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Article

Compassion for Living Creatures in Indian Law Courts

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Abstract: The Constitution of India through an amendment of 1976 prescribes a Fundamental Duty ‘to have compassion for living creatures’. The use of this notion in actual legal practice, gathered from various judgments, provides a glimpse of the current debates in India that address the relationships between humans and animals. Judgments explicitly mentioning ‘compassion’ cover diverse issues, concerning stray dogs, trespassing cattle, birds in cages, bull races, cart-horses, animal sacrifice, etc. They often juxtapose a discourse on compassion as an emotional and moral attitude, and a discourse about legal rights, essentially the right not to suffer unnecessary pain at the hands of humans (according to formulae that bear the imprint of British utilitarianism). In these judgments, various religious founding figures such as the Buddha, Mahavira, etc., are paid due tribute, perhaps not so much in reference to their religion, but rather as historical icons—on the same footing as Mahatma Gandhi—of an idealized intrinsic Indian compassion.

Keywords: India; animal welfare; compassion; Buddhism; court cases

In 1976, the 42nd Amendment to the Constitution of India introduced a new section detailing various Fundamental Duties¹ that citizens were to observe. One of these duties is ‘to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures’ (Constitution of India, Part IV-A, Art. 51A (g)). [my emphasis]

The aim of the present contribution is to examine how this disposition is translated into actual judicial practice, and what conceptions of the relationships between humans and non-human animals this practice may exemplify. How the Indian legal system (inherited from Common Law) in which animals are classified as property or things, applies to them the notion of ‘compassion’? My discussion will rely on the debates on animal welfare and ‘animal rights’ as they are reflected in actual judgments in India. As a matter of fact, the notion of compassion is not defined in the Constitution and it fell upon the upper courts to define and comment on it. The texts of relevant judgments provide therefore an exceptional vantage point for analyzing how the constitutional duty of compassion frames the legal resolution of conflicts concerning the treatment of animals in India.

A second issue concerns the choice of the word ‘compassion’. The Indian Constitution is probably alone in prescribing *compassion for living creatures*. Why this particularity? I shall look at what the judgments say in this respect. We shall see that they refer to religious traditions developed in India—Hinduism, Jainism, Buddhism, Sikhism (so-called ‘Indic’ religions)—which are felt to develop a specific ethos of compassion at the origin of this constitutional disposition.

¹ In the scheme of the Indian constitution, the Fundamental Duties are non-enforceable: they are policy guidelines encouraging the States that constitute the Indian Republic to legislate accordingly, and constitute an ethical perspective for the courts in their interpretation of litigations.

What is involved here is the idealized *image* that these religions assume in the text of these judgments.² Among these traditions, Jainism is probably foremost in its engagement for the protection of animals since early times, in the name of *ahiṃsā*, commonly understood now as ‘non-violence’. Many if not most shelters for disabled animals in India (*pañjarapole*) are run by Jain associations. However, the word ‘compassion’, though extensively used nowadays by all religions in India (and elsewhere), would more easily refer to Buddhism in the popular imagination: Jainism is seen as epitomizing ‘non-violence’, indeed, but the respect of animal life as part of this non-violence corresponds to a moral scheme where even unintentional violence is condemned and where the ‘state of mind’ (as implied, for instance, by compassion) is not central in moral judgments.³ By comparison, Buddhism may be less present in Indian today’s religious landscape—though certainly not worldwide—but puts compassion at the very core of its ethical values.

Notwithstanding the actual possible influence of Jainism or other religions, including non-Indic ones, I shall pay attention to how Buddhism is presented in the judgments as a major foundation for today’s duty of compassion—this is not necessarily what Buddhist sources or actual practice tell us about Buddhist views of the relationships between humans and other living creatures.⁴ Moreover, if a few contextual elements can suggest an indirect intellectual link between Buddhism and some actors involved in promoting legislation for the protection of animals in the name of compassion, it cannot be said that this religion was a direct source of inspiration.

I shall proceed in three steps. The first section presents the context of introducing ‘compassion for living creatures’ in the Constitution of India—without pretending to offer a historical narrative—and how it is claimed that this is an outcome of Indian religious history. The second section highlights how judgments have elaborated on, and made use of this constitutional duty; what assumptions about animals underlie references to compassion in Indian case law? A third and final section discusses aspects of the legal status of animals in India in relation to this judicial activity: since compassion is an *emotion*, how is it articulated with animal *rights*?

My material is composed of judgments obtained online and selected for including an explicit reference to ‘compassion for living creatures’. There are limitations imposed by this choice: Indian judgments online are from upper courts (though some judgments refer to decisions taken at the level of lower courts); the internet legal search software used, ‘Indian Kanoon’,⁵ may not provide an exhaustive list of cases. Thus, judgments examined here cannot be considered to be representative in quantitative terms. My impression, nevertheless, is that they give a fair glimpse of what is going on since judgments quote each other frequently, when referring to precedents, in an intertextuality leading to a marked redundancy.

With this caveat, I found judgments with an explicit reference to compassion to be few when compared to all the judgments available through Indian Kanoon on a given question (e.g., litigations concerning stray dogs): I could find 35 judgments ranging from 1977 to 2018 that explicitly referred to ‘compassion for living creatures’, some in a rather cursory manner, out of some 130 judgments

² Similar idealized views have been proposed by (Phelps 2004) for whom Buddhism ought to be an animal rights religion par excellence, or by some legal scholars who see eastern religions as a particularly favorable context for initiating legislation protecting animals (Le Bot 2007, pp. 28–30; Lubinski 2004; Singer [1975] 2002, p. 191); for a differing point of view, see (Stewart 2016, p. 4). The opposition sometimes drawn between Christianity and Buddhism in this respect is criticized in (Waldau 2002)—see also (Sciberras 2008) who brings nuance to the latter.

³ I am grateful to one of the anonymous reviewers for pointing out this dimension to me. On aspects of compassion in Jainism, see also (De Clercq 2013), (Kelting 2007), (Wiley 2004). Jainism tends to encourage dispassionate non-violence while holding somewhat ambivalent views on compassion-as-emotion—though compassion is important in medieval stories.

⁴ Considerable scholarship exists on the subject, e.g., (Cohen 2013), (Harris 2001), (McDermott 1989), (Ohnuma 2017), (Sciberras 2008), (Stewart 2014, 2016), (Waldau 2002).

⁵ <https://indiankanoon.org/>.

consulted on similar litigations.⁶ This could be significant and point to a difficulty or a reluctance, in many courts, to integrate compassion-as-emotion in the legal reasoning.

The judgments address various issues, e.g., stray dogs or cattle, cow slaughter, animal sacrifice, livestock, cart-horses, caged birds, bull races, animal fights, exhibition of wild animals, etc. Wildlife is not addressed by the legal discourse on compassion, except for wild animals kept in cages: the injunction to have compassion for *all* living creatures is thus predominantly limited, in actual litigations, to domesticated animals: cattle, horses, dogs, poultry, etc.—the same categories on which bears most animal welfare legislation across the world.

A last remark: the 1976 Amendment to the Constitution was introduced when Indira Gandhi was Prime Minister of India and had imposed a State of Emergency (1975–1977), one of the Amendment's purposes being to increase Executive and Legislative powers at the expense of the judiciary. The disposition enjoining compassion for living creatures—unconnected with this political agenda—was in harmony with Mrs. Gandhi's personal preoccupation for the preservation of nature and the protection of animals. A biographer called her the 'Naturalist Prime Minister' (Ramesh 1978, chap. IV and VI), as she displayed throughout her life a love for animals and sensitivity to ecological issues that led her government to initiate and develop strong environmental policies (Ramesh 1978; Gosling 2001, pp. 7, 119–22). However, this political history does not find any place in the text of the judgments, which tend to both parochialize—as a specific Indian ideology—and universalize—as a marker of global human progress—compassion for living creatures.

1. Introducing Compassion in the Constitution

India follows a common law system, and much of its current legislation is anchored in laws enacted during the British period and later amended. The legislative activity for protecting animals intensified after the country's independence, starting with a Constitutional disposition banning cow slaughter (Art. 48, also non-enforceable, but followed by corresponding legislation in many States—*Le Bot* 2007, p. 6).⁷ Introducing compassion in the Constitution is part of a growing concern for the protection of animals within civil society and the political and legal milieus in India, in line with developments at the international level. What judgments often also stress, however, is the antiquity of Indian concerns for animals. Compassion for living creatures is said to be both antique and modern: it has been a specific trait of Indian traditions for more than two millennia, and it is required by progress in civilization.

1.1. Compassion as an Indian Heritage

Many judgments affirm that compassion, or love, is a universal message at the core of all religions. At the same time, India is said to be different in that it has *always* promoted compassion for animals.⁸

In this perspective, a few judgments claim that Vedic culture was important in the promotion of 'non-violence' understood as a manifestation of compassion for living creatures, disregarding those texts in the Vedic corpus that prescribe elaborate animal sacrifices as well as the whole cosmology that relies on them (Lévy 1898; Stewart 2014, pp. 625–28). They do so by referring to a modern reinterpretation of the term *ahimsā* (a literal rendering would be 'non-desire-to-carry-out-any-attack'—Oguibenine [1994] 2003, p. 65) as meaning universal 'non-violence', whereas it initially framed (and legitimized) the

⁶ Only those judgments that are referenced in the text are listed at the end of this contribution. References in judgments are most often numbered by paragraphs. When this is not available, I have used the pagination provided in the file downloaded through Indian Kanon.

⁷ I shall not discuss here cow protection as it has its own historical momentum with highly politicized stakes and differs from the general issue of compassion for *all* living creatures—of which it is not necessarily a reliable indicator. It should be noted, however, that recent judgments against cow slaughter may refer to the duty of compassion enjoined by the 1976 Amendment to the Constitution.

⁸ (Harris 2001, p. 244) even considers that 'There is some evidence to suggest that the avoidance of harming living things predates the arrival of Aryans in the subcontinent some 4500 years ago'.

possibility of effective violence, particularly that required for animal sacrifice (Biardeau [1994] 2003; Oguibenine [1994] 2003). However, as pointed out above, judgments refer to an imagined past more in line with current popular understanding of *ahimsā*, and with today's religious or political stakes.

Take for instance a recent decision by the High Court of Himachal Pradesh—currently stayed by the Supreme Court of India—that banned animal sacrifice in the state (Ramesh Sharma 2014). It asserts:

the core of religion based upon spiritual values, which the Vedas, Upanishads and Puranas were said to reveal to mankind seem to be “love others, serve others, help ever, hurt never”. (Ramesh Sharma 2014, para. 51)⁹

This motto, far from coming from the Vedas, echoes in fact directly that of a modern Hindu Saint, Sathya Sai Baba (1926–2011).¹⁰ The judgment concludes that ‘The *Karuna* (compassion) is deeply ingrained in the Hindu philosophy’ (Ramesh Sharma 2014, para. 74), and that ‘“*Ahimsa*” is also the central theme of the Hindu Philosophy though later on expounded by Budha [sic].’ (ibid., para. 79). Such an absence of differentiation between Vedic, Jain, Buddhist and Hindu ethics and philosophies is frequent in the judgments under scrutiny.

Rather than discussing compassion at a conceptual level, however, most of the judgments prefer evoking iconic historical figures. Jainism is evoked through the figure of Mahavira (the 24th Jain Tirthankara, VIth/Vth century B.C.E.); Buddhism is paid tribute through the mention of the Buddha (VIth/Vth century B.C.E.) or of Emperor Asoka (IIIth century B.C.E.), the latter being presented as initiating the first legislation protecting animals.¹¹

Towards the end of his reign, King Asoka in the third century B.C. issued a decree that it [sic] has a particularly contemporary ring in the matter of preservation of wild life and environment. He had written: “Twenty-six years after my coronation, I declare that the following animals were not to be killed, parrots, mynas, the aruna, ruddy geese, wild geese, the nandimukha, cranes, bats, queen, ants, terrapins, boneless fish, rhinoceroses . . . and all quadrupeds which are not useful or edible . . . Forest must not be burned.” (K.M. Chinappa 2002, p. 12) [on mining activities and river pollution in a protected forest area]

Similarly, another judgment affirms that ‘the advocacy of wild life preservation, animal rights, vegetarianism and environmental protection have their roots in a new ethic of universal compassion inscribed long ago in the rock pillars of Emperor Asoka.’ (Ramavath Hanuma 2017, para. 14) [on cow slaughter].

The Buddha himself is usually simply mentioned within an enumeration of saintly figures, among whom are also found Mahavira for Jainism, and Mahatma Gandhi (1869–1948) as a modern champion of compassion: ‘From the Budha [sic] and Mahavira to St. Francis of Assisi and Gandhiji, compassion for living creatures is a profound religious motivation’ (Commissioner Of Income Tax 1977, para. 24) [whether providing care for animals falls in the category of ‘charity’]. A few judgments elaborate this view:

The concept of compassion for living creatures enshrined in Article 51A (g) is based on the background of the rich cultural heritage of India—the land of Mahatama [sic] Gandhi, Vinobha, Mahaveer, Budha [sic], Nanak¹² and others. No religion or holy book in any part of

⁹ The judgment quotes another, earlier one, unconnected with animal protection: *State of Karnataka and another* 2004, p. 5.

¹⁰ See for instance <http://www.theprasanthereporter.org/2011/11/love-all-serve-all-help-ever-hurt-never/> (accessed 25 December 2018). Sathya Sai Baba declared himself—and is said by his followers—to be an incarnation of god Siva.

¹¹ This view, supported by some law historians (Kelch 2012, pp. 36–39; Le Bot 2007, p. 29), needs to be qualified (Sahu 1987, p. 66; Stewart 2016, pp. 15–17).

¹² Vinobha Bhawe (1895–1982), a companion of Gandhi, was considered as his spiritual successor. Guru Nanak (1469–1539) is the founder of Sikhism.

the world teaches or encourages cruelty. (*State of Gujarat* 2005, p. 21; also quoted in three other judgments) [on cow slaughter]

It finds a full treatment in the words of a former judge of the Supreme Court of India, V.R. Krishna Iyer (1914–2014). One judgment refers to his views:

While expressing deep anguish and sigh of great displeasure over torture inflicted on innocent animals in this country & that too despite the Vedas, the Bible, the Koran, the Buddha and Mahavira and the Supreme miracle and revolutionary apostle of Ahimsa, Mahatmaji [Gandhi], Justice Krishna Iyer has warned us that we have forfeited the right to be heirs of a culture of Karuna, Samata and Dharma. (*People for Animals* 1996, para. 26) [on bull-fights in Goa]

The above reference to specific concepts such as ‘Karuna, Samata and Dharma’ is unique to Justice Krishna Iyer’s text, and is probably to be understood as pointing to general notions permeating India’s philosophies rather than to Buddhist doctrine—as a rule, the complexity of Buddhist attitudes and actual practice towards animals is ignored in the judgments. In fact, Justice Iyer underlined what he felt to be a general characteristic of India:

The philosophical perspective of Animal Welfare is thus part parcel [sic] of our cultural heritage. Every time cruelty is practiced on man or beast or bird or insect, we do violence to the Buddha and Mahavira. Every torture on an animal and every export of animals is a sin to the memory of the founders of Bhartiya Sanskar [Indian civilization] . . . Let us not betray the generations from the Buddha to Gandhi. (V.R. Krishna Iyer’s ‘The Right of our Animal Brethren’, 1980, quoted in *Mahisagar* 2012, p. 17) [on impounded cattle]

Generally speaking, enumerating saintly figures tends to take compassion out of any specific religion and to make it either a part of supposed universal religious preoccupations or, in most cases, a distinctive mark of so-called ‘Indic’ religions (Hinduism, Buddhism, Jainism, Sikhism): it then becomes a cultural specificity of *Indian* civilization (‘Bhartiya Sanskar’), a kind of national characteristic.¹³ This feeling is comforted by the frequent references to Emperor Asoka and to Mahatma Gandhi, who both epitomize compassion together with nationhood at more than two thousand years of interval, one as the founder of the first Empire over most of today’s India, the other as the ‘father of Independence’.

1.2. Impact of Hindu Reformist Movements

Compassion for animals is thus said to be intrinsic to Indian civilization. There, it possesses a kind of timelessness, an impression conveyed by evoking compassionate ‘heroes’ at different periods of time. Indeed, while Buddhism nearly disappeared from India after the XIIth century, respecting animal life has remained an important issue for many sections of the society throughout centuries, especially Jainism and strands of Hinduism. Despite this continuity through time, however, I would argue that the introduction of the notion of compassion for living creatures in the Constitution, and the way it is envisioned in current judgments, results not so much from this ‘tradition’ than from the influence of Hindu reformist thinkers and movements that have blossomed since the early XIXth century and have reinvented this tradition.

¹³ According to two judgments, some Mogul Emperors are said to have banned cow slaughter (*Ramavath Hanuma* 2017, p. 20) or, influenced by Jains, adopted a compassionate attitude towards animals: ‘In 1582, the Emperor [Akbar] invited and received a Jain delegation Jainism, with its doctrine of non-violence, made a profound impression on him and influenced his personal life. He curtailed his food and drink and ultimately abstained from flesh diet altogether for several months in the year. He renounced hunting which was his favourite pastime, restricted the practice of fishing and released prisoners and caged birds. Slaughter of animals was prohibited on certain days and ultimately in 1587 for about half the days in the year’. (*Hinsa Virodhak Sangh* 2008, para. 51; see also para. 53: ‘When he [the Jain delegate] was introduced to the Emperor he defended true religion and told him that the foundation of faith should be daya (compassion).’) [on the closure of municipal slaughter houses during Jain festivals].

For instance, the Brahma Samaj, founded in 1830 in Bengal under the impulse of Ram Mohun Roy (1772–1833), opposed animal sacrifice and more generally the killing of animals. The Arya Samaj, founded in 1875 by Dayananda Sarasvati (1824–1883), has been at the forefront of the movement for cow protection, and Dayananda Sarasvati himself authored in 1881 a book entitled ‘Ocean of compassion for the cow’ (*Gōkaruṇanidhi*). In the South, Shri Ramalinga Adigal (1823–1874) extolled the virtue of ‘compassion for life’ (*jīva karuṇyam*) as a means of liberation from rebirth.¹⁴ A different, more radical perspective was articulated by Ramakrishna Paramahansa (1836–1886) and his disciple Swami Vivekananda (1863–1902), founder of the Ramakrishna Mission (1897), who saw compassion as an attribute of the Supreme Being which, therefore, human beings would be arrogant in claiming, and encouraged instead service (*sēva*) to animals as manifestations of the divine.¹⁵

Each of these reformist movements was engaged in a reformulation of Hindu traditions in relation to perceived modernity, with the aim of fostering a ‘purified’, universalistic religion—an ideal still echoed in the judgments.¹⁶ As part of this general evolution, the role of the Theosophical Society in the diffusion of a message of compassion for animals should not be overlooked. One of its Indian leaders, in particular, Rukmini Devi Arundale (1904–1986), a world famous dancer, had an important influence. Daughter of a Brahmin theosophist, wife of prominent theosophist George Arundale and herself holding various responsibilities in the Society, her role in pushing for a legislation protecting animals was crucial. She was a nominated member of the Rajya Sabha (equivalent to Senate) for two terms, from 1952 to 1962, and a personal friend of politicians including Indira Gandhi. She proposed a Bill for the Prevention of Cruelty to Animals on 10 April 1953 (discussed 5 March 1954). The Bill was not approved at the time but formed the basis on which eventually the current Prevention of Cruelty to Animals Act was passed in 1960.¹⁷ Rukmini Devi became in 1962 the first President of the newly created Animal Welfare Board of India and remained on the Board until her demise in 1986. She regularly spoke about animal protection in terms of compassion. For instance, during the Rajya Sabha debate on her proposed Bill, in 1954, she argued that

The prevention of cruelty to animals is a fundamental issue for if we are really going to follow the ideas of ahimsa we should go to the root of the problem. It is not enough to say that we believe in *ahivisa* [*ahimsā*]; we must try to put it into practice. Especially as we have accepted the emblem of Asoka, which is in essence compassion, kindness and justice to all, it is our duty to try to live up to it. (Rajya Sabha Official Debates 1954, p. 1787)

If there is no compassion, how can it ever be called religion, for there is no religion without compassion. There is no religious teacher who has found a religion without this essential quality of compassion. Without compassion is there a spiritual law? Without compassion is there a cultured man? (*ibid.*, p. 1795)

[...] let our hearts go towards our young friends [the animals] in compassion and in kindness. They work for us, they die for us, cannot we even avoid being cruel to them? [...] the highest *dharma* is compassion. In the Mahabharata every story and every great person shows that this is the real teaching of India. (*ibid.*, p. 1803)

¹⁴ See Chinna Muthukrishna Reddiar (1988, para. 21) [concerning a trust connected with Shri Ramalinga Adigal]: ‘He taught the people the indispensability of compassion for life in this world and for the eternal life to be lived in inseparable union with the ultimate Reality.’ More recently, Mahatma Gandhi and many ‘Saints’—e.g., Sathya Sai Baba, already mentioned—have stressed the need for love and compassion, in general, including for animals.

¹⁵ Ramakrishna is said to have told to Vivekananda: ‘Talk of compassion to beings? Will you, a little animal, bestow compassion on beings? You wretch! Who are you to bestow it? No, no; not compassion to *jivas* [living beings], but service to them as Siva. (Gosling 2001, p. 38).

¹⁶ Reformist efforts since the end of the nineteenth century fostered religious homogenization for political gains also. However, the aspiration for less ritualized, more egalitarian forms of religion are ancient, multiple, and widespread. Besides, the move for a ‘purified’ and ‘modern’ Hinduism was sometimes initiated as a response to colonial Christianity.

¹⁷ Rajya Sabha Official Debates, Sessions 03 (10 April 1953); 05 (4 December 1953); 06 (5 March 1954); 26 (12 August 1959); 28 (1 March 1960).

The role of Rukmini Devi in the development of Indian legislation and institutions for the protection of animals during the 1950s and the 1960s has been amply recognized in India. As Maneka Gandhi and Chinny Krishna, two leading personalities in animal welfare policies, acknowledge, 'If animal welfare is accepted, even fashionable, today, it is solely her efforts and crusade in the early years of independence that have made it possible.' (Krishna and Gandhi 2005, p. 70).

The fact that Rukmini Devi was an important member of the Theosophical Society could suggest a partial, indirect interaction with Buddhist traditions. It has to be recalled that, from its foundation in 1875, the Society was influenced by Orientalist perspectives on Eastern religions, particularly Buddhism. Two of its founders, Helena Blavatsky (1831–1891) and Colonel Olcott (1832–1907), publicly converted to Buddhism in 1880 in Sri Lanka, where Olcott became temporarily part of the Sinhala Buddhist revivalist movement.¹⁸ Olcott shared the views of Thomas W. Rhys Davids, noted Pali translator and secretary of the Royal Asiatic Society, according to which contemporary Buddhists practiced a debased form of Buddhism and were ignorant of its 'real' contents (Liston 2000, pp. 203–5; Wickremeratne 1969, p. 144). According to (Prothero 1995, p. 296), 'the most Protestant of all early Protestant Buddhists, Olcott was the liminoid figure [...] able to conjure traditional Sinhalese Buddhism, Protestant modernism, metropolitan gentility, and academic Orientalism into a decidedly new creole tradition.'

As part of his activities in Sri Lanka, Olcott published a Buddhist Catechism in English. In this, Olcott declared as the First Truth of 'Fundamental Buddhistic beliefs':

Buddhists are taught to show the same tolerance, forbearance, and brotherly love to all men, without distinction; and an unswerving kindness towards the members of the animal kingdom. (Olcott [1881] 1908, p. 88)

The Theosophical Society, with Olcott as its President until his death in 1907, established its headquarters in Adyar, a suburb of Madras, and was to have a lasting influence among elites in India. Buddhist ethics, as envisioned by Olcott and which he did not necessarily distinguish from 'the Wisdom Religion of the Aryan Upanishads and the soul of all the ancient world-faiths' (Liston 2000, p. 205), were thus part of the Indian milieu in which personalities like Rukmini Devi grew and were active—she lived in Adyar itself for many years.

That Rukmini Devi was a Theosophist and that the Society had been involved in reframing Buddhism may not have been entirely irrelevant in the emphasis she put on compassion in her campaign for the protection of animals.¹⁹ This is not to say that Buddhism was instrumental in passing legislation in this respect: it may only have been a component—revised by Theosophy—in an intellectual climate in which many religious influences, particularly from the bhakti (devotional) traditions of Hinduism, blended together; in her address to the Rajya Sabha, Rukmini Devi insisted that her move was not linked to any particular religion. Indeed, the Society was not alone in India in encouraging compassion for living creatures. Hindu reformist and spiritual movements had their own activism for the protection of animals, as did people of very different, even secular background. In the legal milieu, Justice V.R. Krishna Iyer (1914–2014), to whom some judgments refer, was such a figure. A member of the first communist government in the State of Kerala and praised for his engagement in favor of disadvantaged people, he was deeply committed to protecting animals which he sometimes called 'animal citizens' or 'animal brethren'; he pushed for a 'Compassion for Living Creatures Bill' in the State of Kerala in 2009 (which did not pass), and advocated a 'crusade for compassion'.

¹⁸ On Olcott's work in Sri Lanka, see (Liston 2000, p. 206), (McMahan 2004), (Prothero 1995), (Stewart 2016, pp. 28–29), (Wickremeratne 1969). Olcott also went to Burma and Japan (on the latter, see Shin'ichi and Kautau 2012).

¹⁹ She had, however, her own views and insisted for instance on the possibility for animals to experience happiness: 'let us try to be sympathetic and, as far as possible to give to the animal happiness it deserves.' (Rajya Sabha Official Debates 1954, p. 1800) Barbara Ambros pointed out to me that such an emphasis on animals' happiness does not look much Buddhist inspired (personal communication), as Buddhism generally considers animal condition to be a miserable one. Indeed, the founders of the Theosophical Society may not have had a 'pessimistic' view on animals and may have selected from Eastern religions what fitted their own spiritual imagination.

1.3. Call for Modernity

There is in India a constitutional mandate for reforming society according to an idea of progress, and it largely falls on the courts to implement it. The duty of compassion for living creatures has also to be seen in this perspective. Indeed, Article 51A (g) of the Constitution which prescribes this duty is immediately followed by (Art. 51A (h)), enjoining ‘to develop the scientific temper, humanism and the spirit of inquiry and reform’.²⁰ Both articles are often construed together so that compassion is not only an Indian heritage, it is rational and in line with scientific times.

Judgments thus present animal protection as part of a global movement characteristic of ‘modernity’ in its positive dimensions (disconnected from industrialized farming, or from adverse effects of some WTO agreements—Stevenson 2002). There are numerous references to international agreements and conferences on environment or on animal welfare. For instance, *Animal Welfare Board of India 2014*, concerning bull races in the states of Tamil Nadu and Maharashtra, and often quoted in other judgments, develops an ‘International Approach to Animals Welfare’ (para. 47–56) that provides a historical survey of international legislation or conventions. The aim of this narrative is to point to a progress, ‘a slow but observable shift from the anthropocentric approach to a more nature’s right centric approach in International Environmental Law, Animal Welfare Laws etc.’ (para. 47). Stressing that the ‘ecocentric principles’ are internationally recognized, the text underlines India’s participation in this worldwide movement for protecting animals:

Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. [. . .] World Health Organization of Animal Health (OIE), of which India is a member, acts as the international reference organisation for animal health and animal welfare. [. . .] On animal welfare, OIE says that an animal is in good state of welfare if (as indicated by Scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress. (*Animal Welfare Board of India 2014*, para. 52–53)

In these references to international efforts for the protection of animals, the focus is more on some animals’ ‘rights’ to well-being,²¹ rather than on an emotion like compassion. The question of the articulation between these two notions will be treated in the last section of this contribution. First, we have to more fully understand what is exactly meant by ‘compassion’ in the judgments.

2. Explicating Compassion

2.1. Compassion and Suffering

As mentioned earlier, the Constitution does not define ‘compassion’ and the courts had to elaborate on it. In many judgments, the word is associated with similar, kindred notions: ‘kindness’, ‘care’, ‘tender treatment’, ‘humane manner’, ‘sympathy’, or ‘fellow feeling’. Most of the time, compassion is specifically associated with the notion of *suffering*, as also suggested by standard dictionaries:

²⁰ This disposition might also bear the imprint of Indira Gandhi, whose father Jawaharlal Nehru is a major reference for rationalists in India (Quack 2012, p. 87).

²¹ Judgments usually do not draw a clear line between what they call ‘animals’ rights’ (in terms of legal status) and actual ‘animal welfare’. For instance, we find in a same paragraph: ‘Based on eco-centric principles, rights of animals have been recognized in various countries. Protection of animals has been guaranteed by the Constitution of Germany [. . .] German Animal Welfare Law, especially Article 3 provides far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners fundamental rights to property and the animals interest [sic] in freedom from unnecessary suffering or pain, damage and fear.’ (*Animal Welfare Board of India 2014*, para. 49).

Compassion, according to Oxford Advanced Learners' Dictionary means "a strong feeling of sympathy for those who are suffering and a desire to help them". According to Chambers 20th Century Dictionary, compassion is "fellow-feeling, or sorrow for the sufferings of another: pity". Compassion is suggestive of sentiments, a soft feeling, emotions arising out of sympathy, pity and kindness. (*State of Gujarat* 2005, p. 21) [on cow slaughter]

As a consequence, in the judgments, compassion for living creatures essentially concerns the 'weak and the meek' (*State of Gujarat* 2005, p. 21), the 'weak, infirm animals' (*Commissioner Of Income Tax* 1977, para. 9), and those subjected to cruel treatments. Judgments tend to induce this sense of pity by providing horrific accounts of cruelties inflicted on animals. The judgment on bull races (*Animal Welfare Board Of India* 2014), for instance, reproduces page after page of a field report established by the Animal Welfare Board of India, which describes with gruesome details how the bulls are 'subjected to extreme cruelty and unmitigated suffering' (*Animal Welfare Board Of India* 2014, para. 17). A moral condemnation is often strongly affirmed:

'Torture, injury, hurt, discomfort, trauma, agony, pain, distress, disturbance, sorrow, suffering, harm, shock, bleeding, brutal attack etc. ['] are neither synonymous nor can go together with "Pleasure, joy, happiness, excitement, fun, celebration, entertainment, enjoyment, recreation, championship etc." What has been described in the first part, [is] what the poor birds suffer while fighting and the one mentioned in the second part is what men derive out of the birds-fight. (*S. Kannan* 2014, para. 2) The pleasure derived from the suffering of a poor bird is nothing but human perversion. No human can have this kind of sadistic pleasure. (*ibid.*, para. 10) [on cock fights]

It is to be noted that in all 494 different birds/animals like parrots, pigeon, love birds, sparrows, etc. came to be seized which were kept in small cages. . . . wings/tails of the aforesaid birds were cut, there were cello-tape affixed on the wings and there were rings found on the feet of the birds so that they cannot fly. Therefore, the manner in which the birds are treated, it is absolutely inhuman, atrocious and against the rule of nature. (*Abdulkadar* 2011, para. 8.05 [on caged birds and animals])

Compassion is elicited not only because animals suffer, but also because they are helpless and voiceless—bulls, for instance, 'being dumb and helpless, they suffer in silence' (*Animal Welfare Board Of India* 2014, para. 21). Since animals cannot express themselves, courts have to become their protectors:

It is further pleaded that human being has to show compassion to all animals including stray dogs who are unable to protect themselves have to be protected by the Society and Courts. (*M.R. Ajayan* 2015, para. 20) [on stray dogs]

This understanding of compassion for animals is widespread across the world and has long standing antecedents—for instance, Humphry Primatt, an English clergyman, advocated in 1776 the 'duty of mercy' for animals on the ground that 'Pain is pain, whether it be inflicted on man or on beast' (*Primatt* 1776, p. 7); and that 'the dumb Beast cannot utter his complaints' (*ibid.*, p. 36).

What is to be noted is that the suffering of animals, here, is presented as the result of human acts, and is not (except for its voicelessness) an ontological condition as in Buddhism.²² Compassion is elicited because of human cruelty and the powerlessness of animals, not because they suffer, as animals, an 'unfortunate destiny': 'to be an animal in a Buddhist cosmos is to live a miserable and pathetic

²² Buddhism is, of course, not alone in putting suffering at the heart of its concerns, nor does it ignore the harm inflicted on animals by humans. My point here is that the 'unfortunate destiny' (*Ohnuma* 2017) ascribed specifically to animals, by contrast with a more general and widespread conception of 'existence-as-suffering', seems characteristic of Buddhism—and is completely ignored by the courts.

existence, to suffer intensely, to lack the intelligence that makes spiritual progress possible, and to die in a state of abject terror, with little hope of ever attaining a higher rebirth (let alone nirvana)'. (Ohnuma 2017, p. 5; also Stewart 2014, pp. 638–39; Waldau 2002, pp. 153–54) The language of today's Indian courts is one that sees men, not destiny, as the source of animals' suffering—indeed, the discourse of compassion is used with regard to domestic or engaged animals, not wild life.²³

2.2. The 'Doctrine of Necessity'

However, the duty of compassion has its limitations: it is subjected to human *needs*. Litigations that concern stray dogs offer a revealing example. Dogs are classified in two categories: pet dogs, who have an owner; and ownerless street dogs²⁴ (a precarious dividing line as underlined about Victorian pets by Kreilkamp 2007, p. 81). Street, or stray, dogs are in increasing numbers in India: 'Petitioners allege that Kerala which is known as "God's own country" has now become "Dog's own country".' (M.R. Ajayan 2015, para. 3). They have become a major concern as, even when not rabid, these dogs may attack and bite passers-by or cause road accidents:

The menace of dogs and particularly of stray dogs is going beyond control. Stray dogs are seen in large numbers in every village, every city or town and in every locality of cities or towns [. . .] These dogs run after pedestrians, run after vehicles or bicycles, after children, after the aged and infirm. They come from nowhere. They come suddenly, and vanish with speed of lightening. (*People For Elimination Of Stray . . .* 2003, para. 8)

'It is common knowledge that some dogs have inherent habit of chasing running objects, including vehicles and human beings, which sometimes result into very serious accidents or biting cases. There are instances where dogs in a particular locality/street invariably chase every two wheeler which have resulted into fatal accidents.' (*People For Elimination [sic] Of Stray . . .* 2008, para. 166)

To try countering this perceived menace, States in India have adopted various legislative or administrative measures that may include the killing of stray dogs, sparking protests from associations for the protection of animals and consequent litigations. Since the 1976 Amendment, Courts have therefore had to find a balance between the protection of people and the duty of compassion for animals—including stray dogs:

The question, therefore, is whether love for animals and compassion for animals should be stretched to such an extent as to endanger human life. In fact, while passing the Prevention of Cruelty to Animals Act, 1960, care has been taken in the Act itself in this regard. [. . .] [It] carves an exception [to the protection against cruelty] as it reads as under:— "(3) Nothing in this section shall apply to [. . .] (b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed. (*People For Elimination Of Stray . . .* 2003, para. 28)

As the same judgment elaborates, such an exception is justified by necessity:²⁵

animals are required to be protected from unnecessary pain and suffering. It is equally true that love and compassion for animals is growing and is a sign of culture and civilization.

²³ (Stewart 2014, p. 625) contrasts Buddhism, in which animals are pitied, with Vedism, in which animals were respected because of their sacrificial value. I am not sure the notion of 'respect' in Stewart's sense applies in today's Hinduism (or to all animals), but there is generally no feeling of 'pity' for the animal *condition*. Some particular animals can be, and are pitied: but being an animal, by contrast with being a human, does not seem to elicit specific compassion in religious representations.

²⁴ The Animal Birth Control (Dogs) Rules, 2001, para. 3.1.

²⁵ In the case of stray dogs, a later Act tried to conciliate protection of humans and care for stray dogs. It recommends that stray dogs should not be killed, except 'critically ill or fatally injured or rabid dogs', who can then be 'put to sleep' using exclusively a painless method (The Animal Birth Control (Dogs) Rules, 2001, para. 5(b)). Other stray dogs should be sterilized and immunized, rather than killed, then returned to their environment.

However, when it comes to choosing between the suffering of human beings and suffering they undergo particularly due to bite of the stray dogs, either they being rabid dogs or affected by rabies, then obviously, weightage will have to be given for the suffering of human beings. (*People for Elimination of Stray ...* 2003, para. 34) [the redaction of the text, somewhat confusing, is reproduced as it is]

More generally, exceptions enumerated by the Prevention of Cruelty to Animals Act are all said to arise from situations where human needs overcome all other considerations: one judgment, much quoted by later ones, calls this the 'Doctrine of Necessity':

Exceptions are incorporated based on the doctrine of necessity. Clause (b) to Section 11(3) [of the Prevention of Cruelty to Animals Act] deals with the destruction of stray dogs, out of necessity, otherwise, it would be harmful to human beings. Clause (d) to Section 11(3) deals [...] with the experimentation on animals, which is for the purpose of advancement by new discovery of physiological knowledge or of knowledge which would be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants, which is not prohibited and is lawful. Clause (e) to Section 11(3) permits killing of animals as food for mankind, of course, without inflicting unnecessary pain or suffering, which clause is also incorporated out of necessity. ²⁶(*Animal Welfare Board of India* 2014, para. 31) [on bull races]

Thus, the Fundamental Duty of having compassion for animals is not absolute in Indian case law. While it is repeatedly affirmed that compassion is a general moral imperative, in most legal practice it is reduced to not causing *unnecessary* pain to an animal. For instance, while experimentation on animals is a recognized exception to the Prevention of Cruelty to Animals Act, the same Act recommends that animals should not be 'subjected to unnecessary pain or suffering before, during or after the performance of experiments on them' (Prevention of Cruelty to Animals Act, 1960, para. 17.1). The same principle of avoiding unnecessary pain applies widely:

Infliction of unnecessary pain, or suffering on animals is anti-thesis to compassion, the duty as imposed by Article 51-A(g) of the Constitution of India. Nobody has a right to inflict pain or suffering to others inclusive of the animals and birds. Even birds can not [sic] be kept in cages by which they suffer a pain. To keep birds in cages would [be] tantamount to illegal confinement of the birds which is in violation of right of the birds to live in free air/sky. For the aforesaid a specific law might not be required. It is the fundamental right of the bird to live freely in the open sky. As stated above, it is the duty of every citizen to see that there is no unnecessary pain or suffering to any animal or bird. (*Abdulkadar* 2011, para. 8.08) [on caged birds and animals]

The issue for a court becomes then to ascertain if an incriminated act (*even a cruel one*) can be said to have been done out of necessity, or not:

[C]ruelty inflicted on animals cannot be evaluated and measured in quantitative terms. Therefore, the objective for which a particular activity is being undertaken is an important yardstick, e.g., research for medical purposes and animal husbandry which benefits the society at large needs to be continued even if it involves some cruelty. (*N.R. Nair* 2000, para. 4, quoting an ad hoc national committee) [on animals in circuses]

²⁶ The same judgment underlines this limitation to animal protection: 'Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity.' (*Animal Welfare Board of India* 2014, para. 62)

2.3. Compassion Is Good

Judgments hold that compassion, while limited by ‘necessity’, is good for human beings as well as for society.

A few judgments evoke spiritual progress. ‘Compassion for living creatures’, in the Constitution, is sometimes said to ensue from the belief that animals have ‘the same soul as human beings’ and that ‘the spark of divinity [is] as much present in them as in human beings’ (Justice Chagla, quoted in *Commissioner of Income Tax 1977*, para. 11). According to some petitioners, whose argument is reproduced in the judgments, compassion (for other souls) is at the heart of religion and is a path to one’s spiritual progress, as Saints have shown. For instance, Shri Ramalinga Adigal, already mentioned, taught that *jīva karuṇyam*, compassion for life, and not the performance of rituals, was an act of worship leading to the ultimate liberation from rebirths (Chinna Muthukrishna Reddiar 1988, para. 27). Though, to my knowledge, no connection with Buddhism can be established, this spiritual perspective is akin to the quest of spiritual perfection that results from Buddhist attitude towards animals—which makes it, according to Harris, ‘essentially instrumental’: ‘in general, the highlighted advantages of the practice are felt by the practitioner, not by the living being to whom it is directed’ (Harris 2001, p. 246).

However, most of the judgments remain on a more mundane plane and prefer to speak of compassion as inducing moral and societal progress. It is a ‘sign of culture and civilization’ (*People for Elimination of Stray ... 2003*, para. 34). In this perspective, a number of judgments quote an alleged citation of Mahatma Gandhi (which, according to Johnson 2013, he may have never said): ‘The moral progress and strength of a nation can be judged by the care and compassion it shows towards its animals.’

This moral improvement, brought forth to society by showing compassion for animals, has, in fact, long standing antecedents in British case law.²⁷ A 1915 British judgment considered that a trust for the protection of animals tended ‘to promote public morality by checking the innate tendency to cruelty’ (quoted in *Commissioner Of Income Tax 1977*, para. 11), and that

A gift for the benefit and protection of animals tends to promote and encourage kindness towards them, to discourage cruelty, and to ameliorate the condition of the brute creation, and thus to stimulate humane and generous sentiments in man towards the lower animals, and by these means promote feelings of humanity and morality generally, repress brutality, and thus elevate the human race. (Justice Swinfen Eady, 1915, quoted in *Commissioner Of Income Tax 1977*, para. 12) [whether providing care for animals falls in the category of ‘charity’]

The aim for moral and societal progress also corresponds to the Fundamental Duty of developing ‘the scientific temper, humanism and the spirit of inquiry and reform’ (Art. 51 A (h)), already mentioned. Both articles of the Constitution, construed together, are subsumed under one goal: *humanism*.²⁸

HUMANISM: [...] Humanism also means, understand[ing,] benevolence, compassion, mercy etc. Citizens should, therefore, develop a spirit of compassion and humanism [...] To

²⁷ British case law concerning the protection of animals dates back from the nineteenth century but stems from a more ancient moral tradition that sees cruelty to animals as a sign of a cruel character: ‘He that made thee a man, could have made thee a brute. Now if thou art a Man, be thankful, and sh[o]w thy superiority by mercy and compassion; else thou debasest thy reason, and art as low, if not lower than the brute whom you oppress.’ (Primatt 1776, p. 47) According to (Benthall 2007, p. 2), ‘when Aquinas, Locke and Kant recommended kindness towards animals, it was mainly because they thought that those who are cruel towards animals are likely to tend to be cruel towards human beings too’.

²⁸ However, some express doubts about the capacity of mankind to evolve rapidly in this matter. Indeed, one judgment wonders if animals do not fare better than humans in that respect: ‘Though not homosapiens [, animals] are also beings entitled to dignified existences and humane treatment sans cruelty and torture. In many respects, they comport better than humans, they kill to eat and eat to live and not live to eat as some of us do, they do not practice deception, fraud, or falsehood and malpractices as humans do, they care for their little ones expecting nothing [i]n return, they do not proliferate as we do depleting the already scarce resources of the earth, for they practice sex restraint by seasonal mating, nor do they inhale the lethal smoke of tobacco polluting the atmosphere and inflicting harm on fellow beings.’ (N.R. Nair 2000, para. 13) [on animals in circuses]

look after the welfare and wellbeing of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51A(h). (*Animal Welfare Board of India* 2014, para. 58) [on bull races]

Be it spiritual or in civilization, the progress brought by showing compassion to living creatures is human-centered. This is probably one of the points in which reasoning in terms of compassion parts from reasoning in terms of rights: compassion for animals *brings forth* human progress, whereas rights given to animals are a *mark* of progress. By the late nineteenth century, an author writing on ‘Animals’ Rights, considered in relation to social progress’, tried to make this distinction:

this essay [. . .] is not a plea for “mercy” (save the mark!) to the “brute beasts.” [. . .] It is addressed rather to those who see and feel that, as has been well said, “the great advancement of the world, throughout all ages, is to be measured by the increase of humanity and the decrease of cruelty”—that man, to be truly man, must cease to abnegate his common fellowship with all living nature—and that the coming realization of human rights will inevitably bring after it the tardier but not less certain realization of the rights of the lower races. (*Salt* 1894, pp. 103–4)

Since courts have to decide cases according to the parties’ respective rights, judgments concerning the protection of animals combine a language of rights with the moral imperative of compassion for living creatures enjoined by the Constitution. How do courts, in practice, articulate the two notions?

3. The Legal Status of Animals

3.1. *Animals as Things*

Discourses on compassion, in all their diversity, strongly stress that animals are *living beings*, sometimes said to have the same soul as humans. However, generally speaking, Common Law (and other legal systems) recognizes only two broad categories: property, and juristic persons. Animals are property: ‘They are goods to be bought and sold, acquired and maintained. This principle is deeply interwoven into the law. Indeed, some of the first cases read by law students in Property class are [. . .] about the acquisition, ownership, and control of wild property—namely foxes and ducks.’ (*Lubinski* 2004; also *Francione* 2007)

However, animals are clearly not the same kind of property as would be a chair, for instance. They occupy an ill-defined position between things and persons, leading to ambivalence: ‘how could one *own* a being and yet refer to it as an equal such as “man’s best friend”?’ (*Mangum* 2007, p. 17, about Victorian attitudes towards pets).²⁹

Indian Courts have tried to manage this ambivalence in a pragmatic way. In 1887, for instance, an Indian Court made the distinction between ‘inanimate objects’ and ‘animate objects’, in this case a cow. The case concerned two Muslims who had killed a cow in public, knowing well that it was considered ‘an insult by their Hindu fellow-subjects’. The five judges Bench had to decide in appeal if this was an offense under Section 295 of the Indian Penal Code, which punishes ‘whoever destroys, damages, or defiles any place of worship, or any *object* held sacred by any class of persons’ (*Queen Empress* 1887, para. 1) (my emphasis). This was considered a pure question of law: is the cow a (sacred) *object* in the sense envisioned by the IPC? The answer was in the negative:

I should come to the conclusion that it was intended that the “object” should be one ejusdem generis with a “place of worship,” that is, some inanimate object such as an idol, &c. In my opinion the intention of the Legislature in passing this section was to use the term “object” in

²⁹ Also (*Perrin* 2016) on this ambivalence in the French penal code.

that sense, and the Legislature did not intend that the term should apply to animate objects such as cows. (K. John Edge, Chief Justice, in *Queen Empress* 1887, para. 2)

In a concurring opinion, Justice Brodhurst pointed out a vocabulary issue:

Under Section 295, language more appropriate than “destroys, damages or defiles” “any object” would have been brought into use; and such words as “or kills, maims or otherwise injures any animal” would have been inserted between the words “any object” and the words “held sacred by any class of persons.” (*Queen Empress* 1887, para. 6)

Killing the cow, which was neither a legal person nor an inanimate object, but in-between, could thus not be condemned under the Indian Penal Code,³⁰ though one of the judges, Justice Mahmood, felt the act had clearly been inappropriate.

What is to be underlined is that, contrary to the distinctions in terminology made by Justice Brodhurst at the time, the vocabulary used in current judgments regularly confirms that animals are still legal things, on a par with inanimate objects. They can be called ‘goods’, ‘articles’ (*Qamruddin Khan* 1985, para. 6); and they may be sold, disposed of, or ‘destroyed’ (*People For Elimination of Stray . . .* 2003, para. 30; also *Mahisagar* 2012): the terminology is one of ownership,³¹ of property, of sale, and of seizure and confiscation:

Section 451 of the Code of Criminal Procedure confers powers upon the Court for custody and *disposal of the property* [in this case, birds and animals that were seized] pending trial and the Court may make such order as it think fit for the proper custody of such property, pending conclusion of the inquiry or trial and *if such property is subject to speedy and natural decay*, or if it otherwise expedient to do so, Court may, after recording such evidence as it thinks necessary order it to be *sold or otherwise dispose of*. (*Abdulkadar* 2011, para. 8.12). (my emphasis) [on caged birds and animals]

Whereas with reference to livestock, it is stated that since trial would take long time and if *muddamal* [confiscated] *article* [chickens] *remains un-utilized*, it may get spoiled and it will result into loss to the applicant. (*5 Whether It Is To Be Circulated To . . .* 2014, para. 7.1) (my emphasis) [on 2030 chickens transported in cramped conditions]

At the same time, the use of this vocabulary does not exclude the celebration of qualities in at least some animals that clearly are not found in inanimate objects, stressing the ambivalence of attitudes already pointed out:

There are numerous benefits of dog ownership. Dogs are used in a number of ways to provide practical support to humans—as working animals, such as sheep dogs, s[il]eigh dogs and guard dogs, and as assistance animals for disabled people, including the blind, the deaf and those with Downs syndrome. Dogs kept as companions can decrease loneliness and depression by providing companionship, exercise, an interesting and varied life-style and an impetus for nurturing. [. . .] Various scientific studies have confirmed that dogs can be of benefit to their owners in terms of both psychological and physiological health. They can reduce stress, which is known to improve the effective functioning of immune system. The benefits of companion dogs to people’s psychological health has [sic] been a reason behind the introduction of dogs to visit patients in hospices and hospitals. (*J. Gopalan* 1996, para. 39, quoting the World Society for the Protection of Animals)

³⁰ A similar case, today, would certainly be decided very differently, as many States have passed laws that severely punish the killing of cows.

³¹ Recall that this is what distinguishes (owned) pet dogs from (ownerless) stray dogs. In the case of wild animals, they are the property of the nation, except for migratory species which cannot be owned but have to be protected by the states within the latter’s boundaries (*Centre For Envir. Law* 2013, para. 45–46).

Dogs are not seen as mere things when it comes to describing their *actual* relationships to humans—they are not only useful and autonomous in the tasks they are assigned, but also possess cognitive and emotional qualities that make them fully acknowledged companions. However, the profound ambivalence of their situation appears in the fact that these ‘companions’ are still owned; their *legal* relationship to humans is one of being the latter’s property. ‘Companionship’ is part of dogs’ usefulness.

3.2. Dear, Useful Animals

Thus, increasingly, some animals—while legally objects and property—are entitled by law to protections that do not apply to inanimate objects. Indian judgments make explicit that such a protection is still largely connected with the animals’ usefulness, or with the emotional link binding together some species with human beings: human interests are never very far.

Pleasure, joy, happiness should be derived by treating the fellow human beings equally and considering the animals, birds etc. are entitled to co-exist in this world. After all, the animals and birds are always useful to the mankind for their sustenance and therefore we should take care of their well being in our own interest. (S. Kannan 2014, para. 22) [on cock fights]

The aged bullocks were utilized for different purposes like agricultural operations (ploughing, planking, harrowing, hoeing, threshing) and transport-hauling of agricultural produce, feeds and fodders of animals, drinking water, construction materials (bricks, stones, sand grits etc.) and for sugarcane crushing/khandsari making. On an average the bullocks were yoked for 3 to 6 h per working day and 100 to 150 working days per year. [. . .] Thus, the agricultural operations-draft output are [sic] still being taken up from the aged bullocks by the farmers. The farmers [. . .] maintain the health of these animals considering them an important segment of their families. Farmers love their bullocks. (State of Gujarat 2005, para. 31, quoting a 2001 Gujarat State study) [on cattle slaughter]

True, a few judgments insist that animals have an ‘intrinsic worth’, independently of any human use, and oppose an ‘eco-centric approach’, which is to be fostered, to previous anthropocentric ones:

Ecocentrism is nature centred where humans are part of nature and non-human has intrinsic value. In other words, human interest do [sic] not take automatic precedence and humans have obligations to non-humans independently of human interest. (T.N. Godavarman Thirumulpad 2012, para. 14; also para. 20, quoting the Stanford Encyclopaedia of Philosophy) [on the preservation of the Asiatic Wild Buffalo]

However, probably because it enables legal arguments to invoke ‘public interest’, even wildlife’s protection may be advocated in terms of human utility. Protecting wild animals is needed in order to avoid ecological imbalance, which may prove disastrous for human activities:

To give an example, snakes eat frogs, frogs eat insects and insects eat other insects and vegetation. If we kill all the snakes, the result will be that number of frogs will increase and this will result in the frogs eating more of the insects and when more insects are eaten, then the insects which are the prey of other insects will increase in number to a disproportionate extent, or the vegetation will increase to a disproportionate extent. This will upset the delicate ecological balance in nature. If we kill the frogs the insects will increase and this will require more insecticides. Use of much insecticide may create health problems. (Abdulkadar 2011, para. 8.07) [on caged birds and animals]

Obviously, domestic animals, which are involved in most of the litigations considered here, still have more immediate usefulness ensuing from their very domestication. For instance, cow and cow’s progeny are said to ‘have, on their back, the whole structure of the Indian agriculture and

its economic system' (*State of Gujarat 2005*, para. 25, quoting Bombay Animal Preservation (Gujarat Amendment) Act, 1994). Even in their old age, cows and bullocks are stated to remain useful (see above) and should therefore not be slaughtered; this usefulness is proved by the average quantity of urine and dung they may still produce and which provide fertilizer or, in the case of dung cakes, fuel (*State of Gujarat 2005*, para. 30). Such a usefulness is entangled with emotional and moral considerations: 'A cattle which has served human beings is entitled to compassion in its old age' and it would be 'an act of reprehensible ingratitude to condemn a cattle in its old age as useless and send it to a slaughter house' (*State of Gujarat 2005*, para. 21).

3.3. Animal Rights

Some Indian judgments recall that animal protection in British law dates back to the 1820s. It met initially with some resistance:

In 1821 Richard Martin M.P. proposed a law to prevent the ill-treatment of horses. In the debate which ensued [sic], the above proposed law was laughed at and discarded by the members. An account of details of the debates as recorded states following: "... when Alterman C. Smith suggested that protection should be given to asses, there were such howls of laughter that the Times reporter could hear little of what was said. When the Chairman repeated this proposal, the laughter was intensified. Another member said Martin would be legislating for dogs next, which caused a further roar of mirth and a cry "And Cats!" sent the House into convulsions." (*M.R. Ajayan 2015*, para. 32) [on stray dogs]³²

A so-called 'Martin's Act' offering some protection to cattle and draught animals was eventually passed in 1822 (*Salt 1894*, p. 6). Many laws and judgments followed during the Victorian period, forming the basis of much of the legislation in India. This evolution was the outcome of long standing debates in western philosophy.³³ Utilitarians, starting from Bentham, have been particularly influential in this respect—his thinking finds its way into some of the judgments under review:

The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. [...] The question is not Can they *reason?* or, Can they *talk?* but, Can they *suffer?* (*Bentham [1789] 1823*, chap. XVII, para. 1-IV, note 122—quoted in *M.R. Ajayan 2015*, para. 31)

Three remarks are called for.

First, the development of legal protection for animals during the nineteenth century was not a linear, smooth process, but a conflicting one which was driven by a recurrent tension between oppression of animals and compassion for them (*Morse and Danahay 2007; Parker 2013*).

Second, it is noteworthy that Bentham, before evoking the need for animal rights, started by observing that 'Under the Gentoo and Mahometan religions, the interests of the rest of the animal creation seem to have met with some attention.' (*Bentham [1789] 1823*, chap. XVII, para. 1-IV, note 122). Indeed, evolutions in western thinking on this matter cannot be easily dissociated from influences by 'Eastern' religions (the 'Gentoo'), possibly from the time of Pythagoras (a regular reference among

³² This might be a quote from Singer (2002, p. 204—itself a quote from E.S. Turner's *All Heaven in a Rage*; *Salt 1894*, pp. 5–6, gives a slightly different account). Singer adds in note: 'It has been claimed that the first legislation protecting animals from cruelty was enacted by the Massachusetts Bay Colony in 1641. Section 92 of "The Body of Liberties," printed in that year, reads: "No man shall exercise any Tyranny or Crueltie towards any brute Creature which are usuallie kept for man's use"; and the following section requires a rest period for animals being driven.' (*Singer [1975] 2002*, p. 303, note 36)

³³ See, for instance, (*Baratay 2012*), (*Salt 1894*, p. 2), (*Singer [1975] 2002*, pp. 188–89). The end of the XVIIIth century was a period of pamphlets and debates on the question—e.g., (*Primatt 1776*). Discussions in Great-Britain circulated also in Europa (*Serna 2017*, p. 307); in Revolutionary France, one François Boissel claimed that "the Republic is to be vegetarian or will not be" (*ibid.*, p. 300); and an Englishman, John Oswald, became a radical revolutionary ('Sans-culotte') while a strict vegetarian after a previous stay in India (*ibid.*, pp. 307–8).

scholars writing on animal protection), and certainly from the seventeenth century onwards on a regular and intensive way as a consequence of colonial interactions. As such, the indirect influence of Indian religions in the western debates leading to animal protection is not to be altogether discarded.

Third, except for very recent developments, the ‘rights’ alluded to do not concern the legal status of animals, but rather the ‘right’ to benefit of some specific attention and care as living, sentient beings—an issue in terms of welfare, not of legal standing.

Many Acts passed in India after Independence aimed to increase the protection of animals, whether by updating and adapting previous British laws or through new legislation.³⁴ These Acts do not refer to compassion, but confer basic rights to some animals. As a judge remarked, such rights merely ensue from *duties* imposed on human beings:

The [Prevention of Cruelty to Animals] Act, as already indicated, was enacted to prevent the infliction of unnecessary pain, suffering or cruelty on animals. Section 3 of the Act deals with duties of persons having charge of animals, which is mandatory in nature and hence confer corresponding rights on animals. Rights so conferred on animals are thus the antithesis of a duty and if those rights are violated, law will enforce those rights with legal sanction. (*Animal Welfare Board Of India* 2014, para. 27) [on bull races]

Animals’ rights are therefore essentially a right to life, and a right to fair treatment. Some judgments try to enlarge the scope of these rights, stressing that animals have a right to live with ‘honour and dignity’ (*Animal Welfare Board Of India* 2014, para. 56). The aim is not only to protect the life of animals or forbid cruelty to them, but also to provide for their well-being, which the World Health Organization of Animal Health defines as a state in which an animal ‘is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress’ (*Animal Welfare Board Of India* 2014, para. 43).

This also means that animals should not be prevented from expressing their innate behaviour, according to the Universal Declaration of Animal Rights adopted in 1977 by the International League for Animal Rights, to which some Indian judgments refer (the full Declaration is quoted in *Mahisagar* 2012, pp. 15–16). Wild animals and birds have the right to live freely, and in *Mahisagar* (2012, p. 13) the judges exclaim ‘Even an animal has a right to say that its liberty cannot be deprived except in accordance with law’. A few judgments have begun to implement this recommendation, especially in the case of birds. For instance, in a case concerning caged birds and animals, the judge ordered to ‘enlarge the muddamal [confiscated] birds/animal in the open sky/air forthwith’ (*Abdulkadar* 2011, para. 8.13).

However, as pointed out previously, what is understood as the (limited) ‘rights’ of an animal in a welfare perspective greatly differs from the notion of ‘rights’ that would be implied by granting legal status to animals. As Henry Salt stressed more than a century ago, ‘vague sympathy with the lower animals is one thing, and a definite recognition of their “rights” is another’ (Salt 1894, p. 16). Most of the Indian judgments under examination promote the *welfare* of animals by invoking compassion, rather than their rights proper. Animals are still legal things. As (Francione 2007, p. 9) points out:

We purport to balance human and animal interests, but because animals are property, there can be no meaningful balance. Animal interests will almost always be regarded as less important than human interests, even when the human interest at stake is relatively trivial and the animal interest at stake is significant. The result of any supposed balancing of human and nonhuman interests required by animal-welfare laws is predetermined from the outset

³⁴ For instance, at the Central level, the Prevention of Cruelty Act 1960, the Wildlife (Protection) Act 1972, the Transport of Animals Rules 1978, the Prevention of Cruelty (Capture of Animals) Rules 1979, the Animal Birth Control (Dogs) Rules 2001, the Performing Animals (Registration) Rules 2001, etc.

by the property status of the nonhuman as a “food animal”, “experimental animal”, “game animal”, et cetera.

Various proposals have been made by scholars and lawyers across the world for changing the legal status of animals, according to various proposals (giving them legal standing, creating a sub-category of ‘living property’ with specific rights, etc.). Some Indian judgments echo these preoccupations:

In our considered opinion; legal rights shall not be the exclusive preserve of the humans which has to be extended beyond people thereby dismantling the thick legal wall with humans all on one side and all non-human animals on the other side. (*N.R. Nair* 2000, para. 13) [on animals in circuses]

So far, to my knowledge, no legislation has been passed in India in this respect.³⁵

4. Final Remarks

The introduction of a duty of compassion for living creatures in the Constitution of India poses a challenge to the courts: how (legally) is it possible to have compassion for a (legal) thing? For those judges who refer to compassion, the text of their judgments generally tends to juxtapose compassion and rights, without elaborating how they could relate to each other. Nevertheless, a common ground between compassion and legal rights may be found in the will to prevent animals *suffering* harm inflicted by human beings. Suffering, here, is not a specific existential condition of animals, as in Buddhism. On the contrary, judgments tend to present animals as innocent but voiceless beings, eager to live happily were it not for human cruelty.

In the judgments, compassion for living creatures and animals’ ‘rights’ aim at their welfare, but one limited by the ‘Doctrine of Necessity’—a balancing process found in legislation across the world that some see as fundamentally biased. Thus, despite occasional insistence on eco-centrism and on the intrinsic worth of animals, the arguments and the decisions found in the judgments remain deeply human-centered. This is also seen in the legal status of animals—property but not an inanimate one—which exemplifies the constant ambivalence characterizing the relations between humans and non-human animals, in general. In this respect, the Indian situation does not appear to greatly differ from what is found in other countries: introducing ‘compassion’ in the constitution has underlined a *moral* imperative without really transforming the actual rules applying to animals, which are governed in India by various Acts much similar to legislation in other countries. Actually, there is often the feeling in India that what is needed is not necessarily more laws, but a better implementation of existing ones.

The rather heteroclit discussions that are often found in the judgments under scrutiny provide a glimpse of the diversity and the intricacy of the current debates on animals in India. While courts try to stick to secularism in their discussion, some issues involved by the protection of animals also depend on religious attitudes—for instance, the specific legal protection granted to cows. However, as far as the general protection of animals is concerned, case law tends to be entrenched in the legacy of British Utilitarians as conveyed by common law.

Religious figures such as the Buddha, Mahavira and others are paid due tribute, but perhaps not so much for referring to religion as such than as historical icons of an idealized national Indian compassion, on a par with Mahatma Gandhi who epitomizes both compassion and India as a state. This is also what Rukmini Devi meant in her 1954 address to the Rajya Sabha, where she underlined that ‘by instituting these reforms India is going to set a unique example to the whole world. No other

³⁵ However, two judgments by the same judge, in the High Courts of Uttarakhand in 2018 and Punjab-Haryana in 2019, granted juristic personality to ‘the entire animal kingdom including avian and aquatic’. (*Narayan Dutt Bhatt* 2018, para. 99; *Karnail Singh* 2019, para. 29) It is too early to evaluate the practical effects of these decisions and their possible impact on case law.

country in the world could so easily have laws which put mercy above the fruits of cruelty and have wide support from the people.’ (Rajya Sabha Official Debates 1954, p. 1800)

The introduction of ‘compassion’ in the Constitution in 1976 can be seen in this light: as a moral imperative born out of a will to develop what is perceived to be India’s role model ethics, with, as of today, limited juridical effect on the animal welfare paradigm.

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