



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANIMAL RIGHTS: A CRITICAL EXAMINATION OF NECESSITY, SCOPE, AND FEASIBILITY

AUTHORED BY - SHREYA SHARMA¹ & DR. VISHWAS CHOUHAN²

Abstract

Imagine a hypothetical situation where exploitation of humans happens for scientific experiments, in slaughterhouses, for religious sacrifices, and for entertainment purposes, where they are caged and even sometimes killed in order to obtain human-derived products. What a terrific situation would it be, where there are no human rights to protect the human liberty and dignity. In such a scenario, how can values and morals be developed in a society where humanity is disgraced? However, animals have been dealing with this level of treatment for a long time. Now, the question arises whether the notion of humanity is limited to treating humans with respect or whether it extends to other living species as well. Mahatma Gandhi has said “the greatness of a nation and its moral progress can be judged by the way its animals are treated”. Ensuring the enactment and enforcement of human rights is just like part one of any progression story, whereas the next part is ensuring that animals are protected by some rights, which is equally essential for the development of any civilized nation.

This study focuses on understanding of animal rights and the importance of granting them. The relevance of animal rights in the present times of welfare model. How welfare approach for animals differs from the rights-based approach. Analysing the co-existence of animal and human right.

Key-words- Animal Rights, Animal Welfare, Property status, Human Rights.

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Introduction to Animal Rights

Discourse on animal rights is gaining momentum. These deliberations are similar to when voices were raised against other forms of disparity and discrimination prevailing within the society in the name of economic status, unequitable distribution of communities' resources, and other prevailing biases in the name of race(racism), caste(casteism) and sex(sexism). The animal rights activist raises their voice against speciesism which refers to discrimination on the grounds of species, where humans believe to have an upper hand in comparison with other forms of non-human animal species. Some Jurists believe that providing access to certain categories of rights to animals is necessary and is like providing animals with their long overdue; however, another set of jurists believes that animals can benefit more from the welfare-oriented approach than entrusting them with some rights that will be futile and cannot be rendered³. They believe that animals cannot be custodians of rights, as it goes against the pre-existing legal framework.

There is a misconception regarding animal rights, that if such rights are granted, it would demean the already existing position of human rights. However, it is important to know that the animal rights movement advocates granting certain rights to animals not taking away any other specie's rights. It advocated that animals do have moral standing,⁴ which needs to be translated into legal standing by ensuring certain rights that cannot be compromised anytime for human's sake. Animal rights refer to keeping animals away from human usage, ill treatment and other forms of exploitations.

Perspectives That Challenge Animal Rights

There is no denying that the animal rights movement is gaining momentum however, there is a long road ahead that begins with challenging all the previous thought processes and perspectives that have contributed to the denial of animal rights in the present times. The first and foremost reasoning which allows usage and exploitation of animals is on the ground of "necessity". However, one fine look into the situation one can clearly understand that using animals for food, skin, for entertainment in circus etc. does not necessarily fall under the category of "necessity." As there are other favourable animal usage-free alternatives which are easily available to substitute them. In such cases the grounds for necessity cannot be sustainably

³ Francione, Grey. (1996). *Animal as Property*. Animal Law Review, ii.

⁴ DeGrazia, David. (2002). *Animal Rights*. Oxford University Press, 2.

used.

Another argument regarding why animals cannot be granted rights is that animals cannot reason, use wisdom, lack intellectual prowess, and incapability in bearing duties. If intelligence is a criterion for granting rights, and based on these criteria in comparison with animals, all humans are considered smart enough to bear rights. However, some humans, such as babies and mentally retarded persons, lack the ability to reason and perform duties because of their young age or mental disorders. This does not mean that their rights can be taken away, and that they can be treated like animals. Their rights remain with them despite of their lack of reasoning and inability to perform duty. Apart from this, there are some religious factors as well which endorse the use of animals, believing that humans are somehow superior to animals. The dichotomy in it is that even in the same religion the interpretation of religious text varies.⁵

Bridging the Gap: Animal Rights Through the Lens of Human Rights

Whether the co-existence of Animal Rights and Human Rights is a myth or reality and whether these rights correspond to each other or in conflict with each other. It is a well-known fact that humans are competent enough to bear 'rights' because of their advance mental and intellectual abilities, hence there was never a debate regarding human's ability to hold multiple segments of human rights. However, when it comes to the subject of non-human animals, instead of granting them certain rights, the world favours "approach of ignorance" or the "duty-based approach," where duty regarding animal's care and protection is entrusted upon humans. However, the world is witnessing a new emerging trend of 'Animal Rights,' especially in the West and in East it is slowly gaining momentum. The nature of human rights is that it is forever evolving and growing, chances are in nearby future Animal Rights can be seen as the extension of Human Rights, just like "right to healthy environment" is the newest addition to the segments of human rights.⁶ Several contentions have been raised on the ground that if animals are given a certain set of rights, then this will go against the existing set of human rights, while some believe that both are analogous to each other. Bentham also supported animal rights and considered it as the extension of humanity⁷. Several attempts have been made to incorporate

⁵ Quintanilla Marcela. *Animal rights*. Retrieved on April 13 2025. https://www.academia.edu/36067578/Animal_rights

⁶ Stucki, S. (2023). *One Rights: Human and Animal Rights in the Anthropocene*. SpringerBriefs in Law, 3. <https://link.springer.com/book/10.1007/978-3-031-19201-2>

⁷ Neumann, Jean-Marc. (2012). *The Universal Declaration of Animal Rights or the creation of a new Equilibrium between species*. Animal Law, 93. https://www.animallaw.info/sites/default/files/lralvol19_1_91.pdf

Animal Rights in the similar fashion as that of Human Rights, the foremost attempt in this direction was UDAR (Universal Declaration of Animal Rights) which aimed at the notion that “all animals are born with equal claim on life and rights to existence”⁸ which was presented at UNESCO in 1978 however its result was futile as it failed to gain recognition by any international organization⁹, as countries and organizations often shows scepticism whenever the topic of granting animals certain categories of rights which are similar to that of Human.

It is quite possible for animal rights to run parallel to human rights without disturbing them and the fact that humans bears rights by the virtue of personhood status they enjoys, whereas animals are subjected to property status, their protection is taken care by the national level welfare laws, however if some categories of human rights in near future were to be extended to animals just like human rights are specifically extended to women, children, indigenous people, migrants and refugee etc., will there be a need to change legal status of animals or animals can be beneficiary of these rights in the existing legal parlance without changing their legal status. This question is addressed by two approaches: - the animal welfare approach and the animal rights approach. The first one does not believe in changing the legal status of animals, whereas the second one believes in it.

The Animal Welfare Approach or the Animal Rights Approach?

In the legal arena, whenever the subject of animal safeguards is discussed, there are primarily two types of approaches regarding animals that come to the surface: the first one is animal welfare approach, which is followed by many countries, including India. The Prevention of Cruelty to Animals Act, 1960 is one such example of the animal welfare legislation in India. This approach stresses on the need to adopt a mechanism where animals are subjected to less pain and suffering during the process and methodology applied by humans while extracting benefits from animals either in the form of food, scientific experiments, entertainment and in procuring other animal derived products like milk, eggs etc. the supporters of this welfare approach sees no qualms in the fact that animals are treated as property thereby not against animal's usage as well, all they advocates is to avoid unnecessary pain and suffering to animals. On the other hand, supporters of the animal rights approach consider property status of animals to be the main issue in rendering proper protection to animals. This approach aims to alter the

⁸ Universal Declaration of Animal Rights (1978 version) Art. 1.

⁹ Neumann, Jean-Marc. (2012). *The Universal Declaration of Animal Rights or the creation of a new Equilibrium between species*. Animal Law, 103. https://www.animallaw.info/sites/default/files/lralvol19_1_91.pdf

existing property status of animals and grant them rights that cannot be subjugated by humans at any cost and are against use of animals by humans in any form¹⁰.

These two approaches take two different trajectories even though the objective of both these approaches is to safeguard animals and improve their conditions. For example, the welfare approach favours the use of animals for entertainment purposes, while treating animals with decency, while the animal rights approach is absolutely against the use of animals for any purposes. One prefers a careful and painless method while procuring animal fur whereas the rights approach prefers no fur; it believes that animals have lives of their own. They are not meant to serve human interest.

Animal Rights and the International regime

Several countries around the world have their own domestic animal welfare laws, which stresses on the preventing cruelty to animals and regulate animal's usages by humans for their own purposes however the same enthusiasm is not shown by the nations for the subject of animal rights. In the absence of an international code on animal rights, animals are left at the mercy of national laws, and it is now up to them to understand the animal's plight. When it comes to national laws, there are a lot of discrepancies, some laws are not stringent enough, some have too many exceptions. A ray of light in the direction of animal rights can be seen when courts in Argentina and Colombia have granted habeas corpus to apes and bears.¹¹ The main containment regarding animal rights is that its approach seeks to address the alteration of the property status of animals and thereby provide personhood. Is international law ready to provide personhood to non-human animals? In the past, slaves were denied personhood, today all humans have personhood¹² along with that human also have internationally recognised rights such as the Universal Declaration of Human Rights. The journey of reaching this point was not smooth, chances are that similar will be the journey to animal rights.

¹⁰ Gibson, Miah. (2011). *The Universal Declaration of Animal Welfare*. Deakin Law Review, 544.

¹¹ Peters, Anne. (2020)). *Towards International Animal Rights*, Studies in Global Animal Law, Springer Open, 110.

¹² Ibid., 114.

Conclusion

Animal rights mainly imply freedom from human exploitations. The concept of animal rights is not complicated as that of humans their needs are very basic. Animal rights do have a future both at national and international level but it will require efforts of people, NGOs, animal rights organization and ultimately states. There is a need of international codification of animal rights for the universal safeguard of animals. Similar to codification of human rights which took place at the backdrop of wars. Even though the concept of human rights is internationally well recognized still it faces a lot of challenges in its national manifestation even today. Similarly recognising animal rights will not miraculously solve all animal related issues although it will pave way for a better future. Providing access to animals with certain rights will not diminish human rights but on the other hand denial of animal rights in the extreme case condones disrespect for the rights of human themselves¹³.



¹³ Ibid., 109.