EARTH JURISPRUDENCE AND ABOLITIONISM –
TWO SIDES OF THE SAME COIN

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INTRODUCTION

Since time immemorial, every legal framework around the world has been framed according to anthropogenic principles. Such an ideology behind such principles is that which places humans as the centre of activities. According to such a notion, humans are an end in themselves, whereas every other being or element in Nature, including Nature herself, is merely the means to this end. Such an ideology causes human beings to consider all other non-human animals as ‘property’ to be exploited or human benefit and welfare. However, this ideology is a divide amongst Nature and humans; hence being the cause of every natural disaster till date.

Further, considered from both perspectives, anthropocentrism is unethical and a grave infringement of the rights of Nature. As a contradiction, Thomas Berry, a renowned theologian, proposed a novel branch of jurisprudence, called Earth Jurisprudence. This branch, overrules all other branches of legal theory and jurisprudence, in superiority, by virtue of its principles of ecocentrism. According to Earth Jurisprudence, all beings are part of the earth community; no one stands superior to the others, and the welfare of every element of this Community depends on the welfare of the ‘earth’. Such a philosophy confers equal rights to all beings and elements of the earth community by virtue of the role played by them in the processes of Nature. However, there are certain exceptions by virtue of which any being or element (including human beings) may be deprived of their rights, according to the circumstances in which such infringement occurred. Comparatively, animal rights, specifically animal abolitionism and absolutism for the context of the present article, is a theory which grants absolute rights to all non-human animals; hence an infringement of any of their rights is not justified in any circumstances. Both the theories are unique based on very appreciable ethical standards; however, the un-harmonious Nature of the two emphasised upon by various jurists till date, causes an undesirable and unfavourable divide between them, thus leading to their inefficient functioning and unnecessary conflict of ideas.
Further in the paper, a reconciliatory approach is adopted, which is required to achieve a world wherein every being lives in harmony with one another, and thus with Mother Nature. Notably, such a reconciliatory approach is being adopted by various courts across the world, the landmark judgements of India having been emphasised upon in detail in other sections of the paper. However, in order to achieve ecocentrism, it must be followed formally and made a way of life, which gives Nature what she is entitled to.

I. EARTH JURISPRUDENCE

Countering anthropocentrism, which is human-centred governance, Thomas Berry, in 1999 sowed the seed of an eco-centric jurisprudence, Earth Jurisprudence, in his book ‘The Great Work’. Unlike anthropocentrism, this branch of jurisprudence is a set of principles which treat all beings and elements, of Nature, and interests thereof equally. The basis of such an ideology is that humans are merely a part of a larger community, the earth community, and the interests of all the parts of such a community are contingent upon those of Nature. The purpose of the law is to protect the Earth and all its components. Nature functions and sustains life by her unique set of laws and life processes, to which all beings, including human beings, are subject. According to Earth jurisprudence, humans can flourish only if they are governed by laws which are in consistence with the rules or principles of Nature, ‘Great Jurisprudence’. Hence, Earth Jurisprudence does the job of discerning the principles of the Universe; i.e. Great Jurisprudence and then setting laws for the governance of humans which are in conformity with the principles of the Universe. Earth Jurisprudence is a subset of Great Jurisprudence, as it is the application of the latter to the processes of the Earth. There are three core elements of Great Jurisprudence, according to Thomas Berry and Barry Swimme:

1. Nature abhors uniformity.
2. Self-making.
3. Interconnected Nature of all aspects and elements of the Universe.

Earth Jurisprudence is of a very ideal standard with regards to morality as it urges the human mind to consider the interests of non-human entities as well, in the process of governance through laws and principles. This depicts the ecocentrism on which Earth Jurisprudence is

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1Law Centre’s First Case: Saving the Planet, MIAMI HERALD, May 14, 2006.
based, and hence wholly opposes the long-standing idea of anthropocentrism. According to Earth Jurisprudence, the law is meant to govern the relationships between all members of the Earth Community and not merely between human individuals. It provides a philosophical basis for governance, such as including ethics, laws and institutions. The purpose of Earth Jurisprudence is to provide reasoning and theory which follows the principle of equality of interests of all members of the expansive Earth Community. Earth Jurisprudence is based upon a set of principles which are its foundation:³

A. The Earth Community and all individual members thereof are entitled to specific fundamental rights, such as the right of existence, of habitat, and participation in the evolution and function of the Earth Community as a whole.

B. The rights of the beings must be consistent with those of the others, so as to not infringe upon the rights of any being and to maintain the balance, integrity and health of all communities – ‘living in harmony’.

C. Conduct and laws of human beings infringing upon the fundamental rights of any beings or the Earth community, on the whole, are in contravention of the principles which govern and relationships which constitute the Earth Community; therefore being unlawful and illegitimate.

D. Human governance systems, which are laws, social institutions and constitutions, must consider the interests of all members of the Earth Community and not only of humans. Such laws and governance systems must perform the following functions in order to be in conformity with Earth Jurisprudence.

   a. The lawfulness of human conduct must be tested by considering whether it weakens the relationships constituting the Earth community or not.

   b. The maintenance of dynamic balance between the interests of human beings and all other members of the Earth community, by considering the optimum conduct for the welfare of the Earth community, on the whole, is mandatory.

   c. Promotion of restorative justice by restoring the damage caused to the relationships constituting the Earth Community, rather than retributive justice, which adopts punitive measures.

d. The recognition of all members of the Earth community as subjects before the law; hence entitled to the protection of the law and an effective remedy for human conduct violating their fundamental rights.

Earth jurisprudence contradicts the philosophy that treats humans as superior to all other beings, by reminding humans of their subjection to Nature, which is a depiction of humility and respect rather than a notion of ‘false superiority’. Hence, it is the sole manner by which the entire Earth community can be rescued from the chaos of division between communities, created by the preconceived notion of human superiority. This jurisprudence is an ideal reparative measure to damage the chaos already caused by the anthropocentric paradigm propagated by western religious ideals and beginning of the ‘industrial era – formulated to promote industrial growth and development’.

The specifics of the application of this theory may vary from place to place; however, it is based on a common set of elements which are the compulsory basis for Earth Jurisprudence. A body of governance depicting and adhering to the principles of Earth jurisprudence is a reflection of and in conformity with Earth Jurisprudence. Such laws and principles reflecting the principles of earth Jurisprudence are called ‘Wild Law’. Such law is termed ‘wild’ not because it is anarchic, but because it is in conformity with the rules of the Earth and the Universe and not merely favouring human welfare. The wildness of law is assessed based on the amount of consideration and importance given to the welfare of all members of the Earth community and not those of humans alone. Only by the existence of a harmonious relationship between all members of the Earth community, which includes humans, can there be ecological sustainability. ‘Wild laws’ institutionalise such an ideology and bring it from being merely principles on paper which one may choose to refrain from following to laws which subject everyone and make the adherence to such principles compulsory. Hence, Earth jurisprudence is the jurisprudence of Wild law.

i. WHAT ARE ANIMAL RIGHTS IN EARTH JURISPRUDENCE?

Earth Jurisprudence accords a ‘relatively better’ perception of the term ‘rights’, by laying down that rights come into existence by virtue of the Nature of existence itself. This depicts that all beings and elements of the Universe possess inherent rights by virtue of the existence of the being or element, rather than from human legal systems. There is no specific criterion as to the qualifications and faculties for entitlement to rights. According to such an inclusive branch of jurisprudence, all beings and elements of the Earth play a role in its functioning and
maintenance of life processes; hence, no human conduct must infringe upon such role, thereby causing chaos by distorting the balance of Nature. However, Earth Jurisprudence does not advocate for absolute rights of beings and elements of Nature, as it allows for the rights to be infringed upon in specific circumstances, such as a hunter killing a deer for his food. However, the killing of the deer for play would not be allowed. Rights according to earth jurisprudence are role specific. Despite beings not requiring to possess certain faculties to be entitled to rights, they are supposed to be a part of the components playing a role in the functioning of and balance in Nature. Hence, according to Thomas Berry, rights are the freedom of beings to fulfil their role within the earth community, for the functioning of Nature.

Earth Jurisprudence does not confer any specific rights animals, except for those conferred to every other component of Nature. All subjects of natural law are accorded the same fundamental rights. However, a very crucial and selfless aspect of Earth jurisprudence is that human rights are limited to accommodate animal rights or rights of all other components of Nature. Hence, the rights of all members of the Earth community are balanced. The rights of animals are contingent on the circumstances of each case, which is explicit in the illustration given by Cormac Cullinan in his book ‘A History of Wild Law’ – A human killing a zebra for food in conformity with traditional customs is justified. In contrast, a hunter killing a zebra for no valid reason, merely for the purpose of selling the pelts, or game is not justified. Hence, Earth Jurisprudence accords rights to beings in so far as the reason behind the infringement is invalid. This depicts that the Nature of rights under Earth Jurisprudence is not absolute, the ‘right to be’ is not identical to the ‘right to life’ advocated for by Tom Regan’s absolutist reforms and Gray Francione’s Abolitionism. According to Earth Jurisprudence, the exploitation of animals is allowed so far as it is done as part of an ecologically sustainable relationship with natural systems of the Earth. Therefore, it is evident that Earth jurisprudence is worried about the rights of Nature on the whole, and the maintenance of the balance of Nature thus preventing chaos but does not bother about the absolute rights of beings per se.

II. JURISPRUDENCE OF ANIMAL LAW:

Animal law has had a detailed and complex evolutionary history during a short period of time. This branch of law contradicts the ideology of human superiority to an extent and the

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consideration of animals as ‘property’ or things completely. Various theories which depict such evolution of ideas and an increase in the degree of morality are the basis of animal laws. However, terming such laws as ‘animal welfare laws’ would be more appropriate as they are based on the theory of ‘animal welfare’ and ‘utilitarianism’ proposed by Bentham and Peter Singer. Utilitarianism has undergone great evolution from the time of its emergence; furthermore, various other theories have emerged which confer greater rights and moral consideration to animals when compared to preceding theories. The evolution of this branch of legal theory ranges from aiming at the welfare of animals to aiming at granting them rights and moral consideration of ‘personhood’.

i UTILITARIANISM BY JEREMY BENTHAM AND PETER SINGER:

Jeremy Bentham’s Utilitarianism challenges Rene Descartes regarding animals as ‘mere biological machines’, by advocating legal reforms aiming at improving the welfare of animals. His theory lays down the criterion for moral consideration of animals being ‘sentience’ – the ability to suffer, i.e. sentience, rather than the ability to reason or talk. However, a crucial aspect of Bentham’s Utilitarianism is despite his advocating animal welfare; he does not advocate ‘abolition of animal exploitation’, which is evident from the fact that his theory allows the use of animals for human benefit but challenges merely unnecessary harm to animals. The welfare of animals is contingent on that of humans. The consideration of human superiority is evident from the fact of compromising animal welfare for that of humans. This stems from typical ‘Utilitarianism’ on the whole which aims at increasing the utility in the world, not taking into account many more crucial aspects such as the distribution of utility. Hence, Utilitarianism only aims at the ‘greater welfare’ rather than ‘individual right to welfare’, which is the major drawback in the theory. Furthermore, this theory does not accord ‘rights’ to animals but merely advocates consideration of ‘animal welfare’ based on moral grounds.

Peter Singer’s Utilitarianism is a refinement of Jeremy Bentham’s Welfarism, as it does not merely aim at improving the welfare of animals, but also is based on the fundamental principle of ‘equality of interests of animals and humans’. The preconceived notion of the superiority of the rights of humans depicts human’s neglect of the fact of equality of animal and human interests. According to Singer’s Utilitarianism, the interest of utility or happiness of animals and humans is equal. This theory argues that disregarding the interests of non-

5 Id.
human animals is discrimination of very species membership. Singer terms such discrimination on the basis of species as ‘Speciesism’, because he compares it to racism and sexism, saying that just as racists violate the interests of members of races other than theirs and sexists discriminate on the basis of sex by favouring their sex, speciesists discriminate on the basis of species by favouring the interests of their own species and ignoring the greater interests of members of other species.\(^7\)

Albeit Singer’s Utilitarianism does not entitle animals to rights per se because it allows the exploitation of animals as long as such exploitation causes greater benefit (this is not discrimination based on species, it may be the comparison of exploitation and benefit between any two or more species or those of any members of a single species), the equality of interests of animals and humans advocated by the theory renders a major portion of animal exploitation indefensible. However, the theory’s allowing exploitation of animals in certain circumstances, also provides a defence for such exploitation, thus, possessing drawbacks majorly similar to Bentham’s Welfarism, such as the distribution of utility not being considered; hence not being a complete refuge for animals.

\[\text{ii} \quad \text{TOM REGAN’S ABSOLUTISM OF ANIMAL RIGHTS:}\]

The absolutist Nature attributed to animal rights by Tom Regan is a great leap in the evolution of animal legal theory, as it is the first theory entitling animals to certain rights. According to this theory, a ‘subject-of-life’ is entitled to rights. The criteria upon which the decision of whether or not a being is a subject-of-life include perception, memory, desire, and a sense of the future. Beings which possess such capabilities are subjects-of-life, by virtue of which their life has inherent value. Regan’s research concludes that a majority of animals who are victims of exploitation by humans possess such quality, thus qualify for being ‘subjects-of-life’. Hence, this philosophy possesses a very high potential of granting absolute rights to animals and stopping animal exploitation. However, Regan acknowledges that this principle does not instruct or oblige humans to act in a particular way towards subjects-of-life, hence for justice to be accomplished the greater principle is that humans are to treat individuals possessing inherent value in such a manner so as to respect their inherent value.

\[\text{iii} \quad \text{ABOLITIONISM BY GARY FRANCIONE:}\]

\(^7\) Wright, \textit{supra} note 4, at 8.
Gary Francione laid down the theory of Abolitionism according to which animal exploitation must be completely abolished. Francione contends “abolition requires the recognition of one moral right: the right not to be treated as property or things”.\(^8\) According to this theory, reforms and laws for the welfare of animals do not succeed in challenging the cause of animal exploitation and suffering and legitimise the exploitation of animals. This is caused by the underlying conception of human superiority, which causes humans to regard and treat non-human animals as ‘property’ for the use and to promote the welfare of humans, i.e. animals are treated and regarded as a means to an end, which is the human race. Such a principle is legitimised by including non-human animals in the definition of ‘property’ in codified law. Such legitimisation of an immoral principle favours and encourages grave exploitation of animals. Hence, according to Francione, the sole right which animals require is the right not to be regarded as property. The objective of Abolitionism is to encourage and secure a paradigm shift in the moral and legal ideologies of humans causing animals not to be regarded and treated as things or property for humans to make use of and exploit. In his book, *Rain Without Thunder*\(^9\), Francione proposes a legal approach to achieve the abolition of all forms of exploitation practically. According to such an approach, animal rights activists should oppose animal exploitation wholly, rather than partially, which merely aims at regulating cruelty and exploitation to render it ‘humane’\(^10\). However, this is not what Francione advocates, as he proposes the complete abolition of animal exploitation should be the purpose and objective of animal rights activists. Welfarist and abolitionist reforms are different degrees of the same act. Welfarist reforms argue for the enlargement of battery cages, whereas abolitionist argue against their very existence and encourage abolishing the use of such cages.\(^11\) The degree of morality differs in the two ideologies, Abolitionism being based on greater moral standards when compared to welfarist ideologies. Hence, abolitionist reforms aim to outlaw legal action and conduct, exploiting non-human animals and engraving a rights-based treatment of non-human animals in legal systems of governance. According to Francione, a shift of paradigm in human minds ultimately causes legal reform. He draws the path to abolition as being ‘a gradual increase in the prohibition on animal exploitation’, through which the world will one day reach the destination of ideal Abolitionism.

\(^{8}\) *Id.*, at 10.


\(^{10}\) Wright, *supra* note 4, at 10.

\(^{11}\) *Id.*
Steven Wise argues for the complete abolition of the exploitation of chimpanzees and bonobos, as these animals are closest to humans in terms of faculties and hence are subjects-of-life. He brings into practice the suggestion of Francione according to which animal exploitation must be gradually abolished by increasing the prohibition on such exploitation. This theory argues for ‘legal personhood’ beings conferred to animals and their having the fundamental right of bodily integrity and liberty.\(^{12}\)

Majorly, animal law is based on Bentham’s Welfarism which is the reason for animal exploitation to continue despite the existence of laws. Hence, such an approach and such ‘sly principles’ do not cause a shift of paradigm or the mindset of the world, towards the abolition of animal exploitation rather than mere regulation of such exploitation. However, a slight realisation by humans of the inherent rights of animals is bringing about the crucial concept of ‘legal rights’ of animals taking root in the present legal systems through various judgements and constitutions of nations adopting it, and considering the grant of legal personhood to animals. Hence, albeit very minimal, a shift of paradigm from welfarism to Abolitionism is clearly visible.

**III. THE URGENT CALL FOR THE COMMUNION OF EARTH JURISPRUDENCE AND GARY FRANCIONE’S ABOLITIONISM**

i **SIMILARITIES OF EARTH JURISPRUDENCE AND ABOLITIONISM:**

1. The basis of both the philosophies is the criticism of animals and all components of Nature respectively, being regarding as ‘property’ or things for use and exploitation by humans. Cormac Cullinan argues against such an ideology, by saying that a thing possesses no sacred qualities and personality, and is allowed to be marketed. The owner of the thing is accorded absolute power over such land being regarded as property.\(^{13}\) Earth jurisprudence holding the notion of the divide between humans and Nature, thereby humans considering themselves superior to all the other members of the Earth Community, responsible for the natural calamities and extinction of various species faced today, is similar to Gary Francione’s stating that the continued animal exploitation is majorly facilitated by the status of ‘property’ accorded to animals.

2. Both the theories depict a shift in the conception of ‘rights’, as they lay down that rights are not merely those granted by human legal systems but are entitlements ‘by

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\(^{13}\) CORMAC CULLINAN, WILD LAW: A MANIFESTO FOR EARTH JUSTICE (Green Books, 2003).
vory of existence’. Hence, this is an extensive definition of the term. However, Earth jurisprudence and Abolishnism in Animal law, possess different intricacies of the rights accorded, as the former does not grant absolute rights while the latter does.

ii DIFFERENCES OF EARTH JURISPRUDENCE AND ABOLITIONISM:
1. The rights accorded in Earth Jurisprudence are not absolute, unlike those granted by Francione’s Abolitionism, as the former allows for the exploitation of animals in certain circumstances, or if such exploitation is done as part of an ecologically sustained relationship with systems of the Earth. While Earth jurisprudence accords the right to fulfil their role in the functioning of Nature, to all components of Nature, it does not accord the absolute right to life which is conferred upon animals by animal law’s Abolitionism.
2. Earth jurisprudence advocates the equalising of rights of all components of Nature, which means that animals rights would be increased and those of humans would be considerably decreased, in order for the two to meet at an equilibrium. Whereas, the philosophy of animals rights, argues for the increase of the rights of animals in order for them to meet the standards of those of humans and giving animals the same moral consideration as that of humans. Furthermore, according to animal rights philosophies, all living creatures are owed certain moral rights.
3. Since Earth jurisprudence confers the right of the fulfilment of their role in the functioning of Nature, to all components of Nature, domestic animals are out of its purview, as they do not fulfil any role which is necessary for the functioning of Nature.
4. Earth Jurisprudence only aims at ensuring and securing a balance and preventing chaos in the function of Nature, hence being a theory aiming at ensuring the rights of Nature on the whole. In contrast, animal law’s Abolitionism aims at ensuring absolute individual rights to animals.

IV. THE COMMUNION OF EARTH JURISPRUDENCE AND ABOLITIONISM TAKING ROOT IN THE PRESENT LEGAL FRAMEWORK
The present legal system of various nations is coming to realise the drawbacks of anthropocentrism; hence is deviating from such a selfish ideology and adopting an eco-centric legal framework. However, neither Earth jurisprudence nor Abolitionism is being adopted wholly and in isolation of each other. Furthermore, the existing legal framework
does not reflect any one of the theories in isolation. What is clearly visible is a communion of the theories. Both Earth jurisprudence and Abolitionism possess certain inherent drawbacks, furthermore, in an age of grave animal exploitation already occurring, Earth jurisprudence being applied solely is not the proper recourse. Hence, constitutions of various countries, judgements of various courts around the world, and legislation specifically enacted to safeguard and protect Nature and her components depict and are adopting a recourse which is a communion of the two theories. At the same time, some depict either of the theories in isolation also. Hence, a crucial aspect is the reasoning as to the optimum recourse on a case to case basis, as some situations may require either of the theories alone, and others a communion of the two. Laws conforming with the principles of Earth jurisprudence solely are ‘Wild Laws’, thus, treating the interests of humans and Nature equally, whereas laws for the ‘welfare’ of animals are based on welfarism, which is a major drawback. For an ideal application of animal laws or an ideal communion between Earth jurisprudence and animal laws, the theory on which the latter must be based is Francione’s Abolitionism, because only then will a positive change occur in terms of animal rights, thereby animals being benefited ideally. The communion of Earth jurisprudence and welfarism merely will decrease the quality of life and rights of animals, as the former will be adulterated by the latter. Whereas, a communion of Earth jurisprudence and Abolitionism will raise the standards of animals to an ideal level, as the good of both the theories will superimpose eachother.

Ecuador begins and sets an example of the application of Earth jurisprudence

The Republic of Ecuador is the first Country in the world to incorporate the wild law approach in her Constitution, thereby adopting the principles of Earth jurisprudence. The Country has faced immense environmental damage due to rigorous mining. Hence, the need was felt for institutionalising and indoctrinating the principles of Earth jurisprudence, especially in the Constitution, thus curbing the infringement of Nature’s rights. The new Constitution the Country, which came into force in the year 2008, envisages an entire chapter dedicated to ‘Rights for Nature’. The preamble to the chapter lays down that Nature is subject to those rights granted by the Constitution and law. Article 1 of the chapter of ‘Rights for Nature’ affirms that Nature possesses the rights to ‘exist’, which depicts the inherent Nature of the rights of Nature; hence being inalienable in any manner whatsoever. Article 2 entitles Nature to the right of an integral restoration, in order to restore Nature to her fine State prior to the damage. Furthermore, the article obliges the State to motivate natural and juridical persons and collectives to protect Nature and promote respect for her. Art 2 and 4 further
oblige the State to establish mechanisms for restoration and to impose restrictions and precaution on activities which have the potential of causing the extinction of species, destruction of eco-systems, or permanent alteration of natural cycles.

The Constitution of Ecuador has scored 17 out of 24 the highest in a survey conducted by UKELA,\textsuperscript{14} in terms of its wildness; i.e. reflection of the principles of Earth jurisprudence. Hence, it depicts the high standard of consideration accorded to Nature, by the Country. This chapter of the Constitution does not adulterate the rights of Nature with human rights, by granting humans the right to a healthy environment, whereas it is solely aimed at restoring Nature her inherent rights.

**New Zealand Scores the Highest in the Survey by UKELA**

The legislation of New Zealand scored the highest in the survey conducted by UKELA, as the intrinsic value of Nature is explicitly recognised, there exists a very robust sense of eco-centric governance, the interdependence of humans and other members of Nature is recognised, and Maori values are to be respected especially regarding stewardship of Nature. All such measures depict the deviance of the legislation of New Zealand from anthropocentrism of the West.

iii **LEGISLATION AND JUDGEMENTS IN INDIA – A REFLECTION OF EARTH JURISPRUDENCE**

**ENVIRONMENTAL LAW:**

India possesses a considerable amount of legislation aimed at environmental protection and ‘animal welfare’. A significant portion of such legislation either aims at protecting the environment for human welfare and to sustain Nature for future generations, i.e. ‘sustainable development’, or at guaranteeing merely ‘animal welfare’ to the extent to which human welfare is not hampered, which is an application of Bentham’s Welfarism.

Article 51-A(g) of the Constitution of India envisages the duty of the State and every citizen of India, to protect the environment. The survey conducted by UKELA\textsuperscript{15} analysed three pieces of legislation in India which may exhibit characteristics of wild law. The pieces of legislation analysed were The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of


\textsuperscript{15}Id., 15 - 23.
Forest Rights) Act 2006\textsuperscript{16}, The Biological Diversity Act 2002\textsuperscript{17}, and The Protection of Plant Varieties and Farmer’s Rights Act 2001\textsuperscript{18}. Examining the provisions of the pieces of legislation, the anthropocentric Nature of the Indian legal framework is evident, despite the existence of a blurred reflection of wildness. The necessity of the maintenance of an ecological balance for the sustenance of the Earth is not explicit. Majorly the above pieces of legislation merely aim to ensure the rights of humans, such as those of scheduled tribes and indigenous communities. The law could have extended such rights to all other members of the Earth community instead of imposing duties on the tribal inhabitants, which would have rendered it extremely eco-centric. Furthermore, the laws’ considering components of the Earth community as resources to be exploited by humans clearly reflects the anthropocentric Nature of the laws. None of the laws is informed by the ‘rights of nature’. Furthermore, wildlife is protected only in cases of extreme chances of extinction.\textsuperscript{19} The Acts do not possess any provisions for the restoration of the damage caused i.e. restorative justice, whereas they provide for punitive measures. Hence, legislation regarding environmental protection in India possesses merely a ‘blurred’ reflection of the principles of Earth jurisprudence and is majorly anthropocentric as it aims at ensuring and securing human rights to a suitable standard of environment, and at sustainable development which aims at sustaining the environment for ‘future use’; hence, treating the environment as a mere resource. This completely contradicts the principles of earth jurisprudence as it regards the components of Nature as ‘property’ for exploitation by humans. Furthermore, there is no mention of maintaining a ‘harmonious relationship’ with Nature, i.e. to live in harmony with Nature.\textsuperscript{20} The sole purpose of environmental protection and conservation is the sustenance of humans.\textsuperscript{21} Such an anthropocentric and selfish ideology depicts that, in case human existence and welfare did not depend on the well-being of Nature, or if the environment had the capacity of existing forever despite being exploited, humans would not have bothered to even think about the suffering of ‘Mother Nature’. Legal framework, human conduct, and judgements must be analysed and tested from this perspective in order to arrive at a conclusion of the clarity of the reflection of wildness. All laws must be ‘solely wild’, i.e. they must not merely reflect a blurred depiction

\textsuperscript{16} Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, (2007).
\textsuperscript{17} The Biological Diversity Act, No. 18 of 2003, (2002).
\textsuperscript{19} The Biological Diversity Act, No. 18 of 2003, (2002), Sec. 4 (2).
\textsuperscript{20} Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2 of 2007, (2007).
\textsuperscript{21} Filgueria, supra note 14.
of the principles of Earth jurisprudence, but must be wholly based on these principles and all laws which exist must be solely ‘wild laws’.

JUDGEMENTS ON ENVIRONMENTAL PROTECTION:

The judiciary of India has time and again exhibited its concern for the environment, thereby indirectly applying the principles of Earth jurisprudence on a case to case basis. Despite the legislation being of a weak nature in terms of wildness, the decisions of the Supreme Court and various High Courts in India depict the endeavour of the judiciary to fill the gap created by the anthropocentric laws.

In the case of K.M Chinnappa v. Union of India\textsuperscript{22}, the Supreme Court upheld the decision of the Central Empowered Committee, according to which a new mining lease was not to be granted Kadremukh Iron Ore Co. Ltd, in the Kadremukh National Park. In this judgement, the Court reaffirmed the statement of the World Charter for Nature – “mankind is part of nature and life depends on the uninterrupted functioning of natural systems.”\textsuperscript{23} The Supreme Court further stated that “by destroying nature man is committing matricide”.\textsuperscript{24} Thus, the Apex Court affirmed that man is a part of Nature and; hence, has a duty to protect it. Albeit not stating Earth jurisprudence explicitly, the Court engraved the principles its principles by referring to the letter of Chief Seattle as a reply to the White Chief in Washington.

Perumatty Grama Panchayat v. State of Kerala\textsuperscript{25}, despite being a decision based on anthropocentrism, envisages a very crucial statement made by the Court, which reflects the principles of Earth jurisprudence. The Court affirmed that if one unbalances a member of the Earth Community, it will be unable to carry out its role; hence, affecting other members of the Earth Community, especially human beings.

In the case of M.C. Mehta v. Union of India\textsuperscript{26}, the Court based its decision of stopping polluting of the Ganga River, on the need of humans, but did not mention the rights of the river, or its intrinsic value, anywhere; thereby exhibiting its anthropocentric Nature.

\textsuperscript{22}K.M.Chinnappa v. Union of India, W.P  202/1995.
\textsuperscript{24}K.M.Chinnappa v. Union of India, W.P  202/1995, para 1.
\textsuperscript{25}Perumatty Gram Panchayat v. State of Kerala, WP (C) No. 34292/2003 (India).
\textsuperscript{26}M.C.Mehta v. Union of India and Others, [1988] 2 SCR 530.
iv ANIMAL LAW IN INDIA – WELFARISM OR ABOLITIONISM?

LEGISLATION:

India possesses a plethora of legislation aiming at the ensuring welfare of animals, such as Article 48A of the Constitution of India which directs the State to endeavour to protect the environment, forests, and wildlife of India, The Prevention of Cruelty to Animals Act, 1960, The Wildlife Protection Act, 1972, The Prevention of Cruelty to Animals (Dog Breeding and Marketing Rules), 2017, The Prevention of Cruelty to Animals (Aquarium and Fish Tank Animals Shop) Rules, 2017 and certain provisions of The Indian Penal Code, 1860 criminalising animal cruelty. However, all the pieces of legislation are adulterated by anthropocentrism. The penalties imposed in a majority of the Acts are incredibly minimal, thus depicting the fact that despite the enactment of laws for the well being of animals the standard of consideration granted to animals is equated with a few hundreds of Indian Rupees. Furthermore, this exhibits the purpose and basis of the legislation being ‘animal welfare,’ i.e. welfarism and not ‘animal rights’. The legislation possesses numerous inherent drawbacks, such as the use of animals in agriculture and various other activities, allowing dog shows and various other activities involving training and exhibition of animals, mandating the destruction of so-called unwanted animals, allowing the captivity of animals in zoos and various such institutions, employment of animals, confinement by tying of pet dogs, abandonment of animals in specific circumstances, destruction of stray dogs, nose roping of certain animals, and dehorning of cattle are instances which depict the anthropocentric Nature of the law. Such instances in the legislation resemble the status of animals being mere ‘property for exploitation by humans.’ Abolitionism does not reflect itself at all in any of the statutes of India, which is evident from animals being still regarded as property and the law deeming them to be so, such as referring to a person who looks after a

27 The Prevention of Cruelty to Animals Act, 1960, Sec 9(c).
29 The Prevention of Cruelty to Animals Act, 1960, Sec 9(f).
pet, or a breeder, as the ‘owner’ of the pet. Instead of Abolitionism or Earth jurisprudence, anthropocentrism is institutionalised, indoctrinated, engraved into the Indian legal framework, thereby causing grave harm to the life of animals, which is the most vital interest of any being who so ever.

**Is the Communio of Earth Jurisprudence and Abolitionism Taking Root in India**

**JUDGEMENTS WRITING A HISTORY OF ‘ANIMAL RIGHTS’ IN INDIA:**

The reflection of Abolitionism is clearer in various judgements of the Supreme Court and High Courts of India than in the legislation for ‘animal welfare’ in India, because the legislation is based on welfarism; while the Courts now realise and are incorporating and institutionalising Abolitionism to a certain extent.

The first instance of the affirmation of animal rights is the judgement of the Supreme Court in the case of Animal Welfare Board of India v. Nagaraja and Ors, by which the practice of Jallikattu was banned, despite its being an age-old tradition. The Court stated remarkably “just because the sport (Jallikattu) is centuries-old, it can’t be said that it’s legal or permissible under law. Since centuries children below the age of twelve years were married. Does that mean that child marriage is legal?” The scope of the Fundamental Right to Life conferred in Article 21 of the Constitution of India was extended to non-human animals; thus, according the right to a life of intrinsic worth, honour, and dignity, aiming to prevent arbitrary and unlawful deprivation of rights of animals. Hence, the Court conferred ‘personhood’ to animals; which clearly depicts Franscione’s Abolitionism and Steven Wise’s Legal Rights for Animals. However, the Court granted a higher status to humans by holding that interpretation of laws for the welfare of animals must be done keeping in mind the welfare and best interest of animals, subject to exceptions which arise out of human necessity, which again reverts back from the eco-centric view of the Court to the anthropocentric ideologies which from time immemorial plague the human mind’ thus, hampering the principles of Earth jurisprudence also from taking root.

The case of Ramesh Sharma v. State of Himachal Pradesh is another instance of the judiciary’s interference into religious matters for the protection of animals. The High Court of Himachal Pradesh recognised that the age-old religious tradition of animal sacrifice is merely

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34 The Dog Breeding, Marketing and Sale Rules, 2010, Sec 2(c).
based on superstition and ignorance. The Court further observed that animal sacrifice could not be treated as fundamental to follow religion.

In N.Adityan v. Travancore Devaswom Board and Others, the Supreme Court emphasised on the intention of the framers of the Indian Constitution, to liberate the Country from blind faith and superstition.

Narayan Dutt Bhatt v. Union of India and Ors. is a judgement of the Uttarakhand High Court wherein animals were granted rights as those of humans and legal personhood; the Court recognised that humans are morally and legally obliged to protects the rights of animals under the doctrine of parens patriae. Furthermore, the Court acknowledged the unique position of the Courts to change the legal status of animals based on changing morality and existing legal principles.

The Punjab and Haryana High Court, in the case of Karnail Singh and Others v. State of Haryana, reaffirmed conferring personhood to animals, by recognising all animals of the animal kingdom, which include avian and aquatic animals, as legal entities. The Court further declared the citizens of the State of Haryana in loco parentis, i.e. in lieu of a parent, hence enabling them to act as guardians for all the animals in the State. The Court also laid down that legal personhood has not and should not be restricted to human beings. Furthermore, the Court disregarded the criterion for being a legal person which is the attribute of ‘the ability to reason’ as several humans lack in terms of faculties, such as specially-abled people. The Court acknowledged the fact that, unless personhood is granted to an entity, it will be regarded as ‘anything but the thing for the use of “us”, those who are holding rights at that time’. The Court further stated that the action of granting legal personhood to animals would force humans to acknowledge the intrinsic value of animals rather than merely consider them as the object of property.

The reasoning given by the Courts in the various judgements depicts the mindfulness of the judiciary of the Country in aiming at grating not merely humans but also animals, their rights. By conferring ‘personhood’ to animals and expanding the scope of the term ‘life’ to mean animal life also, the judiciary has incorporated Francione’s Abolitionism by following the practical approach of ‘legal personhood’ being attributed to animals, advocated for by

40 Singh, CRR No. 533.
Steven Wise. The active role played by the judiciary of India in making the Country a better place for animals to live in, depicts and reflects the concern of the judiciary for animals.

V. CONCLUSION

The eco-centric portion of the legislation and judgements analysed in the paper exhibit the characteristics of both Earth jurisprudence and Abolitionism, since environmental protection cannot be achieved in isolation from the well-being of individual animals, and animal well-being consequentialy results in the well-being of the environment. Regan states “Animal rights ought not to be dismissed out of hand by environmentalists as being in principle antagonistic to the goals for which they work. It isn’t. Were we to show proper respect for the rights of the individuals who make up their biotic Community, would not the Community be preserved?”41 However, such a communion of the two theories is not expressly stated in any of the pieces of legislation or judgements.

Earth Jurisprudence and Abolitionism are complementary to each other, as none of them can achieve complete success in isolation. Both the theories possess drawbacks; however, such drawbacks can be rectified by merging them, since the reason for such drawbacks is that either of them lacks what the other possesses. Environmental theories have never accepted the individualistic and absolute Nature of animal rights, is the major reason for such a communion between the two theories being required, as in an era of animal exploitation being rampant, environmental protection and well-being can never be achieved without entitling animals to absolute rights. Similarly, animal law does not advocate the protection of Nature expressly, thus, separating Nature and animals which is not correct as animals, humans, and all other components of Nature are members of a large Earth Community. Furthermore, Earth jurisprudence is criticised by Regan, for protecting the environment at the expense of individual animals. The crucial aspect is we are all components of the Earth Community; hence, the well-being of either Nature or all the components, cannot be achieved in isolation from each other. The protection of Nature as a whole must mean the protection of individual animals as well, and vice versa.

The situation which Nature (i.e. Earth and all its components) will consequentially reach, in case Earth jurisprudence is solely adhered to, will resemble the principles of Utilitarianism. The reflection nature’s or animal well-being will be not exhibited, but that of

Utilitarianism will be consequentially established as the distribution of well-being is not considered. In contrast, only the total well-being of Nature is considered as the criterion for any human conduct to be in conformity with the principles of Earth jurisprudence. If Abolitionism is followed solely, only animals will be benefitted, and the interests of all other components of the Earth Community, which are worthy of moral and legal consideration will be neglected.

Furthermore, the rights of animals conferred in Earth jurisprudence are not absolute in Nature as in Abolitionism. All members of Nature are attributed rights based on the role they play in the maintenance of balance in Nature; hence, animals are not entitled to the absolute ‘Right to Life’. Wild animals are granted rights as they play a role in Nature, however, domestic animals, by virtue of their playing no specific role in Nature and possessing merely economic or emotional value to human beings are not conferred any rights under Earth jurisprudence.

Such inherent drawbacks in both the theories make their reconciliation necessary, in an age wherein the need for an ideal theory is felt. Such an ideal theory can be achieved only by the reconciliation of Earth jurisprudence and Abolitionism. Fortunately, there exist similarities between the theories, which form the road to their reconciliation. Similarities such as both the theories condemning the status of ‘property’ attributed to animals, the advancement of either theory is that of the other, as the consequences of the application of any of the theories resemble both of them and novel mechanisms such as legislation and judgements which resemble the principles and ideals of both the theories, depict that the communion of Earth jurisprudence is not only required but also possible.

The reasonable way of achieving a consensus between Earth Jurisprudence and animal laws is not to delve into the intricacies of the theories and analyse their philosophical basis, but to pay attention to their practical aspects and the ideal aim which can be achieved such reconciliation. The method of reconciliation must be based on equity and equality of animals and humans unlike the reconciliatory approach suggested by Mary Warren, according to which animals are granted rights however they are regarded inferior to humans, thus reaffirming the false notion of the superiority of humans, which was born with western culture. Richard Dawkins, a famous evolutionary biologist, states: Such is the breathtaking speciesism of our Christian-inspired attitudes, the abortion of a single human zygote can arouse more moral solicitude and righteous indignation than the vivisection of any number of
intelligent adult chimpanzees! The only reason we can be comfortable with such a double standard is that the intermediates between humans and chimps are all dead. Furthermore, the concept of sustainable development cannot be adopted, as it exhibits its highly anthropocentric Nature by considering all components of the Earth Community as ‘natural resources’, and aiming for sustained economic development rather than sustained harmony with Nature. An anthropocentric approach can never succeed in achieving an eco-centric goal; we will end up in a state of unsolvable hypocrisy.

Unless man-made laws conform to the laws of Nature, the world will reach the conundrum of two goats not giving way to each other while walking in opposite directions on a narrow bridge. Earth and humans, though one Community, will fall together into the canyon of destruction and extinction. The concept of rights being those entitlements granted by law is flawed. Nature, i.e. animals, the Earth, and humans, possess inherent rights and value, our laws granting animals and nature rights is an insult to their intrinsic value of existence. All entities are entitled to rights by virtue of their existence, no by virtue of any law granting them such rights or humans morally considering them. The whole purpose of rights will be vitiated if the attribution of specific faculties exists as a criterion for entitlement to such rights, since. All entities, including animals and every other element of Nature, are persons in themselves, they possess their unique personalities which we fail to conceive by virtue of our shallow ideals and mindsets. Personhood being ‘granted’ to non-humans is a false notion covered by a veil of ignorance and false compassion for non-human animals. The actual scenario which is not accepted is that, now, after cutting the branch on which we humans are sitting, we have realised our grave mistakes and have finally begun ‘acknowledging’ the ‘inherent personhood’ of all other members of the Earth community. The fact of ecocentrism being a new dimension of perceiving law exhibits that such approaches were neglected till date in greed for economic development.

The aim of law to establish harmony between humans is anthropocentric and majorly against the principles of Earth Jurisprudence, law ought to aim at establishing harmony between all members of the Earth Community. We all members of a large closely knitted community, The Earth Community. Humans are not the masters of animals being treated as slaves. Anthropocentrism and the false notion of human superiority have plagued and

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poisoned God’s Uniform Creation, which can only be rescued from the death of extinction by ecocentrism. The paradigm of anthropocentrism was always bad and dysfunctional, however, a shift of paradigm was never accepted since the so-called ideals of human societies being solely based on the false notion of human superiority. A complete overhaul of legal systems and jurisprudence is required in order to achieve ideal ecocentrism and thus the ‘happy survival’ of every member of the Earth Community. Furthermore, true values underpinning every legislation must be established and encouraged so that laws serve the eco-centric purpose. All countries must follow the example set by Ecuador by incorporating ecocentrism in the highest law, i.e. The Constitution. Enforcement mechanisms must set up to supervise and ensure the practice and enforcement of such eco-centric legislation, in order to ensure the law to serve its purpose. The lack of enforcement of the laws in India renders even the most ideal legislation futile, hence depicting the absence of even the flawed theory of ‘welfarism’. Furthermore, laws inherently are flawed, which is evident from the cruel practices being allowed by the Prevention of Cruelty Act, 1960, such as the destruction of ‘unwanted animals.’ Here the question is: How can an entity be unwanted when it was created and exists? These issues depict the anthropocentrism of environmental and animal laws – an ‘ideal hypocrisy!’ Humans are on the verge of extinction since human existence is impossible in isolation.

Our values do not deserve to be called values; they are mere hypocrisy which is driven by selfish standards. Our so-called values need to be transformed into true values. We must refrain from referring animals and all members of the Earth Community with pronouns resembling the flawed status of ‘property’ attributed to animals, such as ‘it’, and ‘that’; all members must be referred to as ‘he’, ‘she’ and ‘who’, which is inculcate ‘eco-centric values in the next generation of humans. Our children must be inculcated with such values that every one of our future generation members knows and ‘live nature’ not with, or in Nature, as we are all The Earth Community.

We need to rescue and value the Nature, not since we fear our extinction, but since we realise that we are One Community. Let Mother Nature Live… Nature is to be loved, not liked!