

Recognising the legal rights of animals in Pakistan: A pathbreaking new judgment

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Introduction

On 21st May 2020, a pathbreaking 67-page judgment was set out at the Islamabad High Court by the Honourable Chief Justice Athar Minallah recognising the legal personhood of animals and other non-human living beings: that they are not just property but have legal rights of their own. He held that non-human living beings have 'natural rights' not to be tortured or unnecessarily killed because the gift of life it possesses is precious and its disrespect undermines the respect of the Creator.¹ This case is precedent-setting in that this has only been held before in Argentina and in obiter in some judgments in US (although the US courts did not allow release of the animals). It seems to have been in part influenced by the dramatic experience of the coronavirus lockdowns across the world, our human experience of imprisonment like zoo animals and the concomitant sense that we need to re-evaluate our interdependent relationship with the natural environment and treat it with more respect.

The case included petitions on the transfer of an elephant and a bear from the Marghazar zoo in Islamabad and the killing of stray dogs across the city. The Judge made a range of declarations and directions that all the animals in Islamabad zoo be moved to appropriate sanctuaries, and the government has been restrained from adding new animals in the zoo until it is redesigned up to international standards.

This article, written jointly by the lawyer taking the case and another involved in the campaign, will (1) look at the context of animal law and welfare in Pakistan; (2) provide an insight into how

the judgment came about; (3) discuss the focus of the litigation, providing a discussion of the findings including particular reference made to Islam; and (4) comment on the likely impact of the judgment in Pakistan and elsewhere.

Context of animal law and welfare in Pakistan

Pakistan is an unexpected locus for pathbreaking animal law reforms. A culture which prides itself on being meat eating, in opposition to vegetarian India, and the only country in the region where Asian Elephants have gone extinct, it has thus far stood apart from other countries in the region such as Sri Lanka and India that have made some headway into recognising the need to protect non-human rights. The Indian Constitution recognises animal sentience by putting an obligation of its citizen to show 'compassion towards all living creatures,'² the Indian Government updated their prevention of cruelty laws in 1960 and created the 'Animal Welfare Board of India' to advance the same, and a range of case law has been developed advancing the welfare of animals and the environment.³

Pakistan's Constitution makes no such provisions, and Pakistani governments have made extremely little in the way of legal reforms on the welfare of animals since the departure of the British. Under colonialism, several pieces of leg-

1 Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad (2020) p.60

2 Article 51 of the Indian Constitution

3 For example, Kerala High Court in the case titled 'N. R. Nair and others etc, v. Union of India and others' [AIR 2000 Kerala 340]; 'Animal Welfare Board of India v. A. Nagaraja and others' [(2014) 7 Supreme Court Cases 547]; 'Dr Manilal V. Valliyate, The Constituted Attorney of people for Ethical treatment of animals v. The State of Maharashtra through Chief Wildlife Warden, etc.' (Writ Petition No.2662/2013)

islation were introduced protecting non-human animals which were crucial to this recent litigation, in particular the Prevention of Cruelty to Animals Act 1890, the Pakistan Penal Code 1860 and the Glanders and Farcy Act 1899 which involve fines and imprisonment for mistreatment of animals. Since the establishment of Pakistan as a State, the main legislation introduced recognising animal sentience involves procedures around slaughtering which, while prohibiting torture, also prohibits stunning.⁴ Pakistan is a signatory to the World Organization for Animal Health but OIE standards have not been transposed into legislation. Responsibility for animal welfare is spread across Ministries with no one Ministry taking a lead. As the Pakistan State has decentralised, control is delegated to regional governments and while some regions have made efforts to protect wildlife and curb illegal trade in the same⁵, others have made less. Overall, the limited updating of legislation and lack of government policies protecting the welfare of animals demonstrates a lack of attention by the government to animal welfare.

Very poor treatment of animals is common across the country. Working animals are worked and beaten until they drop dead, despite the 1890 Act prohibiting the overload of draught animals or employment of sick or injured animals. Strays are tortured by members of the public and killed en masse by local authorities.⁶ Bear baiting and dog fighting is common. Animals are generally seen as commodities even by people considered animal enthusiasts, leading to a booming trade in illegal exotic animals and a common practice of establishing private zoos. Even vets regularly kill animals negligently with impunity⁷. As such, the protective laws that there are are very rarely enforced. Conservation in general is

4 Halal Authority Act 2015

5 Azad Jammu and Kashmir Wildlife (Protection, Preservation, Conservation and Management Act (2014) cruelty to animals is defined as 'an act towards and animal, which is against the natural instinct and behaviour of the animals and has a negative effect on the health of an animal including overdriving, beating, mutilation, starvation, thirst and overcrowding or otherwise ill treatment to the animal.'

6 Documented by ACF Animal Rescue, Karachi

7 . Interview with Sundas Hoorain, June 2020, who brought a case against a vet in Islamabad after her cat was allegedly deliberately misdiagnosed for the purposes of extorting money to undertake an operation, during which operation the cat was killed through mistreatment and neglect. She is in touch with many others who have similar experiences.

not a priority and little is done to preserve local wildlife. Notably, in neighbouring countries in Asia even though laws may be better, cruelty to animals is still a prevalent problem, with for example recent cases of firecrackers being fed to Elephants in Kerala: public attitudes and enforcement remain a problem across the region. There are a few outstanding animal welfare efforts (eg. ACF Animal Rescue Karachi, Pakistan Animal Welfare Society, WWF, Balkasar Bear Sanctuary, Friends of Islamabad Zoo) driven by dedicated citizens, but these are small in scale and highly personality driven. Readers may be interested to follow ACF Animal Rescue on Instagram where it documents its daily efforts to improve conditions for animals and build empathy among the population, against extremely difficult conditions.

How the case came about

The hearing brought together three separate petitions: on an elephant at the zoo, a mistreated bear, and the killing of street dogs.

The focus on the elephant (named Kaavan) had its origins decades ago when citizens began protesting the poor treatment of elephants at the zoo. In 2012 when his fellow elephant Saheli died young under unclear circumstances, Kaavan was showing signs of aggression and was placed in chains, which gave rise to further protest. In 2015, international NGO Free the Wild started a campaign to have Kaavan relocated to a sanctuary. They sought agreement from the Government to relocate him abroad, in return for which Free the Wild would pay to have the zoo upgraded to international standards but, despite promises by various government agencies, after it was clear negotiations were getting nowhere, in March 2019 they filed a petition in court seeking relocation. A key issue in the case was which government agency should be responsible for the zoo, with different agencies claiming control, purportedly for nefarious purposes (the zoo's income being substantial).

Alongside this focus on the elephant, other concerned citizens were campaigning for improved conditions for all the zoo animals. In May 2019, a dancing bear was confiscated from the streets of Islamabad and taken to the zoo, and another concerned citizen brought a case that it need-



ed to be transferred to an appropriate sanctuary within Pakistan, which transfer was made pending final judgment. This case also sought to transfer management of the zoo to the wildlife management board, run by an individual more demonstrably committed to the welfare of the animals. The case was in the papers and garnered some high profile support for example, the First Lady, Imran Khan's wife (Bushra Maneeka), who was wondering what to do with the birds she had inherited from her predecessor that she wanted to put somewhere but found the conditions at the zoo too poor. Hundreds of volunteers did surveys, three times a day for months tracking the condition of the animals, as well as providing enrichments for the animals and training for staff. This demonstrated public attention to and concern for the welfare of animals at the zoo.

When these petitioners were brought together for final hearing, an additional petition was added on the culling of dogs, as local authorities had recently undertaken a cull despite efforts by campaigners to introduce vaccination. All of

these were heard together.

Summary of findings of the court, with a focus on particularly interesting reasoning

While the case could have been argued on the basis of the 1890 Act, it was decided to test whether the law could be expanded by introducing a focus on legal rights of animals under the Constitution into the submissions.

The legal rights of animals was the main focus of the Judge in his deliberations, and he looked at (a) whether animals have independent rights, (b) whether there is a duty on the state to protect, preserve and conserve them, and (c) whether the cruel treatment of animals in question amounts to a breach of the right to life under the Pakistan constitution.

(a) Whether animals have independent rights

After a thorough review of jurisprudence from

international case law, Pakistani legislation, International commitments and Islamic teachings, the Judge concluded that animals do indeed have independent legal rights on the basis of their characteristic of being alive:

'After surveying the jurisprudence developed in various jurisdictions it has become obvious that there is consensus that an 'animal' is not merely a 'thing' or 'property'... Do the animals have legal rights? The answer to this question, without any hesitation, is in the affirmative... The human rights are inherent because they stem from the attribute of being 'alive'. Life, therefore, is the premise of the existence of a right. Whether human rights or rights guaranteed expressly under the Constitution, they all have a nexus with 'life'. An object or thing without 'life' has no right. A living being on the other hand has rights because of the gift of 'life'. An animal undoubtedly is a sentient being. It is a natural right of an animal not to be tortured or unnecessarily killed because the gift of life it possesses is precious and its disrespect undermines the respect of the Creator.⁸

As such he saw 'natural rights' of animals as derived on a religious basis from God much as human rights were originally. Extending such God given rights to animals is a logical progression abandoning the speciesism inherent in the concept of human rights. The Judge considered Islamic principles extensively and after looking at a number of Islamic verses, he noted 'The sacredness of 'life' in the form of animal species and the respect it deserves is explicit from the above verses.' Islam was thus crucial in this finding that animals have independent rights, and the precedent may thus be of particular relevance to States founded on religious principle.

(b) Whether there is a duty on the state to protect, preserve and conserve animals

In his reasoning as to whether these natural rights extend to an obligation on humans or the State to protect those rights, the Judge was clear that the Constitution is 'framed by humans

for regulating themselves' and as such the various rights guaranteed under the Constitution are only in the context of humans.⁹ However, he went on to look at whether the Constitution imposes any duty on the State and humans regarding the welfare of other species, and in doing so he drew on religion and the context of the global pandemic and the degradation of the environment.

First, in terms of religion, the Judge reasoned the Constitution of Pakistan must be interpreted so as to protect non-human animals because the State is under an obligation to enable its citizens to pursue good Muslim practice, and treating animals badly is inconsistent with such practice. He noted in particular the respect of the prophet towards all animals and stated that in Islam 'killing or harming an animal unnecessarily or inflicting unnecessary pain and suffering is forbidden.' He went on to say that 'it is inconceivable that, in a society where the majority follow the religion of Islam, that an animal could be harmed or treated in a cruel manner.'¹⁰ In this way, despite acknowledging natural and legal rights of animals, he took a somewhat anthropocentric utilitarian approach to the reasonableness of pain and suffering, subordinating non-human animals to humans, but nevertheless requiring State protection.

Second, he reasoned that the State has a duty to protect non-human animals on the basis that humans would not be able to exist without the environment and specifically animals, and thus that such protection is an inherent obligation under the human right to life protected by the Constitution.

He started by drawing on existing jurisprudence as the right to life under article 9 of the Constitution had already been interpreted widely. In 1994, the Supreme Court of Pakistan interpreted right to life in a liberal manner holding that the right to a healthy and clean environment is a fundamental right and "life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally."¹¹ This became known as the "Shehla Zia principle" and two cases fol-

⁸ Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad (2020) p.60

⁹ Ibid. p.5

¹⁰ Ibid p.51

¹¹ PLD 1994 SC 693

lowed suggesting threats to the environment were a threat to life: one related to the construction of the Lahore metro-line¹², and the other, the hunting of migratory birds Houbara Bustards¹³. Even though both cases were overturned, observations in the judgments were welcomed by environmentalists and contributed towards environmental jurisprudence.

The Judge in our zoo case went on from consideration of the jurisprudence to look at the current environmental context:

'The United Nations has warned that if the wildlife is not protected then its extinction would expose the human race to the risk of facing extinction.... The threat of climate change and its ensuing devastating consequences for the human race can only be avoided if environmental degradation and damage to ecosystems and biodiversity could be stopped...The welfare, wellbeing and survival of the animal species is the foundational principle for the survival of the human race on this planet... Protecting, preserving and conserving the animal species and preventing it from harm is a constitutional obligation of the State and the authorities.'... 'the relationship of the treatment of animals and the right to life of humans makes it an obligation of the State and its authorities to jealously guard against cruel and illegal treatment of animals'¹⁴

Such forthright reasoning on the centrality of non-humans to the existence of humans should be seen in the context of the coronavirus pandemic. The judge himself noted at the start of the judgment,

'The petitions in hand, besides raising questions of public importance, have a nexus with the threat to human existence highlighted by the current pandemic crisis. It has highlighted the interdependence of living beings on each other, the desperate need to restore the balance created in nature and, above all, it has conspicuously brought the essence, meaning and signifi-

cance of 'life' into the spotlight,'¹⁵

It seems unlikely that such a forceful judgment would have been given without the self-awareness and reflection that the pandemic has inspired. It can only be hoped that other law and policy makers across the world are making similarly powerful reflections.

(c) Whether the cruel treatment of animals amounts to a breach of the right to life under the Pakistan constitution.

The next step was to look at whether the cruelty to animals in question could amount to a breach to the right to life under the Constitution. He observed that, 'any treatment in violation of the provisions of the Act of 1890, or subjecting an animal to unnecessary pain or suffering, is an infringement of the right to life guaranteed under Article 9 of the Constitution.'

The parameters as to what would constitute unnecessary pain and suffering were not spelled out, although in court, the petitioner had cited a case from the High Court of Sindh which held that the traditional sport of donkey- and bull- cart racing fell within the definition of cruelty under the Prevention of Cruelty to Animals Act 1890, and that, far from being necessary such events actually have an adverse effect on the youth.¹⁶ Without going into comparisons as to what counted as unnecessary, the Judge deemed that on the facts of the case, taken from a study by an amicus curiae and observations of citizens tracking animal's treatment, they were not met.

'The Zoo, ... merely serves the purpose of displaying or exhibiting its animals to the visitors. The animals are held in captivity in such enclosures and conditions which, instead of providing an opportunity to study the animals, must be adversely affecting the visitors. There does not appear to be much awareness in society, judging by the conduct of the visitors. The Zoo does not make any positive contribution whatsoever to the society. With the advancement of technology there are far better and more informative opportunities to observe and gain knowledge about the animal spe-

12 PLD 2015 Lahore 522

13 PLD 2016 SC 48

14 Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad (2020) p.57

15 Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad (2020) p.3

16 PLD 2018 Sindh 169

cies.¹⁷

As such, he decided, given the deplorable conditions in which the animals find themselves at the zoo the court had 'no hesitation in declaring that the animals in the Zoo have been subjected to unnecessary pain and suffering.'¹⁸

In view of this the Judge made a range of directions that the elephant be sent to a sanctuary; the bear remain in the sanctuary to which it had been moved; the relocation of all remaining suffering zoo animals; that no new animals be brought to the zoo until it has been certified by an international agency; various directions relating to institutional responsibility for the zoo; a direction that responsibility for stray dogs be transferred to the wildlife board who should develop a suitable policy in compliance with international best practices and Islam; and a recommendation that the Federal government consider including animal welfare in Islamic studies and that the media educates the public about how God's creatures should be treated.

What will be the impact of the judgment? (National and global)

The case was from the High Court of Islamabad, so it is only binding in Islamabad. The limitation period for appeal has passed. However, it is not certain the judgment will be enforced: there could be endless hurdles to implementation. Given the escalating pandemic, the petitioner is seeking an extension of the 30 day period in which they are to transfer the animals, and have commissioned a committee to examine whether a sanctuary can be established locally, where the various animals should be relocated to until conditions are improved and what would be an appropriate timeline. There is a risk that energy dissipates and the animals are never moved, and it will take diligent oversight to ensure it is actually enforced.

The government has not shown its thinking to be aligned with the Judge. Despite earlier promises by certain people in government to transfer the elephant to a sanctuary, progress was never made until this Court judgment, and the Paki-

stan government has not to date demonstrated any reluctance to hold elephants in its zoos. As late as November 2019, the Pakistan government submitted a request to the Namibian government for ten elephants, after a petition by a member of the public that the Lahore zoo should have elephants to amuse children and raise funds.¹⁹ These would likely come from the wild in Zimbabwe contrary to the CITES ban on elephant transportation from Africa. Will there be attitudinal change within the government after this judgment? It is theoretically possible that, following this judgment, the Federal Government may decide to legislate on the trade of wildlife and treatment of non-human animals but given the current health and economic crisis, it would likely be of low priority.

In some ways, it is positive that legal precedent is often not followed in Pakistan, and that laws are often not implemented. A pathbreaking decision such as this can sit there on paper and be called on by those who want to use it. It could likely be used by other animal welfare entities active in Karachi and Lahore, who could file similar petitions in their respective provincial high courts. The Judgment will have symbolic value, not only in Pakistan but across South Asia and elsewhere. Sri Lanka has been active in litigation in this area, and it is likely the Islamabad case could be called on by activists. Beyond that, the Non Human Rights project in the United States are planning to raise it in their submissions in cases currently before the courts in the US²⁰.

Legal changes often come before popular changes. While the vegan movement hasn't taken off in Pakistan yet, a number of small scale companies have cropped up among elite circles specialising in vegan produce, and privatised efforts are being made to introduce local recycling, while the government itself has embarked on substantial campaigns to reduce plastic waste and plant new trees. This judgment will form part of that trend towards greater consciousness of the environment and will hopefully help backstop and encourage further efforts to improve the welfare of animals in particular.

¹⁷ Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad (2020) p.53

¹⁸ Ibid p.53

¹⁹ <http://pawspakistan.org/2019/11/11/plight-of-the-pachyderm/>

²⁰ Email from NHRP updating followers about their work, 22 May 2020