



Global Developments in Animal Personhood Jurisprudence – South Asia

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Overview

- Pakistan
 - The *Kaavan* case – affirming legal rights.
 - Use of electronic decoys in hunting – confirming legal rights.
 - Exotic pets – animal personhood?
- India
 - *Animal Welfare Board v. Nagaraja* – affirming legal rights.
 - High Court decisions – affirming personhood.
 - *Animal Welfare Board v. Union of India* – no personhood?



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Constitutional and Judicial Structure

- Federalist system
 - Legislative and executive power divided between the Federation / Central Governments and Provincial / State Governments
- Judiciary
 - Supreme Court of Pakistan / India – apex court
 - High Courts: Highest constitutional courts in the Province / State
 - Unified Judiciary



The *Kaavan* Decision



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IWMB v. MCI (PLD 2021 Islamabad 6) – The *Kaavan* Case

- Petition challenging the treatment of animals in the Marghzar Zoo.
- One of the animals was Kaavan – “the world’s loneliest elephant”.
- First court decision in Pakistan linking constitutional rights to the natural and legal rights of nonhuman animals.



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The Holding

- Concluded that nonhuman animals have certain natural rights under the statutory regime and linked these rights to Article 9 (right to life) of Pakistan's Constitution.
 - Interdependence on nature
 - The Link
- These rights include:
 - Right to live in an environment meeting the animal's needs;
 - Right to not be subjected to unnecessary pain and suffering;
 - Right to not be unnecessarily killed;
 - Right to be respected.



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The Decision

- Since the zoo was not meeting its inhabitants' social and physiological needs, the court ordered that the zoo be shut down and all animals be relocated to sanctuaries.
- Subsequently, all animals, including Kaavan, were relocated to sanctuaries within and outside Pakistan.
- November 2020 – Kaavan moved to Cambodia.



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Additional Note

- Emphasized that zoos can never meet the needs of wild animals the way their natural habitats can.
- Suggested limits to when a wild animal can be kept in captivity:
 - For conservation
 - To protect the animal (shelters or sanctuaries)
- “Wild animals have to be treated as an end in themselves and not as a means for the mere entertainment of humans”.



After *Kaavan* – Wave of Litigation

- The *Kaavan* decision led other animal protection litigation in Pakistan including:
 - *Zawar Hussain vs. Province of Punjab* – W.P No. 63665/2021
 - *Sanita Gulzar v. Province of Punjab* – W.P 30173/2021



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Zawar Hussain v. Province of Punjab



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Facts of the Case

- The Punjab Wildlife Department issued a notification banning the use of electronic decoys and PCP airguns in hunting.
- The Punjab Wildlife Act 1974 already prohibited the use of live decoys in hunting.
- Petitioner challenged the ban before the Lahore High Court on the ground that:
 - The law only prohibited the use of live decoys, not electronic
 - It is impossible to hunt waterfowl without decoys



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Court's Decision

- The Lahore High Court upheld the ban on the following grounds:
 - One of the core purposes of the Punjab Wildlife Act is to protect wild animals
 - The use of electronic decoys is against the principle of sustainable hunting and the fair chase principle because they allow the hunter an unfair advantage over the animal
 - The *Kaavan* case has affirmed that animals have legal rights and infringement of these is an infringement of Article 9 of the Constitution.
 - Reaffirmed that since animals can feel pain and joy, they have natural rights including the right to life and it is the state's duty that such rights are not infringed.



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Analysis

- Employed a “species best interest” standard.
- Relied on the *Kaavan* decision to give more weight to animal life when weighed against hunters’ interests.



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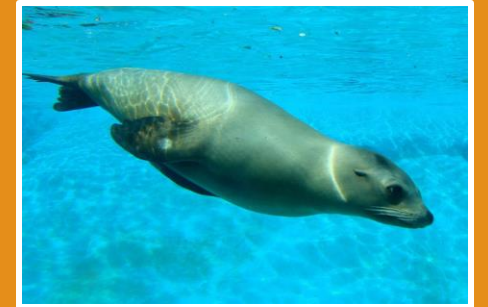
Sanita Gulzar v. Province of Punjab



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Facts of the Case

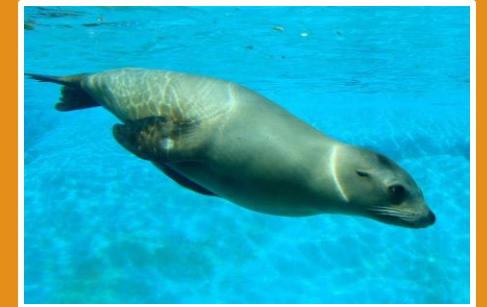
- Increasing trend in Pakistan of keeping exotic wildlife as pets, especially lions.
- S.12 of the Punjab Wildlife Act 1974 allows one to possess a wild animal provided a license is obtained.
- Petitioner challenged S.12 of the Punjab Wildlife Act 1974 as unconstitutional on the ground that the practice of keeping wild animals as pets is against the principles laid down in the *Kaavan* judgement.



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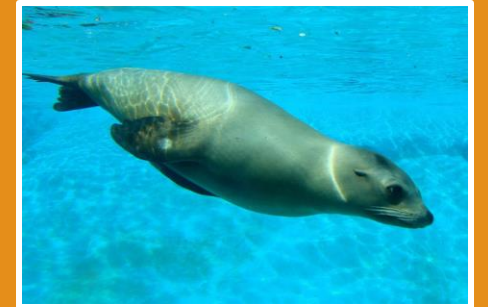
Admitting Note

- In its admitting note, the Lahore High Court noted that after the *Kaavan* decision, the contours of constitutional rights for nonhuman animals need to be further defined.
- Court also observed that any “aggrieved party” – not person – can approach the High Court in writ jurisdiction under Article 199 of the Constitution.
- Can animals have standing to bring suit for the violation of their fundamental rights?



Progress of the case

- Lahore High Court constituted a committee to regulate big cat ownership.
- Final decision in the case still pending.
- Lack of clear legislation is a hurdle.



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India



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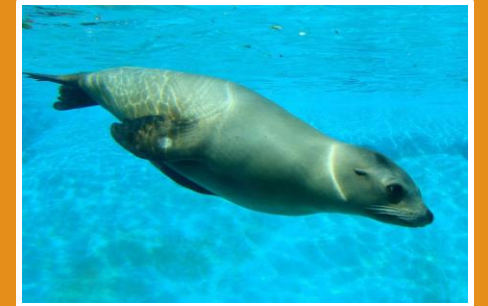
*Animal Welfare Board of
India v. Nagaraja*
2014 (7) SCC 547



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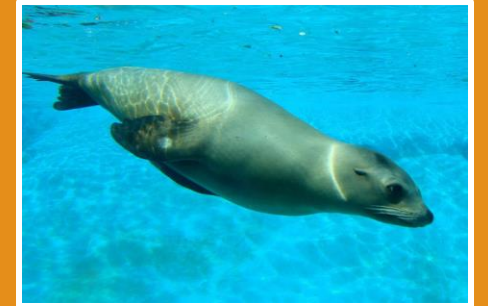
Facts of the Case

- Challenged the practice of Jallikattu and bull cart racing in the States of Tamil Nadu and Maharashtra.
- Recognized animal sentience and that animals suffer physically and psychologically.
- Affirmed statutory animal rights.
- Animals have inherent rights and should not be a means to an end.
- Link with Art. 21 of the Indian Constitution.
- Declared that the practices violate the 1960 Act.



Nagaraja and Personhood

- Did not speak to the question of personhood.
- Court said it expects Parliament to elevate the rights of animals to the status of constitutional rights.



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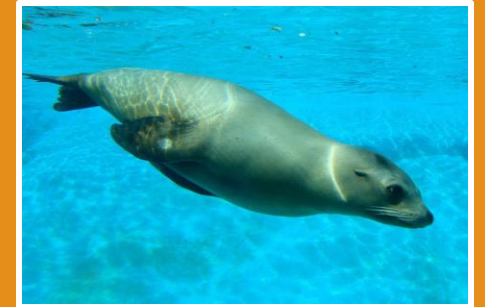
Animal Personhood Cases



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Narayan Dutt Bhatt v. Union of India 2018 SCC OnLine Utt 645

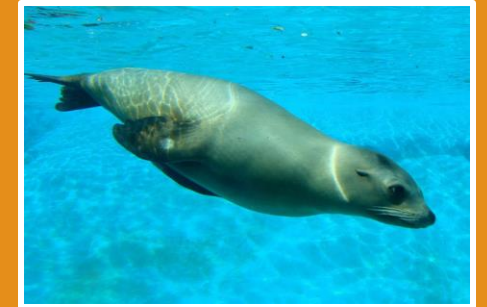
- Uttarkhand High Court decision
- Related to the interstate transport of horses between Nepal and India and overloading of horses.
- Declared the entire animal kingdom including avian and aquatic species as legal persons.
- Declared all citizens in Uttarkhand as persons *in loco parentis* for the welfare of animals.



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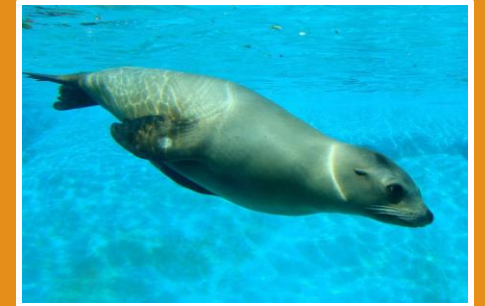
Karnail Singh v. State of Haryana 2019 SCC OnLine P&H 704

- Concerned a criminal conviction for a violation of the Punjab Prohibition of Cow Slaughter Act 1955.
- Discussed Indian animal protection laws at length.
- Declared as follows:
 - *“The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Haryana are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.”*



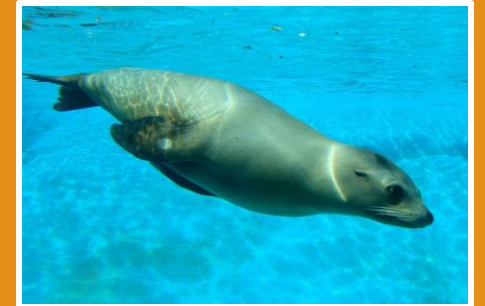
Animal Welfare Board of India v. Union of India

- States of Tamil Nadu, Maharashtra and Karnataka enacted laws to resume and regulate Jallikattu and bull cart racing.
- Court categorically denied that animals have fundamental rights, and said this is a question for the legislature.
- Held:
 - The new laws sufficiently address the animal protection deficiencies *Nagaraja* identified.
 - The court can't decide whether a human use is “necessary” – only whether unnecessary pain and suffering is being inflicted.



Animal Welfare Board of India v. Union of India

- Held:
 - It is not for the court to decide whether the sports are part of the State's culture and heritage.
 - Organizing the sport is permissible, and the new laws seek to minimize the pain and suffering associated with the sport.
 - The new laws do not violate any animal protection or other constitutional provisions in the Indian Constitution.
 - The laws are not contradictory to what the court held in *Nagaraja*.
 - The laws should be strictly enforced.



Takeaways

- Impact of *AWBI v. Union of India* on personhood decisions?
- Animals are not legal persons capable of bringing suits in their own name – is that a problem?
- Overall trend has been very positive but courts have now started to hesitate on questions of personhood – slight regression.
- In Pakistan, it might be interesting to see if this issue reaches the Supreme Court and how it's handled there.



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Takeaways (Cont'd)

- Can litigation be a substitute for legislation?
- Can the two countries legislate to recognize animal rights / personhood more clearly?



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