

Animals are not Ours to Abuse: A Step towards Acknowledging Animals Rights

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Abstract

Historically, there have been various different views regarding animal rights. For e.g., the Pythagoreans (6th–4th century BCE) and the Neoplatonists (3rd–6th century CE) urged respect for animals' interests, primarily because they believed in the transmigration of souls between human and animal bodies; Hermogenianus, the roman jurist (3rd-4th century CE) wrote, 'Hominum causa omne jus constitutum' (All law was established for men's sake) and Salmond also declared, 'The law is made for men and allows no fellowship or bonds of obligation between them and the lower animals'. This shows that the animals for a very long time have not been considered as legal persons but merely as living objects. However, the perspective now also has little changed. And according to the modern view, it is believed that non-human animals have certain basic interests which should be considered, recognised and protected. India's first step to promote the animal protection and animal welfare started by legislating the Prevention of Cruelty to Animals Act in the year 1960 (also called PCA Act, 1960). Although, no amendment has been made in this Act since then, yet the progress did not stop here. Significant development has been made with the help of intervention of judiciary with regard to the animal protection and animal welfare. Those dedicated to the cause of animal welfare have perceived an urgent need to raise general awareness about the rights of animals and to increase the stigma that is attached to acts of animal cruelty, so as to make such practices socially unacceptable.

Keywords: Animals, rights, objects, legal, protection, development, judiciary, welfare, cruelty, awareness

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INTRODUCTION

Earth is the pool of limited resources. Therefore, every species on this planet earth is important. And it is evident that it is because of human activities that our environment is getting depleted. It can also be seen that human beings have always considered themselves as a superior species. The presumption that the humans are superior to any other species leads to misuse and ill treatment of the other creatures. This project deals with the animal rights and also that till what extent do humans have responsibility towards non-human animals. Also, do animals have moral status and any rights and if yes, how is it being affected by human beings? From time and again, the courts have acknowledged the rights of the animals. And the biggest step taken towards it was when the court stated the sports like "Jallikattu" in

Tamil Nadu and "Bullock-Cart Races" in Punjab and Maharashtra were banned. Most animal welfare organisations and other movements find their central theme in the statement quoted by Jeremy Bentham, wherein he argued that the question is not 'can they reason? Nor, can they talk? But, can they suffer [1]'?

This study holds its importance in stating the current perspective of animals' rights and its importance, so as to understand its status and bringing in laws to further improve the condition of animals.

SCOPE OF THE RESEARCH

- To look into the stages of development in the field of International Environmental Law and the freedoms available to the animals.

- To investigate the rights of performing animals.
- Also, this study investigates problems like speciesism and doctrine of necessity.

ANTHROPOCENTRIC APPROACH VS. ECOCENTRIC APPROACH

All species co-exist in an ecosystem. Their existence is interdependent on one another. Therefore, even the extinction of a single species may affect large number of other species, leaving the whole ecosystem disturbed. Therefore, there is the need to protect every species on this planet earth. Even though there are number of proposed treaties to deal with the aspect of animal welfare, but it is unfortunate that there is no international agreement, yet that ensures the welfare and protection of all the animals.

This is merely because humans have always considered themselves as a predominant and more advanced species. But it cannot be said that no development has been made in the environmental law. It is observable that there has been a slow shift from the anthropocentric approach to more of an eco-centric approach in the evolution of the international environmental law.

STAGES IN DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW

Human Self-Interest, Reason for Environmental Protection: 1st Stage

This stage begun by recognition that the conservation of environment was in the common interest of all mankind. The man took steps for the protection of environment for his own self-interest. Some of the legislations drafted at this point of time include:

- Convention for the Protection of Birds Useful to Agriculture [2]; the main objective of this convention was to preserve and protect only those birds which are useful in agriculture [3].
- Convention for the Regulation of Whaling; the objective of this convention was ensuring the protection of the whaling industry instead of conserving or protecting the species of whales [4].

- The main objective of execution of such treaties was the assertion of an unlimited right to exploit natural resources.

Sustainable Development and Treaties for Future Generation: 2nd Stage

This stage saw the extension of treaties beyond the requirements of the present generation to also meet the needs of future generations of human beings. This shift signalled a departure from the pure tenets of anthropocentrism. Some of the documents expressed this shift in terms of sustainability and sustainable development [5].

Nature's Own Rights: 3rd Stage

Recent multinational instruments have asserted the intrinsic value of nature. Based on eco-centric principles, rights of animals have been recognised in various countries. Protection of animals has been guaranteed by constitution of Germany by the way of an amendment in 2002 when the words “and the animals” were added to the constitutional clauses of that obliges “state” to respect “animal dignity”.

Therefore, the dignity of the animals is constitutionally recognised in that country. German Animal Welfare Law, especially Article 3 provides far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, and Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners' fundamental rights to property and the animals' interest in freedom from unnecessary suffering or pain, damage and fear. The Animals Welfare Act of 2006 (UK) also confers considerable protection to the animals from pain and suffering.

The Austrian Federal Animal Protection Act also recognises man's responsibilities towards his fellow creatures and the subject “Federal Act” aims at the protection of life and well-being of the animals [6].

BRAMBELL'S FIVE FREEDOMS

Animal welfare is a complex and multi-faceted subject with scientific, ethical, economic, cultural, social, religious and political dimensions [7]. According to the OIE Terrestrial Code, animal welfare means 'the physical and mental state of an animal in relation to the conditions in which it lives and dies' [8].

In 1965, the British Government commissioned an investigation into the welfare of farmed animals and thereafter proposed that all animals should have freedom to stand up, lie down, turn around, groom themselves and stretch their limbs and these became as the "Five Freedoms" [9] (Farm Animal Welfare Council, 2009). In 1993, the United Kingdom Farm Animal Welfare Council (FAWC) decided that the original definitions concentrated too much on space requirements and on the comfort-seeking aspects of behaviour, to the exclusion of other relevant elements of animal welfare such as good food, good health and safety [10].

Expanded Five Freedoms Now Established by the FAWC

The expanded Five Freedoms now established by the FAWC are:

- Freedom from hunger and thirst: by ready access to fresh water and a diet designed to maintain full health and vigour.
- Freedom from discomfort: by the provision of an appropriate environment including shelter and a comfortable resting area.
- Freedom from pain, injury or disease: by prevention or through rapid diagnosis and treatment.
- Freedom to express normal behaviour: by the provision of sufficient space, proper facilities and company of the animal's own kind.
- Freedom from fear and distress: by the assurance of conditions that avoid mental suffering.

In Indian context, these five principles are enshrined in section 3 and 11 of PCA Act [11]. According to section 3, it is duty of every person having the care or charge of any animal

to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering [12]; And section 11 is the provision which talks about treating animals cruelly [13].

Section 11 of the PCA is the main section which punishes instances of cruelty by listing specific offences. It renders beating, kicking, over-riding, over-driving, over-loading, torturing, which causes unnecessary pain or suffering to any animal punishable [14].

The Orissa High Court interpreted this section in *Bali Parida v. Nira Parida* [15] to mean that beating an animal as such is not punishable under section 11(1) of the Act and does not constitute an offence under this sub-section, unless the beating is such as to subject the animal to unnecessary pain or suffering [16]. Thus, according to this case, section 11 requires a nexus between the action of cruelty and unnecessary pain or suffering.

The Supreme Court in case of *Animal Welfare Board of India vs. A. Nagaraja and Others* also spoke about the concept of 'unnecessary pain'. The court while interpreting the section 3 of the PCA act held that in cases of offences against animals it was important to see whether the suffering caused to the animal could have been reasonably avoided or reduced or whether the conduct causing the suffering was for a 'legitimate purpose', i.e. for instance, to benefit the animal, protect the another animal, a human being or property, etc. Also, the court opined that it does not confer any right upon any person 'to inflict necessary/unnecessary pain or suffering' [17].

Therefore, it can be concluded that although it is impossible to completely abstain using animals for fulfilling certain human needs. Also, it cannot be ignored that even the animals have intrinsic worth. Therefore, it becomes important to balance the needs of humans to that of non-human animals which means that any avoidable suffering which is only for the selfish human needs and gains will be held illegal.

INTERNATIONAL RECOGNITION OF ANIMAL RIGHTS

The intensity of certain conflicts over animal rights obscures an important fact: Almost everyone agrees that animal suffering matters, and that it is legitimate to take steps to reduce it [18]. Mahatma Gandhi has said, “The greatness of a nation and its moral progress can be judged by the way its animals are treated”.

According to Christine M. Korsgaard’s observation, “The idea of animal rights sounds silly to some people, because it seems to suggest an insane desire to moralize nature: to imply that we should declare predation to be murder, and to make it illegal, or perhaps to turn battles over territory into property disputes that get settled in court. But an advocate of animal rights need not be in favour of our trying to protect nonhuman animals from each other. Rather, the point is to protect them from us, from human beings. The reason only the law can do that effectively is because in a sense, the law is the reason why many of the other animals are so completely at our mercy. What I mean is this: it is not just because we are individually smarter than the other animals that human beings are able to do as we wish with them.

It is because human beings are so cooperative and therefore so organized. And the way that we organize ourselves is by making laws, which set the terms of our interactions and so unite us into an effective whole. If the law says it is permissible for a person to inflict torments on an animal in order to test a product, for instance, then there is nothing anyone can do to protect that animal. So, it is one of those cases; and there are certainly others, in which the only thing that can afford protection against the power of the law is the law itself” [19].

The inadequacy and ineffectiveness of anti-cruelty laws can be attributed to a ‘species bias’ or the concept of ‘speciesism’, which is the idea that humans are superior to animals [20]. Public policy makers assume that humans are inherently superior to animals and thus, deserve more rights than them, and

sometimes also at their expense [21]. This can also be seen among people who not only believe that they are superior but also believe that the animals do not deserve to be treated equally or possess any rights. Speciesism is a “prejudice or bias in favour of the interests of members of one's own species and against those of members of other species” [22].

Therefore, now is the high time not only to recognise the rights of co-existing species but also to stand united to pass an international law which should deal with all the issues of animal welfare and protection.

RIGHTS OF PERFORMING ANIMALS

Performing animals means any animal which is used for the purpose of any entertainment to which the public is admitted through the sale of tickets [23]. It restricts the exhibition and training of performing animals, unless the person interested in exhibiting and training the animal is registered in accordance with provisions of the Act. And if the person desires to train or exhibit the performing animals, there is the procedure provided in the Performing Animals Rules for the same. And no person will be allowed to do the same if he is not registered as per the Performing Animals Rules, 1973.

Entire chapter V of the PCA talks about Performing Animals. The Prevention of Cruelty to Animal Acts provides procedure for registration [24].

Conditions that need to be fulfilled with Regard to the Registration of Performing Animals

There are five conditions that need to be fulfilled with regard to the registration of performing animals which are:

- Every person desirous of exhibiting or training any performing animal has to make an application in the prescribed form, to the prescribed authority and on payment of the prescribed fee.
- An application for registration contains such particulars regarding animals and regarding general nature of the performances in which the animals are to

be exhibited or for which they are to be trained and the particulars so given shall be entertained in the register maintained by the prescribed authority.

- The prescribed authority shall give to every person, whose name appears on the register kept by them, a certificate of registration in the prescribed form containing the particulars entered in the register.
- Every register is open for inspection by any person on payment of the prescribed fee.
- And the person whose name is entered in the register, is entitled, on making an application for the purpose, to have the particulars entered in the register with respect to him varied, and where any such particulars are so varied, the existing shall be cancelled and a new certificate will be issued.

Not complying with the above-mentioned conditions, the person shall be punishable on conviction with fine which may extend to Rs. 500/, or with imprisonment which may extend to 3 months or with both. The animal will be confiscated, and the person will not be allowed to keep an animal again. Section 27 of The Prevention of Cruelty to Animal Acts, 1960 acts as an exemption clause. It permits the training of animals for bonafide military or police purposes. However, Section 11 of The Prevention of Cruelty to Animal Acts, 1960 applies to those animals too [25]. Section 25 of The Prevention of Cruelty to Animals Act, 1960, provides that any police officer not below the rank of sub-inspector may enter at any reasonable times and inspect any premises in which any performing animals are being trained or exhibited or kept for training or exhibition and ask for the certificate of registration from the trainer or exhibitor [26]. Section 26 states that anyone who obstructs or wilfully delays any person or police officer from entry and inspecting the premises where the performing animals are kept and conceals any animals with a view to avoid such inspection will be punishable on conviction with a fine, which may extend to Rs. 500/, or with imprisonment, which may extend to 3 months or with both [27]. Section 32 of the

Act states that if a police officer not below the rank of sub inspector, has reason to believe that an offence of cruelty has been committed or that any person has in his possession the skin of any such animal with any part of the head attached thereto, he may enter and search place or any place in which he has reason to believe any such skin to be, and may seize such skin or any article or thing used or intended to be used in the commission of such offence [28]. Also, if a police officer, not below the rank of sub-inspector, has reason to believe that “phooka” or any other operation of the nature referred to in Section 12, has been performed or will be performed on any animal within the limits of his jurisdiction, he may enter any place in which he has reason to believe such animal to be, and may seize the animal and produce it for the examination by the veterinary officer in charge of the area in which the animal is seized [29]. A glare at these different provisions shows that even though PCA talks about the rights of performing animals and also the punishment in case the law is not followed but there is need to adopt for more stringent punishment so that there can be significant reduction in the animal right violation.

ANIMAL RIGHTS vs. ANIMAL WELFARE

Animal welfare approach recognises that animals have interests, but it also believes that these interests can be given away to benefit the human needs. Also, such sacrifice should be justifiable. This is also known as doctrine of necessity, which means that rights of animals in Indian Law are not absolute. This also implies that compassion for animals comes to an end where the human needs begin. On the other hand, animal rights mean that animals have rights just as humans do and cannot be sacrificed merely to benefit others. ‘Animal rights’ means that animals should not and cannot be used for our own selfish gains such as for food, clothing, entertainment, or experimentation. Animal welfare approach allows these uses as long as it is humane, and no unreasonable harm is done to animals.

In India, the understanding of the court is based on eco-centric principles and therefore

it recognises animal rights but it also believes that it can be traded away in a humane manner and thus it can be observed that it is the animal welfare approach which is followed in India. Also, the provision of the PCA talks about the unnecessary pain and reasonable care which indicates towards the animal welfare approach [30].

CONCLUDING REMARKS AND SUGGESTION

It is commendable how judiciary from time and again recognised animal rights in several cases. Supreme Court of India has read the provisions of PCA along with the Article 21 and 51(g) of the Indian Constitution to extend the definition of 'life' to include 'animal life' as well and that the animal dignity should be protected.

Although, PCA is efficient in recognising an offence against animals and it is also effective imposing certain liability on human beings to deter any act of cruelty against any non-human animals. There is still the need to revisit the laws against animal cruelty, so as to make them more stringent as there is lack of proportionality between the penalty and the offence of the cruelty.

Moreover, there is the need to redefine the statutory provisions so as to bring them in line with judicial pronouncements. With all the dramatic and meaningful advances which have taken place in the past few years to make the world better and equitable place. Rights and protection for animals should be recognised so as to make world more decent and humane place to live in.

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Cite this Article

Zeena Nagpal. Animals are not Ours to Abuse: A Step towards Acknowledging Animals Rights. *National Journal of Environmental Law*. 2020; 3(1): 1–7p.