

ANIMALS AND LAW: QUEST FOR ANIMAL RIGHTS

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ABSTRACT

People are not going to think about Animal Conservation until they think that animals are worthwhile.

- David Attenborough

Being alive is a sufficient condition for an individual having inherent value. Animals in this way are to be considered as individuals who have inherent value. We are to treat these individuals in ways that respect their inherent value, i.e., it requires a respectful treatment of all who satisfy the subject-of-a-life criteria. It is not an act of kindness to treat animals respectfully. It is an act of Justice. It is respect for their inherent value. Animals have certain basic moral rights, including in particular the fundamental right to be treated with respect they are due, as a matter of strict justice. Animals shall be treated at par with humans, as their life has the same *philosophical value* as the Human Life. Ethics view that while rejecting *Racism and Sexism*, accept *Speciesism*, with a Neologism that elopes to the parallel intra-human prejudices, the view that grants to the members of our own species, a privileged status with respect to all other creatures- are internally inconsistent, for *Speciesism* and *Racism* are twin doctrines. Humans generally argue that Animals are not mentally developed the same way as themselves and thus have no or low consciousness. Animals do possess the power to understand and respond, maybe not as powerful as Humans but the concept of '*Animal Consciousness*' does exist. *Routine use of animals in research* assumes that their value is reducible to their possible utility relative to the interests of others. They, like us, have a value of their own, logically independent of their utility for others and of their being object of anyone else's interests. To treat them in ways that respect their value, requires that we do not sanction practices that institutionalize treating them as if their value was reducible to their possible

utility relative to our interests. Today's vocal defenders of animal rights are branded as *species-ists of the Animal Rights Movement*. Sometimes the classical view treated animals as a distinctive form of property; at other times, animals became the object of public regulation. In both settings, the legal rules were imposed largely for the benefit of human beings in their role as owners of animals. None of our laws dealing with animals put the animals' front, they center the holder of the animal as the owner of property and its rights respectively. The challenge for anyone trying to describe a process through which one learns about animals and with animals as '*Humane Education*', then, it is to focus not only on the final rules for behaviors toward animals, but also to examine the path way to those roles. The authors focus on the rights and respect that animals deserve but are not given any, and how one can take the initiative to make a difference and bring Animal Rights at par with Human Rights.

Keywords: Animals, Rights, Violence, Inherent Value, Humans, Respect.

INTRODUCTION

All living things have a right to live on this Earth but, we, very often become, totally, insensitive to their pain, only because animals can't speak the language of humans, they don't have a voice. This could be seen in a famous quote which goes as: "One of the most dangerous things that can happen to a child is to kill or torture an animal and get away with it." - By Anthropologist Margaret Mead.

Every day in countries around the world, animals are fighting for their lives. They are enslaved, beaten, and kept in chains to make them perform for humans' "entertainment"; they are mutilated and confined to tiny cages so that we can kill them and eat them; they are burned, blinded, poisoned, and cut up alive in the name of "science"; they are electrocuted, strangled, and skinned alive so that people can parade around in their coats; and worse¹.

Mahatma Gandhi once rightly said, "The greatness of a nation is judged by the way it treats its animals". They have been exploited, used, tortured and killed by humans since time began. Although there has been a parallel trend of caring for animals, given the unsurpassed destruction of animals that takes place today, this trend has achieved very little². The history of the movement in the context of protecting the rights of animals dates back to the 3rd century when Ashoka explicitly banned the killing of any animal in his kingdom³. But, in today's competitive world, no heed is paid to basic morals and ethics and in a rat-race to earn more and easy money, animals become targets of Humans. They are exploited since they are mute spectators and are incapable of raising their voice against these cruelties.

The misuse of animal or the use of animal for the purpose beyond the animal limit is an animal abuse. Most people who abuse animals don't do it on purpose. They hurt animals because they don't think about or realize what they are doing. These people don't know that what they are doing is cruel; people are cruel because they don't pay attention⁴. Therefore, it is necessary to enforce such a change by granting animals' legal standing⁵.

¹ Animal Cruelty in India, http://shodhganga.inflibnet.ac.in/bitstream/10603/23635/11/11_chapter1.pdf

² Kirsten Youens, Animal Rights: A moral and Legal Discussion on Standing of Animals

³ Id 3

⁴ Jill Montgomery, Animal Welfare and Animal Rights: A War of Words with Casualties Mounting

⁵ Id 6

RESEARCH FINDINGS

Are Human Rights Human?

As per Immanuel Kant, As far as Animals are concerned, Humans owe no direct duties to Animals. Animals are not self-conscious and so they act only as means to an end, where the end is Man. Men owe indirect duties towards animals which in turn helps the Humanity⁶. Humans have rights. These rights aren't naturally ours. Humans own these rights through a simple contract (one which was never signed). Through this contract, humans are bound and protected by the law and the State⁷. This is the Social Contract Theory, it is the root of all laws and State that protects Humans from each other or any harm. This Contract in other words provide for Rights. The price of these rights under the Social Contract is certain types of freedom'. Humans forfeit their freedom to harm others in exchange for a guarantee of protection from the state to protect from brutality by stronger species. All Humans are species of animals. So, shouldn't Human Rights actually be Animal Rights? In a wider concept, Animal Rights shall include Human Rights and not vice-versa (which is the present situation)⁸. Humans view themselves as Superior Species and hence, deserve the rights that the own. Humans draw a sharp line to distinct between Animals and Humans and their rights respectively. It is right to say that animals lack mental and physical skills as Humans but one shall not forget that Animals and Humans come from the same culture and conscience. Hence, they should be treated equally. When there are laws on protecting humans from various type of abuses, Animals also should be treated at par and humans shall not have the sanction of abusing animals in any case. It is our citizenship and the concept of Social Contract theory that guarantees us rights and not Humanity in itself⁹.

The first sentence of the Universal Declaration refers to the "recognition of the inherent dignity... of all members of the human family."¹⁰ Human rights have been based largely on the concept of natural law - the notion that, by virtue of their unique capacity to reason or to experience freedom, human beings are automatically - inherently - creatures of dignity and

⁶ Immanuel Kant, Lectures on Ethics, trans. Louis Enfield (New York: Harper and Row, 1963)

⁷ Rousseau, Social Contract Theory

⁸ Id 6

⁹ John Locke, Social Contract Theory

¹⁰ Universal Declaration of Human Rights

worth, different from all other sentient beings¹¹. This meant that human suffering was worse than the suffering of other creatures and that only human beings could claim rights by which to combat it. Vertebrates share much of our DNA and our capacity for thought, feelings, emotions, sociability, language, altruism and empathy. We need to recognize and accept our common animal nature¹².

The Philosophical Value of Wildlife

The instrumental value of something is its utility as a means to some end. The intrinsic value of something is its inherent worth as an end in itself¹³. From the prevailing perspective of modern western philosophy, wildlife and other natural resources remains only instrumentally valuable- whether as a means to satisfy the widest possible range of human spiritual needs or the narrowest range of human material needs.

According to Jeremy Bentham, pleasure is good and pain is evil; and an ethical person should attempt, in choosing courses of action, to maximize the one and minimize the other, no matter whose pain or pleasure may be involved¹⁴. Utilitarian's conventionally limited the impartial weighing of pleasures and pain to human beings. By the same principle of impartiality, we ought to give equal consideration to the pleasure and pain of other animals, no less than of other human beings, in choosing our courses of action. On a deeper level, animal liberation is concerned exclusively with the welfare of individual animals, so much so that should the welfare of individual's conflict with that of population of them¹⁵.

One of the wildlife's greatest champions, John Muir, stressed the spiritual utility of wild nature. Muir's argument for the intrinsic value of wildlife was primarily theological¹⁶. According to the Bible, God created other forms of life as well as human life, and He declared them all to be 'God'¹⁷. Muir's theological theory of the intrinsic value of wildlife provides a conceptual

¹¹ Steven White, *Animals and the Law: A New Legal Frontier?*

¹² *Id* 13

¹³ Susan J. Armstrong and Richard J. Botzler, Chapter 57, *The Animal Ethics Reader*, 2nd Edition, Routledge Taylor and Francis Group

¹⁴ Jeremy Bentham, *Concept of Utilitarianism*

¹⁵ *Ibid* 15

¹⁶ *Id* 17

¹⁷ The Bible

context more congenial to an ecological informed program of wildlife conservation. Wildlife species were not created as we find them today; they evolved into their present form. Nature is regarded as autochthonous and autonomous¹⁸. To the extent that we believe that science gives us a true understanding of nature, a theocentric grounding of the intrinsic value of wildlife simply rests upon false beliefs about the natural world. A theory of the intrinsic value of wildlife grounded exclusively in a scientific world view seems immediately implausible.

Modern humans affirm the intrinsic value of all human beings regardless of race, creed, or national origin and of all human kind. Aldo Leopold observed that today, ecology represents both human beings and wildlife as members of one humming community- the biotic community¹⁹.

Animal Consciousness

In its most basic, literal sense, to be conscious means to be awake and receptive to stimulus received from the surrounding environment. Hence, when someone is asleep or unresponsive, he or she is said to be un-conscious²⁰. When one is not registering the events and things happening to and around them, he or she is unable to react. Consciousness, then, requires an ability to internalize what one observes and to respond accordingly. Instinctual behavior and physiological survival mechanisms are not sufficient characteristics for having consciousness, although some degree of mental presence is necessary for both.

Are Animals Conscious? Science and Ethics are the two departments which deal with this question extensively. Whether or not animals share the capacities to think, reason, emote, and decide that have long been seen as singularly human traits. Darwin himself asserted that “the difference in mind between man and the higher animal, great as it is, is certainly one of degree and not of kind”. If we accept that the theory of evolution is, then humanity’s common ancestry with apes suggests the capacity of primates to have or develop a degree of conscious thought and decision-making.

¹⁸ Id 17

¹⁹ Aldo Leopold, *The Philosophical Value of Wildlife*

²⁰ *Ibid* 15, Chapter 5

Three typical standards by which human consciousness is understood are Capacity for Language, Critical Thinking, and Recognition of Self²¹.

The first of the criteria for consciousness is the Capacity for Language. Animals do not “speak” in the humanly constructed sense, and hence they are not considered to have language. But, it is widely accepted that animals communicate. The ability to make sound is specialized into methods that are used in particular circumstances, whether it is during mating rituals, to scare off a predator, or to locate other members of an animal’s group²². The variance in tone, pitch, volume, etc. are indicative of a specific goal that an animal has in mind, and conscious awareness of its surroundings is essential to the proper sound’s vocalization.

The second criteria is Critical Thinking. It is humanity’s ability to make logical decisions freely and independently, drawing on various avenues of information to come to a conclusion that makes us more than impulse-driven machines. Because animals have no way of describing their experience of being, we can only speculate on the extent to which they are autonomous, free-thinking agents who act on their own volition. The concepts some animals learn through the reward/punishment process can be, and are, applied to similar but different situations. According to Britt Anderson, "Reasoning is the ability to combine disparate experiences into novel solutions for novel problems. Animals possess this skill. In *Defense of Dolphins*, Dr. Thomas White relates his observation of a nervous little boy who unwittingly covered the blowhole of an ocean-dwelling dolphin that approached him at a dolphin research center²³. A typical dolphin’s response would be too quickly and aggressively jerk away from whatever blocked its sole source of oxygen; instead, this one calmly backed away until her blowhole was uncovered so that the boy remained calm.

The third element of consciousness that poses a problem for animal researchers involves the Ability for Introspection or Self-Awareness - to recognize oneself as an individual with an awareness of the effects of one’s actions. The way a human reacts to its own reflection--namely, by recognizing the image as oneself and not as another human--indicates self-awareness; so it follows that animals that exhibit signs of self-recognition would have some general concept of a unique “self”. The test involves marking an animal while anesthetized in a spot only visible

²¹ Animal Consciousness, Stanford Encyclopedia of Philosophy

²² Harry Haladjian, *Theory of Consciousness*

²³ Dr. Thomas White, *Defense of Dolphins*

with a mirror, then observing its reaction to its image²⁴. Attempting to remove the spot on its own body implies self-awareness and “requires that someone grasp the concept of an image that represents reality.” Dolphins, chimpanzees, and orangutans have all responded to their marked image with behavior that shows their recognition of themselves rather than another animal.

Hence, we can ascertain that Animals do possess Consciousness.

Animal Experimentation:

The use of animals in biomedical research raises ethical issues, mainly because most animal research involves harming animal subjects, which in itself provokes ethical concerns, and the leading goal of animal research, promotion of human health, is itself ethically important; even the expenditure of taxpayers’ money on government-funded animal research raises ethical issues about the best use of such money.

In *The Case for Animal Rights*²⁵, makes a case for total elimination of harmful use of animals in research. It argues that animals have a value that cannot be reduced to their utility to others and that their use in research fails to treat them with the respect that they are due. The routine use of animals in research assumes that their value is reducible to their possible utility relative to the interests of others. They, like us, have a value of their own, logically independent of their utility for others and of their being the object of anyone else’s interests. To treat them in ways that respect their value, therefore, requires that we not sanction practices that institutionalize treating them as if their value was reducible to their possible utility relative to our interests. Animals are not to be treated as mere receptacles or as renewable resources. Their inherent value does not disappear just because we have failed to find a way to avoid harming them in pursuit of our chosen goals. Individual rights must be prohibited, even if it means that there are some things that we cannot learn. There are some things that we cannot learn by using humans, if we respect their rights, it merely requires moral consistency in this regard.

Those in the medical profession, as well as those who do research in the hopes that they might improve health care, are not morally authorized to override the basic rights of others in the

²⁴ The Human v. Animals Consciousness Debate

²⁵ Tom Ragen, Chapter 39, *The Animal Ethics Reader*, 2nd Edition

process-rights others have, that is, independently of their place in any institutional arrangement and independent of any voluntary act on the part of anyone. And yet that is what is annually done to literally millions of animals whose services, so to speak, are enlisted in the name of scientific research, including that research allied with medical science.

Animals have interests, which may be adversely affected either by research performed on them or by the conditions under which they live before, during, and after the research. The adverse effect on animals' interests is morally relevant and must be taken into account when deciding whether or not a particular program of animal research is justified or must be modified or abandoned. In light of their ability to experience pleasures and pains, it is implausible to deny animals interests or to give those interests no moral significance at all.

Those who are most strongly opposed to animal research hold that alternatives such as mathematical models, computer simulations, and in vitro biological systems should replace nearly all use of animals in research. Even for those who see the animal research enterprise more favourably, there are good reasons to take an active interest in alternatives. Sometimes an alternative method is the most valid way to approach a particular scientific question; often alternatives are cheaper.

No morally serious person would deny the great importance of human health, so its status as worthy goals seems beyond question. What is sometimes forgotten, however, is that a worthy goal does not automatically justify all the means thereto? Surely it would be unethical to force large numbers of humans to serve as subjects in highly painful, eventually lethal research, even if its goal were to promote human health. The controversy over animal research focuses not on the worthiness of its principal goal-promoting human health-but rather on the means, involving animal subjects, taken in pursuit of that goal.

In US, the best statement on animal research is found in a 1986 document from the Public Health Service entitled "U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training"²⁶, which calls upon the researchers to:

- Use the "minimum number [of animals] required to obtain valid results"

²⁶ Baruch A. Brody, *Defending Animal Research: An International Perspective*

- Practice the “avoidance or minimalization of discomfort, distress, or pain when consistent with sound scientific practices”
- Use “appropriate sedation, analgesia, or anaesthesia”
- Kill animals painlessly after experiments when the animals “would otherwise suffer severe or chronic pain or distress that cannot be relieved”
- Provide living conditions that are “appropriate for their species and contribute to their health and comfort”

The most common prey to animal research are rats and rodents²⁷. Wild rats, harbingers of disease, came to be bred specifically for scientific research (alongside mice); in doing so, they took on new significance. Now, the image of a laboratory rodent conveys a great deal—not so much about animal who, in many ways, remains a mystery, but about the processes and values of scientific research. The rodent has become a potent icon. People might shun the sewer rat or try to exterminate rats and mice from our houses and farms, but, in the laboratory, rats mean a great deal. The transformation into “the” laboratory rat has entailed a loss of the rat understood as an animal or as exemplar of a species. Rather, the laboratory rat has become transformed from what most of the people would commonly call an animal into something that stands in for data and scientific analysis.

By 2000 at least 23 countries worldwide had enacted laws requiring certain humane standards for experimenting in animals. In 1985, the World Health Organization promulgated *Guiding Principles for Biomedical Research Involving Animals*, guidelines designed to provide a framework within which specific legislative or regulatory systems could be built in any country, including less-developed countries. Voluntary acceptance of these modest standards is better than having no provisions at all.

A basic ethical concern requires that captive animals be housed and cared for humanely. In the US, Congress enacted an amendment to the Animal Welfare Act in 1985²⁸ that requires promotion of the “psychological well-being” of primates. This legal provision sparked new funding for environmental enrichment studies and has been profoundly effective in improving the housing conditions of primates. There is a trend toward increased space allocation, group-

²⁷ Lynda Birke, *Who-or What- Are the Rats (and Mice) in the Laboratory?*

²⁸ F. Barbara Orlans, *Ethical Themes of National Regulations Governing Animal Experiments: An International Perspective*

housing animals of similar species, and the addition of branches, toys, and exercise apparatus to the cages where appropriate. European countries and Australia have been in the forefront of enriching the housing of many common laboratory species. Not only primates but also dogs, cats, rabbits, guinea pigs, and rats.

Experimental procedures that cause intense and prolonged animal suffering have been the focus of the greatest public protest and demands for prohibition. Even if useful scientific results might be obtained, the lack of justification holds.²⁹

The ethical reasoning is that purpose-bred animals are likely to suffer less; they do not have to make a stressful transition from a free life to a life in captivity. Purpose-bred animals know no other life than living in confined quarters; they have been singly caged all their lives with little or no opportunity to make decisions for themselves over what exercise they take, what they eat, whom they spend time with and so on. But former pets and free-living wild animals are different; they have usually lived rich social lives where they were accustomed to expressing their own free will. To lose this freedom can be traumatic. The period of transition can cause considerable suffering, including the stresses that come with transportation, close confinement and social and other forms of deprivation.

Humane Conditions:

Unless all members of the learning community are actively engaged in learning how information about animals is obtained and used in classrooms, it cannot be fully demonstrated to the community in practice how to foster an environment of respect for those animals. 'Humane' is a cognitive concept for humans and subject to the same constraints as other cognitive concepts held by humans. To describe 'humane education', one must focus not only on the final rules for behaviour towards animals, but also examine the pathways to those rules. Incorporating animal use in education and involving students as well as teachers in making humane decisions about animal studies in the curriculum is a complex issue. The absence of real experience with non-human animals in the context of a humane educational setting eliminates an important opportunity to develop the concept of 'humane' in students. In teaching and learning about living animals, one might consider, for example, their way of life, social

²⁹ Stephen T. Emlen, Ethics and Experimentation

and environmental needs, feeding strategies and nutritional needs etc³⁰. This process of learning about their lives before the animals come to the classroom, how the animals will be cared for and by whom, how the proposed use will affect the animals and the learners etc will help in ensuring that the animals are treated well even though they are outside their normal environment.

CONCLUSION

Sometimes the classical view treated animals as a distinctive form of property; at other times animals became the object of public regulation³¹. In both settings, however, the legal rules were imposed largely for the benefit of human beings, either in their role as owners of animals or as part of that ubiquitous public-at-large that benefitted from their preservation. None of our laws dealing with animals put the animals' front and centre as the holder of rights themselves, even though the fields of socio-biology and animal behaviour have made enormous strides in recent years.

The Great Ape Project³², argues for the legal extension of the “community of equals” to include various animals for the legal enforcement of the following rights:

- i. The Right to Life
- ii. The Protection of Individual Liberty
- iii. The Prohibition of Torture

8 Animals Rights in India that every citizen should know:

- i. It is the fundamental duty of every citizen of India to have compassion for all living creatures – Article 51A (g)³³

³⁰ Andrew J. Petto and Karla D. Russell, Humane Education: The Role of Animal-Based Learning

³¹ Richard A. Epstein, The Dangerous Claims of the Animal Rights Movement

³² Kate Douglas, Just Like Us

³³ Constitution of India, 1950

- ii. To kill or maim any animal, including stray animals, is a punishable offence. IPC Sections 428 and 429³⁴.
- iii. Neglecting an animal by denying her sufficient food, water, shelter and exercise or by keeping him chained/confined for long hours is punishable by a fine or imprisonment of up to 3 months or both. Section 11(1) (h), Prevention of Cruelty to Animals Act, 1960³⁵.
- iv. Bears, monkeys, tigers, panthers, lions and bulls are prohibited from being trained and used for entertainment purposes, either in circuses or streets. Section 22(ii), Prevention of Cruelty to Animals Act, 1960³⁶.
- v. Animal sacrifice is illegal in every part of the country. Rule 3, Slaughterhouse Rules, 2001³⁷.
- vi. Organizing of or participating in or inciting any animal fight is a cognizable offence. Section 11(1) (m) (ii) and Section 11(1) (n), Prevention of Cruelty to Animals Act, 1960³⁸.
- vii. Cosmetics tested on animals and the import of cosmetics tested on animals is banned. Rules 148-C and 135-B of Drugs & Cosmetics Rules, 1945³⁹.
- viii. Capturing, trapping, poisoning or baiting of any wild animal or even attempting to do so is punishable by law, with a fine of up to Rs. 25000 or imprisonment of up to seven years or both. Section 9, Wildlife (Protection) Act, 1972⁴⁰.

³⁴ Indian Penal Code, 1860

³⁵ Id 30

³⁶ Ibid 30

³⁷ Slaughterhouse Rules, 2001

³⁸ Id 34

³⁹ Drugs and Cosmetics Rules, 1945

⁴⁰ Ibid 33