

A Case for Animal Sentience in Pakistan: “Kaavan” The Elephant’s Incredible Story

Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad
PLD 2021 Isl 6

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Introduction

This case is a landmark judgment delivered by the Islamabad High Court based on a culmination of public interest petitions that highlight the natural and legal rights of animals. Of particular interest is the idea of animals having sentience, which translates into the ability of an animal to feel and understand emotions in interaction with its environment. The idea of sentience is legally established and has achieved formal acceptance by the European Union.¹ The notion of animals being sentient is a gateway to not just animal welfare² but also animal rights.³

This unprecedented decision, issued under three consecutive orders by the Islamabad High Court, declares animals as inmates and orders the Marghazar Zoo, Islamabad (the “Zoo”) to shut down operations and relocate animals to sanctuaries so the animals can fulfill their species-specific needs.⁴ This ruling further declares that animals also have a right to enjoy a conducive environment that enables their

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¹ The treaty of functioning of the European Union Article 13 states: “*In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research, and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions, and regional heritage.*”

² Animal welfare is the idea to minimise unnecessary pain and suffering for the animal based on its guardian/owner.

³ Animal rights is the idea of animals having rights based on their existence, similar to human fundamental rights.

⁴ The ability of the animal to engage in natural, niche-specific behaviors, their emotional state, and their fundamental health and functioning are the three overlapping characteristics that make up animal welfare from a scientific perspective (natural living), Anne Peters, ‘Global Animal Law: What It Is and Why We Need It’ (2016) 5(1) Transnational Environmental Law 9, 11; Mark James Learmonth, ‘Dilemmas for Natural Living Concepts of Zoo Animal Welfare’ (2019) 9(6) Animals 318.

social, behavioural, and physiological well-being. Therefore, the Court further extended this right to animals living as prisoners in all zoos across Pakistan, stating that throwing animals behind bars and confining them in environments that are not even remotely like their natural habitat breaks their natural behaviour and undermines their well-being.

Facts

The case was a culmination of three public interest writ petitions, filed under Article 199 of the Constitution of Pakistan 1973 (the “Constitution”),⁵ for the determination of the relationship between animals and human beings. Through this judgment, the Court also dealt with the question of whether animals have basic rights that ought to be regarded. To ensure human survival, the government has a responsibility to defend animal rights.

I. Petition no. 1

A. Kaavan

The first petition was in direct reference to the deplorable conditions of the Islamabad Marghazar Zoo. Particularly, it highlighted the case of Kaavan: “the world’s loneliest elephant,”⁶ who had spent over 36 years as an inmate in a small enclosure in the Marghazar Zoo.

Kaavan’s story started in 1985 when the Government of Sri Lanka gifted him as a one-year-old baby to the State of Pakistan. Originally, Kaavan lived with his female companion, but she died in 2012, and since then, he had been living in isolation, constantly bobbing against the wall of his tiny enclosure to make his plea.

⁵ Article 199 (1) of the Constitution of Pakistan 1973 stipulates the original jurisdiction of the High Courts of Pakistan wherein a petition can be filed before said courts if they are satisfied that no other remedy is provided under the law.

⁶ Nicole Pallotta, “After Groundbreaking Animal Rights Ruling, Islamabad High Court Continues to Affirm Original Decision” (Animal Legal Defense Fund 4 March 2021) <<https://aldf.org/article/after-groundbreaking-animal-rights-ruling-islamabad-high-court-continues-to-affirm-original-decision/>> accessed 12 Oct 2022.

This petition further referred to the conditions of other animals residing in the Marghazar Zoo, which included two brown bears, the marsh crocodile, and other captive non-human beings.

B. The Two Brown Bears⁷

Suzie and Babloo are two brown Himalayan bears in the Marghazar Zoo of Islamabad who, just like Kaavan, had been spending their entire lives in under-equipped tight spaces where the animals’ health, basic hygiene, nutrition, and food were not adequately looked after and were constantly neglected.

C. The Marsh Crocodile⁸

The marsh crocodile, an exotic species, also resided in a confinement where it could hardly move. It had also lived in captivity and shown severe signs of illness.

D. Other Captive Non-Human Beings: Lions, Bird, Wolves, Ostriches etc.

These animals included a lion, an International Union for Conservation of Nature declared vulnerable species on the Red List of threatened species, several birds, wolves, and ostriches confined in inadequately constructed cages.⁹ The interior of the enclosures falls short of the minimum international standards, and the Marghazar Zoo, as a whole, reflects severe neglect as it deprived the animals of exhibiting their basic behavioural, social, and physiological needs.¹⁰

II. Petition no. 2: The Black Bear Case

The second petition was about a rescued black bear kept as a circus animal in deplorable conditions, where he was asked to dance and perform other tricks. Furthermore, the bear had a rope passed through its muzzle, and its teeth had been

⁷ Ali A, “Islamabad Zoo bears Suzie and Babloo arrive in Jordan” (Samaa 17 Dec 2020) <<https://www.samaaenglish.tv/news/2204119>> accessed 12 Oct 2022.

⁸ “Islamabad Zoo Animals Handed over to SWD” (The Express Tribune July 19, 2020) <<https://tribune.com.pk/story/2255686/islamabad-zoo-animals-handed-over-to-swd>> accessed 12 Oct 2022.

⁹ PLD 2021 Isl 6, 16.

¹⁰ PLD 2021 Isl 6, 15.

taken so its human owner could exercise control over him. This case involved a transfer of this black bear from a person named Muhammad Riaz to Farman Ali based on a purported license from the Punjab Wildlife Board. Since this bear was in the territory of Islamabad and was being mistreated purely for entertainment purposes, the Islamabad High Court ordered Farman Ali to produce documentation under the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (the “Wildlife Ordinance of 1979”).¹¹ The Court ordered that Farman Ali must establish that he was legally entitled to the bear. Farman was unable to prove the same and, therefore, the Court ordered that the bear be seized and shifted to the Balkasar Bear Sanctuary.¹²

III. Petition no. 3: The Dog Culling Case

The third petition was about the inhumane culling of dogs in the Islamabad Capital Territory using bullets or poisoned meat. The Court was requested to address the matter and call for more humane ways of dealing with dog culling.

Questions Framed by the Court

Since all the above petitions aimed to address a similar subject matter, the Islamabad High Court combined the same and framed the following issues:

1. What authority is empowered under the law and exercises jurisdiction to administer and manage the Marghazar Zoo’s daily operations?
2. Does an animal enjoy basic rights? If yes, then whether the state and the humans have a responsibility to take care of the welfare of said animals?

The Court’s Answers to the Questions Framed

A poetic prologue: The 67-page judgment, which pronounces upon the three petitions, begins with contemplating the destructive impact of COVID-19 on the lives of human beings. The Court highlighted the fact that the pandemic had

¹¹ Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979, Ss 9, 10.

¹² Abbasi K, “Black Bear, Shifted to Balkasar Sanctuary, Becomes a Mystery” (The News 12 July 2021) <<https://www.thenews.com.pk/print/863067-black-bear-shifted-to-balkasar-sanctuary-becomes-a-mystery>> accessed 12 Oct 2022.

threatened the very existence of the species that topped the food chain and exposed how vulnerable even human beings are because of the same. As a result of COVID-19, the world has shifted into a self-imposed lockdown in order to save itself; holy places all over the world were completely devoid of humans, and what was ironic was how “the race for acquiring superiority in manufacturing weapons to kill and destroy humans has been superseded by a race to develop a vaccine to fight the threatening virus.”¹³ The court beckons this as an opportunity for humans to reflect on their choices and empathise with the pain and suffering of these sentient beings shoved in captivity and silenced for the human race’s momentary entertainment.

The judgment then makes a poetic jump to the question of animals having rights *vis-à-vis* humans’ interdependence on other living beings and jumps to directly answering the questions framed. The Marghazar Zoo was founded in 1978. According to the Capital Development Authority Ordinance 1960 (“1960 Ordinance”), it was initially run and maintained by the Capital Development Authority until 2016, when its operations were transferred to the Metropolitan Corporation Islamabad (the “Corporation”) the same year. The Court notes that when these petitions were filed, it was under the control of the Corporation. However, what was appalling was that the Corporation did not have any resources nor willpower to fulfill its duties in safeguarding the basic rights and general wellbeing of the captive animals. Along with the Corporation, it was the duty of the Federation, more specifically, the Ministry of Climate Change and the Islamabad Wildlife Management Board (IWMB), and these entities were given time to comply with their obligations. The Court then observed something completely unexpected, as only the IWMB and dedicated private individuals were passionate about protecting the welfare of the animals, and for the rest, it was a political contest in order to gain control of the Marghazar Zoo. The Court, on this point, stated:¹⁴

[I]t does not appear to be a priority to take immediate steps to provide the adequate habitat or abode for the behavioural, social and other needs of the animals kept in captivity, nor can sufficient resources be allocated for this purpose. The caged living beings in the Zoo are undoubtedly in pain, distress and agony, definitely disproportionate to the purpose intended. The

¹³ PLD 2021 Isl 6, 3.

¹⁴ PLD 2021 Isl 6, 6.

conditions at the Zoo definitely amount to criminal treatment of living beings.

Therefore, as the Corporation was inefficient in its role, it employed help from the World Wildlife Fund, Pakistan, to submit a report on the current conditions of the Marghazar Zoo. The report stated that 878 animals were forced into captivity in dire and disturbing conditions with utter disregard for their respective habitats necessary for their survival.

Question 1

The Court finds that the Board of Management established under the Wildlife Ordinance of 1979 has jurisdiction over the Zoo, its management, and all other matters pertaining thereto.

The Court delves into an analysis of all the concerned laws and boils down its conclusion to this answer based on two grounds. First, they state that the Corporation does not have express approval from the Federal Government to have authority over the Zoo. Second, it states that special law trumps general law, which is explained in detail later.

Capital Development Authority Ordinance, 1960

The history of this law begins from the point in time when the Islamabad Capital Territory model plan was submitted by Dr. Doxiadis, a renowned international planner, which was approved by the Federal cabinet, and the 1960 Ordinance was promulgated. Under the above-mentioned Ordinance, the Capital Development Authority (“CDA”) was developed to execute the model plan.

However, the management or administration of a zoo by CDA is not contemplated or provided by this Ordinance. On the other hand, the Wildlife Ordinance of 1979 was passed as a special law with the express purpose of establishing a national park in the Islamabad Capital Territory and stipulating the protection, preservation, conservation, and administration of wildlife.

The Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979

The Wildlife Ordinance of 1979¹⁵ covers the whole area of the capital territory of Islamabad. This Ordinance empowered the Federal Government to appoint a board, which was not formed until later in 2014. Additionally, it authorised the Government to demarcate any piece of land as a national park or sanctuary in order to protect its flora and fauna, which it did in the case of the Zoo. Based on this Ordinance, the Zoo was to be protected. However, there is an abject violation by the invasive species, i.e., humans, as they have deprived the wildlife native species of their habitat.

The Islamabad Wildlife (Protection, Preservation, Conservation and Management) Rules, 1983

Empowered under Section 21 of the Wildlife Ordinance of 1979, the Federal Government then decided to draft rules and regulations and notified the same in 1983. These rules define and describe the constitution of the wildlife management board.

Islamabad Capital Territory Local Government Act, 2015

Under this Act, an elected local government system was to be established. As per the Act,¹⁶ a Metropolitan Corporation was to be established, and as per clause 9 of the Ninth Schedule of this Act, the Corporation was given control over the zoo’s operations.¹⁷

However, the Court ruled that the Corporation could not exercise this power without the express approval of the Federal Government, in light of *Mustafa Impex*

¹⁵ The Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979, Ss 2, 4, 9, 21, 26.

¹⁶ Section 2(w) defines the term local government to be either the metropolitan corporation or a union council formulated under this law.

¹⁷ Islamabad Capital Territory Local Government Act 2015, S 8(8): These clauses suggest the local government can hold fairs and shows with cattle and with the approval of the government in charge, aid in the conservation or development of zoological gardens.

v. The Government of Pakistan,¹⁸ which was not provided to the Corporation. Secondly, the Court also ruled that as the Wildlife Ordinance of 1979 was a special law, it therefore trumps any general law, in light of *State Life Insurance v. Mst. Sardar Begum*.¹⁹

For the second issue, the Court answered in the affirmative that animals have the status of sentient beings and, therefore, have rights. The Court begins its analysis by looking at the international precedents of several landmark cases related to animal welfare.²⁰

International Case Law

These cases include the tragic stories of animals who either won their freedom or lost their lives and became eternal symbols for non-humans. Those who won their freedom include the famous story of Sandra, the Orangutan who was declared to have similar rights to those of the human species. Second, Cecilia, a chimpanzee in a zoo, was another animal that had spent 30 years in solitary confinement. However, in her case, it was decided that Cecilia had a right to the same treatment because she was a part of the zoo's community, and the preservation of the natural and cultural patrimony is part of the basic animal right to have a decent and conducive environment. The third landmark case is of Arturo, a polar bear who had also lived most of his life in captivity. Unfortunately, he lost his case and later eventually died. The fourth case was of Morgan, the orca whale. His case was linked to the thirteenth amendment²¹ of the US Constitution, which linked Morgan being captured and forced to live in captivity as being equivalent to slavery.

¹⁸ *Mustafa Impex v. Government of Pakistan* PLD 2016 SC 808.

¹⁹ *State Life Insurance Corporation v. Mst. Sardar Begum* 2017 SCMR 999.

²⁰ Elassar A, “Sandra the orangutan, freed from a zoo after being granted ‘personhood,’ settles into her new home” (CNN Nov 9, 2019) <<https://www.cnn.com/2019/11/09/world/sandra-orangutan-florida-home-trnd/index.html>> accessed Oct 12, 2022; Choplin L, “Chimpanzee Recognized As Legal Person” (Non-Human Rights Blog Dec 5, 2016) <<https://www.nonhumanrights.org/blog/cecilia-chimpanzee-legal-person/>> accessed 12 Oct 2022; “‘Depressed’ Argentina polar bear Arturo dies at 30” (BBC News July 5, 2016) <<https://www.bbc.com/news/world-latin-america-36711345>> accessed Oct 12, 2022; Mountain M, <https://whalesanctuaryproject.org/morgan-orca-tale-betrayal/> (The Whale Sanctuary Project Dec 9, 2017) <<https://whalesanctuaryproject.org/morgan-orca-tale-betrayal/>> accessed 12 Oct 2022.

²¹ The 13th Amendment to the United States Constitution, 1789, provides that “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

Morgan was denied relief solely on the ground that he was not a human being,²² but the judgment did mention that the thirteenth amendment does not say that animals have no legal rights.

The Court further cited several landmark decisions from India. These included a Kerala High Court judgment, which concluded that legal rights are not the sole domain of human beings but should also be extended to other living beings.²³ In an Indian Supreme Court judgment,²⁴ it was held that the right to life under the Indian Constitution also extends to animals. In another case, the Bombay High Court held that “Sundar the Elephant,” who was treated in a cruel manner, be

²² Also See <https://law.justia.com/cases/new-york/appellate-division-first-department/2017/150149-16-162358-15.html> (While it may be arguable that a chimpanzee is not a ‘person’, there is no doubt that it is not merely a thing”), ‘*National Society for the Prevention of Cruelty to Animals v. Minister of Justice and Constitutional Development*’ {[2016] ZACC 46}, <https://www.nonhumanrights.org/client-happy/>. The United States Non-Human Rights Project approach to securing the right to *habeas corpus*, i.e., bodily integrity is linked to the deliverance of a right to legal personhood for animals as if animals can approach the court and ask for any right, not necessarily *habeas corpus*, they would become legal persons. Declaration of animals as legal persons would create a favourable situation for animals; however, the current legislative system would perhaps be unable to deal with the slippery scope of animal legal personhood for other kinds of animals such as farm animals which are objected to the most heinous amount of animal cruelty daily. As a result, the court would never agree to the declaration of animal legal personhood of animals. In the case of Kaavan, a claim of animal legal personhood was never made, but rather he was afforded Islamic animal rights and an extension of the human fundamental right to life.

²³ *N. R. Nair v. Union of India* AIR 2000 Kerala 340 (“Though not homosapiens, they 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”).

²⁴ *Animal Welfare Board of India v. A. Nagaraja*’ (2014) 7 Supreme Court Cases 547 (“When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which it cannot be arbitrarily deprived of, and its rights and privacy have to be respected and protected from unlawful attacks”).

relocated in order to safeguard its welfare.²⁵ The Chhattisgarh High Court has also held that the court acknowledges the need to protect wild animals from being treated in an inhumane manner.²⁶

National Case Law

The Court further analysed various Pakistani judgments and drew wisdom from all of them while answering this question, which are mentioned as follows. In *Muhammad Arif v. S.H.O. City Police*,²⁷ the Lahore High Court granted²⁸ relief in *habeas* petitions to two persons detained along with their cattle. In *Ghulam Asghar Gadehi v. Senior Superintendent of Police Dadu*,²⁹ the High Court of Sindh held that cultural sports such as donkey and bull-cart racing fell under the ambit of “cruelty”³⁰ under the Pakistan Cruelty to Animals Act, 1890 (“PCA Act”).³¹ In the landmark *Houbara Bustard* case³², the August Supreme Court highlighted the nexus between migratory birds and the environment and the right to life of humans.

²⁵ *Dr Manilal V. Valliyate v. The State of Maharashtra* Writ Petition No.2662/2013. There is a nuanced difference between protecting property under public trust versus ensuring environmental preservation. In either case, the specimen is a property and has a limited scope of protection. The public as a collective essentially decides on the rights of the subject in question. Fundamental rights on the other side, assume certain intrinsic rights within a subject, whether property or person. Article 51 (g) of the Indian Constitution states that it is a fundamental duty of Indian citizens to protect, improve, and preserve the natural environment including wildlife. The Supreme Court of India held that Article 51 (g) of the Indian Constitution is the “Magna Carta of animal rights” Due to the lack thereof any constitutional protections for animals and a limited public understanding of the intrinsic rights of animals, thereby making the public trust concept infructuous; a fundamental right approach, which assumed intrinsic rights for animals was an appropriate approach for the effective delivery of rights to Kaavan.

²⁶ *Nithin Singvi v. Union of India*, Writ Petition No.06/2016.

²⁷ *Muhammad Arif v. S.H. O. City Police*, PLD 1994 Lahore 521.

²⁸ The judgment stated “As per Article 4 of the Constitution every citizen has the inalienable right to be treated in accordance with law and no action detrimental to, life, liberty, body, reputation, or property can be taken except in accordance with law. Under Article 24 of the Constitution, no person is to be deprived of his property, except in accordance with law. Equality before law and equal protection of law is guaranteed to every citizen, under Article 25.” If the Constitution is guaranteeing such wide protection to the citizens, why not the same protection to the cattle and animals of the country?”

²⁹ PLD 2018 Sindh 169.

³⁰ Prevention of Cruelty to Animals Act, 1890, s 3. This section defines cruelty to animals and sale of animals killed with unnecessary cruelty.

³¹ This law was developed by the British and has, since 1890, only been prematurely amended once in 2018. The law at face value is highly deficient when it comes to addressing animal cruelty in the 21st century.

³² *Province of Sindh v. Lal Khan Chandio*, PLD 2016 SC 48.

It went on to declare hunting of the Houbara Bustard, a migratory bird, to be banned unless a valid permit license is provided³³. Even though this decision was overturned in review,³⁴ the essence of the original judgment, which was the protection of vulnerable species, was a duty of the state.

The Court further referred to the Universal Declaration of Animal Rights,³⁵ a soft law instrument that recognizes animals as sentient creatures and, therefore, deserving of the right to liberty and to freely live in their natural environment, where they can potentially exhibit their species-specific behaviour.

As enshrined in the preamble of the Constitution and Article 2 thereof, with Islam being the core religion of Pakistan, the Court heavily relied on primary sources from the Quran³⁶ and Sunnah to derive the value of life and animal rights. The Court states:

[L]ife is most important because it is the best creation of Allah, the Creator. ‘Life’ is not restricted to human life but includes all forms of life, whether a breathing animal or a plant. Human has been made superior to other forms because of its cognitive attributes, intelligence and the ability to think and

³³ The court further observed: “The fundamental right to life and to live it with dignity (Articles 9 and 14 of the Constitution) is one lived in a world that has an abundance of all species not only for the duration of our lives but available for our progeny too. It has now been scientifically established that if the earth becomes bereft of birds, animals, insects, trees, plants, clean rivers, unpolluted air, soil it will be the precursor of our destruction/extinction. The United Nations World Commission on Environment and Development, chaired by the former Norwegian Prime Minister Gro Harlem Brundtland, published the report “Our Common Future” in 1987 (also known as the ‘Brundtland Report’) which was the forerunner of innumerable reports and treaties, including CITES and CMS”.

³⁴ *Government of Punjab v. Aamir Zahoor ul Haq* PLD 2016 SC 421.

³⁵ UDAW, “Universal Declaration on Animal Welfare” <https://www.worldanimalprotection.ca/sites/default/files/media/ca_-_en_files/case_for_a_udaw_tcm22-8305.pdf> accessed 12 Oct 2022.

³⁶ The judgment specifically cites the following versus of the Holy Quran “And it is He who has created horses, mules, and donkeys, for you to ride and as an adornment; And he has created other things of which you have no knowledge.” Surah An Nahl 16:8 “We have made animals subject to you, that ye may be grateful.” Surah Al Haj 22:36 “Although there is no animal that walks on earth and no bird that flies on its two wings which is not God’s creature like yourself.” Surah Al-Anam 6:38 “Seest thou not that it is Allah whose praise all beings in the heavens and on earth do celebrate, and the birds (of the air) with wings outspread? Each one knows its own (mode of) prayer and praise, and Allah knows well all that they do.” Surah An-Noor 24:41 “transgress not in the balance, and weigh with justice, and skimp not in the balance...earth, He set it down for all beings.” Surah Ar Rahman 55:8–10.

reason. The other forms of life are not inferior but each have a specific and distinct purpose.³⁷

In order to come to a conclusion, the Court looks at the PCA Act,³⁸ which shows that the notion of animals not being subject to unnecessary pain and suffering has a very wide meaning and scope. The Court eloquently links the above argument to zoos and states:³⁹

[W]ith the advancement of technology, there are far better and more informative opportunities to observe and gain knowledge about the animal species. Above all, and as already held, the Zoo definitely does not provide facilities nor has the resources to be able to provide for the behavioral, social and physiological needs of the animals, who have been deprived of their natural habitats and have been kept in shockingly deplorable conditions. This Court, therefore, has no hesitation in declaring that the animals in the Zoo have been subjected to unnecessary pain and suffering.

It then refers to the Pakistan Penal Code,⁴⁰ specifically Sections 428⁴¹ and 429,⁴² in making an argument that as zoo animals are public property, they are protected under these provisions if the ingredients of the above-stated provisions stand fulfilled.

Lastly, the Court connects Article 9⁴³ of the Constitution,⁴⁴ on the human right to life, with dependency on plants and animals. The Court places additional reliance on the United Nations’ warnings that failure to protect wildlife can cause irreversible damage to our ecosystem, and as a result, humans could face extinction.

³⁷ PLD 2021 Isl 6, 47–48.

³⁸ Prevention (n 30); Section 2(1) defines an 'animal' and Section 3 penalises cruelty to animals.

³⁹ PLD 2021 Isl 6, 53.

⁴⁰ Pakistan Penal Code, 1860, s 428.

⁴¹ Ibid s 425 of the Code defines mischief.

⁴² Ibid s 429.

⁴³ Constitution of Pakistan 1973, Article 9.

⁴⁴ The August Supreme Court in the case titled *Ms. Shehla Zia v. WAPDA* PLD 1994 SC 693 has observed and held that the word life is very significant because it covers every facet of human existence. “Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.” An animal’s right to life includes meeting its behavioural, social, and physiological needs.

Therefore, “The welfare, wellbeing and survival of the animal species is the foundational principle for the survival of the human race on this planet. Without the wildlife species, there will be no human life on this planet.”⁴⁵

Thus, to conclude, the interrelationship of humans and non-humans creates constitutional obligations on the state and its authorities to protect animals against cruel and illegal treatment and provide them with a natural habitat by virtue of their sentient status.

Analysis

Although the idea of sentience is not a new one, the acknowledgement of legal status for animals is rather new. Accordingly, this analysis will focus on the notion of sentience and its impact on all animals.

The judgment begins by answering the question of whether animals have legal rights in the affirmative while further labelling animals as inmates in the zoo and illustrating that a zoo, despite being very well-equipped, is still a concentration camp for these sentient beings.

The Court’s decision used wording referring to an animal’s right to an environment that can meet their physiological, social, and behavioural needs. The then Chief Justice of the Islamabad High Court, Justice Athar Minallah, determined that since animals are sentient beings with rights of their own, depending on their nature and particular requirements, they have a right to an environment that supports their development and overall well-being.

What is crucial to note is that, even outside of the Islamabad High Court’s legal jurisdiction, Justice Minallah went ahead and extended his criticism not just at the Marghazar Zoo but to all zoos that confine animals in conditions asymmetrical to their natural habitats, which ends up preventing an animal from exhibiting its normal behaviour.

⁴⁵ PLD 2021 Isl 6, 55–56.

In July 2020, the Islamabad High Court further issued a follow-up judgment that provided an update on the relocation of Kaavan to Cambodia and other animals to various sanctuaries.⁴⁶ What is remarkable to note is that the Government of Pakistan had fully endorsed the Court’s previous judgment and had initiated the procedure for the relocation of animals. This is significant because various court judgments in Pakistan, which set up foundational jurisprudence regarding particular issues, remain unimplemented and, therefore, only retain symbolic value.⁴⁷

While this judgment is legally enforceable in the Islamic Capital Territory, it can serve as a persuasive precedent for other jurisdictions in Pakistan. It has also created an international example of Pakistan as a pro-animal welfare country, similar to the EU countries, the UK, and Switzerland, which can fuel the desires of other nations, especially underdeveloped ones, to become advocates for animal welfare.

Why Was the Enlargement of the Scope of Fundamental Rights Necessary?

The PCA Act, a colonial relic, was originally designed to reduce unnecessary pain or suffering for farm or street animals. It was never designed to cover zoo animals. Section 2 of the Act defines animals to only include domestic or captured animals, and the punishments prescribed from Section 3 to 5 have a threshold of unnecessary pain or suffering. The term unnecessary pain or suffering is not defined under the Act, leaving it to the discretion of the government or concerned officials. In the case of Kaavan, who was subjected to solitary confinement in 2012 after the loss of his companion, mental and emotional suffering were never prescribed under the PCA Act. In 2020, the Punjab Government even tried to bring in additional

⁴⁶ Order Sheet in The Islamabad High Court, Islamabad (Judicial Department) C.M. No. 1630 Of 2020 In W.P. No. 1155/2019.

⁴⁷ An example of this would be the history of Article 251 of the Constitution of Pakistan and the Supreme Court judgment titled: *M. Kowkab Iqbal v. Govt. of Pakistan through Secretary Cabinet Division, Islamabad*, PLD 2015 SC 1210. This judgment attempted to implement Article 251 which was brought into force in 1973 and had to be implemented in 15 years, i.e., by 1988, whereas the above judgment was delivered in 2015, i.e., 45 years after 1973. It can still be debated whether Article 251 has actually been fully implemented or not.

elephants, but given the deplorable condition of animals at the Lahore Zoo, the move was never realised.⁴⁸

The PCA Act only covers physical suffering, and that too when it crosses the discretionary threshold of unnecessary pain and suffering; thereby, such an act could never do complete justice to the suffering of Kaavan and his fellow inmates at the zoo. Therefore, the rather expansive fundamental rights approach was an appropriate step in advancing the rights of animals through the human right of public health. The fundamental rights enshrined under the Constitution are an anthropocentric framework and offer direct protection to humans alone. However, given Islam is a part of the Constitution and animal cruelty violates Islamic principles and the human right to life, the Court was correct in its approach to enlarge the scope of fundamental rights.

The Supreme Court, in its seminal judgment, *Shehla Zia v. WAPDA*,⁴⁹ held that the right to life or the word “life” must be construed broadly and that it covers all facets of human existence. In *Kamil Khan Mumtaz v. Province of Punjab*,⁵⁰ the Lahore High Court distinguished the broad meaning given by the superior judiciary to the right to life guaranteed by Article 9 of the Constitution in the following terms:

[T]he expression 'life' has, likewise, received an expansive meaning at the hands of the superior courts in Pakistan and includes the right to protection against adverse effects of electromagnetic fields (*Shehla Zia case* PLD 1994 SC 693); the right to pure and unpolluted water (*Salt Mines Union case* 1994 SCMR 2061); the right of access to justice (*Azizullah Memon case* PLD 1993 SC 341; *Al-Jehad Trust case* PLD 1997 SC 84; and *Khan Asfandyar Wali v. Federation* PLD 2001 SC 607, 924).

By indoctrinating the elements of Islam, which extensively grants rights to both animals and nature, the now enlarged scope of the right to life is closely

⁴⁸ Asif R, ‘Zoo Struggles to Import Elephants Following Ban’ (*The Express Tribune*, 7 Sep 2019) <<https://tribune.com.pk/story/2051199/zoo-struggles-import-elephants-following-ban>> accessed 9 Mar 2024.

⁴⁹ PLD 1994 SC 693.

⁵⁰ PLD 2016 Lahore 699.

inching towards the interconnection of human welfare with animal and environmental welfare. This is referred to as the One Health principle.⁵¹

Animals in Islam

God created Earth for all beings, and he placed a duty of trusteeship on all humans to make sure they keep the planet in their trust. Anyone who violates this trust will bear the burden of disbelief.

“[H]e laid out the earth for all beings” (Quran 55:10).

“It is He Who made you vicegerents in the earth. So, whoever disbelieves will bear the burden of his unbelief” (Quran 35:39).

The Quran mentions animals as communities, just like Muslims: “There is not an animal that lives on the earth, nor a being that flies on its wings, but they form communities like you. Nothing have we omitted from the Book, and they all shall be gathered to their Lord in the end” (Quran 6:38).

The word community translates to the term *Ummah*, which means the community for whom the religion is made. The Quran also mentions that animals have a form of prayer as well: “Do you not see that Allah is glorified by all those in the heavens and the earth, even the birds as they soar? Each ‘instinctively’ knows their manner of prayer and glorification. And Allah has ‘perfect’ knowledge of all they do” (Quran 24:41).

While we, as humans, cannot understand animal speech, they do have a specific method of prayer. The form of a horse or a giraffe bowing down on its knees symbolises the prayer Muslims make five times a day. The Quran designates a punishment for animal cruelty as well as a reward for being kind to them. The following Hadith relate to this matter:

⁵¹ ‘One Health Definitions and Principles’ (*World Health Organization*) <<https://www.who.int/publications/m/item/one-health-definitions-and-principles>> accessed 9 Mar 2024.

[W]hoever is kind to the creatures of God, is to himself. There is no man who kills {even} a sparrow or anything smaller, without its deserving it, but God will question him about it (Hadith, Bukhari).

The Prophet cursed the one who treated animals harshly. Whoever treats harshly a living being and then does not repent, God will treat him just as harshly on judgment day (Hadith, Bukhari).

Similarly, all events of animal cruelty are recorded, and animals will be given a chance to make their statements on the day of judgment. It is an Islamic belief that all Muslims will eventually die and be resurrected on the day of judgment, where all their actions will be judged for their entry into heaven or hell. Heaven or hell is a constant mention in all Abrahamic religions.

One Health in Islam:

Islam, in all its forms, is a religion of peace for all life, be it humans, animals, or the environment. The Quran has laid down the following:

[I]t is Allah who made for you the earth a place of settlement and the sky a ceiling and formed you and perfected your forms and provided you with good things. That is Allah, your Lord; then blessed is Allah, Lord of the worlds (Quran 40:64).

And He has cast into the earth firmly set mountains, lest it shift with you, and [made] rivers and roads, that you may be guided (Quran 16:15).

Indeed, we offered the Trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it. Indeed, he was unjust and ignorant (Quran 33:72).

Do not strut exultantly on the Earth. You will never split the Earth apart nor will you rival the mountains in stature (Quran 17:37).

Allah also says, ‘Indeed, the creation of heaven and Earth is greater than the creation of humankind, but most people do not know it (Quran 40:57).

God mentions in the Quran that he created Earth for all life and placed it in the form of a trusteeship to humans. However, man has transgressed, which is evident from the amount of climate change and natural disasters occurring in the era of the Anthropocene.

Conclusion

The aftermath of this judgment led to several positive developments for the animals of Pakistan. First, it was the closure of the Marghazar Zoo; second, the relocation of Kaavan to Cambodia in an elephant sanctuary; third, the relocation of Suzie and Babloo to Balkasar Bear sanctuary; fourth, the relocation of the marsh crocodiles; and finally, but significantly, Pakistan taking the first positive step in making this country a safe place for animals.

With Kaavan becoming a symbol of hope for all animals, Pakistan, despite being an underdeveloped country in comparison to Europe and the West, has established itself as one of the forerunners of animal welfare and, eventually, animal rights. However, this is merely the starting line of a very arduous long race, and Pakistan has made its first step towards recognising animal sentience.⁵²

⁵² This case has been cited in the following Lahore High Court cases, thereby extending its evidentiary value in the case of animal rights in Pakistan: *Mr. Faizullah Khan Niazi v. Express Entertainment* (Pakistan Regulatory Media Authority) F. No. 14(02)/RO-LHR/106/36309 Of 2021. *Zawar Hussain v. Province of Punjab* PLD 2022 Lahore 445, *Sanita Gulzar v. Province of Punjab* Lahore W.P No. 30173 of 2021.