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The Vista of Rights for Animals

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Abstract:

This paper is written with the object to address the issue of rights animals must possess. The paper analyses the issue of animal rights with a comparisons of difference in opinion of various scholars, regarding the extent of those rights as well as the implementation of such rights. Moreover the paper attempts to address how far the rights for animals are affected due to the anthropogenic approach and how far this is a relevant factor in ascertaining the rights to animals. The importance of animals in the ecology and the inter-relation of various components of environment are looked upon, from the point of view, of the intrinsic value they possess. At the end, the paper sums up what rights they should have and the way they are accorded such rights, therefore it is the duty of human's to help them cherish the value they possess by nature. Evidently how and when the rights are created and accepted legally and socially is evident of the shift of mental setup from anthropogenic to intrinsic, in last few decades.

1. Introduction

Animal rights¹ are a complex term. It's Origin and gradual change with time is a very important aspect reflecting change in attitude of international community regarding animal rights. It has concerned mankind for decades, but for the last two decades its growing concern is recorded and can easily be traced in various legal texts, regional and national legal instruments. This concerns international community, non-governmental organizations, philosophers and environmentalists, which all together led to regime change in relation to animal rights. The Universal Declaration of Animal Rights was concluded in 1978. It recognized basic animal rights such as, right to life, right to reproduce, right to be free from cruelty, right to proper maintenance and care, protection against crime like genocide and biotopes. Various legislations in regional level have set basic minimum standard for animal treatment, regarding their health, hygiene, food, medical treatment, and their right to be free from torture is clearly recognized.

Humans are considered as centre of this universal system. They have utilized animals for their own use from time immemorial for varying needs such as food, clothing, fur, leather, beast, carriage, etc. This anthropogenic² approach has dominated the world for generations. With increasing overexploitation of animals by human beings, for generations, it has now caused serious ecological imbalance. This adverse impact of human activity has compelled them to preserve animals, and in-turn the ecology for their own benefits. As a result, theories like, animal protection, animal conservation and animal rights have emerged, which again in some way proves that man is the centre of the Universe.

The concept of animal rights depends upon intrinsic value of animals, which is widely accepted in international law, where animals act as a means and end in it. This concept of conferring rights on animals is debatable due to various reasons like, lack of political will, ideological conflicts between people, practical problem of implementation like application of concept of rights, duties, agency, recognition of these rights, who will be held responsible, how these rights can be exercised, and on what grounds these legal principals will be applied. All these issues will be discussed in this essay by the help of theories of eminent philosophers, international treaties, national legislations and case laws.

The main aim of this essay is to analyse what constitutes animal rights from the point of view of various philosophers and academicians; to analyse and compare theories on the basis of which animal rights are proposed and problems related to their practical implications. Evolution of rights for animals will facilitate the protection of animals in international sphere, by incorporating rights based approach in developing new international instruments for animal protection and analysing how far these rights are recognized by international community, their evolution and implementation in regional and international treaties and conventions. Legal aspects of animal rights will be discussed with problems of applying basic notions of law on animals. Impact of anthropogenic approach in evolution of animal rights and grounds on which they are differentiated from humans. Reasonable justifications of claims asserting or denying rights to animals are discussed in detail with examples. As it is clear that all the right's possessed by humans cannot be

¹ Rights belonging fundamentally to all animals(as to fair and human treatment), Webster dictionary

² Regarding humankind as the most important element of existence, Oxford dictionary.

accorded to animals, thus it is essential to determine the extent to which such rights shall constitute part of animal rights. But in deciding the extent of rights to animals, the judgment shall be impartial and based on justifiable reasons. As we humans are the one judging the extent of right animals should have, it should not be influenced by anthropogenic view. Instead such rights should be given to animals by virtue of life they possess from nature³.

2. History, Evolution and Theories of Animal Rights

Animals are regarded as a species different than man. Humans believe themselves to be unique but this uniqueness is the most common property possessed by every existing species⁴. To understand what constitutes animal rights, it is essential to know what animal is. Superiority of humans to every other species present in the world is a result of exaggerated anthropogenic approach supported with religion, philosophy, culture, and cultivated and inherited by mankind for generations. Humans consistently try to differentiate themselves from animals on the basis of their linguistic abilities, ability to read and write, to memorize stuff, behavioural patterns etc. All these abilities humans exhibit are the result of their journey known as life, which is influenced by experience and surroundings they belongs to. People living in various part of the world, like hunters, aboriginals, etc., live in rudimentary stage as compared to non human's/animals. Thus these criteria do not seem sufficient either to define or to differentiate animals from human species.

Cultural and historical concept of human superiority is the result of thought process, which has dominated the world. This idea of human superiority is the result of appropriation of nature which has its roots deep embedded in western thoughts.⁵ People in different cultures need not necessarily have same views as expressed in book by Tapper. Western world is obsessed with the concept of man as a maker or 'Homo faber' whereas other parts of the world certainly deny this view. But one thing is sure that human and animals have grown together and that is proved by various stories, epic, dramas, literature, ancient art, culture etc.

Midgley writes that human-animal relations were guided by emotion, as per her finding emotion of fear is the most prominent of all guiding human-animal relationship. Dark or evil side of human has always explained as wilderness or animality as a peculiar characteristic of animals⁶. Mundkur agrees to findings of Midgley that humans attitude towards animals are embedded with fear⁷. Variety of relationship exist between human and animals like predator-prey, to partnership, taming and training etc. from time immemorial animals and humans have some kind of relations between them, in spite of all the similarities and differences. This observation gives us flavour of what animal is, its relation and evolution with man, which can be helpful in ascertaining rights of animals and to what extent and way they can be guaranteed to them.

Animals have instrumental, inherent and intrinsic values, instrumental and inherent values depend on their utility to humans. Whereas, their intrinsic value depends upon the value possessed by entity themselves, irrespective of their utility to others. Animals have both good-of-its-own and good-of-its-kind.⁸ Organisms share good-of-its-kind with all other species of its kind irrespective of time and place, this good-of-its-kind is primarily derived from their genotype⁹. Features are common to all the members of same species and capable of being transmitted from generations to generations by means of reproduction. Genetic traits of species can only be transmitted by means of reproduction, but all the qualities adopted by individual species during their lifetime cannot be inherited to future generations, rather they are possessed by that individual organism itself. This is the intrinsic value of individual species that should be preserved and protected. This protection will be possible if certain rights will be guaranteed to them in this respect. The growing principle of animal protection and animal conservation is based on the quantum of rights accorded to animals.

Good-of its-own mainly deals with individual character on an organism, it is frowned upon uniqueness of an organism due to its separate, individual gene makeup which is genetically unique in itself. Individual development of an animal depends on various, social and geographical factors faced during life. Every individual animal possess intrinsic value by its own existence, it should be protected because of its value to itself and its unique position in the ecological cycle, which includes the benefits derived due to the relationship with the environment. Ecosystem approach works better in protecting intrinsic value of individual animal because in order to protect individual animal its entire habitat shall be protected, but this type of conservation is done for instrumental reasons irrespective of its intrinsic value¹⁰. In practice protection of animals is grounded upon its intrinsic value but in order to implement such protection regime they have to stand with interest of human and other life forms¹¹.

All these principals confer rights to animals in some or the other form, but the conflict lies where they have to compete with human interest. This makes implementation of rights difficult due to difference of opinion and the approach how we look and deal with these

³ Verhoog, H. (1992a). The concept of intrinsic value and transgenic animals. *Journal of Agricultural and Environmental Ethics* 5/2, 147-160.

⁴ Hull 1984, in *minds machine and evolution*, by c hookway (ed) 17-42 CUP.

⁵ Introduction (to what is an animal), animal and society. By Wilkie and David.

⁶ T. Ingold (1994) *Animals and society*, by Rhoda Wilkieans David Ingis.

⁷ Ibid.

⁸ Chapter 3, *Lyster's, International Wildlife Law (second Edition)* by Micheal Bpwman, Peter Davis and Catherine Redgwell. Cambridge University Press.

⁹ Chapter 3, *Lyster's, International Wildlife Law (second Edition)* by Micheal Bpwman, Peter Davis and Catherine Redgwell. Cambridge University Press.

¹⁰ Ibid.

¹¹ Ibid.

issues mentally. Better view of this represents, that the animals like other living human being are born with rights or they do possess some inherent rights. Human beings need to accept this notion and confer those rights to animals in some way. Mere fact that animals are not capable to protect their own interest, rather they need human to act as their agent for protection of their rights, can't act as ground for denial of rights. This makes it more difficult for human to act on behalf of species which is regarded as inferior by them or subordinate to them from generations. It is human perception to consider them as supreme and this self obsessed thinking cannot act as good ground to deny animals their rights¹².

Evolution of animal rights is similar to evolution of women's right back in time since they represent certain similarities. These concepts of animal rights were frowned upon notion of equality. Equality in law does not mean equal treatment, but means equal consideration. Notion of equality among same species does not necessarily mean equal treatment for all, because every individual is different and unique for example; group of fifty men having different physical, mental and social capacities and need. Right to equality is recognizing and respecting diversity among same group of people or similar species¹³. Then considering them equally by conferring them different treatment and different rights as needed, for example; right to vote, shall be conferred to men and women both because they both have same ability required to cast vote and this right is equally useful to them. Whereas women have right to maternal health and right to abortion, but men don't need these rights as it will be of no use to them.

Similarly, when notion of equality is applied to animals this does not mean they should be accorded same rights as that of human's. But they must not be denied rights just on the ground of speciesism¹⁴. Animals have different needs thus rights guaranteed to them have to be different: but they should be accorded equal consideration of their rights. As difference between men and women exist in the same way we don't deny difference between human beings and nonhumans. Thus if basic principle of equality applies to different people of human species, it shall be equally applied to non human animals as such¹⁵.

Equality is a moral idea, not an assertion of facts¹⁶, thus factual difference between individual does not seem as good reason to deny them equal consideration. Amount of consideration depends upon needs and interest of individual that widely varies on factors like sex, species, race, etc. Kind of rights conferred also depends upon needs and interest of individuals. When animals are dealt with moral concept of equality and equal consideration is given to their needs, it justifies the kind of rights they shall be guaranteed with (like right to life, right to be free from cruelty etc).

3. Nature of Animal Rights

Right to life is basic fundamental right possessed by humans. Life is defined as a process by James Rachel which involves aim and goal related activities and projects as essential condition for right to life. H. J. McCloskey says ability of self-determination and ability to take rational decision, including moral choice is precondition to moral right to life. Based on these views animals do not possess basic right to life. Their lies contrary view supported by Notion of Equality by P. Singer¹⁷ which confer animals basic right to life, based on the mere fact that they are non human life forms having equal consideration of their need and interest. Like racism and sexism, speciesism is equally wrong. Man by his very nature has higher degree of intelligence, this intelligence does not authorize him to use another man of his own species for his own benefit, and thus he is not entitled to exploit animals or non humans for the same reason¹⁸. Thus there are two contrary views regarding animal's right to life.

Right to liberty is considered as moral right possessed by humans and non humans both¹⁹. It has two basic rights embedded in it, right not to be needlessly harmed against its own interest and right not to be deprived of any intrinsic good one has capacity to enjoy, According to James Rachel, this right seems acceptable for animals and humans both. Right not to be tortured is the basic right every animal must possess on the basic of intrinsic value it has²⁰. This right has its root in the concept of suffering, thus should be protected. Bentham clearly states that, the ability to suffer is in a way related or dependent on ability to use language to express such pain. If

¹² Rollin, B.E. (1995). *The Frankenstein Syndrome*. Cambridge University Press, Cambridge.

Taylor, Paul W. (1984). Are humans superior to animals and plants. *Environmental Ethics* 6/2, 149-160.

¹³ Animals and society. Part two, article by Peter Singer Equality for Animals? Excerpted from *Practical Ethics*, Cambridge, 1979, chap. 3

¹⁴ Pure speciesism: Pure speciesism carries the idea of human superiority to the extreme of saying that the most trivial human wish is more important than the vital needs of other species... for example a pure speciesist would argue that it's ok for animals to be cruelly treated and killed to provide fur decorations for human beings to wear.

Few people take speciesism to this length. More commonly, they say that all other things being more or less equal, it's morally correct to take the human side when considering an ethical issue.

¹⁵ Animals and society. Part two, article by Peter Singer Equality for Animals? Excerpted from *Practical Ethics*, Cambridge, 1979, chap. 3

¹⁶ Ibid.

¹⁷ Animal liberation. P.singer.

¹⁸ Ibid.

¹⁹ The proliferation of rights. By Carl Wellman.

²⁰ Ibid.

language was the criteria to justify pain a young child or infant cannot be said to feel pain at all. If we don't deny suffering of young child, we can't deny suffering of animal its pure Specicism²¹.

Animals do have moral and legal rights; moral rights are those rights that are based on their intrinsic worth and not of its utility to mankind²². Every individual is considered as means and end in itself, thus it should be protected. These moral rights of animals create indirect moral duty on man to protect them, giving them equal consideration. Legal rights are debatable with respect to animals as their implementation has various serious practical problems. The main purpose of conferring legal rights to animals, were protection of animals from overexploitation. This has been done by protection and conservation strategies in various international and regional treaties and conventions.

Animal trials have represented various interesting cases²³ where animals are treated as property and property laws were applied on them. On the other hand they were accorded status similar to human, where animals were summoned to court and pleaded by means of lawyer etc. this seems impractical but this era has recognized animal rights and has gone a way ahead of time in conferring animals equal right and treatment as that of humans. This clearly shows shift in mental attitude of philosophers, judges, and public towards animal rights. Animal right has mainly to do with shift of mentality from human centric approach to equality of all living forms. This change is being evident in last few decades to an extent and it will take few more decades to accept and realize the rights of non human life forms.

4. Theories of Animal Rights

Peter singer's Utilitarian approach towards animal rights and moral standing of animal suffering²⁴ is grounded upon principles of pleasure and pain of animal suffering. He says that, speciesism is wrong as racism and sexism, because it differentiates on the basis of morally irrelevant characteristics²⁵. Animals are the living organism and they do suffer pain, animal suffering is the centre object of this theory. It seems unreasonable to legal perspective, if law does not provide protection to any living being which is sensitive, law is based on equality, and when law differentiates on the basis of Specicism, it seems unjustifiable.

Animal interest is regarded at par with human interest, which seems unfeasible, just because they do feel pain and react to it. Interest of animals is problematic to recognize, as we do not have sufficient evidence to prove their suffering, which does not seem to Singer. That does not mean animals used for such purpose have no rights and are left at human mercy. Rather they are used for good objectives, which will be beneficial to humans as well as to animals. This problem is resolved to an extent by means of various legislations on animal testing and experimentation²⁶. These acts have rules and guidelines on the condition of animals, their health and hygiene, conditions where they are kept, what they are fed with, their breeding conditions, etc. Most interesting feature of this piece of legislation is they have a licensing system that means animals will be used for experiments only after obtaining valid license from the appropriate authority. Experiments carried once will be recoded and, result of experiments will be circulated to other places, where similar experiments are carried. This exchange of information will reduce the number of animals subject to similar experiments²⁷. This is better view to balance human-animal interest in such conflicting situations.

Contractual theory is based on such assumption that animals are not regarded as rational agent²⁸. Morality is the basic of contractual theory, based on the grounds of morality that human should protect rights of animals. In the similar fashion as they preserve rights of child, mentally disabled and other weaker section of their society. This act of protecting animal rights is solely guided by moral principles. Thus animals should be guaranteed equal rights with humans, according to their different needs and requirements. As a result, they should be accorded with right to life and right to be free from cruelty etc, instead of any civil and political rights which will be of no use to them.

Animal protection is what concern Rawl and Scanlon's version of contractual theory. This theory has many drawbacks, but both the philosophers have made one thing very clear, that animal protection is fuelled by care and concern for them. People can respect animal rights and protect them because they care for them or just because they are animal lovers. But they don't necessarily have any moral grounds supporting their actions. In environmental aspect we have a tendency of inheriting values and nature, to future generation without accepting anything in return. This is considered our duty towards coming generations, similarly, we have duty to protect and pass animal diversity to future generations. Whereas, from the ecological point of view, it is the necessity of the present generation to preserve, as well as inherit the biological diversity and maintain the ecological balance by balancing one of the important link of ecology 'animals/animal kingdom'. This objective can be traced in legal text of convention of biological diversity²⁹. This is the duty inherent to mankind, but due to anthropogenic approach it is difficult to accept. Man act as agent for protection of animals as they have indirect right to protect them, which is guided by moral instinct of man³⁰.

²¹ Discrimination based on species, especially against animals.(<http://www.merriam-webster.com/dictionary/speciesism>)

²²The proliferation of rights. By Carl Wellman.

²³ Law abiding rats, in Animal freaks by Jan Bandeson.

²⁴ Chapter 3. Utilitarianism and animal suffering, by Peter Carruthers.

²⁵ Ibid.

²⁶ Like European convention for protection of vertebrate animals used for experimental and other scientific purposes.

²⁷ Animal law, by Shaw and Sons.

²⁸ Chapter 5, The Animal Issue: Moral Theory and practice by Peter Carruthers. (first Edition) Cambridge University Press.

²⁹Convention of biological diversity 1992.

³⁰The Animal issue, By Peter Carruthers. Chapter 5.

Comparison of both utilitarian and contractual view on animal rights reflects Contractual as better view. As it consider protection of animals by humans on the ground of care and concern and not on the moral grounds. This approach can easily be implemented and will result in animal welfare all together. Contractualism is explained by various philosophers but none of them have accorded it moral standing³¹, rather inflected indirect duty arising out of care, affection and concern for animals.

5. Legal Implications of Animal Rights

Concept of animal right is related to intrinsic value it possess, irrespective of others interest³². Intrinsic value is defined as a property possessed only by living things by virtue of themselves and not by their utility to others, thus they are capable of having moral considerations³³. Animals are the living things, thus possess intrinsic value where they are means and ends in themselves, irrespective of their utility to human beings. This forms the base for animals right, this concept of intrinsic value have resulted in the shift of views in various treaties and conventions dealing with protection and conservation programs for animals.

It is a general concept that rights are conferred only to those who are capable of recognizing and performing their respective duties. But this concept of rights and duties doesn't always go together. Duties can be direct as well as indirect³⁴; in case of animals they do have rights, but in order to protect these rights, indirect duties are conferred on mankind³⁵. Animals are not capable of protecting themselves, similar to that of young child or mentally retarded person, they have rights but their rights are protected and duties are performed by their guardian or representatives, on behalf of them. Animal rights are different to those of human rights, that does not mean that animal do not possess right, instead they possess different type of rights, like rights to freedom of speech or political rights will be of no use to them. Whereas, right to life and right to be free from cruelty are kind of rights they should possess and will be benefited from.

Rights are of two types that is negative and positive rights, negative rights is right not to be interfered with, whereas positive right is right to benefit³⁶. Environmental rights are both positive and negative in nature³⁷. Animal rights are positive rights that have to be exercised by means of others. Law is much more comfortable in dealing with negative rights because they are direct, and positive rights like protection of animals have various problems like, recognizing extent to injury, cause and effect of damage, etc. This aspect of animal right creates practical problems of implementation.

This problem of implementation and enforcement of animal rights can be resolved to an extent by means of Public Interest litigation³⁸, where lawyers act as a representative of animals and protect their rights. This concept is similar to rational agent concept of Contractualism³⁹ theory proposed by Rawls and Regal. And this seems increasingly effective in current scenario, by contribution of animal rights activists like, "*Maneka Gandhi*." Recognizing animal rights is not sufficient in itself they have to be guaranteed and protected by means of proper agencies like PETA, WWF, Bird International etc..

Human beings are considered as centre of universe and they have utilized every natural resource, available, for their own good. Overexploitation of animals has resulted in ecological imbalance. Thus the concept of animal rights is an outcome of anthropogenic approach or human fear arising due to changing environmental condition due to their own activities. Rights are being guaranteed to animals; when prevailing conditions became threat to mankind, this shows human-centric approach in animal protection and conservation regime. This approach is of ideological fault that has dominated the world from centuries and always supported by the philosophies and the religious texts. On the contrary, this approach is proved beneficial for animals and the ecology as a whole; the situation in my opinion is like "paying for our own sins". Here are we not over obsessed with ourselves? Does this anthropogenic approach benefit other life-forms or the ecology we belong from? Yes, it does benefit from them, not for them. Evidently the concern of 21st century is, increasing imbalance in various life forms within the ecology; and the burning concern were the environment is left with the capacity to overcome this turmoil on its own!!..

Legal instruments have had recognized the intrinsic value of non human life forms⁴⁰, which has been reflected in various treaty regime and international and regional conventions. International community has persuaded developing countries that, benefit of mankind, are not in exploitation of natural resource, but in their conservation. Conservation is protection of species, the notion of conservation lies in belief on intrinsic value of other living forms, due to human centric mind setup it became easier for the international community to get all the members agreed on conservation strategy. World conservation strategy says, 'conservation is like development for people'⁴¹. Growing concern of intrinsic value is reflected in various legal instruments like Stockholm Declaration 1972, Bern convention, European regional convention. World charter of nature has recognized this principle in global level, stating "every life form is unique, warranting respect regardless of its worth to man, and to accord other organism such recognition, man must be guided

³¹ Ibid.

³² Chapter 3 Lyster's international wildlife law

³³ Ibid.

³⁴ Environmental law and ethics, by John alder and David Wilkinson. Chapter 12

³⁵ Kant view.

³⁶ Environmental law and ethics, by John alder and David Wilkinson. Chapter 12

³⁷ Wenz 1988

³⁸ Litigation in the interest of public

³⁹ Chapter 5, the animal issue, by Peter Carruthers

⁴⁰ By January 2010, convention boasted on 193 parties. US non ratification is attributable to other consideration.

⁴¹ World conservation strategy, chapter 1.

by moral code of action”⁴². This was further elaborated by revision of World Conservation strategy, caring for Earth, 1991. Supported principle of sustainable society and created respect and care for community of life which was the basis on which all other ethical principles were frowned upon⁴³. Later convention of Biodiversity, Antarctic treaty system and several other treaties have adopted this approach and resulted in universal acceptance of intrinsic value of non-human life form principle achieving international acceptance and recognition⁴⁴.

These legal instruments shows acceptance of the concept internationally, this concept is well known and recognized but it will take few more decades to gain a legal status like fundamental rights for human. It is human nature to act repulsive to change; it has been evident that women’s right and abolition of slavery took lot of time to gain such status. It has to go through series of change and hardships before it gain universal recognition, same is the situation with animal rights it might gain proper legal status in future. Contributions from academics, philosophers and environmentalist, etc have created positive impact in changing the attitude of global community regarding animal rights. This evidently led to the formation of Universal Declaration of Animal Rights, 1978. But this universal declaration is concluded, yet, has not gained legally binding status.

6. Conclusion

Animal rights are emerging concept still in the process of crystallization in international law. Varying view of philosophers, theories and text discussed in this essay reflects that, in some way those animals do possess rights and it need to be recognized and guaranteed to them. Public awareness and dissemination of information regarding animal rights can be helpful in changing attitude among masses. This change in attitude need not to be universal at given time, it could be regional or national giving rise to local legislations recognizing animal rights. These legislations will act as evidence of state practice that can create pressure on international community for recognizing animal rights. NGO’S are the best means for the fulfilment of this objective. This could be a plausible means of achieving legally binding legislation on animal rights in future. Animals are born with rights as every other living form; it is just human ignorance denying them what they inherit by nature.

7. References

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5. International Environmental Law by Alexander Gillespie.
6. Lyster’s International Wildlife Law by Michael Bowman, Peter Davis and Redgwell.
7. Law Relating To Animals by Brooman and Legge.
8. The Animal Issue by Peter Carruthers.

⁴²Chapter 3, lysters international wildlife law.

⁴³ Ibid.

⁴⁴ Ibid.