

COURT OF APPEALS OF THE STATE OF NEW YORK

In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus and Order to Show Cause,

THE NONHUMAN RIGHTS PROJECT, INC., on behalf
of HAPPY,

Petitioner-Appellant,

-against-

JAMES J. BREHENY, in his official capacity as the
Executive Vice President and General Director of Zoos and
Aquariums of the Wildlife Conservation Society and
Director of the Bronx Zoo, and WILDLIFE
CONSERVATION SOCIETY,

Respondents-Respondents.

APL 2021-00087

App. Div. Case No.: 2020-
02581

Index No.: 260441/2019
(Bronx County)

**NOTICE OF MOTION
OF K. S. PANICKER
RADHAKRISHNAN
FOR LEAVE TO FILE
BRIEF AS *AMICUS
CURIAE* IN SUPPORT
OF PETITIONER-
APPELLANT**


PLEASE TAKE NOTICE that, upon the annexed affirmation of Isha Jain, dated April 8, 2022, and the papers attached thereto, the undersigned will move this Court on behalf of K.S. Panicker Radhakrishnan for an order granting his motion for leave to file the attached brief as *Amicus Curiae* in support of the Petitioner-Appellant Nonhuman Rights Project, Inc. (“NhRP”) in the above-captioned proceedings.

PLEASE TAKE FURTHER NOTICE, that the motion is returnable at 10 o’clock in the forenoon on April 18, 2022, which is at least 9 days from the date of service of these papers. Parties are hereby advised that arguments will be on the papers and no appearance is required or permitted. Parties are further advised that

answering papers, if any, must be served and filed in the Court of Appeals with proof of service on or before the return date of this motion.

Dated: April 8, 2022

Respectfully submitted,

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COURT OF APPEALS OF THE STATE OF NEW YORK

In the Matter of a Proceeding under Article 70 of the CPLR
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APL-2021-00087

App. Div. Case No.: 2020-
02581

Index No.: 260441/2019
(Bronx County)

**AFFIRMATION OF ISHA
JAIN IN SUPPORT OF
MOTION OF K.S.
PANICKER
RADHAKRISHNAN FOR
LEAVE TO FILE BRIEF
AS *AMICUS CURIAE* IN
SUPPORT OF
PETITIONER-
APPELLANT**

I, Isha Jain, hereby affirm under penalty of perjury:


1. I am an attorney duly admitted to practice in the courts of the State of New York. I submit this affirmation on behalf of K.S. Panicker Radhakrishnan in support of his motion for leave to file the attached brief as *Amicus Curiae* in support of the Petitioner-Appellant Nonhuman Rights Project, Inc. (“NhRP”) in its appeal before this Court in the above-captioned proceedings. I am not a party to this proceeding, nor do I represent any of the parties to it.

2. Pursuant to Rule 500.23 of the Rules of Practice of this Court, the proposed *Amicus Curiae* brief has identified arguments that might otherwise escape the Court's consideration and would be of assistance to the Court.
3. No party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner.
4. Amicus has not submitted a brief in this case prior to this one.
5. The Petitioner-Appellant funded the costs of printing, filing, and serving the brief and motion in support. No other person or entity, other than movants or movants' counsel, contributed money that was intended to fund preparation or submission of the brief.

WHEREFORE, I respectfully request that this Court enter an order: (i) granting Amicus' motion for leave to file the annexed brief; (ii) accepting the brief that has been filed and served along with this motion, and; (iii) granting such other and further relief as this Court deems just and proper.

Dated: April 8, 2022

Respectfully submitted,

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BRIEF

Court of Appeals
of the
State of New York

In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus and Order to Show Cause,

THE NONHUMAN RIGHTS PROJECT, INC., on behalf of HAPPY,

Petitioner-Appellant,

– against –

JAMES J. BREHENY, in his official capacity as Executive Vice President and
General Director of Zoos and Aquariums of the Wildlife Conservation Society
and Director of the Bronx Zoo and WILDLIFE CONSERVATION SOCIETY,

Respondents-Respondents.

**BRIEF FOR *AMICUS CURIAE* K.S. PANICKER RADHAKRISHNAN
IN SUPPORT OF PETITIONER-APPELLANT**

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STATEMENT OF RELATED LITIGATION

Pursuant to Rule 500.13(a) of the Rules of Practice of the Court of Appeals of the State of New York, Amicus states that, as of the date of the completion of this Brief, there is no related litigation pending before any court.

STATEMENT OF AMICUS CURIAE

Pursuant to Rule 500.23(a)(4)(iii) of the Rules of Practice of the Court of Appeals of the State of New York, Amicus states that no party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner. Petitioner-Appellant the Nonhuman Rights Project Inc. contributed money that was intended to fund preparation and submission of the brief. No person or entity, other than Petitioner-Appellant or Petitioner-Appellant's counsel, contributed money that was intended to fund preparation or submission of the brief

I. STATEMENT OF INTEREST OF *AMICUS CURIAE*

This *amicus curiae* brief is submitted in support of the habeas corpus petition filed on behalf of Happy the elephant, who is being held captive at the Bronx Zoo under conditions that violate her fundamental rights to life, liberty, and bodily integrity.

Amicus Justice K.S. Radhakrishnan is a former judge of the Supreme Court of India. As a Supreme Court judge, he decided the landmark animal rights case *Animal Welfare Board of India v. A. Nagaraja* (2014). The case concerned the practice of “Jallikattu,” a bull-racing event in which bulls were physically and mentally tortured by participants and onlookers. In his decision banning the practice, Justice Radhakrishnan recognized that all animals have a fundamental right to live with honor and dignity. The *Nagaraja* case has since been widely relied on by Indian Courts to develop India’s animal rights jurisprudence.

II. SUMMARY OF THE ARGUMENT

This brief proceeds in three sections. The first section explains the relevance of Indian law to this petition, highlighting the constitutional and common law traditions shared by India and the United States. The second section summarizes Indian law on the rights of non-human persons and, in particular, elephants. This section traces the development of animal rights jurisprudence in India beyond the limited scope of constitutional and statutory texts. The third and final section

identifies three jurisprudential bases for Happy’s rights: natural law, environmental principles, and customs and usages.

III. ARGUMENT

1. Relevance of Indian law

a. Shared common law tradition

Indian law traces its roots to the English common law tradition. Where Constitutional and Statutory texts are silent or unclear, Indian Courts develop and clarify the law through judicial decisions. In this way, Indian Courts have recognized and enforced the fundamental rights of non-human animals. Since the United States and New York Courts follow a similar common law tradition, this Court may find Indian jurisprudence instructive.

b. Shared Constitutional guarantees

The Indian Constitution recognizes the rights to life and personal liberty as fundamental.¹ Judicial interpretation of these Constitutional guarantees has resulted in their extension to non-human animals, including elephants. Since the United States and New York Constitutions recognize similar rights, this Court may find Indian Courts’ interpretation of these rights instructive. In India, the writ of *habeas*

¹ Constitution of India, Article 21 (“No person shall be deprived of his life or personal liberty except according to a procedure established by law”). Article 21 is in Part III of the Constitution, titled “Fundamental Rights.”

corpus issues precisely for the protection of these rights.² Indeed, the Indian Supreme Court has recognized that India’s *habeas corpus* jurisprudence is similar to the United States’ in that it extends “beyond the orbit of release from illegal custody, into every trauma and torture on persons in legal custody.”³

c. Asian legal traditions should inform Happy’s rights

Happy is an Asian elephant, native to South and Southeast Asia. It is therefore only proper that her rights be determined with reference to her native legal traditions, which include Indian laws, customs, and practices.

2. Summary of Indian law

a. Constitutional law

Part III of the Indian Constitution lists the fundamental rights guaranteed by the Constitution. These rights are sacrosanct, and any law inconsistent with these rights is void.⁴ Article 21 contains the most foundational fundamental right: the right to life and personal liberty. Article 21 dictates that “[n]o person shall be deprived of his life or personal liberty except according to a procedure established by law.”

The Indian Supreme Court has interpreted this right to extend to all species, including non-human animals.⁵ As it applies to non-human animals, the right to life

² *Ummu Sabeena v. State of Kerala and Others* (2011) 10 SCC 781, ¶ 15.

³ *Prem Shankar Shukla v. Delhi Admn* (1980 3 SCC 526), ¶ 11.

⁴ Indian Constitution, Art. 13.

⁵ *Animal Welfare Board of India v. A. Nagaraja and Others* (2014) 7 SCC 547, ¶ 62; *Centre for Environment Law v. Union of India* (2013 SCCOnline SC 345), ¶ 41.

guarantees “more than mere survival or existence or instrumental value for human-beings.”⁶ Instead, it secures their right “to lead a life with some intrinsic worth, honour and dignity.”⁷

Article 51A of the Indian Constitution lists the “fundamental duties” of all Indian citizens. While these duties are non-binding, they meaningfully inform the interpretation of other constitutional and statutory provisions and provide direction for the development of the common law.

Article 51A(g) and (h) impose on Indian citizens the duties to “protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures” and “develop the scientific temper, humanism and the spirit of inquiry and reform.” Together, these form the “magna carta” of animal rights in Indian constitutional jurisprudence.⁸

b. Statutory law

India also has several statutes that create limited protections for domestic and wild animals, including the Prevention of Cruelty to Animals Act, 1960 and the Wild Life (Protection) Act, 1972. However, these statutes merely regulate the capturing and killing of animals without creating substantive, enforceable rights for them. For this reason, Indian Courts have developed the common law to recognize and enforce

⁶ Animal Welfare Board of India v. A. Nagaraja and Others (2014) 7 SCC 547, ¶ 62.

⁷ Id.

⁸ Id. at ¶ 66.

the fundamental rights of animals. While these rights reflect the *principles* of the Indian Constitution and animal welfare statutes, they necessarily go beyond the plain text of these instruments.

c. Common law

Indian common law has developed to (i) recognize the Court's jurisdiction over animal rights issues, (ii) emphasize the importance of adopting an ecocentric approach to animal rights issues, and (iii) identify specific rights that non-human animals enjoy.

i. Jurisdiction

Indian Courts have applied the doctrine of *parens patriae* (parent of the people) to assume jurisdiction over cases involving the violation of the rights of non-human animals. Since animals are unable to protect themselves against humans, the Courts have a duty to protect animal rights.⁹

Several Courts have also explicitly recognized the legal personhood of animals, and in turn acknowledged their capacity to hold rights, duties, and liabilities.¹⁰ In order for animals to realize these rights in practice, the Courts have

⁹ Id. at ¶ 26; *Salim v. State of Uttarakhand* (2017 SCC OnLine Utt 367), ¶ 19; *Saddam v. Union of India* (2020 SCC OnLine Del 386), ¶ 10.

¹⁰ *Salim v. State of Uttarakhand* (2017 SCC OnLine Utt 367), ¶ 19; *Narayan Dutt Bhatt v. Union of India* (2018 SCC OnLine Utt 645), ¶ 99; *Karnail Singh v. State of Haryana* (2019 SCC Online P&H 704), ¶ 29.

designated citizens of the relevant States as *loco parentis* of the animal kingdom, having legal authority to represent and protect animals' interests.¹¹

ii. Ecocentrism

The Indian Supreme Court has emphasized that its examination of animal rights issues must be ecocentric, focusing on the best interests of the animal in question.¹² This is particularly the case for endangered species,¹³ such as Happy's.¹⁴

iii. Specific rights

Over the years, Indian Courts have recognized several rights that inhere in non-human animals, irrespective of whether these rights are statutorily recognized. These include the rights of all animals to live with honour and dignity;¹⁵ of birds to move freely and fly in the sky;¹⁶ the right of cattle not to be deprived of bodily liberty except in accordance with law.¹⁷

¹¹ Id.

¹² Centre for Environment Law v. Union of India (2013 SCCOnline SC 345), ¶ 40; Animal Welfare Board of India v. A. Nagaraja and Others (2014) 7 SCC 547, ¶ 48; Saddam v. Union of India (2020 SCC OnLine Del 386), ¶ 11; People for the Ethical Treatment of Animals v. State of Maharashtra (Bom HC WP 2662 of 2013), ¶ 22.

¹³ Centre for Environment Law v. Union of India (2013 SCCOnline SC 345), ¶ 40.

¹⁴ <https://www.worldwildlife.org/species/asian-elephant> (classifying the Asian elephant as “endangered”).

¹⁵ Animal Welfare Board of India v. A. Nagaraja and Others (2014) 7 SCC 547, ¶ 62.

¹⁶ Abdulkadar Mohamad Azam Sheikh v. State of Gujarat (2011 SCC OnLine Guj 2603), para 8.08, 8.11; Mohazzim.

¹⁷ Mahisagar Mataji Samaj Seva Trust v. State of Gujarat (2012 SCC OnLine Guj 1648).

With respect to elephants, Courts have recognized they are highly intelligent animals with correspondingly complex needs.¹⁸ Courts have further recognized that elephants have the right to live in their natural habitat,¹⁹ have access to large spaces for living, walking, and grazing,²⁰ and be in the company of other animals.²¹

3. Jurisprudential bases for Happy's rights

In the absence of written constitutional or statutory guarantees, I consider there to be three common law bases for this Court to recognize and enforce Happy's Rights: (a) Natural law; (b) Environmental protection principles; and (c) customs and usages.

a. Natural law

Natural law, which comprises fundamental principles of science and morality, precedes and supersedes man-made law as it may apply to non-human animals. Indian Courts have repeatedly recognized that animals' rights to life and liberty are "basic"²² or "fundamental"²³ rights that inhere in animals by virtue of their "natural

¹⁸ *People for the Ethical Treatment of Animals v. State of Maharashtra* (Bom HC WP 2662 of 2013), ¶ 23.

¹⁹ *Id.*

²⁰ *Saddam v. Union of India* (Del, 2020) (2020 SCC OnLine Del 386), ¶ 9.

²¹ <https://www.barandbench.com/news/litigation/elephants-belong-to-forest-not-temple-karnataka-high-court>.

²² *Subhas Bhattacharjee v. State of Tripura* (2019 SCC Online Tri 441), ¶ 129.

²³ *Animal Welfare Board of India v. A. Nagaraja and Others* (2014) 7 SCC 547, ¶ 66.

characteristics.”²⁴ Thus, natural law can be incorporated into the common law as a source of animal rights.

b. Environmental principles

International and transnational law has generated fundamental environmental principles that are well-suited to incorporation within the common law. For instance, the Indian Supreme Court has found that the principle of “public trust” requires the State to hold land and natural resources for the benefit of the public, including non-human animals.²⁵

Similarly, Indian jurisprudence has incorporated the widely recognized “precautionary principle” to pass pre-emptive orders necessary to protect the elephant population from potential degradation of their habitat.²⁶

c. Customs and usages

In India, which forms part of Happy’s native region, Elephants are recognized as environmentally and spiritually significant. Indian Courts consider this cultural significance relevant in the conferral of legal personhood on non-human entities. For instance, the Uttarakhand High Court has recognized the Yamuna and Ganga rivers

²⁴ *Saddam v. Union of India* (2020 SCC OnLine Del 386), ¶ 11.

²⁵ *Centre for Environment Law v. Union of India* (2013 SCCOnline SC 345), ¶ 41.

²⁶ *Hospitality Association of Mudumalai v. Defence of Environment and Animals* (SC, CA nos. 3438-3439 of 2020), ¶ 40.

as legal persons in light of their spiritual and practical significance to the local communities they sustain.²⁷

The Indian Supreme Court has acknowledged that elephants are a “keystone species” of immense importance to the environment: they clear the forest, disperse seeds, nourish the earth with their dung, and serve as prey for apex predators.²⁸ More generally, India has a rich and longstanding tradition of protecting and recognizing the rights of non-human animals. Rock edicts from the Maurya dynasty that ruled during the third century BC articulate the basic rights of animals.²⁹ More recently, the Indian Supreme Court has recognized that the elephant is “a figure of traditional cultural relevance.”³⁰

These customs and usages from Happy’s native region may inform this Court’s determination of her rights.

IV. CONCLUSION

Indian common law has developed to recognize the basic rights of non-human animals, notwithstanding the absence of these rights in India’s Constitutional and statutory texts. These rights have been located in natural law, environmental

²⁷ *Salim v. State of Uttarakhand* (2017 SCC OnLine Utt 367), ¶ 17.

²⁸ *Hospitality Association of Mudumalai v. Defence of Environment and Animals* (SC, CA nos. 3438-3439 of 2020), ¶ 34.

²⁹ B.Reich, *To Uphold the World: The message of Ashoka & Kautilya for the 21st century*, 191-92 (2008).

³⁰ *Hospitality Association of Mudumalai v. Defence of Environment and Animals* (SC, CA nos. 3438-3439 of 2020), ¶ 5.

principles, and customs and usages. The most fundamental of these rights are the rights to life and liberty. Happy's solitary and unnatural confinement in a small, concrete space deprives her of these fundamental rights. The common law is sufficiently flexible and progressive to remedy this deprivation.

Dated: April 8, 2022

Respectfully submitted,

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³¹ Thanks are owed to Sahana Ramdas and Sonia Shad for assisting with research for this brief.

**NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE**

Pursuant to the Rules of the Court of Appeals (22 NYCRR) §§ 500.1 (j), 500.13 (c) (1) and (3), and 500.23 (a) (1) (i), I hereby certify that:

Word-Processing System. The foregoing brief was prepared on a computer using Microsoft Word.

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Line spacing: Double

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Dated: April 8, 2022


Isha Jain