

5. PAWPRINTS OF MORALITY: EXPLORING BESTIALITY LAW AND ANIMAL ETHICS

Chiradeep Basak*

Abstract

This paper critically examines the complex legal, ethical, and philosophical dimensions of bestiality laws and animal ethics, tracing their historical and contemporary significance. It explores the evolving interplay between ecclesiastical condemnation and secular legislation, highlighting the persistent ambiguity surrounding the definition of bestiality across legal systems. The study investigates global legal frameworks, including those of the United States, Canada, Spain, New Zealand, Sweden, and India, analysing legislative trends and socio-political influences that shape the criminalisation and decriminalisation of bestiality. Additionally, it engages with theoretical perspectives on animal rights, consent, and sentience, questioning the adequacy of current moral and legal standards in delineating permissible human-animal interactions. The discourse integrates frameworks such as utilitarianism, speciesism, and the capabilities approach, drawing insights from thinkers like Jeremy Bentham, Martha Nussbaum, Peter Singer, and Gary Francione. It critiques the inconsistencies in legal protections afforded to animals, juxtaposing bestiality laws with accepted practices like animal husbandry and domestication. The paper ultimately calls for a reassessment of ethical paradigms governing human-animal relationships, advocating for a more coherent and principled approach to animal welfare within legal and moral discourse.

Keywords: *Bestiality laws, animal ethics, legal philosophy, sentience, speciesism, moral autonomy, animal welfare, legal frameworks, utilitarianism, capabilities approach.*

DECODING BESTIALITY: THE ECCLESIASTICAL, AND LEGAL CONUNDRUMS

* PhD, WBES, Government of Legal Education, West Bengal

In commencing any juridical scrutiny, it is imperative to delineate the terminological parameters intrinsic to the subject matter. In the instance of bestiality, an ostensibly straightforward task becomes fraught with intricacy. Throughout the annals of the past several centuries, ecclesiastical authorities, the secular apparatus, and legal scholars have endeavoured to furnish an authoritative definition of bestiality. Regrettably, these efforts have yielded naught but a universally nebulous explication of the concept.

From its inception, the Christian ecclesiastical body has proscribed bestiality, assimilating it into the broader rubric of sodomy. Within the ecclesiastical purview, an explicit proscription against aberrant sexual comportment, encompassing acts categorized as "unnatural," including but not limited to masturbation, homosexuality, and bestiality, was articulated. Nevertheless, the ecclesiastical discourse exhibited a conspicuous dearth in effecting meaningful differentiations between licit and illicit sexual conduct. As the adage professes, the diabolical nature of the intricacies lies therein.

Regrettably, the secular legal realm has proven similarly unavailing in augmenting clarity. One of the inaugural legislative endeavours to proscribe sexual congress with an animal manifested as the condemnation of the "detestable and abominable Vice of Buggery committed with mankind or beast."¹ This statutory articulation, while ostensibly purporting to circumscribe the proscribed conduct, serves only to underscore the gravity of the matter without providing requisite definitional precision.

In juxtaposing this discourse with the exigencies of philosophical inquiries, one discerns a parallelism in the perpetual struggle for definitional precision. Much akin to the nuanced efforts in philosophical dialectics, the legal adjudication of bestiality encounters the intricacies intrinsic to demarcating boundaries and explicating the parameters of proscribed conduct. The historical trajectory evinces the persistent challenge encountered by ecclesiastical and secular authorities alike in encapsulating bestiality within a universally coherent and precise doctrinal or statutory framework.

Within the ambit of the animal rights community, a discernible absence of unanimity prevails regarding whether bestiality ought to be categorically deemed as "interspecies sexual assault." The absence of consensus extends to the contemplation of the

¹ Buggery Act, 1853. The first enactment of King Henry VIII that criminalized homosexual activity.

possibility that certain animals may derive pleasure from consensual sexual acts with humans. The consequential inquiry questions whether such a distinction should bear any legal significance.

Firstly, the judiciary, in its interpretative role, tends to adopt a broad approach, thereby subjecting the definitional boundaries to a degree of elasticity, ostensibly influenced by the prevailing moral ethos. Secondly, the scholarly scrutiny, though not as assertive as one might anticipate, reveals a reluctance, with a notable subset of scholars arising predominantly from the animal rights advocacy sphere.

The intra-community divergence among animal rights activists further underscores the nuanced complexity of the subject matter, epitomized by the unresolved dichotomy surrounding the characterization of bestiality as either an unequivocal transgression or a potentially consensual interaction between humans and animals. The absence of a unified perspective within this scholarly enclave contributes to the broader ambiguity and dearth of legal clarity surrounding the definitional contours and ethical implications of bestiality.

Global Legislatopia: Exploring National Norms

The American Scenario

The legal trajectory of bestiality within the United States spans a continuum oscillating between criminalisation and decriminalisation, reflecting a nuanced evolution influenced by historical, societal, and ideological factors. During the Colonial Era, characterised by a Puritanical ethos, bestiality incurred severe condemnation, resulting in a legislative framework imposing ten years of hard labor imprisonment for transgressors.² However, the early twentieth century witnessed a paradigm shift marked by increased societal tolerance, culminating in the effective decriminalisation of bestiality by the conclusion of World War II. Notably, during this period, offenses related to bestiality were more apt to be prosecuted under charges of breaching the peace or causing public disorder rather than formal bestiality charges.

² John Canup, "'The Cry of Sodom Enquired Into': Bestiality and the Wilderness of Human Nature in Seventeenth-Century New England" (1988).

The zenith of this leniency transpired in 1990, wherein no state maintained specific legislation expressly criminalising bestiality. This lenient stance, however, underwent a stark reversal by 2001, as twenty-four states enacted legislation designating bestiality as a felony offense. As of today, more than 40 States have enacted laws pertaining to sexual assault against animals. These states include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming.

This marked shift is attributable to a confluence of factors, notably the resurgence of religious fundamentalism, an upsurge in animal rights activism, and an augmented exertion of social control by state governments. A pivotal moment in the legal landscape, *Lawrence v. Texas*³, rendered by the Supreme Court, posed challenges for states in regulating sexual acts. Consequently, states sought alternative avenues to proscribe bestiality by aligning with the emerging animal rights doctrine. This doctrinal shift reflected an attempt to circumvent difficulties in regulating consensual sexual conduct while simultaneously adhering to evolving societal norms and ethical considerations.

Another specific instance comes from Nevada Assembly member Richard Carrillo, who proposed legislation in the form of Chapter 86 with the aim of criminalising bestiality within the state. This legislative endeavour not only addresses the immediate concern of animal welfare but also endeavours to mitigate the risk of potential harm to humans in the future.⁴

Through the enactment of Chapter 86, Nevada aligns itself with the majority of states by criminalising bestiality for the protection of both animal and human communities. Legislators introduced a novel code section within Chapter 201, Crimes Against Public Decency and Good Morals, of the Nevada Revised Statutes, delineating the offense and its corresponding penalties. According to Chapter 86, bestiality encompasses

³ *Lawrence v Texas* 539 US 558 (2003).

⁴ Emily Malhiot, "Chapter 86: Nevada Finally Outlaws Bestiality" (2018) 49 U Pac L Rev 555.

instances where an individual knowingly and intentionally: (1) engages in sexual conduct with an animal; (2) induces another person to engage in such conduct; (3) allows any sexual conduct with an animal on premises owned by that individual; (4) assists or facilitates in any manner; or (5) photographs or films such conduct for personal or others' sexual gratification.⁵ The legislation excludes certain acts from constituting the offense, such as animal husbandry, recognised methods of insemination for procreation, conformation judging, and established medical procedures performed by a licensed veterinarian.⁶

In sum, the historical and legal evolution of bestiality legislation in the United States portrays a dynamic interplay between moral, religious, and societal influences. The ebb and flow between criminalisation and decriminalisation demonstrate the inherent complexity and fluidity of legal approaches to this issue, with each era shaped by prevailing cultural, ideological, and legal paradigms.

Canadian Scenario

The Civil Code of Quebec under General Provision- 898.1. enumerates that the Animals are not things. They are sentient beings and have biological needs.⁷ Furthermore, in the Canadian case of *R v. Chen*, the gravity of offenses and 2008 amendments to the Criminal Code were under the radar of the Canadian court in Alberta. The accused's initial 90-day sentence for beating his dog was reinstated on appeal, prioritizing denunciation and deterrence. The court highlighted animals as sentient beings and rejected cultural norms as mitigating factors. The judgment underscores the need for prohibition and restitution orders, aiming to bridge the enforcement gap in animal cruelty cases and enhance protection for animal victims.⁸ Section 160 of the Criminal Code of Canada prohibits bestiality by enumerating

“(1) Every person who commits bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction: Compelling the commission of bestiality

⁵ Assembly Bill 391, 2017 Leg, 79th Sess (Nev 2017).

⁶ *id.*

⁷ The Civil Code of Quebec 2016

https://www.publicationsduquebec.gouv.qc.ca/fileadmin/Fichiers_client/lois_et_reglements/LoisAnnuelles/en/2015/2015C35A.PDF accessed 2 March 2024.

⁸ *R v. Chen*, [2021] ABCA 382.

(2) Every person who compels another to commit bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.”⁹

Spanish Scenario

Spain's Law 17/2021, effective from January 5, 2022, recognises animals as sentient beings and family members, requiring proper care from owners. It safeguards animals during separation, allows shared custody, and considers pets in wills. The law prohibits including certain animals in mortgages and prevents companion animals from being seized for unpaid debts. This reflects a broader global trend in recognising and enhancing legal protections for animals.¹⁰ Coming to the angle of bestiality, it has been under the fire of several proponents and opponents as regards the deletion of Article 337 of its Criminal Code.¹¹

Kiwis Scenario

In May 2015, New Zealand's Parliament passed the Animal Welfare Amendment Act (No. 2) 2015, explicitly recognising animals as sentient in the long title of the Animal Welfare Act 1999. The amendment aimed to reform animal welfare laws, emphasising the proper treatment of animals, specifying permissible conduct, and establishing committees. The legislation also introduced mandatory animal welfare standards, enhanced enforcement tools, addressed the ill-treatment of wild animals, and increased transparency in animal research. Notably, it banned animal testing for finished cosmetic products or cosmetic ingredients. The changes responded to a government review, marking a significant step toward improved animal welfare in New Zealand.¹² The Crimes Act, of 1961 criminalises bestiality in New Zealand.¹³

⁹ Section 160, The Criminal Code of Canada <https://www.justice.gc.ca/eng/csj-sjc/pl/baf-bca/index.html> accessed 1 March 2024.

¹⁰ Library of Congress, "Spain: New Law Providing for Increased Protection of Animals Adopted" (17 January 2022) <https://www.loc.gov/item/global-legal-monitor/2022-01-17/spain-new-law-providing-for-increased-protection-of-animals-adopted/> accessed 1 March 2024.

¹¹ Parliamentary Question- E-000756/2023, European Parliament, Spanish breach of European animal health (2023) https://www.europarl.europa.eu/doceo/document/E-9-2023-000756_EN.html accessed 1 March 2024.

¹² Library of Congress, "New Zealand: Animal Welfare Legislation Recognises Animals as Sentient, Bans Cosmetic Testing" (19 May 2015) <https://www.loc.gov/item/global-legal-monitor/2015-05-19/new-zealand-animal-welfare-legislation-recognises-animals-as-sentient-bans-cosmetic-testing/> accessed 1 March 2024.

¹³ Section 143, Crimes Act 1961 (NZ).

Swedish Scenario

The European Union, under Article 13 of the Council of Europe's Convention for the Protection of Animals¹⁴, recognises animal sentience, urging Member States to prioritise animal welfare in various policy areas. In Sweden, the Animal Welfare Act 2018 replaced the 1988 version, explicitly acknowledging animal sentience and applying it to animals kept by humans and those used for scientific purposes. The Act emphasises respecting animals and allowing them to exhibit natural behavior. This reflects Sweden's commitment to recognising animals as sentient beings with inherent value, as highlighted in the governmental bill accompanying the Animal Welfare Act. Additionally, Sweden's Penal Code, Chapter 16, Section 13, addresses animal suffering.¹⁵ Interestingly in Sweden, Bestiality was illegal only if there was the subjugation of suffering upon a non-human but post-2014, bestiality has been completely outlawed.¹⁶

Indian Scenario

The Bhartiya Nyaya Sanhita, 2023 Bill has raised concerns among Indian animal rights activists due to the omission of Section 377 of the Indian Penal Code, which addresses sexual crimes against animals. The removal of Section 377, previously addressing carnal intercourse against the order of nature with animals, without introducing alternative provisions has created apprehension. The 2018 Supreme Court judgment of India in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1) decriminalised gay sex but retained provisions for prosecuting bestiality and non-consensual gay activities. Recent incidents of animal sexual abuse highlight the importance of legal clarity. Critics argue that the current form of the BNS Bill may create a legal gap, lacking explicit provisions to charge individuals for the offense of bestiality.¹⁷

Bestiality (1) Every one is liable to imprisonment for a term not exceeding 7 years who commits bestiality.

(2) This offence is complete upon penetration.

¹⁴ Art. 13, Council of Europe's Convention for the Protection of Animals < <https://eur-lex.europa.eu/EN/legal-content/glossary/animal-welfare.html> > (accessed Mar 3, 2024).

¹⁵ Animal Protection Index, "Sweden" <https://api.worldanimalprotection.org/country/sweden> accessed 3 March 2024.

¹⁶ Malcolm, "Bestiality Officially Illegal in Sweden" (2014) <https://www.icenews.is/2014/04/13/bestiality-officially-illegal-in-sweden/> accessed 3 March 2024.

¹⁷ Soibam Rocky Singh, "Concerns Grow Over Legal Vacuum as India Moves to Repeal Section 377 in the Wake of Disturbing Cases of Sexual Assault of Animals" *The Hindu* (2023) <https://www.thehindu.com/news/national/concerns-grow-over-legal-vacuum-as-india-moves-to>

Beyond Consent: Rethinking Standards in Anti-Bestiality Advocacy

Advocates for anti-bestiality legislation commonly initiate their arguments by emphasising the concept of consent, a rational approach given that consent serves as the distinguishing factor between legitimate and illegitimate sexual activities among humans. The examination of what constitutes consent becomes imperative for safeguarding individual autonomy. However, it is noteworthy that consent is not universally a prerequisite for the diverse uses humans make of nonhuman animals. If consent is generally deemed unnecessary in various contexts, it becomes challenging to justify imposing a distinct standard for sexual interactions with animals.¹⁸

In asserting the distinctiveness of sexual activities, it becomes essential to establish a guiding principle that prohibits animals from potentially engaging in pleasurable interactions with humans while simultaneously permitting reprehensible violations. If the aforementioned objections to the necessity of consent are unfounded, the appropriateness of current conceptions of "consent" as a universal standard for all human sexual activities becomes questionable. Consequently, it may be argued that such notions of consent may not serve as an appropriate standard for evaluating interspecies sexual activity.¹⁹

Nonhuman animals routinely find themselves ensnared in a web of recurrent infringements upon their inherent sexual autonomy. Consider, for instance, domesticated companion animals, which undergo commonplace practices such as spaying and neutering, actions executed without any due consideration or acknowledgment of the animals' capacity for consent.²⁰ This lack of regard extends further into agricultural settings, where farmers routinely subject animals like pigs and bulls to the invasive procedure of castration.²¹ Female counterparts within these agricultural realms are often subjected to insemination, perpetually held in a state of pregnancy, a condition imposed upon them within the confines of what derogatorily

repeal-section-377-in-the-wake-of-disturbing-cases-of-sexual-assault-of-animals/article67288875.ece accessed 1 March 2024.

¹⁸ Antonio M Haynes, "The Bestiality Proscription: In Search of a Rationale" (2014) 21 *Animal L* 130.

¹⁹ Peter Singer, "Heavy Petting" *Nerve* (2001) <http://www.utilitarian.net/singer/by/2001.htm> accessed 12 February 2024.

²⁰ David Boonin, "Robbing PETA to Spay Paul: Do Animal Rights Include Reproductive Rights?" (2003) 13 *Between the Species* <http://digitalcommons.calpoly.edu/bts/voll3/iss3/1> accessed 23 February 2024.

²¹ AVMA, "Swine Castration" (2014) <https://www.avma.org/KB/Policies/Pages/Swine-Castration.aspx> accessed 23 February 2024.

colloquial language deems "rape racks."²² Furthermore, within the spectrum of dairy production, animals endure the relentless practice of milking, an operation conducted without due respect to the intricacies of their sexual autonomy.²³

The argument positing the imperative criminalisation of bestiality as a means to shield the sexual autonomy of animals unravels upon closer inspection, revealing a conspicuous inconsistency within the legal framework. Within this realm, the intrinsic value of an animal's sexual autonomy remains conspicuously absent, and attempts to rationalize the establishment of bestiality laws by invoking the premise that sexual acts are inherently disparate fail to ameliorate the prevailing irrationality. Consequently, the purported act of safeguarding animal sexual autonomy through the prohibition of bestiality becomes enmeshed in a perplexing paradox and an inherently inconsistent legal posture.

In juxtaposition to the presented perspective, an alternative viewpoint may contend that the mentioned procedures, such as spaying, neutering, and castration, are essential for the responsible management of companion and agricultural animal populations. Proponents of these practices argue that they contribute to population control, tempering issues of overpopulation and the subsequent strain on resources.

From an agricultural standpoint, advocates may assert that procedures like insemination and milking are integral for ensuring optimal productivity and efficiency in food production. The implementation of such practices, proponents argue, is driven by the need to meet the demands of a growing global population while addressing economic considerations within the agricultural sector.

Concerning the argument against bestiality laws, an opposing stance might assert that prohibiting such acts is essential for safeguarding societal norms and preventing potential harm. Contrary to the contention of inconsistency in legal frameworks, proponents of anti-bestiality laws may emphasise the importance of delineating acceptable boundaries in human-animal interactions to prevent instances of cruelty, abuse, or potential harm to both parties involved.

²² (n 17), 133.

²³ *ibid.*

In essence, this counter opinion underscores the pragmatic considerations inherent in certain animal management practices and the imperative, from a societal standpoint, of establishing boundaries to ensure ethical and responsible treatment of animals within the framework of human-animal relationships.

However, the angle of informed consent has also drawn contention from some fronts.²⁴ Sexual engagement is ethically sanctioned solely under the auspices of explicit and voluntary consent from all involved parties. Existing legal frameworks addressing sexual assault universally acknowledge two circumstances wherein an individual's consent is invalidated: when in a state of unconsciousness or sleep, and when too young, drugged, or mentally incapacitated. The latter scenario invokes a heightened standard for consent, recognising the potential for cognitive shifts in victims with a cognitive impairment.

Transposing this nuanced perspective to interspecies relations, proponents posit that the inherent vulnerability of animals necessitates an informed consent standard. This contention derives from the recognition that animals, owing to their cognitive limitations, cannot meet the informed consent benchmark. Consequently, proponents assert the categorical impermissibility of bestiality, contending that the application of a heightened standard is justified by the inherent vulnerability of the non-human participant.

Nevertheless, the argument positing a categorical impermissibility of bestiality on the grounds of animals' presumed inability to provide informed consent, an alternative perspective may contend that the application of human-centric standards to interspecies interactions is inherently flawed. Advocates for a more permissive stance may argue that animals communicate consent through non-verbal cues and behaviors, suggesting a degree of agency in their interactions with humans.

Moreover, this counter opinion might assert that animals engage in consensual behaviors within their own species, indicating a capacity for understanding and navigating social interactions. The imposition of a strict human-like standard of informed consent on animals could be seen as anthropocentric, failing to appreciate the diversity of communication methods and social structures in the animal kingdom.

²⁴ *ibid.*

In essence, this counter perspective challenges the notion that informed consent, as defined within a human context, is the sole arbiter of ethical interspecies interactions, advocating for a more nuanced understanding of animal agency and communication in such contexts.

UNRAVELLING THE NEXUS OF CRIME AGAINST NATURE AND ETHICAL CONSIDERATIONS FOR ANIMAL WELFARE

Whether or not we should tolerate human-animal sexual relations hinges both on identifying what it is and also on answering the overriding question of whether it is consensual or coerced behavior.²⁵ According to French anthropologist Philippe Descola, Western cultures often adopt a naturalistic view of organisation, treating humans, animals, plants, and certain minerals as similar in terms of their external characteristics—such as breathing, eating, reproducing, being born, and dying. However, from an internal perspective, they distinguish humans from other entities, highlighting that only humans possess the ability to reason.²⁶ Italian theorist Gary Francione argues that any form of human-animal cohabitation amounts to a form of enslavement, as it prevents animals from living in their natural environments. He therefore calls for the cessation of human control over pets, advocating for their sterilization, a halt in the acquisition of new animals, and the adoption of veganism as a political objective. Similarly, American philosopher Bernard Rollin contends that animals should be "restored" to their natural, autonomous sexual existence, suggesting that veganism includes the ethical responsibility to support animals in reclaiming their familial and reproductive autonomy.²⁷ Peter Singer, an Australian philosopher and animal rights advocate, offers a thought-provoking reflection on human-animal sexuality in his essay *Heavy Petting*. He references historical examples from the relatively recent past when non-procreative sexual acts were widely considered morally questionable, yet societal attitudes toward these practices have since evolved. Nonetheless, a lingering societal taboo concerns intimate relations between humans and animals. He reviews the contention of the renowned Dutch biologist Dekkers who presented a substantial body of evidence, spanning historical

²⁵ Piers Beirne, "Peter Singer's 'Heavy Petting' and the Politics of Animal Sexual Assault" (2001) 10 *Critical Criminology* 48.

²⁶ Giuditta Bassano, "Bestialities and the New Ethics on 'Human' Animals" (2018) 31 *Int'l J Semiot Law* 661.

²⁷ *id* 665.

illustrations and twentieth-century court records from Austria, to illuminate diverse facets of human-animal connections extending beyond conventional forms of affection. This enduring taboo surrounding bestiality underscores the intricate and ambivalent nature of the human-animal relationship, signalling the persistence of societal norms. Singer further argues that this taboo mirrors the intricate dynamics inherent in human-animal interactions, despite occasional instances of unconventional engagements occurring privately.²⁸ The discourse surrounding the humanity of animals and the animality of humans remains a pivotal topic within semiotic studies. Additionally, ongoing discussions explore the distinction between the concepts of difference and threshold, highlighting their operational significance in shaping this field of inquiry..²⁹ In essence, the theoretical challenge lies in how we perceive gradual variations at the discursive level of texts and how these nuanced meanings correspond to the logical distinctions within the framework of the semiotic square..³⁰ Jeremy Bentham, the originator of utilitarianism, was the first prominent figure in Western ethical thought to argue, in 1789, for the explicit consideration of animals in moral reasoning. He also proposed a significant link between humans and other animals in ethical discourse.³¹ Bentham engaged with the question of the boundary between humans and animals, positioning sentience—the capacity to experience pleasure and pain—as the fundamental criterion in matters of animal ethics. Following sentience, speciesism emerged as another key concept in the ethical treatment of animals. This term, originally coined by Richard Ryder and later popularized by Peter Singer, further shaped the discourse on animal ethics.³² It denotes a predisposition or biased perspective in favor of individuals belonging to one's own species over those of another species. Speciesism draws parallels with the negative implications of racism and sexism, aligning with the efforts to promote equitable consideration for the interests of people of color and women. This association underscores the significance of animal welfare as a contemporary social justice concern.³³ Another argument was articulated by Martha Nussbaum which is commonly known as the 'capabilities approach'. According to Nussbaum, asserting the

²⁸ *Supra* note 7.

²⁹ *Supra* note 25, 666.

³⁰ *ibid.*

³¹ Gail Tulloch and Steven White, "A Global Justice Approach to Animal Law & Ethics" (2011) 6 *Austl Animal Protection LJ* 31.

³² *ibid.*

³³ *ibid.*

universality of capabilities involves dismissing cultural relativism and countering the notion that all universal principles inevitably lack sensitivity to regional and cultural nuances. This argument holds particular significance, especially in the current context where cultural or traditional practices may be used as a defense for unacceptable behaviors.³⁴ Nussbaum advocates for the capabilities approach as the optimal ethical framework for non-human animals, surpassing traditional appeals to compassion and humanity by incorporating considerations of justice.³⁵ She outlines ten capabilities, asserting that individuals, including animals, have a vested interest in manifesting these capabilities:

- i.** Life- Animal entitlement to life, irrespective of conscious interest, challenges the meat industry's practices and raises ethical issues surrounding sport killing and fur production, prompting the need for reform.
- ii.** Bodily health pertains to animals under human care. This encompasses laws preventing cruelty in the meat and fur industries, ensuring humane treatment of working animals, and regulating facilities like zoos. Nussbaum emphasises the need to rectify the inconsistency in protecting animals in the food industry compared to domestic animals.³⁶
- iii.** Senses, imagination, and thought involve the provision of access to sources of pleasure. This includes facilitating free movement in an environment to gratify the senses and provide opportunities for engaging in characteristic activities
- iv.** Bodily integrity seeks to forbid actions like declawing in animals and other forms of mutilation carried out for human aesthetic preferences while allowing for training methods intrinsic to their characteristic capability profile.
- v.** Emotions have been placed by Nussbaum as all animals, experiencing a range of emotions including fear, anger, gratitude, and joy, are entitled to lives with unaltered attachments, free from isolation or fear. This recognition is often overlooked in zoos, farms, and research animals.

³⁴ *id* 33.

³⁵ *ibid.*

³⁶ *ibid.*

- vi.** The affiliation has been argued as a form of attachment, which entails a relationship between humans and non-humans based on sympathy and empathy where they cohabit in a world public culture that regards non-humans with dignity.³⁷
- vii.** Play is the entitlement that emphasises adequate space for exercising all lively stimulations that a human too entails in its voyage of living.
- viii.** Other species call for the formation of an 'interdependent world in which all species will enjoy cooperation and mutually supportive relations with one another.'³⁸
- ix.** Control over one's environmental approach highlights both political and natural aspects. For nonhuman animals, it requires fair treatment and legal advocacy, akin to children's rights protection, with respect for habitat integrity as a parallel to property rights and ensuring dignified labour conditions as an analogue to human work rights.³⁹

The capabilities approach, advocated by Nussbaum, underscores the need for ethical consideration and legal protection for nonhuman animals, encompassing aspects such as bodily health, integrity, and the capacity for goal formation, with an emphasis on justice, respect, and fair treatment in various contexts. However, one potential criticism of the capabilities approach for nonhuman animals, as proposed by Nussbaum, is the challenge of objectively measuring and prioritizing the diverse capabilities across species. The inherent subjectivity in determining the significance of certain capabilities may lead to difficulties in establishing universally applicable ethical standards, potentially hindering the approach's practical implementation and effectiveness in addressing animal welfare concerns. Additionally, the approach could overlook the cultural and contextual variations in attitudes toward animals, limiting its cross-cultural applicability. The angle of cultural relativism against universalism is quite a common standpoint on such discourse but coming to the real time subjectivity of objectively measuring these capabilities needs a critical evaluation further.

³⁷ Emanuela Prato-Previde, Elisa Basso Ricci & Elisa Silvia Colombo, The Complexity of the Human–Animal Bond: Empathy, Attachment and Anthropomorphism in Human–Animal Relationships and Animal Hoarding, 12 *Animals* 2835 (2022), <https://doi.org/10.3390/ani12202835>.

³⁸ *id* 317.

³⁹ *Supra* note 31, 36.

THEORETICAL INSIGHTS INTO ANIMAL WELFARE

Unlike human welfare aspects, currently, there is a lack of research addressing the ethical evaluation of policies impacting animal welfare through the "outcome-ranking" method, which involves selecting the option with greater moral desirability when presented with pairs of outcomes.⁴⁰ There have been some attempts to quantify the same from the lens of distributive justice to inter-species comparisons but they all ended up with a negative outcome.⁴¹ Even Bentham and Sidgwick tabled a probability to quantify the mental state of pleasure by placing the hedonistic utility theory.⁴² Theorists like Broome & Harsanyi have also propounded a 'preferentialist approach' by highlighting personal desirability has been emphasised in terms of fulfilled desires.⁴³ John Broome espouses that "Preferencism is the view that good – what is good for a person and what is good overall – is determined entirely by people's preferences".⁴⁴ He further adds- 'We must ask, What concept of degree of preference do we have, or can we construct, that satisfies the requirements? Having done that, we may then be up against the epistemological question of how we can find out what the degree of a particular preference is. The epistemological question may turn out easy or difficult, depending on what the appropriate concept of degree of preference turns out to be.'⁴⁵ John Harsanyi contends that in addressing normative issues, informed preferences should be prioritized over actual preferences or measures of happiness (or welfare).⁴⁶ Another theorist, Emmanuel Levinas through his essay titled, 'The Name of a Dog, or Natural Rights' explores the theme of ethics and responsibility through a reflection on the encounter with the Other, drawing on his philosophical perspective

⁴⁰ Paola Morreale, Distributive Justice and Animal Welfare, 9 REL.: BEYOND ANTHROPOCENTRISM 80 (2021).

⁴¹ *ibid.* Also See Pearson 1984; Arneson 1999; Vallentyne 2007 & Holtug 2007.

⁴² *ibid.* Hedonistic utility theory, which seeks to maximize pleasure and minimize pain, is pertinent to ethical debates involving non-human animals, particularly bestiality, as it assesses moral permissibility based on the resulting pleasure or harm. In this context, the focus is on whether such acts benefit or harm both humans and animals, with attention to animals' capacity for suffering and inability to provide consent. Critics argue that this approach may overlook essential ethical considerations like rights and autonomy, particularly when animals are exploited or harmed.

⁴³ *ibid.*

⁴⁴ John Broome, "Can There Be a Preference-Based Utilitarianism?" in M Fleurbaey, M Salles, and JA Weymark (eds), *Justice, Political Liberalism, and Utilitarianism: Themes from Harsanyi and Rawls* (Cambridge University Press 2008) 221.

⁴⁵ *id* 229.

⁴⁶ Yew-Kwang Ng, "Utility, Informed Preference, or Happiness: Following Harsanyi's Argument to Its Logical Conclusion" (1999) 16(2) Soc Choice Welf 197.

rooted in phenomenology and existentialism.⁴⁷ In this essay, Levinas uses an example of a dog and emphasises the idea that ethical responsibility is not based on contractual agreements or reciprocity but is a fundamental duty that arises from the asymmetrical relationship between the self and the Other.⁴⁸ Theoretically, there is a strong foundation to ascertain the sentience of non-humans as equal to humans. The ethical framework recognises that as sentient beings, animals have a moral status that needs to be taken seriously.⁴⁹ Applying this to the practice of animal research, the ethical framework insists that animals be treated as much as reasonably possible with respect to their well-being, which also includes allowing them to live the typical life of a representative of their species.⁵⁰ Anthropologist Susan Sperling observes that while traditional animal welfare advocates have sought to enhance the treatment of animals across various contexts and raise public awareness of humane issues, proponents of the contemporary animal rights movement challenge foundational assumptions regarding the human-animal relationship that have been integral to modern Western culture. Similarly, political scientist Robert Garner identifies a critical distinction within the animal protection movement, noting that the terms "welfare" and "rights" epitomize the divide between those who view animal interests as secondary, though significant, and those who ascribe a higher moral standing to animals."⁵¹ To focus on companion animals without considering what our moral obligations are to animals generally, or to not discuss the moral issues involved in the status of animals as property or those raised by domestication generally as they affect animals, including our companion animals, is to omit fundamental issues that must be considered as a necessary part of critical thinking about our moral obligations to companion animals.⁵²

CONCLUDING REMARKS

⁴⁷ Emmanuel Levinas, "The Name of a Dog, or Natural Rights" in *Difficult Freedom: Essays on Judaism* (Sein Hand trans, Johns Hopkins University Press 1990) https://www.sas.upenn.edu/~cavitch/pdf-library/Levinas_Name_of_Dog.pdf accessed 25 February 2024.

⁴⁸ *ibid.*

⁴⁹ Verna Jans et al., "Balancing Animal Welfare and Assisted Reproduction: Ethics of Preclinical Animal Research for Testing New Reproductive Technologies" (2018) 21 *Med Health Care & Phil* 539.

⁵⁰ *ibid.*

⁵¹ *id* 402.

⁵² Gary L Francione, "Pets and People: The Ethics of Our Relationships with Companion Animals" (2018) 52 *J Value Inquiry* 515.

In conclusion, the discourse surrounding human-animal relations, particularly in the context of ethical considerations and legal protections, involves diverse perspectives and philosophical frameworks. The examination of sexual relations between humans and animals necessitates a nuanced approach, where the pivotal factors include the nature of the relationship and the consent or coercion involved. French anthropologist Philippe Descola's exploration of Western cultures' naturalistic ontology reveals a distinct separation between humans and other living entities based on reasoning capabilities. Meanwhile, divergent views, such as those advocated by Gary Francione, Bernard Rollin, and Peter Singer, reflect varied stances on cohabitation, ethical treatment, and the necessity of veganism.

The enduring societal taboo surrounding bestiality, as highlighted by Singer, underscores the complex dynamics within human-animal relationships, revealing persistent norms despite societal transformations. Moreover, the ongoing debate on the humanity of animals and the animality of humans, as discussed in semiotics, poses crucial questions about differences, thresholds, and their operational significance.

The historical development of animal ethics sees figures like Jeremy Bentham advocating for the inclusion of animals in ethical considerations, particularly emphasising sentience as a key criterion. The concept of speciesism, popularized by Richard Ryder and Peter Singer, sheds light on biased perspectives favoring one's own species, drawing parallels with racism and sexism and emphasising animal welfare as a contemporary social justice concern. Marsha Nussbaum's capabilities approach provides a comprehensive ethical framework for non-human animals, although it faces criticism for challenges in measuring diverse capabilities objectively.

Theoretical perspectives, including hedonistic utility, preferentialism, and Emmanuel Levinas' phenomenological approach, contribute to the ongoing scholarly engagement on human-animal ethics. Despite the lack of available research on the moral assessment of policies impacting animal welfare, ethical considerations continue to evolve, challenging traditional assumptions and urging a reconsideration of the human relationship with animals. In navigating this intricate landscape, ongoing scholarly awareness is essential to comprehensively understand and address the ethical obligations to animals within broader societal contexts. While the comprehensive exploration of human-animal relations in the provided discourse

offers valuable insights into diverse philosophical perspectives and ethical frameworks, there are certain aspects that merit critique. Firstly, the analysis of human-animal sexual relations, although acknowledging the significance of consent, may benefit from a more in-depth examination of the legal and ethical implications surrounding this sensitive topic. A more detailed exploration of cultural variations and historical perspectives on this issue could enrich the discourse.

The discussion on Descola's naturalistic ontology raises intriguing points about Western cultural perspectives, but the critique could involve a deeper examination of the cultural relativity of these ontological distinctions. It is crucial to recognise that cultural attitudes toward animals vary globally, and a more inclusive examination of diverse cultural ontologies would provide a more comprehensive understanding.

The incorporation of various ethical theories, including those proposed by Francione, Rollin, and Singer, offers a diverse array of perspectives. However, a more critical engagement with the potential limitations or challenges associated with each theory could enhance the depth of the analysis. For instance, exploring potential contradictions or areas where these theories may fall short in addressing complex ethical dilemmas would contribute to a more balanced critique.

The historical development of animal ethics, with figures like Bentham and the concept of speciesism, is well-articulated. However, a deeper examination of the practical implications and challenges in implementing these ethical frameworks in real-world contexts could provide a more realistic perspective. Additionally, the critique could address the evolving nature of societal attitudes toward animals and whether these philosophical frameworks adequately adapt to contemporary ethical considerations.

In the context of the standing of an animal as a legal person in a court of law, the honourable High Court of Uttarakhand in the matter of *Narayan Dutt Bhatt v. Union of India*⁵³ has held that “The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties, and liabilities of a living person. All the citizens throughout the State of Uttarakhand

⁵³ MANU/UC/0431/2018 (04 July 2018 - Uttarakhand HC).

are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.”⁵⁴

So as a utilitarian, going by Peter Singer’s contention, then moral actions are based on their consequences, particularly whether they lead to pleasure or suffering. So, in theory, if an interaction between a human and an animal does not cause harm or suffering to the animal, it may not be inherently immoral from a utilitarian perspective. However, this contention is also underestimating issues related to animal welfare, consent, and exploitation. In fact, the civil society organisation, PETA has pointed out that the absence of consent-giving the capability of an animal amounts to rape.⁵⁵ However, on a point, one cannot simply rule out the social norm angle of Singer’s that he sees as inconsistent or hypocritical. He has pointed out that while society condemns bestiality, it often condones or overlooks other forms of exploitation of animals, such as factory farming or animal experimentation. This does not mean he advocates for bestiality, but he questions why certain acts are condemned while others are tolerated. Many critics argue that Singer’s views downplay the ethical complexity of human-animal relationships, particularly regarding issues of consent and the potential for exploitation. They argue that animals cannot consent in the same way humans can, making any sexual activity with them inherently exploitative.

In sum, Singer’s discussions about bestiality are more about questioning the consistency of moral frameworks concerning animals than about promoting the practice itself. His provocative ideas often aim to force readers to reflect on the deeper ethical principles governing our treatment of animals.

The discussion on Nussbaum’s capabilities approach provides a nuanced perspective on ethical considerations for non-human animals. However, the critique could delve into practical challenges associated with implementing such an approach, especially considering the difficulty in objectively measuring diverse capabilities across species. The potential cultural biases embedded in the capabilities approach should also be critically examined.

⁵⁴ *ibid*, para 99

⁵⁵ PETA, "Statement on Bestiality" <https://www.peta.org/media/news-releases/petas-statement-bestiality/> accessed 4 September 2024.

In conclusion, while the discourse on human-animal relations is thorough and insightful, a more in-depth exploration of certain aspects, including the legal and cultural dimensions of human-animal sexual relations, cultural relativity in ontological distinctions, critical engagement with ethical theories, practical implications of historical ethical frameworks, and challenges associated with the capabilities approach, could contribute to a more nuanced and robust analysis.