

## **Animal Rights: The Social Justice Movement of the 21st Century**

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### **Abstract**

Animals have always played a great role in our life but the literature on social justice, and social justice movements themselves, routinely ignore animals as legitimate subject of social justice. The reason is very clear that the place of animals in human morality was absent and often they consider them as the property and use it however they want. Prior there were no laws; Aristotle and Aquinas believed animals exist to serve human requirement and the ethical treatment of animals were appears to be optional. But after the rise of utilitarianism with the idea of pleasure and pain, including animal pain promotes the humane treatment of animals and the era of animal welfare movement started.

Against this background, the author will highlight how the level of enlightenment within our society has increased in the last several years and will examine various philosophical theories pertaining to animal rights that have evolved over a period of time that made the emergence of animal right as a separate legal discipline.

**Keywords:** *Animal Rights, Ethical treatment, property, animal welfare movement.*

### **I. Introduction**

Human regularly imposes their dominance over animals as they possess the ability to use reason which animals lack. There is always a conflict between animal interest and human interest as human think animals do not hold the same interest that they have and do not deserve any moral considerations. To have a broad understanding of the concept of animals rights, it is important to have a look at the philosophical background of animals rights. Before there were no laws, Aristotle felt that even though animals have the sensation they are inferior

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to human as they lack rationality.<sup>2</sup> Similarly, Saint Thomas Aquinas believed that man alone is rational and animals exist to serve human's requirements.<sup>3</sup> Hence, the ethical treatment of animals appeared to be optional. But within a passage of time, the level of enlightenment within our society has expanded, now many of having begun to question these unethical practices and raising their voices for animal rights. Animal welfare advocates contended for more grounded laws against brutality and requiring compassionate treatment and restrict all human exploitation so that such practices ought to be arrived at an end and changed.<sup>4</sup>

However, there are different level of animal welfare in many countries like in 1992 Switzerland amended its constitution to include animals from things to beings<sup>5</sup> and in 2002 Germany followed the same and in the USA the court settled that chimpanzee as a legal "people" in the eyes of the law<sup>6</sup>but later it reversed its decision but the case is still a watershed movement in animal rights movement. In India, animals are accorded the same right to humans. However, we have to understand that animals are not here to serve human beings they have their own purpose in this world.

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<sup>2</sup>Jada Bruccoleri, The Extension Of Fundamental Rights To Animals, (2018) LL.M dissertation , Ghent University, ( July 22,2020 , 3:30 PM)[https://lib.ugent.be/fulltxt/RUG01/002/479/235/RUG01-002479235\\_2018\\_0001\\_AC.pdf](https://lib.ugent.be/fulltxt/RUG01/002/479/235/RUG01-002479235_2018_0001_AC.pdf) at 9.

<sup>3</sup> Id. at 10.

<sup>4</sup>Marie blosh, The History Of Animal Welfare Law And The Future Of Animal Rights (2012)LL.M dissertation, Western University (Mar. 24, 2020, 4:30 PM) <http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=2089&context=etd>

<sup>5</sup> Margot Michel & Eveline Schneider Kayasseh, The Legal Situation of Animals in Switzerland: Two Steps Forward, One Step Back – Many Steps to go ( April 22,2020, 11:32 AM) <https://www.afgoetschel.com/de/downloads/legal-situation-of-animals-in-switzerland.pdf>.

<sup>6</sup>Rich McCormick, Judge Gives Chimpanzees Human Rights For The First Time (2015) ( June 22,2020) <https://www.theverge.com/2015/4/21/8460657/judge-gives-chimpanzees-human-rights-first-time>.

## II. Position of Animal before 19th Century

The idea of the legal status of animal is controversial and it is frequently classified as “human” or “non human” conflict, animals can be owned and are subject to the property rights of their owners.<sup>1</sup> Therefore as long as animals are property, they will face severe limitation in the process of protecting their interests. There are various obstacles which the animal rights movement faces like

physical, economic, political, religious, historical, legal, and psychological; so to overcome the obstacles by way of avoiding specialism and liberty should not be limited with the human species only.<sup>2</sup>

## III. Superiority of Human over Animals

The place of animals and their welfare in the law before the nineteenth century was an optional, rather than essential as it was considered with respect to only human use. Aristotle’s hierarchical concept of human supremacy over animals was fortified by a Biblical entry which says that “*God said, Let us make man in our image after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creeps upon the earth.*”<sup>6</sup> Certainly from this divine hierarchy it was assumed that since people serve God, who is above us, similarly animals, who are lower than us, exist to fulfil our needs. Hence, humans may kill animals even though God created them and they are put on earth to serve human.<sup>3</sup> Aquinas put it forward, that the “life of animals is preserved not for themselves but for humankind.”<sup>4</sup> Similarly, Rousseau was also using the similar quality of thoughts but he always emphasized that people have an obligation to treat animals humanely hence did not allow to be ill-treated by the former. In this way Rousseau's idea is similar with Aquinas' decision that

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<sup>1</sup> Cass R. Sunstein & Martha Nussbaum, Animal Rights Current Debates And New Directions (Oxford University Press, 2004) at 19 -26

<sup>2</sup> Id.

<sup>3</sup> King James Bible, Genesis 1: 20.

<sup>4</sup> Marie Blosh, supra, 19.

animals exist for human purposes therefore do not deserve ethical considerations.<sup>5</sup>

During this era, animals were considered only for human use but for the first time Leonardo da Vinci was the first to share opinion against animal cruelty. However, during seventeenth century this has been subverted by Descartes where he related animals with a machine which is without soul and has no feelings and cannot suffer pain nor any pleasure.<sup>6</sup>

#### **IV. 19<sup>th</sup> Century Reforms: Transformation on behalf of Animals**

##### **Utilitarianism**

Since animal do not behave morally so it was assumed that they do not deserve to be treated morally by other living beings. However during 18th and 19th century, there was the rise of utilitarianism, Bentham actively rejected natural law theory, famously calling it “nonsense upon stilts,” which encouraged more direct attention to the suffering of the animals.<sup>7</sup> Bentham incorporated the new idea about pleasure and pain, including animal pain. Bentham described utilitarianism as a system in which pain and pleasure are “two sovereign masters”. The suffering of any living being is a more relevant consideration than that being’s ability to reason or to talk and humans should not engage in superfluous cruelty to animals. This era has been described as a fruitful ground for social movements which also saw the rise of humanitarian movements along with promoting the humane treatment of animals heavily influenced by the Bentham principle. The animal welfare advocates accepted human use of animals, including killing for food and the use of animals in research but with sympathetically.<sup>8</sup> On the other hand, Kantian categorical imperative made a

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<sup>5</sup>St. Thomas Aquinas, No Friendship with Irrational Creatures in A.B. Clarke and Andrew Linzey (eds). Political Theory and Animal Rights (London: Pluto Pr., 1990), at 102-105 as cited in Marie Blosh, supra, 11.

<sup>6</sup>Jada Bruccoleri, supra, 11.

<sup>7</sup>Marie Blosh, supra, 19.

<sup>8</sup>Anders Schinkel, Martha Nussbaum on Animal Rights(2008) 13, Ethics and the Environment at 41, 44 also cited in <http://muse.jhu.edu/journals/een/summary/v013/13.1.schinkel.html> ( Mar. 14, 2020, 10:30 PM).

distinction into two categories of animals one is rational (person) and other non-rational (animals); rational being can never be used as means whereas non-rational i.e. animals can be used, from this it is clear that animals are not moral specialists or self-conscious and people do not owe animals any direct obligation outside the moral community. The human obligation toward animals is just indirect by not abusing animals. Thus, people were qualified for use and even kill animals but cruelty to the animals should be avoided because it had negative effects on humans thus there was a very limited position of animals in the nineteenth century.<sup>9</sup>

The first reform bills introduced in the British Parliament attempted to ban bull-baiting with dogs but went unsuccessful as it was defeated by thirteen votes but finally outlawed with the enactment of Cruelty to Animals Act, 1835. Another similar proposal law known as Martin's Act, was enacted in 1822 if animals were inflicted with unnecessary sufferings it will be considered as a criminal offence.<sup>10</sup>

Therefore, after analyzing the creation of the offence of cruelty to animals in the nineteenth century which made the ill-treatment of animals legally wrong, but it did not grant animals any new status or entitlement rather than treating humanly neither do Bentham give rule or guidance on how heavily animal interests should be protected. The Utilitarian theory was willing to consider animal suffering but it never purported to place animals on the same moral level as humankind.

## V. Current issues on Animal Rights

There is nothing new or unknown in the idea of animal rights. In the last three decades, protection of animal "rights" in the form of protection of animal welfare has become a clear part of federal law.<sup>11</sup>No doubt animals have given many rights in terms of violation of any provisions of law but the lack of enforcement that comes under the rubric of standing. The eminent jurist Cash

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<sup>9</sup>Anders Schinkel, *supra*, 44.

<sup>10</sup>Marie Blosh, *supra*, 33.

<sup>11</sup>Cass R.Sunstein& Martha Nussbaum, *supra*, 19-26.

Sunstein advised to the US government to allow representatives of animals to bring private suits to ensure that anti-cruelty and related laws are actually enforced. For instance, if X is treating cows cruelly in violation of legal requirements, a suit could be brought, on behalf of those animals to bring conformity with the law. So that the animals might be counted as juridical persons to protect their interests as no relevant confers a cause of action on animals.<sup>12</sup>

Under the American Psychological Association (APA), a person has standing to protect animals that she likes to see or to study, if the activity at issue undermines to decrease the number of inhabitants in the endangered species. Under existing statutes, animals do not have standing as such to secure their own interests. But Congress is qualified to grant them standing if it chooses to do so as mentioned above, therefore Cass Sunstein suggested that Congress ought to allow a private cause of action, to injured persons and to animals themselves, to prevent practices that are already unlawful. Hence, there is a ray of hope for better protection of animals.<sup>13</sup>

## VI. Equal Consideration for Animals

Another philosopher Peter Singer on the rights of the animal from the notion of equality and follows the viewpoint of Bentham's utilitarian theory, addressed this issue in his book '*Animal Liberation*'.<sup>14</sup> Singer used his principle of "equal consideration" to argue that experimentation on animals inflicts a great deal of suffering on them, and in most cases is morally wrong. Here he differs from Bentham's view on the theory of utility, for Bentham, animal interests could matter since they can suffer, but the extent was always weighted in favor of human considerations.

No doubt man is superior to a human in many respects and he does not believe in the rights of the animal as it is not the correct appropriate terminology of animals. He would rather think equality in the very specific sense as human and animals are not politically equal as animals don't have right to vote but it cannot

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<sup>12</sup> Id.

<sup>13</sup> Cass R. Sunstein & Martha Nussbaum, *supra*, 19-26.

<sup>14</sup> Peter Singer., *Animal Liberation* (New York: Random House, 2001).

shatter this hard fact that animals do share equality in terms of capacity to suffer or enjoy their life that lead to moral equality similar to human beings. Therefore Singer wants to bring equal consideration of human and animal interest which earlier philosophers failed to do so.<sup>15</sup>

### **VII. Broadening the Position of Animal with the Capabilities Approach**

With the capabilities approach, Martha Nussbaum tried to broaden the position of animals in the form of animal welfare which was articulated in ten core entitlements. Although initially capabilities approach was developed to allow the voices of women to be heard in the global development agenda but Nussbaum has adapted the capabilities approach towards different species in order to consider animals direct subjects of justice.<sup>16</sup> Nussbaum idea of justice for non-human species draws upon the Aristotelian notions of dignity, and the individual good.<sup>17</sup> Nussbaum contends that the capabilities approach is better than social contract since it establishes direct obligations of justice, in the form of entitlements to non-human species and also considers her approach as superior to utilitarianism, due to its ability to respect individual creatures.<sup>18</sup>

However, among ten political principles, life and bodily health capabilities as beginning stages for an examination of Nussbaum's claims "life capability" provides that all animals are qualified to continue their lives but can be raised and killed for food unless the death no longer makes a cruel practices and painful killing in the process are banned. This contradicts her earlier statement that the capabilities approach is superior to utilitarianism that is no creature is being used as a means to the ends of others, or of society as a whole. By the bodily health principle provides for a healthy life and banning cruelty, including those in the meat and fur industries, working animals and those in zoos and aquaria should provide with adequate nutrition and space and also insists that the irregularity in welfare standards between animals raised for food and

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<sup>15</sup>Id.

<sup>16</sup>Cass R. Sunstein & Martha Nussbaum, *supra*, 19-26.

<sup>17</sup> Aristotle, *The Nicomachean Ethics: Book I* in Betty Radice (ed) Aristotle: *The Nicomachean Ethics*, Translated by A K Thomson (revised edition, 2004).

<sup>18</sup>Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (2006).

companion animals be eliminated<sup>19</sup> Hence, they are entitled to a healthy life. But like the other animal welfare contentions, the capabilities approach accepts the use of animals in research and research that should be allowed to promote human health and safety as one cannot refrain from such research to save the human good in the form of human health, hence animal good is at stake.<sup>20</sup>

Thus her capabilities approach accordingly does not give animal in equal with human<sup>21</sup> by accepting animal use in research and killing for food the core entitlements are infringed just to fulfil human-interest. But there is no denying the fact that Nussbaum's Capability approach promotes an attitude of respect, care, and admiration for animals. We are asked to consider animals very much like we consider our fellow human beings and give respect to animal dignity - the same kind of dignity we have.<sup>22</sup>

### **VIII. Position of Animals in the Indian Law**

Animal protection law has remained amazingly dynamic even though the statutory offence of cruelty to animals has changed very little since it was first enacted. In a country like India, protection of animals is itself found in the Constitution<sup>23</sup> and the concept of right to life is so wide enough that includes animal rights. To kill or injure any animal, including stray animals is a punishable offence under sections 428 and 429 of the Indian Penal Code.

In 1960, the Prevention of Cruelty to Animals Act was enacted to prevent the infliction of needless pain or suffering on animals under Sections 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed there under, especially when they are domesticated. The Central Government has notified the Prevention of Cruelty to Animals (Slaughter

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<sup>19</sup> Anders Schinkel, *supra*, 44.

<sup>20</sup> *Id.*

<sup>21</sup> Martha Nausbaum, *supra*, 281.

<sup>22</sup> Anders Schinkel, *supra*, 60.

<sup>23</sup> Art. 48A which gives protection and improvement of environment and safeguarding of forests and wildlife and Art. 51A(g) with a moral obligation to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

House) Rules, 2001 and by virtue of Rule 6, slaughterhouses are required to be constructed and maintained. Slaughtering the animals should be made in isolation and not in the site of or visibility of another animal. Wildlife are also protected under the Wildlife Protection Act of 1972 under Sections 3<sup>24</sup> and 11<sup>25</sup> of the Act. Hence, it is pertinent that in India there is a social reform to value the life and dignity of animals and have many policies and laws in respect of animals and has also banned the use of dolphins, whales and tortoises for public entertainment and forbid them from being held confined anywhere in India.<sup>26</sup>

### IX. Role of Judiciary in Promoting Rights of Animals

Indian Judiciary has further protected the rights of animal and the word "life" in Article 21 of the Indian Constitution is wide enough to include every living organism whether it's human, animal, insects or bird. No doubt there can be a deprivation of life but that has to be as per the procedure established by law.

Hence, right to dignity and fair treatment is, therefore, not confined to human beings alone. They have no right to keep birds in small cages of their business or otherwise as birds also have the right to live with dignity.<sup>27</sup>

However, Supreme Court allowed certain pain, sufferings inflicted to animals if it falls under the doctrine of necessity recognized under Sections 11 (3) and 28 of the Prevention of Cruelty to Animals Act, 1960. But other activities which are avoidable and which are not exceptions under sub section 11(3) and 28 and which do not arise out of human necessity (for eg. Jallikattu case) **violate Sections 3 and 11 of the PCA Act** and cannot be permitted because pain,

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<sup>24</sup>It shall be the 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.

<sup>25</sup>If any person beats, over-rides, over-drives, will fully and unreasonably administers any injurious drug or injurious substance to any animals or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting etc shall be punishable.

<sup>26</sup>Kumar Sambhav Shrivastava, India bans use of dolphins for commercial entertainment, Down To Earth (July 04, 2015) (<https://www.downtoearth.org.in/news/india-bans-use-of-dolphins-for-commercial-entertainment-41127>).

<sup>27</sup>People for Animals v. Mohazzim and Ors (2015), (3) RCR(Criminal) at 94.

suffering and anxiety inflicted to bulls during Jallikattu events is solely for human pleasure and can be avoided.<sup>28</sup>

The court time to time has reminded in multiple cases that even animals face the same pain as humans. Human owes a duty to exhibit love and compassion towards animals, with empathy and understanding of the sufferings of animals who are speechless and voiceless. This is a sign of a civilized society. Recently in 2019, Tripura High court in **Subhas Bhattacharjee v. State of Tripura and Ors.**<sup>29</sup> held that sacrifice of an animal, based on superstition do not fall under the doctrine of necessity and is banned and prohibited animal/birds sacrifice in the temples. Hence the age-long practice of sacrifice of the animals, either by the State or by an individual, cannot be said to be an essential part of the religion and as such, is not protected under Article 25(1) for it is against the principle of morality and health, as also provisions of the Prevention of Cruelty to Animal Act, 1960. In July 2020, Supreme Court has issued notice to the Kerala government as a petition was filed in Supreme Court challenging **the Kerala Animals and Birds Sacrifices Prohibition Act, 1968** which prohibits the sacrifice of animals and temple to please the deity but it has not forbidden for human consumption. Therefore, Supreme court has asked the Kerala government to justify their ban.<sup>30</sup> The year 2020 is a major turning point for animal rights activist in India as the Nagaland government banned the import, trading and sale of dog meat in live markets after Mizoram<sup>31</sup>

But despite many policies and legal provisions illegal trade takes place and animals have to undergo unreasonable pain because there is no proper enforcement of law and the penalty for violation of those rights are insignificant<sup>32</sup> since laws are made by humans and punishment prescribed in Section 11(1) is not proportionate with the gravity of the offence. Hence,

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<sup>28</sup> Animal welfare board of India v. A. Nagaraja (2014) 7SCC547, 2014(6)SCALE468.

<sup>29</sup> (C) (PIL) No. 2/2018.

<sup>30</sup> Murali Krishnan, SC seeks Centre, Kerala replies on plea against ban on animal sacrifice, Hindustan Times, Jul 17, 2020, (Jul. 30, 2020, 1:30PM) <https://www.hindustantimes.com/india-news/sc-seeks-centre-kerala-replies-on-plea-against-ban-on-animal-sacrifice/story-zjn1yLLJbXrLbDamMrhvYI.html>.

<sup>31</sup> Nagaland dog meat: Animal rights groups hail ban as 'major turning point' BBC News (Jul. 4, 2020) <https://www.bbc.com/news/world-asia-india-53288214>.

<sup>32</sup> For instance, maximum fine is just Rs. 50 and with no imprisonment.

defeating the very object and purpose of the Act well petition has been filed in the Honorable Supreme Court for enhancement of penalties in PCA Act 1960.<sup>33</sup>

## **X. Conclusion**

Hence, with the span of time many animals theories act as a shield to protect animals and helps to improve the well being of animals with much needed legislative reform. Natural law theory underlies the belief in the superiority of humans over other animals and excluded animals from moral consideration but accepted a duty not to mistreat them. This theory is still prevalent today as to some extent justify the use of animals by mankind. Gradually with the increase on the movements of animal rights, many philosophers spark on the rights of animals like Cass Sunstein asked amendment in the US constitution to allow people as representative of animals in case they face any sort of ill-treatment; similarly, Martha Nussbaum capabilities approach which justifies animal rights but allows the killing of animals or using in research which goes against her approach. However, to close the gap in law we have to take the aspiration of maximizing the happiness and minimizing the sufferings for all human and non-human beings. So on utilitarian grounds, that it's morally justified to inflict pain on animals if doing so will prevent death and suffering on a massive scale. Thus maximizing happiness but unnecessary pain should be avoided. However, we cannot change the horrors of what animals have endured in the past but being the civilized animal we have responsibilities towards them and must guarantee those rights given to them otherwise the idea of constitutional protection for animals will remain a state of flux and the judiciary as a guardian has played a remarkable role in changing the perspective of people.

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<sup>33</sup>Akshita Saxena, Plea In Supreme Court To Enhance Penalties Under The Prevention Of Cruelty To Animals Act, 1960 (Jul. 28,2020, 2:30 PM) <https://www.livelaw.in/top-stories/plea-in-supreme-court-to-enhance-penalties-under-the-prevention-of-cruelty-to-animals-act-1960-read-petition-160650>.