
Animal Protection in Light of Modern Legal Thought and Islam

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Abstract

Animals possess certain rights like human beings including the right to life, liberty, health, well-being and reasonable abode. So far only right to life of animals has been given due consideration, but unlike other inanimate objects, animals are emotional and intelligent beings who also deserve dignity and respect. Sometimes, animals are killed without any reason which violates their right to life and some of them never see outdoor except on their way to slaughterhouse including chickens, pigs and cows, which violates their right to liberty. Business has been cited as justification, but mistreatment should be stopped at any cost by way of minimizing the use of animals for industrial purposes and reducing their pain and suffering during this process. Available legislations focus on the right to life of animals while other rights including the right to liberty, dignity and health are ignored. Whereas being emotional and intelligent being, animals are entitled for all other rights associated with them like human beings. Therefore, it is imperative that all other rights available for animals should also be protected. The paper argues that animals do possess certain rights that are available to human beings and also intends to focus on the rights of animals on the basis of their emotional and intelligent characteristics using doctrinal and socio-legal research methodology. The paper further intends to provide a comprehensive framework of all the rights of animals that are ignored under available legislations and shall also suggest possible measures to implement the same.

Key words: animals, rights, emotional, intelligent, violations, legislation.

Introduction:

Many countries are facing the challenge for lack of a suitable legal framework to protect animal rights. For instance, it has been observed by various legal experts that the prevailing laws in the United States of America (USA) and particularly North America do not provide a robust protection to animals. It is also debatable as to whether the animals possess rights which appears to be the primary reason for failure to provide a suitable legislation in many countries including the USA. A few legal experts contend that animals are things and objects and not persons. This kind of categorization is the first crucial aspect with respect to determination of animal rights.¹ Scientists use the term animal welfare to describe the quality of life an animal needs at a given time.² Since long, animals were being considered property and objects under various laws and were granted protection only that was available for property and objects.³ However, the opinion of legal experts over this aspect started changing and now many have

¹ Oliver Wendell Holmes Jr., *Book Review Comptes Rendus De Lecture, Animal Rights: Current Debates and New Directions* by Cass R. Sunstein and Martha C. Nussbaum (Toronto: Oxford University Press 2004) 351.

² Donald M. Broom, 'Animal Welfare in the European Union' (2017) Policy Department for Citizens' Rights and Constitutional Affairs 14.

³ See for instance Article 23(g) of the Hague Regulations of 1899 and 1907.

adopted an opposite view. Those who are against the concept of animals being property assert that they should not be treated as property as once a thing becomes property of the owner; it is the discretion of the owner to treat it as he or she wants. Furthermore, animals cannot be treated as property as they possess moral and legal rights.⁴ However, the counter argument is that animals are sold and purchased in the market against certain amount which renders their status as property and they are not considered as property, they cannot be sold or purchased or used for any other purpose rather in that situation animals should be left at their sweet will to eat, drink and move wherever they want. On the basis of this concept, billions of animals are killed for human needs. In a year, around ten billion animals are slaughtered for meals. In Canada, this number reaches around 650 million. Many are kept in dark or artificial lights in compounds for the entire period of their life and see the sunlight only on their way to slaughterhouse. The procedure for slaughtering animals is also debatable where they are slaughtered without a proper anaesthesia and without proper procedure to reduce their pain and suffering.⁵ These are two extreme positions and a balanced approach is required to be adopted.

There are other issues as well. Many animals are used for bio experiments and are injured, medicated, their organs and limbs are removed, are kept in dark and cages and are sometimes killed after experiments or are repeatedly used in these kinds of experiments. Some animals are largely used in fashion industry to provide us clothes, shoes and bags etc. They are also killed and sometimes used in a way which makes their life miserable. Many others are favourite species for hunting and are hunt on regular basis or are kept in captivity and zoos for our entertainment.⁶ It is also evident that previously animals were in a race of survival from each other but now they need their survival from the human beings.⁷ Many voices are raised against their use as such with the contention that they are not created to serve human beings only rather they are also living creatures and entitled to certain rights like other living creatures.

Some other animals are used as pets. Animals used as pets are normally taken care of by the house owners. However, normally dogs and cats are used as pets and are given quality life by the house owners. They are properly fed, are kept in the houses to be loved, are given proper medical treatment and are nourished properly. On the other hand, there are other animals which are not taken care of to this extent though they are used for human benefits in one way or the other. Therefore, there are different categories of animals. A few are properly taken care of while a few others are not given due consideration for protection of any type of rights. Here the question arises as to what type of rights animals possess and what are the main criteria for protection of animals from any harm. If protection from harm is considered a right, then there is no dispute that animals do possess rights regarding protection from any harm. However, with regard to rights of animals, there are two main opinions amongst the legal experts. On the one hand, a few say that they have legal rights and a few others say that they possess some moral obligations only unlike legal rights. With regard to moral obligations, the proponents of this idea say that animals have certain rights to be treated properly. A third view is that animals are emotionless beings and being so they are like robots given totally at the disposal of human beings and can be treated by their owners as and in whatever manner they want to.⁸ This kind of treatment cannot be accepted by anyone as even ethical considerations cannot accept maltreatment of animals at the hands of human beings. Therefore, this argument is not acceptable in a civilized society.

Theoretical Framework:

⁴ Cass R. Sunstein, 'The Rights of Animals: A Very Short Primer' Public Law and Legal Theory Working Paper No. 30 University of Chicago Law School Chicago Unbound.

⁵ Holmes, Jr., (n 1).

⁶ *ibid.*

⁷ Michiel Korthals, 'Humanity in the Living, the Living in Humans' in Bernice Bovenkerk and Jozef Keulartz eds., *Animals in Our Midst: The Challenges of Co-existing with Animals in the Anthropocene* (Cham: Springer 2017) 141.

⁸ Sunstein, (n 4).

The idea of animal rights evolved with many perceptions. The term ‘animal rights’ was generally interpreted by some people as moral and ethical considerations of human beings towards animals.⁹ The debate over the consciousness and emotional status of animals is another issue among the legal experts to extend rights to them also leading towards the nature of the rights to be so extended. Some people contend that animals do not have consciousness and this is the basic reason they are called animals. On the other hand, a few other experts assert that animals have communication skills and the scientific research has also verified the fact that animals do communicate and adopt a social life. Mere fact that they do not have oral communication language does not make them disentitled from consciousness and losing rights based on the same. They do not have a written and oral language understandable by human beings, but they do have communication skills and an environment to live and all this is based on their consciousness.¹⁰ If they are taken out of said environment and are deprived of their social life, their rights would be violated.

On the basis of the same, some legal experts argue that animals have legal rights and others say that they just have moral obligations and not legal rights. Legal rights are those which are protected by law, rules and regulations. While on the other hand, moral rights are those rights that are not protected by laws, rules and regulations rather are ethics to be followed by human beings. These types of rights are already available in each society as animals are required to be protected from harm and are to be treated fairly. However, advocates of legal rights for animals say that animals possess legal rights and on the basis of the same they cannot be used for human service like work, eggs, meat and experiments as they cannot give consent to it and as a general principles animals are not likely to agree to provide us eggs, meat etc. This is an extreme position whereafter animals cannot be used for any human service. There is a third view as well and proponents of this view say that animals can be used for human service but should be given rights under the prevailing laws including that they should be given proper food, shelter and humane treatment.¹¹ The above mentioned positions among the legal experts not only indicate the entitlement of animals for rights rather also indicate the category of rights to be so extended. If they are considered property of human beings, then their rights entirely depend at the discretion of their owner. On the other hand, if they are considered an independent living specie like human beings, then the modern research clarifies that they are emotional and intelligent being and being so they express their emotions and communicate in one way or the other. These characteristics make them entitled for independent rights just like human beings and accordingly they become entitled not only for protection of any harm rather for all other rights including right to reasonable abode, food, shelter, natural environment of their habitat and social well-being.

The people who are of the opinion that animals do not have legal rights are of the view that they do not think, do not have emotions and do not feel pain and sufferings like human beings do. On the other hand, a few others say that animals have emotions and sentiments and they express it often. Normally these sentiments are supported by children and families who adopt these animals as pets. People negating the legal rights of animals have adopted the theory presented by contractarians. They are of the opinion that legal rights could only be possessed by those who can enter into and sign agreements. Since animals are not capable to sign and enter into agreements, therefore, they cannot be held entitled for legal rights. This argument is primarily based on the concept that animals lack intelligence, autonomy and reasoning. However, if we look we can see that certain human beings also lack these characteristics or have some sort of deficiency. For instance, certain human beings are mentally sick or lack

⁹ David R. Schmahmann and Lori J. Polacheck, ‘the Case against Rights for Animals’ (1995) 22(4) Boston College Environmental Affairs Law Review 747.

¹⁰ Hernandez-Umana and Bernardo Alfredo, ‘What are the fundamentals of animal rights?’ (2022) 4(7) Análisis Jurídico Político 129-30.

¹¹ Marisa Erasmus, ‘Animal welfare and animal rights: Ethics, science and explanations’ Purdue University, Animal Sciences 3.

intelligence and reasoning in one way or the other. Follow the contractarians, we can say that they do not have legal rights like animals as both lack intelligence and reasoning.¹² Therefore, we can say that the concept is not well founded and we cannot deprive animals from their legal rights merely on the basis that they lack intelligence and reasoning.

Nature of Animal Rights:

It has also been long debated as to whether animals can have rights or in other words as to whether legal rights can be extended to animals. Based on general theories of right holders in the context of jurisprudence, this dilemma can be solved easily. However, one of the factors for the right holders also stipulates corresponding duties against those rights. Legal experts have provided different answers to this and accordingly differed on the issue of animals being legal rights holders.¹³

Recognizing this fact, many jurisdictions have adopted their relevant legislations, but advocates of animal rights still assert that these legislations are not sufficiently protecting animal rights. A few of the recommended animal rights proposed for legislation are that the animals should not be used for food, they should not be hunted and killed, the habitats of animals should be protected from any kind of interference and they should not be disturbed to live according to their chosen environment, animals should not be selected for breeding except for their own benefits and they should not be used for work by human beings.¹⁴ However, this appears to be an extreme position and beyond practical implications as none of the countries around the globe has so far implemented this strategy.

There is also need to make a distinction between animal rights and animal welfare. Animal rights are the legal obligations to be followed by everyone with adverse consequences in case of any violation. On the other hand, animal welfare consists of the policies to be adopted for benefit of animals. The difference is based on the concept of legal obligations. Animal welfare normally does not contain a binding legal obligation with adverse consequences in case of failure to be followed. On the other hand, legal obligations cannot be violated and if violated would result in adverse consequences. It is quite possible that animal welfare is observed but legal obligations towards animals are bypassed and surpassed. For instance, if it is a legal obligation not to kill animals for food then they cannot be killed howsoever they are treated humanely and their welfare is ensured during the process of their breeding to produce meat. Many think that animals do not possess these legal rights rather are entitled for human ethics. Their primary argument is based on the fact that animals do not think, they do not have mind and consciousness and they do not make judgment. Another argument is that animals are created for benefit of human beings and nothing else.¹⁵ These are two extreme positions. There are many reasons for animals killing. A few seem justified while other do not.¹⁶ The ideal course seems to be the recognition and enforcement of animal rights and taking benefit from them.

There are two main extremes over the protection of animals i.e. abolitionists and welfarists. The formers are of the opinion that every kind of suffering for animals should be immediately stopped, while the later views that animals are made for human use and can be used provided they are provided welfare and are well treated. Both these concepts do not seem practicable in today's scenario. On the one hand, human survival without use of animals seems difficult while on the other, free hand cannot be given to use animals on the pretext that welfare is provided

¹² Tom Regan, 'A case for animal rights' in M.W. Fox & L.D. Mickley (Eds.), *Advances in animal welfare science* (Washington, DC: The Humane Society of the United States) 179-189.

¹³ Saskia Stucki, 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' (2020) 40(3) *Oxford Journal of Legal Studies* 536.

¹⁴ Naresh Kumar R. and Yudesh Raghavan K, 'A Study on Animal Rights' (2022) 6(11) *International Journal of Engineering Applied Sciences and Technology* 77.

¹⁵ *ibid.*

¹⁶ Benjamin L. Allen et. al., 'Why humans kill animals and why we cannot avoid it' (2023) 896 *Science of the Total Environment* 3.

to the animals as concept of welfare would differ from case to case basis. An animal provided every kind of food and shelter if killed at the end, or used for human amusement or is confined in a cage without any reason cannot be regarded to be provided welfare. Therefore, both these concepts should be integrated to provide a better solution bridging the gap between these two extremes.¹⁷ Unless legal rights are provided to the animals, their protection cannot be ensured effectively. Therefore, there is need for legal theory of animal rights to be developed meaning thereby that ethical and moral rights for animal protection would not work unless they are incorporated into legal rights.¹⁸ It is also important to note that in our legal system, sometimes laws contain general directions without any sanction or consequence in case of violation. In my view, simple directions even if incorporated into legal rights would not work unless they are properly implemented with sanctions and consequences in case of violation.

Irrespective of the debate over legal and moral rights, animal sufferings continue all over the world. Even in the states where laws for animal protection are enforced, it cannot be said that animals are effectively protected from all kinds of sufferings including death. Reasons for disobedience of enforced laws can vary, but political forces and economic aspects seem to be the major among many others. Therefore, still a lot is required to be done and legislation does not seem sufficient to solve the issue. In order to effectively implement animal protection laws, will of the people is the primary requirement. We have to change our daily habits including hobbies, workforce and eating habits keeping in view the protection of animals and only this way we can better protect animals.

Legal Framework:

Despite the differences in philosophical debates, many national and international laws have been enacted to provide animal rights on the basis of they being living creatures.¹⁹ For instance, in some parts of the United States, laws have been enacted for protection of animals for their protection from any harm. It is generally forbidden to transport animals in a cruel and inhuman manner. It is also forbidden to do anything which comes under the ambit of torture. A few states and cities have more specific laws. For instance, in New York, whoever transports an animal in a car or railroad is required to give proper rest and food to the animal with an additional condition that animal should be taken for a rest break after every five hours. Working animals are also entitled for their basic rights including food and proper shelter along with the condition that they should not be overburdened in work and should be given proper rest. It is prohibited in New York to use an animal for overworking. A few other states, for instance, California, has criminalized overworking of the animals. However, these laws and regulations do not seem sufficient to protect animals. A lot more is required to be done particularly with regard to hunting, experimentation and use of animals for work and entertainment. Laws are required to be promulgated with regard to the use of animals in experiments to ensure that they are used where it is absolutely necessary and are not given unnecessary sufferings. Many nations have moved themselves towards this direction and it seems to be the right direction.²⁰ UK's legislation is the most recent. After Animals Welfare Act, 2006, the Animals Welfare (Sentience) Act, 2022 was enacted to incorporate modern trends towards animal protection. UK has also moved another Pet Abduction Bill in 2024 to curb abduction of pets. The former regards animals as emotional beings, i.e. creatures which have emotions and feelings. Therefore, the idea of animals being conscious and emotional has been formally recognized by UK. The later legislation tends to criminalise the abduction of dogs and cats and treats it an

¹⁷ Peter Sankoff, 'The Animal Rights Debate and the Expansion of Public Discourse: Is it Possible for the Law Protecting Animals to Simultaneously Fail and Succeed' 18 *Animal Law* 281.

¹⁸ Stucki, (n 13).

¹⁹ Roscini, 'Animals as Property and as Objects' in Anne Peters, Robert Kolb and Jerome de Hemptinne (eds), *Animals in the International Law of Armed Conflict* (Cambridge: Cambridge University Press 2022) 23.

²⁰ Sunstein, (n 4).

offence independently. UK has attempted to bring these legislations in accordance with internationally settled norms and principles.²¹

Canadian law on animal rights is one of the earlier legislations dating back to the 19th century. Prior to that time, animal rights were primarily based on the values and customs of that time.²² Animals were primarily treated as human property along with all other nonhuman creatures. Any harm to animals was considered a harm to the environment and society as a whole and not an act against the animals in their personal capacity or in violation of their personal rights and animals were not considered legal right holders by that time. Reforms have been made with the passage of time in Canada and any act of cruelty to animals has now been considered a crime under the Criminal Code which is the primary legislation of the country on criminal law. For instance, it has been provided in Canadian Criminal Code that “everyone commits an offence who willfully causes or, being the owner, willfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird”.²³ It has also been provided in the Code that “everyone commits an offence who being the owner or the person having the custody or control of a domestic animal or a bird . . . fails to provide suitable and adequate food, water, shelter and care for it”.²⁴ Apart from the Code, animal rights are also protected under some federal legislations including that promulgated for animal food. However, despite these comprehensive legislations criminalizing any act of cruelty against animals, it is observed that Canada still failed to adopt modern philosophies developed in favor of animal rights protection.²⁵

In contrast to the Canadian law, New Zealand has adopted a bit different approach which so far seems to be the most suitable legislation all over the world. New Zealand, in this regard, has adopted a centralized legislation in the form of Animal Welfare Act, 1999 which provides strict guidelines regarding food, shelter, humane treatment, welfare and well-being of animals including all other measures falling within the ambit of good behavior. Any violation or deviation has been dealt with under the Act and more than forty deviations are criminalized under the Act. In fact, the Act provides for almost everything that could be considered universally accepted legal rights of the animals. Another major aspect of New Zealand legislation is that it provides protection to every type of animals in captivity including companion animals. The legislation provides a comprehensive framework detailing the measures to be adopted by everyone in respect of all types of animals as a uniform policy without leaving the discretion to the owners of these animals.²⁶ The practice adopted by New Zealand is required to be followed by other states till a more comprehensive and robust legislation comes at the surface.

Apart from different legislations adopted across the globe, there are certain cases where animal rights were not only discussed rather key principles regarding animal protection have been set out. For instance, the European Court of Human Rights (Court) discussed animal rights in a number of cases. In 1998, in the case of *Steel and others*,²⁷ the Court took up the matter over arrest of the applicant over the disruption of a grouse hunting party. The Court examined the complaint under Article 5 of the European Convention on Human Rights (Convention) regarding arbitrary interference in liberty and as an interference with the right of free expression. The Court noted that ‘Ms. Steel had been subjected to serious interferences with the exercise of her right to freedom of expression’ balancing this approach by saying that the same was result of ‘obstruction of the lawful pastime of the hunting party and apprehension for

²¹ Roma Beke, ‘To What Extent Should Non-Human Animals Have Legal Rights?’ <www.york.ac.uk/media/law/documents/eventsandnewsdocs/9.To%20What%20Extent%20Should%20Non-Human%20Animals%20Have%20Legal%20Rights_Roma%20Beke.pdf> accessed 21 January 2025.

²² Oliver Wendell Holmes, Jr., book Review of Cass R. Sunstein and Martha C. Nussbaum, ‘Animal Rights: Current Debates and New Directions’ 36(2) *Ottawa Law Review* 353.

²³ Section 445.1(a), Criminal Code.

²⁴ Section 445.1(b), Criminal Code.

²⁵ Sankoff, (n 17).

²⁶ *ibid*, 300.

²⁷ *Steel and Others v. UK* [1998] ECtHR Application No. 24838/94.

law and order'. However, in some future cases, the Court also examined the importance of animal rights by declaring that animal welfare is a matter of public importance and should be protected at all levels. In another case of *Chassagnou v France* (1999)²⁸, the Court took up the matter of certain applicants challenging the pool of their land holdings for hunting purposes where under the relevant law, each land falling below a certain threshold was required to be given in the pool of hunting area. The Court though examined the case in light of general principles of human rights including discrimination and protection of property, but ultimately these rights were given preference over right of the hunting association which directly related to animal protection and the primary concern of the Court was animal protection. This is evident from the fact that in 2012, the Court again examined the case of an applicant in *Chabauty v France*²⁹ where the applicant challenged inclusion of his land in the hunting area but not on ethical basis or violation of animal rights rather on the ground that it amounted to violation of his right to rent his land privately for hunting. The Court distinguished this case from the case of *Chassagnou* by holding that no violation of the Convention was found.

However, disruption to the hunting was not protected in other cases as well. For instance, in *Steel and others v UK*, the Court held that the act of the applicant by throwing herself before the hunting party amounted not only to endanger her own life rather created disorder and amounted to interference and therefore, no violation of Articles 10 & 11 was committed. Same reasoning was adopted in *Geert Drieman and others v Norway*³⁰ where the protesters obstructed a whale hunt and the Court considered it interference, though the application was later on dismissed being ill-founded. The Court, for the first time, considered the protest on animal protection as a matter of public interest in the case of *Bladet Tromsø and Stensaas v Norway*.³¹ The case involved the pleas of *Bladet Tromsø* newspaper and its editor after successful defamation proceedings over the allegation of seal hunt and many other illegal practices in the relevant organization. The Court for the first time examined the role of media in spreading and sharing information within the limits of respecting rights of others and for highlighting the matters of public importance and declared that highlighting the importance of allegations made was a matter of public interest and a major concern at local, national and international level for animal protection.³²

Adopting the same approach, national courts of Pakistan have also started using lens of international best practices regarding animal welfare. Pakistan is rich enough in adopting different laws on animal rights. Almost each province has adopted the relevant legislation.³³ Courts in Pakistan also came forward to protect animal rights. For instance, Supreme Court of Pakistan has started interpreting animal rights in light of other constitutional provisions and international treaties. It has also been observed by the Supreme Court that favorable conditions should be created for animal protection. In some other cases, the courts have started making their endeavors to protect endangered species. For instance, in one of the cases, Lahore High Court took up the matter of Black Buck deer holding that it is an endangered specie and the provincial government is bound to adopt appropriate measures to protect this specie.³⁴ In another case before Islamabad High Court, the rights of animals in captivity came under discussion and the Court held that animals were being kept in small, uneasy and unhealthy

²⁸ *Chassagnou and Others v. France*, Grand Chamber Judgment [1999] ECtHR Applications Nos. 25088/94, 28331/95 and 28443/95.

²⁹ *Chabauty v. France*, Grand Chamber Judgment [2012] ECtHR Application No. 57412/08.

³⁰ *Geert Drieman and Others v. Norway* [2000] ECtHR Application No. 33678/96.

³¹ *Bladet Tromsø and Stensaas v. Norway* Grand Chamber Judgment [1999] ECtHR Application No. 21980/93.

³² Tom Sparks, 'Protection of Animals through Human Rights: The Case-Law of the European Court of Human Rights' Mphil Research Paper Series No. 2018-21, Max Planck Institute for Comparative Public Law and International Law.

³³ See for instance, West Pakistan Wildlife Protection Ordinance, 1959, Pakistan Wildlife Protection Rules, 1960, Pakistan Wildlife Ordinance, 1971, Wildlife Protection Ordinance Sindh, 1972, Baluchistan Wildlife Protection Act, 1974, Punjab Wildlife Act and Rules, 1974, Azad Jammu and Kashmir Wildlife Act, 1975, NWFP Wildlife Act, 1975 and Northern Areas Wildlife Preservation Act, 1975.

³⁴ *Ali Imran v. Forest Wildlife and Fishery Department* 2020 PLD 24 Lahore.

environment which amounted to violation of relevant obligations towards animal rights and appropriate measures should be adopted to provide healthy and suitable living environment to these animals. The Court took up the matter of animals kept in captivity in a zoo in Islamabad and observed that the environment and the facilities in the zoo were not sufficient deal with the behavioral, social and psychological needs of the animals and directed that these animals were required to be relocated.³⁵ The Court though recognized the social and psychological needs of the animals recognizing that they are emotional beings and are required to be treated accordingly but also observed that they are property of the zoo. The Court primarily relied upon Prevention of Cruelty to Animals Act, 1890, which is centuries old legislation and unable to contain modern philosophical considerations. However, all the legislations and rights recognized and enforced by courts in Pakistan are the basic rights of animals and lot of animals suffer. Pakistan still lacks legal framework for effective protection of wildlife, protection of rights of animals in captivity and determination of rights of animals used for human benefit.

Islamic Perspective:

Islam adopts a balance approach towards the rights and duties towards animals. The primary principles are contained in the holy Quran where it has been said by Almighty ALLAH: “We have honoured the children of Adam and carried them by land and sea. We have provided good sustenance for them and favoured them specially above many of those We have created”.³⁶

The verse indicates that among all the creatures, human beings are given preference but creation of everything else has been recognized which includes animals. In respect of taking benefit by the human beings from other creatures the holy Quran states that “He has subjected / tamed all that is in the heavens and the earth for your benefit”.³⁷ It means that it is absolutely permissible under Islam to take benefits from animals. On the other hand, Islam also imposes certain duties towards animals including that they should not be killed without a reason, should be well treated and fed properly. Detailed duties and obligations towards animals have been provided in the Sunnah of the holy Prophet Mohammad.³⁸ With regard to the right to life of animals, the Prophet Mohammad warned killing of animals and is reported to have said: “There is no person who kills a small bird or anything larger for just nothing, but Allah, the Mighty and Sublime, will ask him about it”. When he was asked about the concept of ‘nothing’, he stated: “that you slaughter the animal and eat it and do not cut off its head and throw it aside”.³⁹ These principles clearly illustrate that killing of animals for the purpose of eating and use is allowed in Islam, but they cannot be killed without a justified reason or without adopting the less painful procedure and their meat cannot be wasted.

As far as question with regard to consciousness of animals and they being emotional and intelligent being is concerned, Islam recognized them as conscious beings and capable to perceive emotions, intelligence and sentiments. Rather Islam also says that animals are capable to perceive a few things which human beings cannot. The Prophet Mohammad in this regard said “When you hear the barking of dogs and the braying of asses at night, seek refuge in Allah, for they see which you do not see”.⁴⁰ This hadith has been interpreted by the scholars of hadith to say that animals are capable to see others creatures like jinn and angles which human beings cannot see and even sometimes they can perceive the feelings of natural calamity like flood, hurricane and earthquake etc.

³⁵ *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad* 2021 CLC 262 Islamabad.

³⁶ Qur'an, Surah Al-Isra (The Night Journey) 17:70 [Allama Abdullah Yusuf Ali (tr), 'The Holy Qur'an: Arabic Text, English Translation & Commentary' (Lahore: Sh. Muhammad Ashraf 1934)].

³⁷ Qur'an, Surah Al-Jathiyah (The Kneeling) 45:13. [Allama Abdullah Yusuf Ali (tr), 'The Holy Qur'an: Arabic Text, English Translation & Commentary' (Lahore: Sh. Muhammad Ashraf 1934)].

³⁸ Peace be Upon Him.

³⁹ Abu Abd-ur-Rahman Ahmad ibn Shuayb ibn Ali ibn Sinan ibn Bahr Al-Khurasani An-Nasai, Sunan Al-Nasa'i (in Arabic) [The Collection of Nasa'i] (Halb: Maktabat ul Matboaat 1986) hadith no 4446.

⁴⁰ Abu-Dawud Sulaiman bin Al-Aash'ath Al-Azdi as-Sijistani, Sunan Abu Dawud (in Arabic) [The Collection of Abu Dawud] (Beirut: Maktabat ul Asria) vol. 5, hadith no 5103.

There are number of other traditions of the holy Prophet Mohammad where all the rights of animals have been recognized and enforced. In accordance with the teachings of the holy Prophet Mohammad, animal welfare has been ensured, unjust killing of animals has been prohibited and compassion has been directed to be shown to animals. For instance, the holy Prophet Mohammad passed through a man dragging a sheep by its ear; he stopped and said: 'Leave its ear and hold it by the sides of its neck'⁴¹ for the reason that holding an animal by its ears and dragging is more painful than holding it by neck. It is also reported that the holy Prophet Mohammad has forbidden beating animals on the face,⁴² as the face is sensitive part of the body. The holy Prophet Mohammad has also forbidden fighting of animals against each other as it also causes pain and suffering to the animals.⁴³ Mutilation of animals has also been forbidden by the holy Prophet Mohammad.⁴⁴ With regard to mercy for the animals, it is reported that a man came to the holy Prophet Mohammad and said that he was going to slaughter a sheep, but when he intended so he felt mercy for the sheep and the holy Prophet Mohammad said: 'since you showed mercy to the sheep, Allah will show mercy to you'.⁴⁵ With regard to use of animals in experiments, it has been reported by Abdul Rahman Ibne Usman saying that when a physician consulted the holy Prophet Mohammad about the use of frogs for experiments, he forbade him to kill them.⁴⁶

With regard to showing mercy to the animals, it has been narrated that Abdul Rahman Bin Abdullah quoted his father saying:

"When we were on a journey with the Messenger of Allah and he had gone to relieve himself, we saw a Hummarah with two young ones. We took the young ones. The Hummarah came and began to spread out its wings. Then the prophet (May peace be upon him) came and said: who has pained this young by the loss of her young? Give her young ones back to her. We also saw an ant-hill which we had burned. He asked? Who has burned this? We replied: we have. He said: it is not fitting that anyone but the lord of the fire should punish with fire".⁴⁷

Mercy has also been ordered to be shown even at the time of slaughter. In this regard, the holy Prophet Mohammad said: "Allah has decreed that everything should be done in a good way, so when you kill an animal, use a good method. And when you slaughter, sharpen your knife, and give the animal as little pain as possible".⁴⁸ In another hadith, the holy Prophet Mohammad is reported to have said: "verily Allah has enjoined goodness to everything; so when you kill, kill in a good manner and when you slaughter, slaughter in a good manner". It was further said that "everyone must sharpen his knife, and let the slaughtered animal die comfortably".⁴⁹

All these teachings of the holy Prophet Mohammad clearly illustrate that animals are entitled for certain rights. Islam recognizes that animals are emotional beings and they have feelings of pain and suffering as well as happiness. Islam also recognizes that animals can be used for human benefits, but not unnecessarily nor in a way which causes pain and sufferings to the

⁴¹ Ibn-e-Majah M. n.d. Sunan Ibn-e-Majah (in Arabic) [The Collection of Ibn-e-Majah] (Halb: Daar ul Ihya il Kutub Al Arabiah 1422 A.H.) hadith no 3171.

⁴² Muḥammad ibn Isma'il Bukhari, Al-Jami' al-Ṣaḥiḥ (in Arabic) [The Authentic Collection] (Beirut: Daar ul Tawqal Naijah) vol. 7, hadith no 449.

⁴³ Abu-Dawud Sulaiman bin Al-Aash'ath Al-Azdi as-Sijistani, Sunan Abu Dawud (in Arabic) [The Collection of Abu Dawud] (Beirut: Maktabat ul Asria) Book 15, hadith no 86).

⁴⁴ Ibn-e-Majah M. n.d. Sunan Ibn-e-Majah (in Arabic) [The Collection of Ibn-e-Majah] (Halb: Daar ul Ihya il Kutub Al Arabiah 1422 A.H.) Book 27, hadith no 24).

⁴⁵ Muḥammad ibn Isma'il Bukhari, Al-Jami' al-Ṣaḥiḥ (in Arabic) [The Authentic Collection] (Beirut: Daar ul Tawqal Naijah) vol. 7, hadith no 373.

⁴⁶ Abu-Dawud Sulaiman bin Al-Aash'ath Al-Azdi as-Sijistani, Sunan Abu Dawud (in Arabic) [The Collection of Abu Dawud] (Beirut: Maktabat ul Asria) vol. 5, hadith no 475.

⁴⁷ Abu-Dawud Sulaiman bin Al-Aash'ath Al-Azdi as-Sijistani, Sunan Abu Dawud (in Arabic) [The Collection of Abu Dawud] (Beirut: Maktabat ul Asria) Book 43, hadith no 496).

⁴⁸ Abul Husain Muslim ibn Al-Hajjaj Al-Qushairi An-Naisaburi, Sahih Muslim (in Arabic) [The Authentic Collection of Muslim] (Beirut: Daar ul Ihya il Turath 1955) Book 34, hadith no 84.

⁴⁹ *ibid.*

animals rather while slaughtering animals, it has been ordered to show mercy. These rights are still disputed in modern animal rights context, but these were recognized and enforced by Islam centuries ago.

Summarizing the above discussion, we can say that the theories regarding animal rights though take some unique stands, but have been reconciled by recent jurisprudence. Theoretically, we can still debate that animals possess legal or moral rights or no rights at all and animals are intelligent and emotional beings or otherwise, but in essence, humans do consider animals to be the right holders. It has been proved scientifically that animals are emotional and intelligent being. They express their emotions, feel pain and suffering as well as every other kind of treatment at the hands of human beings. Being so, they are entitled for all the rights available for a living creature, including proper food, shelter, environment, privacy, and natural habitat suitable for their healthy life. Many countries all over the world have adopted legislations with the approach that animals are entitled for legal rights and in one way or the other the concept of animal rights has been recognized all over the world. Therefore, the question over the entitlement of animals as right holders has been solved by current legal framework. Many international and national courts have also adopted the jurisprudence in respect of protection of rights of animals considering them as right holders and have adopted the approach feeling the importance of animal welfare and declaring it a matter of human concern. However, still many legal frameworks are based on general guidelines amounting to moral obligations which is the main obstacle in the protection of animal rights and in this regard comprehensive legal framework at international level is the need of the time.

Conclusion:

The debate with regard to legal status of animals is relevant for their rights. Previously it was common perception among the legal experts that only species falling within the category of persons are entitled for legal rights and not things owned and possessed by human beings as they can be used at the discretion of the later. Animals were considered things and property depriving them from their basic legal rights. Arguments in favor and against may contain value, but current studies have shown that depriving animals from their legal rights is not only an old concept rather goes against the welfare and basic interest of human beings. The concept has been changed over the passage of time and using the animals at the discretion of humans without recognizing their legal rights has been replaced with recent legal developments. Despite the existence of debates over the nature of rights which are available for animals, the modern world has adopted legal frameworks that not only recognize rather protect animal rights. The protection afforded in this regard has been sanctioned with criminal offences in many countries and this practice in this regard is being followed by many others, thus recognizing the legal rights of animals. However, the legal framework differs from state to state and the world still lacks comprehensive code of legal rights at international level to be adopted by the countries in a uniform manner. Certain countries also lack a uniform legal framework within their jurisdiction as the applicable laws are at variance within different parts of a country. Lack of uniformity in this regard gives rise to further debate as to which policy is best suited and better protects the rights of animals on one hand and interest of human beings on the other. Although certain countries have adopted uniform policies containing concrete rules and principles with regard to protection of animal rights, but legal frameworks of this nature though meet the requirement of a particular country but create complications when it comes to regional enforcement of animal rights. This is also one of the major issues regarding uniform interpretation of the animal rights by the regional courts. It is, therefore, required that international bodies should adopt a uniform set of principles to be followed by each country either as a legal obligation after becoming party to it or at least by taking guidance for developing their national legal framework on the basis of universally accepted legal principles. It has also been noticed that merely enlisting legal rights would only amount to lay down some basic ethical values and would not serve the purpose unless violations of animal rights are

criminalized as it has been done in New Zealand. This objective can be achieved by adopting a universally applicable treaty on animal rights establishing an international body to monitor the compliance of principles set out therein by the state parties like other international bodies created for compliance of human rights at international level. It shall also ensure application of these principles at domestic level with strict compliance by the bodies established domestically.