using ‘unnecessary’ as a yardstick has led to the exemption of multiple instances of animal abuse from the law.³⁵ For example, scientific experiments on animals are exempt from the Prevention of Cruelty to Animals Act, 1960. Similar exemptions have been provided in other countries for animals that are a source of human food. As it is the human beings (in the courts) who decide whether an act is needed or not, the *doctrine of necessity* acts against animal rights. In most laws, this dilemma is decided by weighing animal needs against human needs, and the latter always outweighs the former. Thus, through the laws, *necessity* as a qualifier has been used to justify the mistreatment of animals. Such an approach also reverberates in the popularly ratified World Organization for Animal Health’s OIE Global Animal Welfare Strategy of 2017³⁶, which continues to base animal welfare propositions in the *necessity* doctrine.

Though the acts recognise that animals are capable of suffering physical and mental pain, they do not mention sentience explicitly. Even in cases where governments decide to identify a particular species as sentient, they consider the specie’s similarity with ‘humanness’ to judge its sentience. In 2013, the then Indian Ministry of Environment and Forests banned dolphinariums. The order issued by the Ministry stated that “cetaceans in general are highly intelligent and sensitive...they have unusually high intelligence compared to other animals. This means that dolphins should be seen as 'non-human persons' and as such should have their own specific rights.”³⁷ The statement reflects the idea that for an animal to be sentient, it has to be similar to human beings or possess traits considered uniquely human. Such an attitude is also inherent in the very arbitrary

³⁴ *T.N. Godavarman Thirumalpad v. Union of India* (2006) 2 SCC 267.

³⁵ Nicole Pallota, “Islamabad High Court Holds that Animals Have Legal Rights”, *Animal Legal Defense Fund*, Oct 2, 2020, available at: <https://aldf.org/article/islamabad-high-court-holds-that-animals-have-legal-rights/> (last visited on April 15, 2022).

³⁶ OIE, “OIE Global Animal Welfare Strategy”, 2017, available at: <https://www.oie.int/app/uploads/2021/03/en-oie-aw-strategy.pdf> (last visited on April 30, 2022).

³⁷ Ministry of Environment and Forests “Policy on Establishment of Dolphinarium” (2013), available at: petaindia.com/wp-content/uploads/2020/02/MoEF-Circular.pdf (last visited on April 30, 2022).

categorisation of animals by the laws. Moreover, in many cases, the obligations of human beings towards animals are considered optional. For example, a 1920 law in Bangladesh uses words such as ‘may’ instead of ‘shall’- implying that the state’s obligations for animal protection are not mandatory.³⁸ While the current laws are an improvement over those exclusively aimed at protecting the number of animals of a species, their approach is inadequate in addressing the needs and interests of animals.

On a positive note, several judgements in the last two decades indicate a shift from animal welfare to an animal rights-based approach. The Kerala High Court in India has called for the need for “fundamental rights” for animals by saying that “(animals) though not *homosapiens* ...are also beings entitled to dignified existences and humane treatment sans cruelty and torture.”³⁹ In 2014, the Supreme Court of India, while delivering a judgment related to *Jallikattu*, noted that “every species has a right to life and security”. It thereby extended the scope of Right to Life, by stating that animals also have the right to lead a life with dignity.⁴⁰ In 2018, the Uttarakhand High Court delivered a historic judgment by assigning a legal personality to all members of the animal kingdom.⁴¹ The verdict implies that animals have legal rights and can be represented in the courts by their custodians. In *Karnail Singh v. State of Haryana*⁴², the court declared that the entire animal kingdom has a “distinct persona with corresponding rights, duties and liabilities of a *living person*”. It invoked the concept of “*loco parentis*” (in place of parents), for the protection/welfare of animals⁴³. Similarly, the Islamabad High Court also recognised that animals have legal rights and are protected under the Pakistani Constitution.⁴⁴

Such judgements have positive implications for the rights of animals, yet they present challenges towards realizing these rights. First, many of them continue to be located in colonial, anthropocentric framings- centred around the benefits accrued to human beings by adding animals into the narrow rights framework. This additive exercise to the existing rights framework, without

³⁸ However, the Cruelty to Animals Act, 1920 has been replaced by the Animal Welfare Act, 2019.

³⁹ *N.R. Nair v. Union of India*, AIR 2000 Ker 340.

⁴⁰ *Id.*, at 25.

⁴¹ *Narayan Dutt Bhatt v. Union of India*, 2018 SCC Utt 645.

⁴² (2009) 8 SCC 539.

⁴³ *Ibid.*

⁴⁴ *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad* (2019), W.P. No.1155/2019.

a deeper reconceptualisation of ‘animality’, has time and again proven to be inconsistent and paradoxical. Second, how ‘animals’ are defined is also important. Does the category include only wild animals and exclude domesticated animals ‘owned’, ‘traded’ by human beings? Does it only include those animals with ‘proven’ capacity to feel pain and pleasure? Third, animal personhood is a historic step, but what tangible benefits would the animal gain by transforming into a ‘right-bearing individual’? The judgements are too vague to identify whether they see animals as individuals or members of a community. Besides, they do not reflect how the interests of the animals will be accommodated in the human-centric world, where humans are essentially the prosecutors, defenders, judges and legislators of animal interests. The challenges presented here demand a new approach that goes beyond granting basic rights to the animals and begs to revisit the deeper philosophical, theoretical logjams around animals, their ‘animality’. Such an approach should be holistic, identifying the positive obligations of human beings towards animals. It should also go beyond the demarcation of the human and non-human world to seeing every living creature as having “co-membership in a shared community”.⁴⁵

IV. Implications and the Way Forward

In his autobiography, Gandhi’s philosophy of *ahimsa*, applicable to all living beings, is a repudiation of a utilitarianism that justifies the subjugation of other creatures for one’s selfish purposes while also affirming that human moral superiority lies in our ability to care for lesser beings instead of dominating over them⁴⁶. The centrality of compassion, of the humane treatment of animals, ultimately serves to reinforce the very humanity that must be negated in order to conceive of justice in terms beyond those of the human subject and the natural object. The fruits of the efforts of those advocating for welfare and those who insist upon rights are intended only for a narrow substratum of animals, distinguished by their sentience or, in other words, by their similarity with the parameters of the Cartesian qualities of human being. Without abandoning the oppositional dualism in its entirety, the incorporation of animals as legal persons (as suggested by

⁴⁵ Sue Donaldson and Will Kymlicka, *Zoopolis :A Political Theory of Animal Rights* 74 (Oxford University Press, 2013).

⁴⁶ M.K. Gandhi, *An Autobiography, Or, The Story of My Experiments with Truth* 80 (M. H. Desai, Trans.), (Navajivan Publishing House, 2003).

the several courts across the world) will take the form of their being secondary subjects of law, never quite like human beings but thoroughly subjected to the law.

Animals, as subjects in a heightened regime of surveillance, monitoring and regulation, would continue to be entirely subject to human intervention and management under the guise of protection and conservation. To supply proof of their sentience as psychosocial beings with the capacity to have beliefs, desires, memory etcetera that are supposedly the hallmarks of an experientially superior life and therefore of their desert for rights⁴⁷, animals would have to continue to undergo scientific experimentation as empirical evidence would be sought to qualify their claims. The question of which creatures are appropriately similar to human beings is a fraught one and advocacy for them would be bogged down in determining whether large mammals or reptiles or birds or insects are suitable. To this while the ‘animal sentience precautionary principle’ is suggested, which requires that if the state of a particular animal’s sentience is unknown; then wide, effective precautions should be taken to minimise the cost of ethical considerations flowing from actions if the said animal is proven to be sentient.⁴⁸

While this is progressive in its own right, the idea of narrowly constructed ‘sentience’ that is largely human-centric in resolving the claims of animal justice is inadequate. For example, a human person with a condition of Congenital Insensitivity to Pain and Anhidrosis (CIPA), a rare genetic disorder that prevents the person from feeling pain, can no more to be justified to be subjected to torture than other pain-feeling human person as advocacy for inherent human ‘worth’ and dignity reigns. For those left out of the juridical framework, the issue of their entitlements or of our obligations towards them would effectively be closed thereby rendering the entire project suspect as it is not really about animals per se; most other species would remain locked in alterity and abjection. Animal interests, the bedrock of the rights movement, would still be represented by humans and the adjudication of conflicting claims would also be settled by humans with the probability remaining high of human interests being perceived as morally and consequentially greater than the limited interests of creatures with only basic levels of sentience and consciousness.

⁴⁷ Tom Regan, *The Case for Animal Rights* 60-80 (University of California Press, 1985).

⁴⁸ Jonathan Birch, “Crabs and lobsters deserve protection from being cooked alive”, *Aeon*, Nov. 3, 2017, available at: <https://aeon.co/ideas/crabs-and-lobsters-deserve-protection-from-being-cooked-alive> (last visited on April 30, 2022).

A. The Limits of the Political Community and Negotiations with It

Donaldson and Kymlicka⁴⁹ are amongst scholars who have developed a system of claims for or responsibility towards animals within political theory. Political status, political claims and political community result from the organisation, an implicit contract and agreed-upon principles. It is an imaginative overstretch to develop a political framework for animals based purely on the assumption that what works for humans can readily be universalised as a natural way of being. The continuation of anthropomorphic ways of thinking ensures that the mere recognition of political status remains inadequate in radically altering animal circumstances. The liberal theory of rights is associated with a morality that takes bounded, unencumbered individuals as its subjects. Removed from context and surroundings in this manner, the atomistic individual legal person performs the function of the law. Within such a framework of animal rights, outrageous cases such as the death of the elephant in the Indian state of Kerala⁵⁰ attract widespread outrage owing to *inhumaneness* while the harm done to elephants in Sri Lanka⁵¹ through the expansion of cultivable land and the decimation of elephant habitats does not attract much attention.

Theorisation about animal entitlements cannot take place in a vacuum as the temporal and spatial context within which claims are being made affects the content of the discourse. Animal rights would have to engage in political negotiation with the existing rights of human beings, especially the human-others or those who are marginalised. The recognition and incorporation of select sentient animal-others cannot be to the detriment of sub humans, who are often cast out of humanity and reduced to ‘bare life’⁵². For example, if a meat ban were to be rigorously implemented in India as a result of the legal recognition of animal rights, those who would be most affected by the move would be Dalits, Muslims and several Adivasi groups. One cannot, as Tom Regan has done, abstractly weigh the moral consequences of valuing the cultural preferences,

⁴⁹ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* 11-16 (Oxford University Press, 2013).

⁵⁰ Swati Gupta and Nectar Gan, “Elephant dies after suspected firecrackers hidden in fruit exploded in her mouth”, *CNN*, June 4, 2020, available at: <https://edition.cnn.com/2020/06/04/asia/india-elephant-death-intl-hnk-scli/index.html> (last visited on April 30, 2022).

⁵¹ Prithviraj Fernando, “Elephants in Sri Lanka: past present and future” 22(2) *Loris* 38-44 available at: http://www.ccrsl.org/userobjects/2602_683_Fernando-00-ElephantsSriLanka.pdf (last visited on April 30, 2022).

⁵² Giorgio Agamben, *The Open: Man and Animal* 38 (Stanford University Press, 2004).

convenience or economic interests of human beings against the lives of animals and rule in favour of the latter⁵³. Similarly, human rights are not objective entitlements that automatically bring forth the realities they pronounce; they themselves are immersed in power equations and multiple layers of inequality. To continue with the earlier example, protecting the rights of Muslims is not to automatically be anthropocentric as the relationship between Muslims and cows in India at present is not a simple one of hierarchy and domination. The achievements of the *anthropos* of the anthropocene have not included large numbers of subhuman others within its bounty and to compensate for the wrong done to animals by further marginalising such groups and villainising them for their mistreatment of animals would be an egregious error.

Tribal and indigenous people have helped in the conservation of biodiversity that preserved natural animal habitats. However, traditional tribal activities such as indigenous hunting practices and the use of forest resources like honey or bamboo are excessively maligned for being responsible for large-scale biodiversity loss and species extinction. The state mounts criminal charges against the indigenous groups for trivialities in the name of nature conservation and wildlife protection. The large-scale eviction resulting from the non-granting of community rights to forest-dwelling communities in Critical Tiger Habitats (CTHs) of India to boost the conservation of tigers shows the marginalisation of tribal rights in the language of wildlife conservation⁵⁴. Further, in the attempt to end the commercial hunting that sustains the global industries of leather, fur, etcetera, it is these already vulnerable communities that will face further deprivation of their rights. It is because of these inevitable negotiations that animal rights must undergo with existing human power equations that the entire question gets embroiled in ‘purity’ politics or in an assertion of moral superiority that also confers political, economic and social advantages. In India, this can be evinced by the mobilisation around vegetarianism, especially with regards to beef consumption, that is fortified by brahminical notions of ‘purity’ and ‘pollution’ with the protection of animal rights getting reduced to an appealing discursive veil for concealing a caste-based, anti-minority view.

⁵³ Tom Regan, *The Case for Animal Rights* 266-280 (University of California Press, 1985).

⁵⁴ Meenal Tatpati and Snehal Gutgutia, “Criminalising Forest-Dwellers Has Not Helped India's Forests or Wildlife. It's Time for a New Deal,” *The Wire*, May 23, 2007, available at: <https://thewire.in/environment/forest-rights-dwelling-communities> (last visited on May 21., 2022)

B. Living in a Posthuman World: The Way Forward

Haraway has mounted an objection to the vocabulary of the Anthropocene with its attendant valorisation of human exceptionalism, bounded individualism and top-down bureaucratic social apparatus of management⁵⁵. The construction of the *Homo sapiens*, the Species Man or the Modern Man who has made History is one that has undeservedly pedestalled human agency and humans as the actors endowed with the most significance; it has naturalised the mythology of discrete organism units interacting with one another in relations of competition within an autopoietic, self-generated, homeostatically controlled system. The urgent imperative of our time is to realise the limits of anthropomorphic aggrandisement and inculcate multispecies thinking of relationality, entanglement, and responsibility within an ecology of ‘shared being’. It must be understood that all species or the *more-than-human*, as opposed to the antagonistic or abject *other-than-human*, are the conditional possibilities of human lives, providing for human wellbeing directly and indirectly through ecological processes. The pledge to the ‘One Health’ framework popularised in the backdrop of COVID-19 pandemic signifying the nexus among animals, ecosystems, and humans is a case in point. The framework calls for an “integrated, unifying approach that aims to sustainably balance and optimize the health of people, animals and ecosystems. It recognizes the health of humans, domestic and wild animals, plants, and the wider environment (including ecosystems) are closely linked and interdependent.”⁵⁶ It is a paradigm shift from an anthropocentric understanding of health that jeopardises ecosystems and animals. The recognition of this approach gives a broader context for rooting animal interests and multispecies well-being.

Decolonising Knowledge and Governmental Systems

The first level of negation is to strip away the strictures of Western colonial epistemology that universalises and naturalises its own precepts without dwelling upon the inherent violence within its knowledge systems and practices. The project of colonisation was a part of the same epistemic paradigm of the speciated reason that, through the tenets of evolutionary biology categorised

⁵⁵ Donna J. Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* 30 (Duke University Press, 2016).

⁵⁶ World Health Organization, “Tripartite and UNEP support OHHLEP’s definition of ‘One Health’” (2010) available at <https://www.who.int/news/item/01-12-2021-tripartite-and-unep-support-ohhlep-s-definition-of-one-health> (last visited on April 30, 2022).

bodies, naturalised biological differences and created racial subspecies amongst humans, paving the way for their animalisation, oppression and genocide⁵⁷. Fanon wrote, “When the colonist speaks of the colonized he uses zoological terms....This explosive population growth, those hysterical masses, those blank faces, those shapeless, obese bodies, this headless, tailless cohort, these children who seem not to belong to anyone, this indolence sprawling under the sun, this vegetating existence, all is part of the colonial vocabulary.”⁵⁸ Disrupting the dualism between the human subject and the animal object requires the concomitant dismantling of the structures of racism, colonialism, global capitalism, sexism and others, as the former creates the conditions of possibility for the latter. To right such grievous historical wrongs is to be open to indigenous (not necessarily postcolonial national elites) knowledge practices about ecological balances and multispecies ways of living together and to hear the voice of the more-than-human, to recover their agency and cultivate responsibility towards them.⁵⁹

It is with the influence of indigenous cultural practices and interactions with the more-than-human that one can find an ecological perspective that does not support the view that the taking of life at all times and in any predator-prey relationship is necessarily representative of brute violence already existent in nature. Such a presupposition is an anthropomorphic projection upon nature that creates the space for a techno-rational, managerial regime of governmentality in which humans who ostensibly have politically overcome the state of nature are believed to be capable of bringing such deliverance to animals as well. This is not to take a position in favour of an overly ecological approach in which utilitarian calculations are made about which creature gets to live and which must die. As Smuts argues, personhood is not just about being a human person endowed with certain qualities, but it entails interaction between actors who form a personal relationship or bond⁶⁰. It is this form of personhood that must be imbibed within our ethics vis a vis the more-than-human. To quote Smuts, “Radically rethinking our relations with other species can change the future; for example, in the context of an endangered species, what if we expanded our concerns

⁵⁷ Neel Ahuja, “Postcolonial Critique in a Multispecies World” 124(2) *Publications of the Modern Language Association* 556-563 (2009).

⁵⁸ Franz Fanon, *The Wretched of the Earth* 7 (Grove Press, New York, 1963).

⁵⁹ Lewis Williams, Rose Roberts, et. al.(eds.), *Radical Human Ecology: Intercultural and Indigenous Approaches* (Ashgate, 2012).

⁶⁰ Lauren Corman and Tereza Vandrovцова, “Radical Humility: Toward a More Holistic Critical Animal Studies Pedagogy” 448 *Counterpoints* 135-157 (2014).

about the disappearance of an abstract category to include the concrete reality of death by starvation or disease or poaching of multitudes of feeling, thinking, relational beings.”⁶¹

Reconceptualising Justice

It is vital to acknowledge that within conditions of scarcity, the conception of justice itself undergoes transformation. The climate crisis has and is still raising global temperatures, making the hydrological cycle unpredictable, while the over-extraction of resources under the profit or growth-oriented economic models has severely depleted water tables and ruined soil quality, among other effects. Therefore, it is not practical to assume that the nutritional requirements of the world’s population, for example, can easily be met by growing more crops alone in the context of climate and resource-related woes. Diversification of food sources is urgently required to thwart plant and animal diseases that can cripple the entire global food production system and a multispecies perspective lays the foundation for challenging the technical economy of monocultures. South Asia, and therefore India, is particularly vulnerable to the climate crisis, as highlighted by various international reports.⁶² The problems of hunger, poverty, resource insufficiency due to climate change aggravate the societal concerns about the size of landholdings, the level of technology, the availability of credit and inputs in the region. This view questions the applicability and advocacy of ‘veganism’, considered cruel-free and palatable to human conscience, within the Indian context. Thus, animal rights discourse in the region should engage with these inadequacies and call for incorporating regional, cultural specificities and localised solutions, and reconceptualisations.

What would a multispecies ethic of justice and responsibility look like? Instead of individualising every case of exploitation of the more-than-human and dealing with them separately in terms of specific claims, multispecies justice could be enshrined as a constitutional value such that it would be incumbent upon governments to apply the principle in all its legislation, policies, executive decisions, judgements, procedures and so on. Considerations of development in their broadest

⁶¹ Barbara Smuts, “Between species: Science and subjectivity” 14(1) *Configurations* 115-12 (2006).

⁶² Michael Kugelman, “South Asia Is on the Front Lines of the Climate Crisis”, *Foreign Policy*, Aug. 12 2021, available at <https://foreignpolicy.com/2021/08/12/south-asia-climate-ipcc-report-front-lines/> (last visited on May 21, 2022).

sense cannot be divorced from justice towards the more-than-human. In this context, the ‘One Health’ approach is a positive step in this direction, as it recognises the importance of human and non-human interface for a secure future. At the same time, cultural practices and beliefs will play an important role in integrating the ethic of multispecies justice into quotidian life.

VI. Conclusion

Notwithstanding the approaches laid out for a holistic consideration of the more-than-human, it must be understood that within this framework, the pursuit of such a commitment will inevitably involve choices, omissions and exclusions in the maintenance of a balance that reasonably allows for humans, including marginalised groups, to live well alongside all other species.⁶³ There will, time and again, be complications to grapple with when there are disputes over the forms of life that must be valued under this ethical obligation. In order to create room for human intervention with accountability, governmental decisions within an entangled, common space of living, in which humans are but junior partners in relationships of reciprocity, must be “temporary, contingent, and open to contestation to ensure that they do not congeal in ways that allow normative social relations to simply reimpose themselves and reinscribe existing inequalities.”⁶⁴ A decolonised perspective of multispecies justice when popularly imbibed through cultural idioms can simultaneously influence all governmental action while also being the source of critical introspection and resistance to it and thereby ensure that despite the contestability of the choices that are made, the orientation of society is towards justice. The errors sustained in the choices that are made do not invalidate the ethical project itself but remind us that all living beings, with special emphasis upon human beings, are only way-farers or string figures on the earth, destined to live through attachment and ultimately pass away.⁶⁵

⁶³ E.H. Giraud, *What Comes After Entanglement? Activism, Anthropocentrism and an Ethics of Exclusion* 1-20 (Duke University Press, 2019).

⁶⁴ *Id.*, at 12.

⁶⁵ Donna J. Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* 32 (Duke University Press, 2016).