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**Whose Cattle Is It, Anyway? : *Karnail Singh and Ors. v. State of Haryana* and the Questions it raises vis-a-vis Animal Rights Jurisprudence**

 *“Boundless compassion for all living beings is the surest and most certain guarantee of pure moral conduct, and needs no casuistry[[1]](#footnote-1)”.*

* Arthur Schopenhauer

**ABSTRACT**

In the recently concluded *Karnail Singh & Ors. v. State of Haryana* case, where the Hon’ble Court declared that the entire animal kingdom, inclusive of avian and aquatic animals, possess a juridical personality. Such a *ratio decidendi* by the Hon’ble Court, although unprecedented and progressive- has indeed put forth new challenges for the domain of constitutional law, as animals too, now possess rights and duties.

The present research paper sets out to ask certain unprecedented questions, particularly with regards to one of the profound impediments with regards to Animal Welfare in the country, viz. their undue exploitation and forced labour. Ornamental fine amounts and petty (read: bail-able) jail sentences haven’t helped much either.

How effective have existing legislations such as Prevention of Cruelty to Animals Act, 1960 or the Wildlife Protection Act, 1972 not just as deterrent measures- but as legislations that are meant to protect the Constitutional Rights of animals?

The present research paper shall seek to study Animal Rights and Anti-Exploitation legislations from Common Law jurisdictions across the world in order to not find a befitting reply, but to find a good place for legislators and policymakers to start off when they think about expanding animal and wildlife laws in India.

**FACTUAL OVERVIEW[[2]](#footnote-2)**

Close to midnight on the 5th of September 2004, Assistant Sub Inspector Azad Singh, along with his colleagues; was on *naka* (checkpoint) duty near the Nagla Megha Roundabout on the Karnal-Shamli Road. At around 11 PM, a police informer told him that cattle were being illegally transported to the neighbouring state of UP in two trucks with Haryana registration plates[[3]](#footnote-3) and that the exporters along with their drivers and other support staff had just halted for dinner in a roadside motel near the roundabout. The Karnal police laid a checkpoint near the interstate boundary crossing bridge on the banks of the river Yamuna. A little past midnight, both the trucks were halted for inspection at the checkpoint. A total of 29 cows were seized from both the trucks. The support staffs as well as the owners of the trucks were reprimanded, and the registration documents of the trucks were seized and the cows were taken away as their ownership could not be proven by the truck owners to the police. The cows were subjected to a medico-legal examination and a site plan was prepared by the police. A *challan* (fine) was imposed on the truck owners and drivers post the completion of the necessary formalities.

Proceedings commenced before the Hon’ble Additional District and Sessions Judge, Karnal. Three witnesses were produced before the Court and were examined by the prosecution. The statements of the parties accused were accordingly recorded under the relevant provisions[[4]](#footnote-4) of the Criminal Procedure Code. The accused were later convicted by the Hon’ble Trial Court and were sentenced to a two-year prison sentence, along with a nominal fine under. The Hon’ble High Court punished the accused and sentenced them to 6 months of imprisonment (which had been served already[[5]](#footnote-5)) under the Punjab Prohibition of Cow Slaughter Act and other relevant state legislations.

However, the most significant part of the judgement was Hon’ble Justice Rajiv Sharma’s proclamation that declared the entire Animal Kingdom including Avian and Aquatic species as legal entities with all rights and duties of living persons[[6]](#footnote-6), which has surely opened up newer pastures for the growth of animal rights jurisprudence in India and has given rise to quite a few interesting questions[[7]](#footnote-7), particularly when this matter is looked at within the lens of comparative constitutionalism.

**The Endless Debate of Animal Rights vs. Animal Welfare**

The legal rights versus legal welfare debate has, indeed, cropped up like a relentless question that has characterised animal law advocacy with supporters from both sides vehemently trying to convince legislators and judges that their side’s opinion must be considered over and above the other.

Renowned American Professor (Wise)[[8]](#footnote-8), who has considerable experience in arguing animal law cases identified the status of animals under property laws around the world as animal law jurisprudence’s most major concern, and has been working on changing it since three decades[[9]](#footnote-9). Another American Professor (Favre) has adopted an ‘incremental’ outlook with regards to the subject[[10]](#footnote-10).

Others contend that while the aforementioned academicians shine the light upon the need for rights, there exist a plethora of other opportunities, primarily in the judicial and the legislative spheres that will allow us to push forth with the same ‘incremental’ approach by utilizing progressive legislation[[11]](#footnote-11) in order to achieve effective results immediately rather than in the uncertain future[[12]](#footnote-12).

Which of the aforementioned opinions are correct?

 I’d say that all of them stand absolutely correct, albeit, in their own right.

Social change is in no way a linear ordeal and any successful socio-political or socio-legal movement, for that matter, shall adopt a plethora of methods and approaches rather than putting all their eggs in a single basket. However, as a general rule of thumb, Animal law advocacy must develop a short-term focus on introducing progressive legislations and thus inducing ‘incremental’ change and a long-term focus on constantly questioning the status quo about the constitutional morality that presumably exists in distinguishing between two living beings’ rights solely on the basis of their species.

I relate with the analogy of Lawrence and Susan Finsen in their book[[13]](#footnote-13) where they look at modern society as a river and the movement for animal rights as a boat sailing on it. Henceforth, ‘numerous hands must keep the numerous oars moving[[14]](#footnote-14)’ so that the boat reaches its destination (read: so that social change is achieved). It is crucial to note that since the boat is being rowed against the current of the river, there shall be immense hurdles (for example, the current may push us off course at times) but we must keep rowing past and reflect on the islands (milestones) we have crossed for inspiration. The currents cannot be fully discerned either, as the view beneath the water is not transparent but translucent (the water under the boat represents social norms such as folkways and mores, with the riverbed representing the foundations of the culture or the society in which the change is being promulgated). Animal rights advocates must put their best foot forward and focus upon increasing the manpower of the huge boat.

This positive approach does not restrain anyone from criticising or raising their voice against any such approaches which may harm the movement, such as sexism or other forms of gender based discrimination, or concerted efforts which give specific individuals more ‘visibility’ over the others, leading to the detriment of fellow participants. As animal law, as an ‘ark of law’, is still on the anvil; one must be careful of the way one teaches, writes, litigates, legislates and speaks- as a lack of caution could create wrong legislative and judicial precedents, in this nascent but rapidly developing field, where there were none before. On a lighter note, there exists, in most scenarios the possibility of accommodating multifarious approaches in order to increase the recognition of animals’ interests in the legal system. When the challenge before us is as complex and vexing as Animal Exploitation is, we must realise that the strength of our movement lies in our sheer numerical strength; and thus, we must remain broadly on the same page despite our marked differences in approaching the same issue. Progression with regards to changing social attitudes and behaviour when it comes to the treatments of animals- has, is and shall continue to be a slow but sure (and occasionally, even monotonous) process.

***GREEN PASTURES AHEAD: A FUTURISTIC OUTLOOK ON THE GROWTH OF ANIMAL LAW JURISPRUDENCE – A CONCLUSION***

 In the nascent stages of animal law jurisprudence, every single case that was presented before a Court of Law was, in one way or the other, exploring uncharted territory and creating legal precedent where none existed before. Lawyers at this early stage started from scratch and worked to develop the lines of legal thought which lawyers and academicians can easily adopt on this issue today. It’s indeed good to note that these lines of thought are being constantly expanded and refined into more cogent and compelling forms, via the natural course of law; and that this process shall be not just a few ‘one-off’ decisions but a continuous work in progress.

In recent years, a particularly positive and powerful development in the animal law sphere has been the growth of consortiums between animal rights litigators with non-animal rights focused entities in order to challenge laws that are antithetical to their growth. This is a practice that has been seen across the globe, whether it be in Argentina[[15]](#footnote-15), United States of America[[16]](#footnote-16) (The ‘Ag-Gag’[[17]](#footnote-17) challenges) or India[[18]](#footnote-18).

Apart from utilising legislations previously in existence in newer and more profound ways via consortium building with non-animal rights organisations whilst litigating, lawyers have also shown a lot of creative resolve leading to ‘out of the box’ methodologies. One of the best examples of the same is the utilisation of laws not meant for animal welfare for that purpose by reinterpreting the provisions of the same. A few excellent examples from the United States include the utilization of gambling laws to hold accountable those engaged in dog-fighting[[19]](#footnote-19), Consumer Protection Laws to address the issue of internal breeding in dog kennels[[20]](#footnote-20) and Advertising Laws to counter incorrect labelling of meat[[21]](#footnote-21). A well-known Indian example of the same is the utilization of Public Safety Laws and Fundamental Rights in the *Jallikattu* Case.

Thus, it is crucial to keep the light of constitutional morality alive, which is best summed up in a quote:

*We clasp the hands of those that go before us,*

*And the hands of those who come after us[[22]](#footnote-22).*

For the sake of our fellow friends, let us assure that we work dedicatedly and relentlessly to achieve our objective- a day when they and us would become ‘we’.

1. (Schopenhauer, 1903) [↑](#footnote-ref-1)
2. *Karnail Singh and Ors. V. State of Haryana, 2-9 533 CRR 2013 (P&H HC Ct. 2019)* available at <https://www.livelaw.in/pdf_upload/pdf_upload-361239.pdf> [↑](#footnote-ref-2)
3. *Supra* para 2, pg. 1 [↑](#footnote-ref-3)
4. CRIMINAL PROCEDURE CODE *(CrPC, 1973)* [↑](#footnote-ref-4)
5. See para 15, supra 2 [↑](#footnote-ref-5)
6. See <https://www.livelaw.in/top-stories/ph-hc-declares-entire-animal-kingdom-including-avian-and-aquatic-as-legal-entities-with-all-rights-and-duties-of-living-persons-read-judgment-145417> [↑](#footnote-ref-6)
7. Pamela Frasch; Joyce Tischler, Animal Law: The Next Generation, 25 Animal L. 303 (2019). [↑](#footnote-ref-7)
8. See Professor Stephen Wise in pg. 332 of *Supra* 7 [↑](#footnote-ref-8)
9. Center for Animal Law Studies: Steven Wise, Lewis & Clark L. SCH., https:/law.lclark.edu/-live/profiles/6509-steven-wise (Accessed 11:09 AM, 8th September 2019) [↑](#footnote-ref-9)
10. DAVID S. FAVRE, RESPECTING ANIMALS: A BALANCED APPROACH TO OUR RELATIONSHIP

WITH PETS, FOOD, AND WILDLIFE (Steven L. Mitchell ed., 2018). [↑](#footnote-ref-10)
11. A good academic example of the concept can be seen in KATY SOWERY; *SENTIENT BEINGS AND TRADABLE PRODUCTS: THE CURIOUS CONSTITUTIONAL STATUS OF ANIMALS UNDER UNION LAW,* 55(1) Common. Mkt. L. Rev. (2019) accessible at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3090363> (Accessed at 3:21 AM on 10th September, 2019) [↑](#footnote-ref-11)
12. See Jonathan Lovvorn, Animal Law in Action: The Law, Public Perception, and

the Limits of Animal Rights Theory as a Basis for Legal Reform, 12 ANIMAL L. 133, 139,

146 (2006) ("But as we daydream about a heroic legal victory for animals that will most

likely not occur in our lifetime, millions and millions of animals are suffering in conditions

that we have the power, and the societal support, to change today.") [↑](#footnote-ref-12)
13. LAWRENCE FINSEN *&* SUSAN FINSEN, THE ANIMAL RIGHTS MOVEMENT IN AMERICA:

FROM COMPASSION TO RESPECT (1994) [↑](#footnote-ref-13)
14. *Id* pg. 72 [↑](#footnote-ref-14)
15. Gabriel Samuels, Chimpanzees Have Rights, Says Argentine Judge as She Orders Cecilia Be Released from Zoo, INDEPENDENT(Nov. 7, 2016), https://www.independent.co.uk/news/world/americas/argentina-judge-says-chimpanzee-poor-conditionshasrights-and-should-be-freed-from-zoo-a7402606.html [https://perma.cc/239H-E3E7] (accessed Sept. 13, 2019); Lauren Choplin, Chimpanzee Recognized as Legal Person, NON**-**HUMAN RIGHTS BLOG (Dec. 5, 2016), https://www.nonhumanrights.org/blog/ceciliachimpanzee-

legal-person/ [https://perma.cc/7RAE-E38F] (accessed Sept. 13, 2019). [↑](#footnote-ref-15)
16. Animal Legal Def. Fund v. Otter, F.Supp.3d, 2015 WL 4623943 (D.

Idaho 2015); Animal Legal Def. Fund v. Reynolds, 297 F.Supp.3d 901 (S.D. Iowa 2018); see also Daniel Sternberg, Why Can't I Know How the Sausage is Made?: How Ag-Gag

Statutes Threaten Animal Welfare Groups and the First Amendment, 3 Cardozo Pus. L.

POL'Y& Ethics J. 625, 637-38 (2015) [↑](#footnote-ref-16)
17. Ag-Gag laws make it a crime to record or videotape inside an industrial animal

facility. Animal attorneys have successfully challenged the constitutionality of these

laws in Utah, Idaho and Iowa. Animal Legal Def. Fund v. Herbert, 263 F. Supp. 3d 1193

(D. Utah 2017). [↑](#footnote-ref-17)
18. Apoorva Mandhani, Uttarakhand HC Declares "Entire Animal Kingdom"As Legal

Entity, With Rights, Duties, & Liabilities of A Living Person, **LIVE** LAW, httpsJ/www

.lvelaw.in/uttarakhand-hc-declares-entire-animal-kingdom-as-legal-entity-with-rightsduties-

liabilities-of-a-living-person-read-judgment/ [https://perma.cc/GG3P-YGHE] (accessed

Sept. 11, 2019); see also Narayan Dutt Bhatt v. Union of India, (July 5, 2018) 43

AIR 1, 50 (India) (declaring that "the entire animal kingdom" are legal entities, having

corresponding rights, duties and liabilities of a living person). [↑](#footnote-ref-18)
19. See Animal Fighting: Related Cases, MICH. STATE UNI v. ANIMAL LEGAL & HIST.

CTR., httpsJ/www.animallaw.info/cases/topicanimal-fighting?page=l&order=field-pri

mary-citation&sort=desc [https-/perma.cc/5FD3-R3YTl (accessed Sept. 16, 2019) (summarizing

and linking to several dog fighting judgements which were won on gambling,

cruelty laws, or both). [↑](#footnote-ref-19)
20. Challenging the Sale of Puppy Mill Dogs - Barkworks Class Action, ANIMAL LEGAL

DEF. FUND (Dec. 18, 2018), httpsJ/aldf.org/casechallenging-the-sale-of-puppy-mill-dogsbarkworks-

class-actionl [https://perma.cc/S8FV-G84F] (accessed Sept. 16, 2019). [↑](#footnote-ref-20)
21. See <https://www.facebook.com/WEFvideo/videos/1681062875357997/> (World Economic Forum- 1 in 5 fish sold in US under the wrong label) (Accessed Sept. 17, 2019); *E.g.,* Animal Legal Def. Fund v. HVFG, No. C 12-05809 WHA, 2013 U.S. Dist.

LEXIS 89169, at \*1 (N.D. Cal. June 25, 2013) ("Plaintiffs Animal Legal Defense

Fund...allege that defendants HVFG ...violated the Lanham Act and California's

unfair competition and false advertising laws by marketing their foie grass as 'the humane choice.'"); PETA v. Cal. Milk Producers Advisory Bd., 22 Cal. Rptr. 3d 900 (Cal. Ct. App. 2005); Physicians Comm. for Responsible Med. v. Tyson Foods, 13 Cal. Rptr. 3d 96 (Ct. App. 2004); *see also* Carter Dullard, *False Advertising, Animals, and Ethical* *Considerations,* 10 Animal L. 25, 25-27 (2004) ("PETA also filed suit.., in 2003 against the Kentucky Fried Chicken Corporation and its parent company alleging that the defendants

were making grossly false representations regarding the treatment of their chickens"). [↑](#footnote-ref-21)
22. WENDELL BERRY, *Healing, in* WHAT ARE PEOPLE FOR? 10 (1990). [↑](#footnote-ref-22)