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Constitutional Pathways to the Progressive Realisation of Animal Rights: A Comparative Study

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INTRODUCTION

The recognition of animal rights has emerged as one of the defining ethical and legal challenges of our time. As scientific understanding of animal sentience deepens and societal values evolve, pressure on legal systems to extend protections to non-human animals is increasing. Yet despite this normative momentum, animals remain entrenched within legal and political structures that permit extensive exploitation. Their classification as property and the predominance of welfare-based regulatory approaches serve to maintain a system in which human interests, particularly economic and cultural ones, are routinely prioritised over the well-being of animals.

A fundamental limitation of the existing framework lies in the subordinate legal status of animal welfare provisions. As ordinary legislation, these measures are subject to override when they come into conflict with constitutionally protected human rights. In practice, nearly all domains of animal use, from agriculture and scientific research to religious and cultural practices, can be framed as expressions of such rights, including property, occupation, and freedom of religion. As a result, the protective scope of welfare legislation is repeatedly diminished in the face of competing human claims, leaving animals vulnerable to systemic and often legally sanctioned harm. Except in rare cases of gratuitous cruelty, human interests typically prevail over the protections afforded by welfare norms without much difficulty.

Against this backdrop, constitutional animal protections hold particular promise. By embedding animal protection at the constitutional level, states not only affirm the moral and political salience of the issue but also create the conditions for more robust legal development. Constitutional animal protection provisions, however, differ widely in their form, scope, and effect. In most jurisdictions where they exist, they do not confer rights upon animals but instead articulate general objectives or duties of the state. Their legal force is often limited, raising critical questions about their capacity to effect meaningful change and whether they can serve as credible foundations for the progressive realisation of animal rights.

The concept of progressive realisation, rooted in international human rights law and most prominently articulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR),[1] recognises that the full achievement of

[1] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3

certain rights may not be immediately possible. It imposes a duty on states to take deliberate, continuous, and concrete steps towards the full realisation of these rights over time. Applied to animal rights, progressive realisation offers a strategic model for advancing protections incrementally while remaining anchored to a clear ethical objective: the eventual full recognition of animals as rights holders. It provides a framework for legally meaningful, staged reforms without losing sight of the final moral imperative.

Importantly, constitutional provisions have a function that extends beyond their doctrinal enforceability. They may also serve as normative anchors, embedding social values within the legal system and facilitating long-term transformation through public and institutional discourse. Scholars of deliberative democracy have highlighted the significance of legal mechanisms that invite sustained reflection, contestation, and revision. Peter Sankoff has argued that constitutional recognition of animal protection can prompt precisely this type of engagement, fostering legal challenge, legislative scrutiny, and public debate.[2] Through these avenues, such provisions contribute not only to doctrinal development but also to the cultivation of a political culture more attuned to animal interests. Jerry Anderson similarly contends that lasting social change depends as much on enriched public discussion as on formal legal reform.[3] Constitutional provisions may thus operate as tools of ethical formation, helping to shift the contours of what is publicly understood as just, necessary, or legitimate in our treatment of animals.

This article examines the potential and limitations of constitutional animal protection as a mechanism for advancing animal rights. It engages the concept of transformative constitutionalism, which posits that constitutional interpretation must evolve in response to changing moral and social norms, and considers the framework of progressive realisation, rooted in international human rights law, as a strategic model for incremental but meaningful reform. Through a comparative analysis of constitutional animal protection provisions, the article evaluates their legal significance, interpretive impact, and broader discursive role.

The central aim is to examine how constitutional protections might help bridge the gap between the normative aspirations of animal rights theory and the structural constraints of existing legal and political systems, which remain deeply embedded in practices of animal exploitation. By addressing cultural, economic, and doctrinal barriers, and by treating constitutional recognition as both a symbolic and strategic tool, this article argues that the progressive realisation of animal rights offers a coherent and viable pathway for legal development. It contributes to the broader scholarly debate on how legal systems can evolve to reflect the ethical imperative of recognising animals as subjects of moral and legal concern.

[2] Sankoff, P (2012) '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 Review* 281.

[3] Anderson, JL (2011) 'Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement' (4) *Stanford Journal of Animal Law and Policy*, available at: <https://papers.ssrn.com/abstract=1946337>.

TRANSFORMATIVE CONSTITUTIONALISM AND THE PROGRESSIVE REALISATION OF ANIMAL RIGHTS

The Living Constitution and Evolving Societal Attitudes Toward Animals

As a nation's foundational legal instrument, the constitution articulates the principles, rights, and values that structure its social and political order. Yet constitutions are not static. They evolve alongside shifts in moral, cultural, economic, and political contexts, often necessitating reinterpretation or amendment to remain responsive to contemporary challenges. In line with the theory of living constitutionalism, constitutional interpretation should not be confined to the original intentions of its framers but must reflect current societal values and understandings.[4] Although the expression and application of this interpretive approach vary across jurisdictions, the core idea of the living constitution is widely recognised in both common law and civil law traditions, having influenced judicial approaches in countries such as the United States, Germany, India, Pakistan, and South Africa, each shaped by distinct national contexts and constitutional mechanisms.[5]

The idea of transformative constitutionalism builds upon these principles but advances a more ambitious agenda. It is not solely concerned with interpretation but with the constitution's capacity to drive broad, structural societal change over time.[6] This approach is particularly visible in jurisdictions that emphasise rights-based protections, social justice, and an active judiciary, and scholars such as David Bilchitz have further developed the concept by exploring its potential to push the boundaries of constitutional practice and address deeper, systemic forms of inequality.[7]

This paper argues that living constitutionalism and transformative constitutionalism are not merely complementary but mutually reinforcing. Living constitutionalism supplies the interpretive flexibility needed for constitutions to remain responsive to changing societal values, while transformative constitutionalism provides the normative direction that ensures such flexibility is mobilised towards meaningful, structural reform. Read together, these concepts do not simply support constitutional evolution in a general sense; they create the conditions for evolution to be actively steered by commitments to justice, dignity, and equality.

[4] Strauss, DA (2010) *The Living Constitution* Oxford University Press.

[5] Hailbronner, M (2017) 'Transformative Constitutionalism: Not Only in the Global South' (65) *The American Journal of Comparative Law* 527; Ali, MI (2024) 'Unpacking Living Originalism and Living Constitutionalism in the Constitutional Contexts of India and Pakistan' (5) *Indonesian Journal of Law and Society* 316 at 334.; Shai, I (2019) 'The Right to Development, Transformative Constitutionalism and Radical Transformation in South Africa: Post-Colonial and de-Colonial Reflections' (19) *African Human Rights Law Journal* 494; TerBeek, C (2021) 'The Search for an Anchor: Living Constitutionalism from the Progressives to Trump' (46) *Law & Social Inquiry* 860.

[6] Transformative constitutionalism originated in the South African post-apartheid context, where the Constitution was explicitly designed as a tool for social transformation, addressing deep-rooted inequalities and fostering democratic development. See Klare, KE (1998) 'Legal Culture and Transformative Constitutionalism' (14) *South African Journal on Human Rights* 146.

[7] Bilchitz, D (2010) 'Does Transformative Constitutionalism Require the Recognition of Animal Rights?' (25) *Southern African Public Law* Available at: <https://papers.ssrn.com/abstract=1872936>.

The imperative to adapt legal systems in response to societal evolution holds particular relevance in emerging areas of moral concern, including the protection of animals. As public awareness of animals' capacity to suffer increases, alongside growing criticism of their systematic instrumentalization for human purposes, some jurisdictions have begun to incorporate animal protections into their constitutional frameworks. Animal constitutionalism is a clear example of living constitutionalism in action and can also serve as a practical expression of transformative constitutionalism. It offers legal mechanisms for responding to urgent societal concerns regarding animal welfare and reaffirms the constitution's function as a living, transformative document capable of upholding its foundational values amid evolving ethical norms.

Why Animal Rights?

Given the extensive scientific evidence confirming animal sentience, their exclusion from moral consideration without valid justification is arbitrary. Scholars such as Steven Wise, Martha Nussbaum and David DeGrazia associate animals' moral worth with various cognitive and emotional capacities, including agency, problem-solving ability, intentionality, and self-awareness.[8] While this paper does not seek to identify the specific characteristics that best ground moral worth, it argues that animals' demonstrated capacity to suffer, experience pleasure, and express a range of complex emotions provides a compelling basis for moral consideration. In contrast, some scholars have challenged the reliance on human-like qualities, the so-called 'sameness route', as the primary basis for moral and legal inclusion, arguing that this approach risks perpetuating exclusionary hierarchies and that grounding protection in vulnerability, rather than resemblance, may offer a more inclusive and ethically sound foundation. Nevertheless, within constitutional systems still shaped by anthropocentric assumptions, the sameness route often offers the most immediate and persuasive pathway for advancing animal protections.[9] As philosopher Elizabeth Anderson observes, 'change occurs through a complex mixture of ingredients, the most important of which is the development of a new ethical imperative'.[10] As moral agents capable of ethical reflection, it is a moral imperative for human beings to extend deep and conscientious regard for sentient animals.

However, as moral arguments alone do not catalyse the necessary paradigm shift in public consciousness, the next logical step after animals' moral worth is recognised is to examine legal mechanisms that can protect their interests. At present, the dominant animal welfare framework promotes moderate concern for animals by prohibiting only 'unnecessary' suffering, contrasting with animal

[8] DeGrazia, D (1996) *Taking Animals Seriously: Mental Life and Moral Status* Cambridge University Press; Nussbaum, MC (2007) *Frontiers of Justice: Disability, Nationality, Species Membership* (1st ed) Harvard University Press; Nussbaum, MC (2024) *Justice for Animals: Our Collective Responsibility* (1st ed) Simon & Schuster; Wise, SM (2002) *'Unlocking the Cage: Science and the Case for Animal Rights'* The Perseus Press.

[9] While this approach remains strategically viable, its conceptual limitations should be acknowledged, along with the potential of vulnerability-based frameworks to more fundamentally challenge anthropocentric paradigms in the future. On the critique of sameness-based grounding and the turn toward vulnerability, see Deckha, M (2015) 'Vulnerability, Equality, and Animals' (27) *Canadian Journal of Women and the Law* 47; Satz, AB (2010) 'Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy and Property' (16) *Animal Law Review* 65.

[10] Anderson 'Protection for the Powerless' supra note 3.

rights theory, which seeks the complete abolition of animal exploitation. The issue remains that, without strong legal rights, animals' recognised moral status remains unenforceable, leaving them vulnerable to exploitation and harm.

Legal scholar Saskia Stucki defines animal rights as a broad, umbrella concept that encompasses all legal protections afforded to animals.[11] These range from minimal safeguards under animal welfare laws, which she terms 'simple animal rights', to more robust, inviolable protections labelled 'fundamental animal rights'.[12] In line with much of animal rights theory, this paper emphasises the latter: a strong conception of rights comparable to basic human rights, such as life, liberty, and bodily integrity, as the most desirable normative protection.

Translating animals' moral status into legal rights ensures logical consistency with the broader human rights framework by upholding the principle of non-arbitrary discrimination. However, some scholars, particularly in posthumanist and critical animal studies, have raised concerns about the limitations of relying on the human rights discourse to accommodate animal interests, arguing that this framework risks reinforcing anthropocentric assumptions and that it constrains more radical reimaginings of human–animal relations. Nevertheless, within the limitations of existing constitutional structures, the rights framework remains a strategically persuasive pathway for advancing animal protections in ways that are both legally recognisable and socially resonant.[13] Recognising animals as rights holders protects them not merely as passive recipients of human obligations but as subjects with legitimate interests that the law must safeguard.[14] This approach highlights the need for adaptive legal systems that accommodate scientific advances and evolving ethical values. As sociologist Lyle Munro notes, 'for most people, the concept of animal rights is an alien one, so the task of the animal movement is to normalise it'.[15]

The Progressive Realisation Framework

The idea of progressive realisation of rights complements a balanced approach to transformative constitutionalism by providing a structured framework for gradually adapting legal interpretations to evolving societal needs. Originating in international human rights law, particularly in the context of economic, social, and cultural rights, the concept of progressive realisation recognises that states may face financial, administrative, or institutional constraints but are nonetheless required to take deliberate, concrete steps towards the full enjoyment of these

[11] Stucki, S (2023) *One Rights: Human and Animal Rights in the Anthropocene* Springer Nature.

[12] Stucki, S (2020) 'Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights' (40) *Oxford Journal of Legal Studies* 533.

[13] Deckha, M (2012) 'Critical Animal Studies and Animal Law' (18) *Animal Law Review* 207 Available at: <https://lawcommons.lclark.edu/alr/vol18/iss2/4/>.

[14] On animal rights and their dereification in legal systems see Pietrzykowski, T (2020) 'Animal Rights' in von Arnauld, A; von der Decken, K; and Susi, M (eds) (2020) *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric* Cambridge University Press 241, available at: <https://www.cambridge.org/core/books/cambridge-handbook-of-new-human-rights/animal-rights/30C347FFC692D13BB0E36F9050EAE943>.

[15] Munro, LP (2012) 'Teaching & Learning Guide for: The Animal Rights Movement in Theory and Practice: A Review of the Sociological Literature' (6) *Sociology Compass* 511 at 169.

rights over time. It holds states accountable for sustained efforts to expand protections, even where immediate fulfilment is not feasible.[16]

When applied to animal rights, the progressive realisation framework provides a strategic pathway for navigating the deeply embedded legal, economic, and cultural systems that currently obstruct rapid reform. At present, animal welfare advocates pursue incremental reforms within existing political structures to secure enhanced protections for animals, while animal rights proponents often focus on civil society advocacy.[17] The progressive realisation model bridges these strategies, proposing a combined social and political approach aimed at legally grounded animal rights. Unlike a purely welfarist model, which often relies on uncertain, incremental outcomes, the progressive realisation approach sets clear goals, timelines, and measurable objectives. It recognises that the most significant obstacle to change lies in public perception and resistance to challenging entrenched norms. A progressive realisation strategy for animal rights should therefore include objectives such as raising public awareness, promoting education, developing viable alternatives to animal use, and actively addressing societal resistance. This structured approach supports gradual but meaningful reform while maintaining a clear normative direction.

Implementing fundamental animal rights constitutes a significant paradigm shift, given the pervasive entrenchment of animal exploitation within societal structures. While the immediate and comprehensive adoption of animal rights remains unlikely, as it would necessitate an abrupt near-total cessation of animal use, the principle of progressive realisation allows legal and political structures to conceptualise and initiate incremental reforms to dismantle existing barriers and pave the way forward. In doing so, it positions the attainment of animal rights not only as a plausible long-term objective but also as a moral imperative, consistent with the broader trajectory of human rights development.

A key distinction in this framework is between negative and positive rights. Negative rights, which require the state to refrain from interfering with individual freedoms, are typically enforceable. Positive rights, however, require proactive state measures, like resources or services, and are often less readily enforceable. In the case of animals, achieving fundamental rights would require both negative protections, limiting exploitation, and positive actions, such as developing protective regulations and alternative practices.

Overcoming the First Obstacle: A Roadmap through Constitutional Protections

Unlike the human rights framework, where resource limitations often constitute the primary barrier, the first and most significant hurdle to recognising animal rights lies in society's reluctance to envision animals as legitimate holders of fundamental rights. While logistical and resource-related concerns may eventually become relevant, they are secondary to this initial conceptual resistance. Whereas human rights enjoy widespread acceptance as a normative ideal, a society that equally embraces animal rights remains controversial and distant. Realising such rights would require a radical transformation of

[16] Chenwi, L (2013) 'Unpacking "Progressive Realisation", Its Relation to Resources, Minimum Core and Reasonableness, and Some Methodological Considerations for Assessing Compliance' (46) *De Jure* 742.

[17] Garner, R (2006) 'Animal Welfare: A Political Defense' (1) *Journal of Animal Law and Ethics* 161.

entrenched practices, including the use of animals for food, clothing, and experimentation.

The journey towards this goal begins by confronting society's unwillingness to consider animals as rights-bearing subjects. Only after addressing this foundational barrier can we meaningfully engage with the practical challenges, such as financial or institutional constraints, that may hinder the implementation of such rights. At present, we remain in what might be termed a 'pre-conceptualisation stage', a phase in which animal rights are not yet perceived as a feasible or urgent legal issue.

Progressing beyond this stage requires sustained public education and awareness-raising. Research shows that the public remains largely unaware of the scale of suffering inherent in industrial animal agriculture. A systematic review of 90 studies found that most individuals lack awareness of the cruelty and animal suffering involved in the production of animal foods, and that increased awareness leads to behavioural change, including dietary shifts.[18] These findings underscore the potential of education and advocacy to reposition animal rights as a legitimate ethical and legal concern.

As public discourse expands, it will become necessary to develop more robust legal frameworks to ensure these protections extend beyond symbolic gestures. Practical implementation will likely depend on incentives and resources to support governments and industries in adopting animal rights-aligned practices. These ideas, however, remain speculative in nature, serving primarily as tools for normative imagination rather than definitive policy prescriptions. The aim is to explore potential pathways and provoke inquiry, rather than present a detailed action plan.

In this context, constitutional protections play a pivotal role in fostering the progressive realisation of animal rights by stimulating much-needed legal and societal discourse. While such provisions may not confer enforceable rights on animals, they embed within the constitution a set of values and responsibilities that recognise animals' moral relevance. This formal acknowledgment prompts ongoing reflection and deliberation, vital for gradual normative change, as theorists of deliberative democracy have argued. Sankoff highlights the importance of public discourse as a means of democratising animal welfare law, as it enables citizens to participate in shaping the laws that govern animal treatment.[19] His comparative research suggests that periodic public engagement with animal-related legislation contributes to a more dynamic and responsive legal system, while laws that remain static and closed to public debate risk perpetuating injustices through their rigidity.[20]

Sankoff identifies core features of legal systems that encourage sustained engagement with animal protection, including mechanisms for periodic review, avenues for public participation, and opportunities for legal challenge.[21] This

[18] Fonseca, RP and Sanchez-Sabate, R (2022) 'Consumers' Attitudes towards Animal Suffering: A Systematic Review on Awareness, Willingness and Dietary Change' (19) *International Journal of Environmental Research and Public Health* 16372.

[19] Sankoff 'The Animal Rights Debate and the Expansion of Public Discourse' supra note 2.

[20] Ibid.

[21] Ibid.

paper builds upon that foundation, arguing that constitutional protections often facilitate these features by prompting active involvement from both government and judiciary, while opening space for diverse perspectives in animal protection discourse. Public engagement, in turn, often reveals underlying inconsistencies and compels society to confront the structural conditions that leave animals vulnerable to harm.

Ultimately, the advancement of animal rights depends not only on legal reform but also on sustained societal dialogue. As Jerry Anderson observes, social movements require enriched discussions no less than they require direct action.[22] Building public consensus for a paradigm shift is a long-term endeavour, which underscores the importance of legal systems that nurture collective reflection. Constitutional protections can serve as catalysts for such conversations, gradually fostering a social ethic more amenable to recognising future animal rights.

The following chapter presents a comparative analysis of constitutional animal protections across jurisdictions. It explores how these provisions influence legal interpretation and public discourse, and whether they contribute to long-term structural changes that increase societal receptiveness to recognising animals as subjects of fundamental rights.

A COMPARATIVE STUDY OF CONSTITUTIONAL ANIMAL PROTECTIONS

Achieving the systemic shift necessary to accommodate animal rights is a long-term objective, one that may be progressively shaped by the influence of existing constitutional provisions on animal protection. These provisions often function as aspirational commitments, laying the groundwork for future legal and normative advancements. Despite the particularities of each legal system, certain implications can be drawn at a more abstract level, regardless of whether the provision takes the form of a state objective, an explicit right, or another constitutional mechanism.

At present, eleven countries have incorporated explicit animal protection provisions into their constitutions: Austria (section 2 Preamble), Egypt (article 45, section 2), Germany (article 20a), India (article 51A, (g)), Brazil (article 225, section 1, VIII), Russia (Article 114, 1, e), Italy (article 9), Luxembourg (article 11bis), Slovenia (article 72, section4), Switzerland (article 80 and 120, section 2), and Belgium (article 7 bis). This momentum continues, with proposed constitutional amendments on animal protection under discussion in South Korea, Greece, and Chile.[23]

The key question is whether these constitutional protections yield meaningful and positive outcomes for animals. As with most evaluations of legal effectiveness, the answer is complex and context-dependent. Assessing the impact of such provisions requires careful consideration of the variety of

[22] Anderson 'Protection for the Powerless' supra note 3.

[23] Le Bot, O (2024) 'Constitutional Animal Law: Trends and Impacts' *International Association of Constitutional Law (IACL-AIDC Blog)*, available at: <https://blog-iacl-aidc.org/2024-posts/2024/2/27/constitutional-animal-law-trends-and-impacts>.

constitutional formulations and their respective roles within national legal systems.

This chapter centres on three core elements: first, the classification of constitutional provisions and the extent to which their form influences enforceability and societal impact; second, an analysis of the practical effects these have produced within law and society; and third, an examination of how such provisions may serve as stepping stones towards the broader legal recognition of animals as holders of fundamental rights.

Legal Classification of the Provisions

Constitutional animal protections take varied forms across jurisdictions, each offering different degrees of enforceability and normative influence. As scholar Janneke Vink observes, the practical effectiveness of these provisions largely depends on how they are classified and the specific influence they exert within their legal systems.[24] Understanding these classifications is therefore essential for evaluating their capacity to promote animal protection and to influence societal attitudes towards animals.

State Objectives

Constitutional animal protection is frequently articulated as a state objective, an expression of socio-political commitments that, while not conferring subjective rights to individuals, serve as guiding principles for state action.[25] Comparing state objectives requires nuance, as their significance varies depending on jurisdictional factors such as constitutional wording, the drafters' original intent, and the broader legal context. Nonetheless, certain generally recognised functions can be identified across systems with similar constitutional features.

First, state objectives often fulfil a symbolic function, signalling that animal welfare holds sufficient importance to merit constitutional acknowledgment. This symbolic recognition may guide legislative, executive, and judicial bodies in shaping policy and interpreting law. Second, such objectives can influence legal interpretation, encouraging courts to give greater weight to animal protection when balancing competing human and animal interests.[26]

Germany's Article 20a, amended in 2002 to include animal protection, illustrates the multifaceted role of state objectives. This constitutional amendment has influenced judicial reasoning, prompting courts to accord greater consideration to animal interests in cases involving conflicts with human rights or freedoms.[27] Similarly, Austria[28] and Luxembourg[29] follow a similar path

[24] Vink, J (2020) *The Open Society and Its Animals* (1st ed) Palgrave Macmillan.

[25] Ibid.

[26] Ibid.

[27] For case law analysis on the application of Article 20a, see the following sections of this chapter, Verniers (2020) and Haupt (2010).

[28] Article 11 (1) 8 in the Austrian Constitution lists the protection of animals as a matter of Federal legislative competence and section 2 states that the Republic of Austria is committed to animal protection.

[29] In 2023, Luxembourg adopted a new Constitution, revising its previous provision on animal

with constitutional provisions that, while limited in direct legal application, require the state to take animal welfare into account in legislative and executive decision-making.[30] In these jurisdictions, constitutional animal protections operate as normative and interpretive tools, gradually shaping policies and judicial balancing techniques.[31]

Egypt's Article 45, section 2, introduced in the 2014 Constitution, also functions as a state objective by mandating the humane treatment of animals. While this provision has yet to effect substantial legal reforms, it has contributed to the social legitimacy of animal advocacy, making it harder to dismiss. Legal scholar Kristen Stilt notes that this constitutional recognition of animal protection in Egypt has bolstered advocates' ability to engage with both public officials and civil society.[32]

More recently, Belgium's 2024 constitutional amendment designated animal protection as a state objective and formally recognised animal sentience. While the full legal effects remain to be seen, this development represents a significant normative commitment to the animal issue, laying the foundation for future policy initiatives and judicial interpretation aligned with animal protection.

While state objectives demonstrate considerable potential, critical examination reveals significant limitations in their capacity to effectuate rights-based interventions. Khaitan's analysis of directive principles within the Indian constitutional framework illuminates a fundamental concern that such provisions may function predominantly as mechanisms of 'expressive accommodation', whereby ideological minorities achieve symbolic recognition of their values without corresponding binding legal obligations or substantive systemic transformation.[33] This phenomenon extends beyond the Indian context, representing a systemic vulnerability inherent in constitutional frameworks where state objectives lack direct enforceability. Constitutional animal protection state objectives risk becoming instruments of political expedience, enabling governments to project progressive values and inclusive governance while simultaneously circumventing or indefinitely postponing the implementation of concrete legal safeguards. Accordingly, constitutional animal protection must be understood as a necessary but insufficient precondition for transforming human-animal relations, one that requires complementary enforceable legal rights to transcend mere aspirational rhetoric and achieve substantive change.

Fundamental Duty

In India, animal protection was incorporated into the Constitution through the 1976 amendment, placing it under the category of the Fundamental Duties.

protection. The new Article 41(3) states that the State 'recognises to animals the quality of non-human living beings endowed with sentience and ensures the protection of their welfare'.

[30] Lennkh, S (2011) 'The Animal: A Subject of Law? A Reflection on Aspects of the Austrian and German Juridical Systems' (24) *International Journal for the Semiotics of Law* 307.

[31] Vetter, S; Ózsvári, L; and Boros, A (2020) 'Protection of Animals in the Constitutions of the European Countries' (1) *Pro Publico Bono - Magyar Kozigazgatas* 170.

[32] Stilt, KA (2018) 'Constitutional Innovation and Animal Protection in Egypt' (43) *Law & Social Inquiry* 1364.

[33] Khaitan, T (2018) 'Directive Principles and the Expressive Accommodation of Ideological Dissenters' (16) *International Journal of Constitutional Law* 389.

Located in Part IV-A, this provision establishes the protection of animals as a civic responsibility, alongside other moral obligations. Although non-justiciable, it serves as a moral guideline applicable to all citizens.

Scholar Gilles Tarabout notes that this constitutional duty has enhanced the legitimacy and visibility of animal welfare in both legal jurisprudence and public discourse in India.[34] Courts have invoked this provision in numerous cases involving issues such as stray dogs, cattle, and animal sacrifices. In these rulings, courts often appeal to the principle of compassion, deeply rooted in India's cultural and religious traditions as a normative basis for promoting more ethical treatment of animals.[35]

While the constitutional status of this duty has provided animal advocates with a stronger legal and rhetorical platform, scholars have criticised the judiciary's reliance on overly idealistic or hyperbolic language. Despite the symbolic weight of such rulings, they argue, tangible improvements in the lived experiences of animals have remained limited.[36]

Fundamental (Human) Right

In Brazil and Slovenia, animal protections are embedded within broader environmental human rights provisions. However, the scope and legal force of these provisions differ markedly between the two jurisdictions. In Slovenia, the constitutional text is more limited, bordering on a jurisdictional clause, as it merely states that animal protection shall be regulated by law. This wording offers minimal direct normative weight as it primarily delegates responsibility to the legislature.

By contrast, Brazil's animal protection clause, enshrined in the 1988 Constitution from its inception, frames animal protection as a necessary component of a healthy environment where humans can live and thrive. This integration amplifies the provision's prominence within political and legislative agendas, offering distinct advantages over state objectives by enabling direct legal applicability and enforcement. Unlike state objectives, this provision offers direct legal applicability, supported by a broad standing regime that permits both individuals and organisations to bring legal actions in defence of animal interests.

Brazil's legal framework has given rise to a substantial body of case law on animal welfare. These cases have not only clarified legal norms but have also contributed to public awareness and advanced societal discourse on animal protection. As a result, the Brazilian model demonstrates how embedding animal protection within a fundamental human right to a healthy environment can strengthen both legal outcomes and broader normative commitments.

[34] Tarabout, G (2019) 'Compassion for Living Creatures in Indian Law Courts' (10) *Religions* 383.

[35] Ibid.

[36] Apoorva (2024) 'The Role of Constitutional Courts in the Development of Animal Law in India' *Helsinki Animal Law Conference* Available at: <https://www.youtube.com/watch?v=UZYGvG99ChA&ab_channel=HelsinkiAnimalLawCentre>.

Jurisdiction Clauses

Unlike state objectives, which articulate broad normative priorities that guide the development and interpretation of law, jurisdiction clauses designate the specific governmental level responsible for legislating on a particular matter. These provisions clarify the distribution of regulatory power without necessarily establishing enforceable rights or substantive constitutional values.

Switzerland exemplifies this model. Its Constitution incorporates two distinct provisions concerning animals, both serving to consolidate legislative competence over animal protection matters at the federal level. Remarkably, Switzerland stands alone among constitutional systems in explicitly enshrining the concept of animal dignity within its foundational legal document. This recognition represents a significant ethical advancement and provides interpretive guidance for legislative development. However, the practical legal impact of this provision remains constrained by the absence of corresponding fundamental rights protections. Without a framework for enforceable rights, the concept of dignity remains largely interpretive and context-dependent.[37]

Contemporary constitutional developments in Russia and Italy demonstrate similar jurisdictional approaches, albeit with distinct institutional emphases. Russia's 2020 constitutional amendment exemplifies executive-centred delegation, formally assigning responsibility for cultivating responsible attitudes toward animals to the executive branch of government. Italy's 2022 constitutional provision adopts a legislative-centred model, explicitly delegating to statutory law the determination of appropriate methods and mechanisms for animal protection. Both jurisdictional frameworks share a common characteristic in that they allocate regulatory responsibility among governmental institutions without establishing direct constitutional guarantees or enforceable substantive protections for animals themselves.

Implications in Law and Society

A Basis for Limiting Human Rights

One of the most significant legal implications of constitutional animal protection is its capacity to recalibrate the balance between human and animal interests. In the absence of constitutional recognition, human rights claims often prevail with little resistance, rendering animal welfare protections vulnerable to interpretive dilution. Constitutional provisions, by contrast, provide legal leverage that allows animal interests to be weighed more meaningfully in judicial reasoning.

Germany provides a clear illustration of this shift. Scholar Claudia E. Haupt notes that, although Germany's constitutional provision is framed as a state objective and does not grant direct rights to either animals or humans, it has nonetheless prompted substantive legal developments. Notably, it has strengthened the courts' ability to balance fundamental human rights, such as freedom of religion, academic research, and artistic expression, against animal protection interests.[38] Prior to the 2002 constitutional amendment, animal

[37] Vetter, S; Ózsvári, L; and Boros, A (2020) 'Protection of Animals in the Constitutions of the European Countries' (1) *Pro Publico Bono - Magyar Kozigazgatas* 170.

[38] Haupt, CE (2010) 'The Nature and Effects of Constitutional State Objectives: Assessing the German Basic Law's Animal Protection Clause' (16) *Animal Law Review* 213.

welfare concerns were largely ineffective when in conflict with constitutionally protected human rights. In one 1990 case, an artist charged with animal cruelty for binding a bird in glue for an exhibition was acquitted because the court upheld his constitutional right to artistic freedom over animal welfare concerns.[39] Legal scholar Elien Verniers argues that, prior to the amendment, the Animal Welfare Act alone lacked sufficient constitutional weight to counterbalance such fundamental rights.[40] Since 2002, however, courts have increasingly ruled that artistic freedom does not justify cruelty to animals, demonstrating the enhanced normative status of animal protection within Germany's constitutional framework.

However, when constitutional animal protection conflicts with scientific research or professional freedoms, German courts have delivered inconsistent outcomes. Verniers' analysis of German case law reveals significant jurisprudential ambiguity, with court decisions yielding contradictory results that alternately privilege human interests and animal protection.[41]

Despite this judicial uncertainty, constitutional entrenchment of animal protection remains a positive step for animal welfare. The constitutional recognition of animal interests has established animal protection as a legitimate consideration that courts must acknowledge, creating new possibilities for legal argument. While some human rights prove more amenable to limitation in favour of animals than others, even these incremental gains constitute significant advancement within legal systems where animal interests previously held minimal weight.

Importantly, constitutional animal protection, while not equivalent to granting animals legal rights, still enables courts to impose limits on certain human rights. Peter Sankoff underscores the significance of legal challenges in this context.[42] Even when unsuccessful, such cases catalyse public debate and compel critical reflection on issues that might otherwise remain unexamined. From this perspective, litigation plays a vital role in advancing the moral and political legitimacy of animal protection. It is worth noting that a growing body of literature has raised concerns about the strategic risks of high-stakes litigation, arguing that repeated courtroom failures may entrench resistance, set limiting precedents, or divert resources from potentially more achievable, incremental reforms.[43]

Slovenia's experience provides a parallel example. Its constitutional provision, in place since 1991, has similarly enhanced the legal standing of animal interests. In a 2018 case concerning ritual slaughter, the Slovenian Constitutional Court held

[39] Nattrass, KM (2004) '"... Und Die Tiere" Constitutional Protection for Germany's Animals' (10) *Journal of Animal Law* 283.

[40] Verniers, E (2020) 'The Impact of Including Animals in the Constitution–Lessons Learned from the German Animal Welfare State Objective' (8) *Global Journal of Animal Law,* available at: <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1691>.

[41] Ibid.

[42] Sankoff 'The Animal Rights Debate and the Expansion of Public Discourse' supra note 2.

[43] See eg McLaughlin, BE (2019) 'A Conspiracy of Life: A Posthumanist Critique of Approaches to Animal Rights in the Law Note' (14) *University of Massachusetts Law Review* 150; Kennedy, D (1997) *A Critique of Adjudication: (Fin de Siècle)* Harvard University Press.

that animal protection constitutes a constitutional value of public interest.[44] As such, the court ruled that this value can justify limitations on religious freedom, affirming that fundamental rights are not absolute and may be constrained when in conflict with constitutional commitments to animal protection.[45]

However, in the absence of fundamental animal rights, these constitutional protections typically influence only the periphery of human rights, not their core. The tendency for human interests to retain primacy is also evident in Brazil. While the Brazilian Supreme Court has repeatedly upheld animal protection over the constitutional right to cultural expression, invalidating certain animal-based cultural practices, as well as limiting economic freedoms in contexts involving bans on animal testing and the prohibition of bird fighting, it has also ruled in favour of religious freedom in cases where it conflicted with animal protection.[46] These varied outcomes illustrate that the legal strength of animal protection often depends on the nature of the competing human right.[47]

In sum, constitutional animal protections have contributed to a rebalancing of the traditionally asymmetrical relationship between human and animal interests. Although they do not confer enforceable rights on animals, these provisions offer a legal foundation for limiting certain human rights when they conflict with animal welfare. While case law remains inconsistent across jurisdictions, the broader trajectory suggests a gradual, meaningful shift towards enhanced legal consideration of animals within constitutional frameworks.

Prohibition of Retrogression and Progressive Interpretation of Welfare Statutes

A core feature of fundamental rights is they cannot retrocede. The principle of non-retrogression, also referred to as prohibition of retrogression, holds that constitutionally protected rights, once established, cannot be diminished by subsequent legislation.[48] This 'non-regression' guarantee is recognised under different terminologies across jurisdictions: in Belgium, it is often referred to as the 'standstill' or 'immobility' principle;[49] in France, as the 'cliquet effect' or '*anti-retour* rule'.[50] These formulations also reflect broader concepts such as the 'intangibility' or 'irreversibility' of certain rights, closely aligned with the theory of acquired rights.[51]

[44] Constitutional Court of Slovenia, 25 April 2018, No. U-I-140/14-21, from section 151.

[45] Le Bot, O (2023) *Constitutional Animal Law* Independently published.

[46] *Vaquejada* (ADI n. 4983/CE); *Farra do Boi* (RE 153531/SC); Maciel, C (2023) 'The Legal Protection of Animals in Brazil: The Awakening of a Giant Potential' *ReVista [Harvard Review of Latin America],* available at: <https://revista.drclas.harvard.edu/the-legal-protection-of-animals-in-brazil/>.

[47] Brazil Federal Supreme Court, RE 494601/RS (2004).

[48] Pesegoginski, CR (2014) '*Princípio da Vedação do Retrocesso: "Efeito Cliquet"'* [Principle of Backlash Prevention: The "Cliquet Effect"] *JurídicoCerto,* available at: <https://juridicocerto.com/artigos/carlaadvogada/principio-da-vedacao-do-retrocesso-efeito-cliquet-436>.

[49] Verniers, E (2022) 'Animal Constitutionalism: Paving the Way for Animal Inclusion in the Belgian Constitution (10) *Global Journal of Animal Law* 1, available at: <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1759>; Prieur, M and others (2011) *'O Princípio da Proibição do Retrocesso Ambiental'* [The Principle of Prohibition of Environmental Retrogression] *Brasília: Senado Federal* [Federal Senate] 269, available at: <http://www2.senado.leg.br/bdsf/handle/id/242559>.

[50] Prieur and others *'O Princípio da Proibição do Retrocesso Ambiental'* supra note 50.

[51] Ibid.

In Brazil, where animal protection is constitutionally embedded within the right to a healthy environment, the courts have affirmed that the level of protection afforded to animals cannot be rolled back.[52] Haupt argues that the standstill effect can also apply to state objectives, expanding its scope beyond just fundamental rights.[53] In Germany, constitutional provisions have reinforced consistent interpretation of the Animal Protection Act in line with constitutional principles, thereby shielding it from efforts to undermine its protections. German jurisprudence requires legislators to incorporate the latest scientific evidence on animal welfare when updating relevant regulations, ensuring that animal protections remain both current and evidence-based.[54] Verniers describes this requirement as 'inherently progressive', since it compels the prioritisation of animal welfare whenever regulatory changes risk adverse outcomes for animals.[55]

A similarly progressive interpretive approach is evident in Switzerland, where the Constitution has been instrumental in shaping the 2008 Animal Welfare Act. Legal scholar Gieri Bolliger notes that numerous regulations within this Act, particularly those relating to animal husbandry, are closely linked to the constitutional protection of animal dignity.[56] Examples include the requirement that sociable animals be housed in appropriate social groupings (at minimum in pairs), and the prohibition of practices such as feeding live prey, such as mice, to other animals, thereby affirming the dignity of prey species.

Moreover, constitutional animal protections lend greater weight to considering animals' interests when courts interpret open norms. Several key concepts in animal welfare laws remain vague and imprecise, such as the prohibition of 'unnecessary suffering' or the requirement to keep animals in 'reasonable conditions', which are commonly found in most animal welfare statutes. In this context, the constitutional text serves as normative anchors, guiding courts to construe such indeterminate terms in ways that prioritise animal interests. As a result, the Constitution elevates the interpretive standard, pushing legal reasoning beyond minimal thresholds and towards more robust, rights-aligned interpretations of welfare obligations.

Right to Conscientious Objection

The right to conscientious objection allows individuals to abstain from participating in activities that conflict with their moral, ethical, or religious beliefs. Within the context of animal protection, this right may be invoked to refuse involvement in practices deemed harmful to animals, such as educational dissections or participation in animal-based research.

[52] Lewandowski, R (2018) '*Proibição Do Retrocesso*' [Standstill Effect] (*Federal Supreme Court*), available at: <https://www.stf.jus.br/arquivo/biblioteca/PastasMinistros/RicardoLewandowski/ArtigosJornais/1117223.pdf>.

[53] Haupt 'The Nature and Effects of Constitutional State Objectives' supra note 38.

[54] Verniers 'The Impact of Including Animals in the Constitution' supra note 40.

[55] Ibid.

[56] Bolliger, G (2016) 'Legal Protection of Animal Dignity in Switzerland: Status Quo and Future Perspectives' (22) *Animal Law Review* 311.

A landmark case in India, *Sarika Sancheti vs Central Board of Secondary Education*, illustrated the legal recognition of this right in relation to animal ethics.[57] In this case, a student objected to participating in animal dissection on ethical grounds. The Court upheld her right to abstain, affirming the legitimacy of individual conscience and encouraging the use of humane alternatives, such as virtual dissections and synthetic models.

The scope of conscientious objection extends well beyond educational settings, encompassing professional domains where animal use is prevalent, including veterinary medicine, scientific research, and agriculture. For instance, veterinarians may decline to perform procedures they find ethically objectionable, while researchers may opt out of experiments involving animal testing. In jurisdictions where constitutional animal protections are in place, such objections gain additional normative force, as they align not only with individual ethical convictions but also with constitutionally endorsed societal values, making them more difficult for institutions to dismiss.

Furthermore, the increasing invocation of conscientious objection in animal-related contexts stimulates broader ethical discourse and institutional reflection. It can serve as a catalyst for innovation in fields such as cruelty-free research, humane educational practices, and ethical agricultural alternatives. In this way, the exercise of conscientious objection not only safeguards individual autonomy but also contributes to the advancement of animal welfare by prompting the development of alternatives that uphold both personal beliefs and the well-being of animals.

Binding the Three Branches of Government

A constitutional provision for animal protection imposes obligations on all three branches of government, the legislative, the executive, and the judicial, to ensure its effective implementation within their respective competencies. The legislature is tasked with enacting and revising laws in a manner consistent with the constitutional mandate, ensuring that all new and amended legislation aligns with the commitment to animal protection. Similarly, the executive and judiciary are required to interpret and enforce existing laws in accordance with the constitutional mandate.

Brazil provides a compelling example of how constitutional animal protection can influence legislative developments. Over the past decade, numerous municipal and state-level laws have recognised animals as 'non-personal subjects of rights', granting them a distinct legal status that affirms their (simple) rights and legal standing without conferring legal personhood. The preambles of nearly all these laws explicitly reference the constitutional commitment to animal protection, illustrating the enduring influence of constitutional principles, even decades after their adoption.[58] Conversely, when legislative measures have conflicted with constitutional animal protection, such as statutes permitting bird fighting, the judiciary has invalidated them through

[57] *Sarika Sancheti v. Central Board of Secondary Education* (CBSE) (1997) All India Reporter Delhi High Court, Writ Petition, No. 139/96; Le Bot 'Constitutional Animal Law: Trends and Impacts' supra note 23.

[58] Baptista-Rosa, M (2024) 'Animals as Subjects of Rights: Brazil's Constitutional Blueprint' *LEOH - Journal of Animal Law, Ethics and One Health* 146.

constitutional review, citing their inconsistency with the Constitution.[59] In such cases, the constitutional mandate has served as a critical tool for striking down legislation that undermines animal welfare.

The judiciary plays a fundamental role in applying constitutional animal protections, particularly in involving conflicts with competing human interests. In Brazil, courts have not only conducted constitutional reviews but have also, in reference to the constitutional mandate, recognised animals' legal standing in cases of mistreatment, allowing them to be represented in legal proceedings seeking compensation or redress.[60]

The executive branch, through its regulatory authority, is similarly bound to advance policies that fulfil constitutional objectives related to animal protection. Where the executive fails to act in alignment with these objectives, its omissions or actions may be subject to judicial challenge, reinforcing the accountability mechanisms built into the constitutional framework.

In applying, interpreting, and reviewing animal welfare laws, the executive and judiciary are tasked with aligning their interpretations with the values articulated in the constitution. Judicial rulings and executive measures arising from such interpretations should ideally lead to more stringent enforcement of statutory protections and a progressive strengthening of animal welfare standards. Moreover, the presence of constitutional animal protection provisions serves as a normative compass for future governments, helping to shape the long-term ethical and legal trajectory of society.

Depoliticising the Issue of Animal Protection

Embedding animal protection within the constitution serves to reduce political controversy and transform the pursuit of animal protection from a subject of partisan debate into a constitutional mandate shared by all state officials. Once recognised as a core societal value of constitutional significance, animal protection transcends shifting political agendas and binds all branches of government, legislative, executive, and judicial, regardless of ideological orientation. Constitutional recognition thus reframes animal protection not as a discretionary policy preference, but as a non-negotiable responsibility integrated into the functioning of the state.

In this way, the constitution functions as a stabilising force. It shifts the political and legal discourse from questioning whether animal protection should be prioritised to determining how it should be implemented, enforced, and progressively developed. The presence of constitutional animal protection provisions signals a broad legal and ethical consensus, reinforcing the notion that safeguarding animals is part of the constitutional order.

Moreover, this constitutional grounding provides a strong foundation for judicial intervention in cases where animal welfare standards are at risk. Courts are thereby empowered to treat failures to protect animals not merely as policy deficiencies, but as constitutional violations. In doing so, constitutional provisions elevate animal welfare from a contingent political issue to a fundamental legal and moral duty of the state.

[59] Ibid.

[60] Ibid.

Shaping Discourse and Advancing Ethical Thinking

Achieving paradigmatic shifts through mechanisms such as strategic litigation requires acknowledging that judges and policymakers often lack in-depth familiarity with animal ethics and animal rights theory. In this context, constitutional provisions offer a crucial guiding framework, supplying both legal authority and ethical direction to guide decision-making. These provisions reinforce the state's political commitment to animal protection while encouraging critical reflection on the limits of what is considered 'necessary' in the use of animals.

Animal welfare systems typically operate under the presumption that the use and killing of animals is justified if deemed necessary for human purposes. Although this logic persists even in jurisdictions with constitutional protections, such provisions can promote more rigorous scrutiny of the 'necessity' justification. While the use of animals for food remains largely uncontested, ethical norms are shifting in other domains. Increasingly, the use of animals for entertainment or in certain scientific contexts is being questioned, reflecting a gradual evolution in societal standards.

A landmark case before the Brazilian Supreme Court illustrates this progression. In examining the constitutionality of rodeo practices involving bulls, the Court extended its reasoning to broader questions about the ethical treatment of animals in food production.[61] One Justice observed that a consistent application of ethical reasoning could, in theory, lead to compulsory vegetarianism, a conclusion the plenary unanimously agreed was beyond the scope of judicial consideration. Nevertheless, while society may not yet be prepared to relinquish animal consumption altogether, practices such as rodeos could be reassessed as societal attitudes continue to evolve toward reducing unnecessary animal suffering.

Similarly, in a related case concerning the legality of religious animal sacrifice in religious rituals, the Court upheld the practice.[62] It reasoned that the ritual's cultural and religious significance, combined with the post-ceremonial consumption of the animals, rendered it comparable to commercial slaughter practices. While recognising the inherent cruelty in industrial animal agriculture, the Court concluded that it could not meaningfully distinguish between the two contexts in the absence of clear evidence that ritual slaughter involved greater suffering. These rulings reveal the tension between constitutional commitments to animal protection and prevailing societal norms, highlighting the need for a coherent and consistent ethical framework.

Such judicial engagements have extended ethical debates beyond the courtroom, catalysing broader public discourse. Although the courts refrained from directly challenging mainstream animal exploitation practices, their recognition of underlying cruelty helped push the boundaries of what society considers justifiable. These deliberations laid the groundwork for future normative and legal developments.

[61] *Vaquejada* (2017) Ação Direta De Inconstitucionalidade [Tribunal for Direct Action of Unconstitutionality] ADI 4983/CE Judgment: 06/10/2016, available at: <https://jurisprudencia.stf.jus.br/pages/search/sjur366632/false>.

[62] Brazil Federal Supreme Court, RE 494601/RS (2004)

As scholars and advocates deepen their engagement with constitutional animal protections, a feedback loop emerges between legal interpretation and public discourse, with each influencing the other. Judicial rulings prompt media coverage and public debate, reinforcing the perception that animal protection is a serious constitutional matter. This, in turn, can bolster support for progressive judicial reasoning and embolden courts to expand the ethical boundaries of animal law. The resulting dynamic enhances public awareness, civic engagement, and advocacy, thereby contributing to an evolving discourse on the legal and moral standing of animals.

Beyond Brazil, other jurisdictions demonstrate similar patterns. In Egypt, constitutional animal protection intersects with broader concerns including Islamic law and human rights, enhancing the social resonance of animal welfare as both a symbolic and practical commitment. Stilt observes that this approach has bolstered public perception of animal protection as a state commitment.[63]

In Italy, scholar Francesca Rescigno considered the constitutional reform to include the animal protection clause as a positive development even for its symbolic power. She argued that even if the provision is insufficient to affirm animals' legal subjectivity, the constitutional amendment and discussions around it help cast the animal issue in a new and perhaps more favourable light.[64] In India, the Supreme Court has gone further by affirming animals' intrinsic value, dignity, and honour.[65] These rulings frequently invoke compassion not only as an emotional response but also as a moral principle, reflecting a shift in the ethical foundations of animal law in the country.

Collectively, these examples underscore the role of constitutional provisions in advancing ethical and legal discourse on animal protection. Strategic litigation remains a vital catalyst for change, but its success relies on the judiciary's ability to reflect evolving societal values. Ultimately, courts can extend ethical boundaries, but only to the extent that society is prepared to accept such change. The task, then, is to push those boundaries incrementally, guided by constitutional principles, without exceeding what the prevailing ethical climate can support.

Limitations

While constitutional provisions represent a positive development within welfarist legal systems, they face inherent limitations. Despite the emergence of progressive frameworks in certain jurisdictions, systemic animal exploitation remains pervasive, and even advanced legal systems struggle to achieve substantial, lasting improvements for the most vulnerable animals.

One major limitation concerns the challenge of cross-border protection. Even where strong domestic safeguards exist, global trade rules and the dynamics

[63] Stilt, KA (2018) 'Constitutional Innovation and Animal Protection in Egypt' (43) *Law & Social Inquiry* 1364.

[64] Rescigno, F (2023) 'The Entrance of Animal Beings in the Italian Constitution. The Still Incomplete Path of Animal Subjectivity' (5) *Journal of Ethics and Legal Technologies* 22.

[65] *AWBI v. Nagaraja & Ors.* (2014) 7 Supreme Court Cases 547 (Para 72); Shad, S and Joglekar, Y (2022) 'Key Animal Law in India' in Knight, A; Phillips, C and Sparks, P (eds) (2022) *Routledge Handbook of Animal Welfare* Taylor & Francis 414, available at: <https://directory.doabooks.org/handle/20.500.12854/121349>.

of globalisation expose animals to harm once they cross national boundaries.[66] However, many of the most pressing challenges are internal, and this discussion will focus on domestic constraints.

A primary internal limitation lies in the tension between animal protection and economic interests, particularly in sectors reliant on animal exploitation, such as agriculture. In many countries, agricultural production is constitutionally supported, with governments mandated to promote food security and economic development. These priorities often render reforms aimed at improving farmed animal welfare politically sensitive and economically contentious. In countries where agribusiness plays a significant economic driver, such as India and Brazil, political resistance to reforms in farmed animal protection remains strong, even amidst growing public concern.

The distinction between state objectives and enforceable rights further constrains the impact of constitutional animal protection. As Vink notes, state objectives hold symbolic importance but do not grant concrete, justiciable rights.[67] Without legal standing, animals, or their representatives, cannot invoke these provisions directly in court. In Brazil and Slovenia, where animal protection is embedded within environmental rights, humans remain the direct beneficiaries. Although Brazil's legal framework permits animals to be represented in court, this broad standing regime is not derived from its constitutional animal protection mandate alone, but supported by other elements in the legal system.[68]

Haupt cautions against raising public expectations that constitutional recognition alone will yield meaningful legal change.[69] The interpretive flexibility and judicial balancing required by such provisions often dilute their practical effects. Italy illustrates this risk. While its recent constitutional amendment acknowledging animal protection has been widely celebrated, critics argue that in the absence of accompanying legislative or cultural changes, its impact may remain largely symbolic.[70] Although the amendment signals commitment to future reforms, its practical impact on animal protection is limited without robust legislative and judicial support. Like many constitutional provisions aimed at social progress, the gap between formal recognition and effective enforcement highlights the need for sustained legal and social efforts.

Judicial discretion also plays a crucial role in determining the effectiveness of constitutional provisions. While judges have the authority to interpret constitutional norms, they are often hesitant to initiate transformative rulings without clear societal support. Even in legal systems that permit judicial innovation, courts tend to align their interpretations with prevailing cultural and economic norms. As a result, although certain forms of animal use, such as for entertainment or specific scientific experiments, are increasingly subject to legal

[66] Blattner, CE (2019) *Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization* (online ed) Oxford University Press.

[67] Vink, J (2020) *The Open Society and Its Animals* (1st ed) Palgrave Macmillan.

[68] Baptista-Rosa, M (2024) 'Animals as Subjects of Rights: Brazil's Constitutional Blueprint' *LEOH - Journal of Animal Law, Ethics and One Health* 146.

[69] Haupt 'The Nature and Effects of Constitutional State Objectives' supra note 38.

[70] Rescigno, F (2023) 'The Entrance of Animal Beings in the Italian Constitution. The Still Incomplete Path of Animal Subjectivity' (5) *Journal of Ethics and Legal Technologies* 22.

scrutiny, entrenched practices like factory farming often remain unchallenged due to their broad social acceptance and economic significance.

Ultimately, the limitations of constitutional animal protection reflect deeper tensions among cultural values, economic priorities, and legal structures. The journey towards meaningful legal change requires more than constitutional recognition; it needs overcoming entrenched societal resistance, which is the main obstacle in the way of the full realisation of animal rights.

Despite the challenges, constitutional animal protection remains a positive development, offering a promising foundation for shaping societal values and enabling future legal advances. As legal scholar Jessica Eisen observes, while such protections may fall short of addressing the most severe harms associated with industrialised agriculture, they nonetheless hold significant normative value by formally acknowledging animals' vulnerability and sentience.[71] This recognition creates conceptual space for further legal and ethical progress. However, without sustained efforts in legislative reform, judicial interpretation, and public engagement, the transformative potential of these provisions risks remaining unrealised.

Next Steps Towards the Progressive Realisation of Animal Rights

The concept of progressive realisation offers a structured approach to advancing animal rights in a world where immediate, sweeping change is unfeasible. Rooted in the principles of transformative constitutionalism, this framework acknowledges the need for legal systems to evolve alongside shifting societal values, while remaining cognisant of present institutional and cultural constraints. A foundational step in this process is the establishment of constitutional protections for animals. As discussed, several countries have taken initial steps to incorporate animal welfare protections in their constitutions. However, these provisions generally function as aspirational objectives of guiding principles, rather than enforceable rights, binding state actors without yet recognising animals as subjects of fundamental rights. The progressive implementation of animal rights therefore requires building upon these initial foundations to incrementally expand the scope and enforceability of legal protections.

A key aspect of this progression involves identifying and guaranteeing a minimum core of protections for animals, with the long-term objective of realising comprehensive rights such as freedom, life, and bodily integrity. Drawing from human rights theory, the minimum core concept establishes baseline protections essential to preserving an individual's well-being and dignity. Applied to animals, the minimum core of the right to freedom might include prohibitions against inhumane confinement, while the minimum core of the right to bodily integrity could mandate welfare standards that respect animals' physical and psychological needs, banning ordinary factory farming practices such as tail docking or beak trimming. Over time, as initiatives to cultivate a more ethically grounded societal perspective on animals gain traction, these foundational rights could evolve into broader protections, eg the right to be free from lifelong confinement, and invasive breeding practices.

[71] Eisen, J (2017) 'Animals in the Constitutional State' (15) *International Journal of Constitutional Law* 909.

To support this gradual expansion, societies must first confront the deep-rooted cultural and economic barriers that hinder the recognition of animal rights. Cultural traditions and economic dependencies on animal-exploiting industries present substantial obstacles to reform. These, however, can be addressed through a phased strategy involving public education, ethical advocacy, investment in alternatives, and incremental legal reform. Public awareness campaigns that foreground scientific evidence of animal sentience, coupled with moral reasoning, are essential for shifting public attitudes. As recognition of animals' moral status deepens, legal and political systems are more likely to respond in kind.

Legal systems should be tasked with creating frameworks that progressively expand protections for animals. This includes strengthening existing laws, implementing sector-specific reforms to reduce suffering (e.g. in agriculture, entertainment, or scientific research), facilitating legal access and representation for animals, and ensuring consistent application of constitutional principles. Courts have a critical role to play by interpreting constitutional provisions in ways that open new avenues for protective jurisprudence. Even if full legal recognition of animal rights remains a distant goal, judicial decisions that favour animal interests can lay the groundwork for future normative and legal developments.

The progressive realisation framework requires states to take deliberate and measurable steps towards fully recognising animal rights. This obligation entails not only maintaining current protections but actively building upon them. The principle of non-regression, which prohibits the weakening of established rights, already applies to many constitutional animal protection clauses, reinforcing the need for forward momentum and shielding hard-won gains from erosion.

In summary, the progressive realisation of animal rights demands sustained commitment across legal, social, and cultural domains. Crucially, it is not merely a strategy of incremental reform, but a principled framework that requires clarity of purpose from the outset. Its value lies in affirming the final objective, the full legal recognition of animals as rights holders, as both morally imperative and legally conceivable, even if current social and political conditions preclude the immediate cessation of all forms of animal exploitation. By setting this destination clearly, progressive realisation ensures that each legal step taken is guided by an overarching vision of justice for animals. It preserves the normative integrity of the animal rights project, offering a way to honour the ethical urgency of correcting systemic wrongs while advancing reforms that are feasible in the present. In doing so, it enables societies to build, over time, a legal and moral order in which animals are no longer treated as instruments, but as subjects of law entitled to protection, dignity, and freedom from harm.

CONCLUSION

The progressive realisation of animal rights offers both a principled and pragmatic framework for navigating the inherent tensions between the current realities of animal exploitation and the moral imperative to end it. This paper has argued that constitutional animal protection provisions, though often limited in scope and enforceability, represent an essential starting point for advancing the legal status of animals. By embedding animal protection within constitutional texts,

states provide a stable and authoritative platform from which legal, political, and cultural systems can evolve.

Through a comparative analysis, this paper has demonstrated that constitutional provisions, whether framed as state objectives, jurisdictional clauses, or elements of fundamental rights, can influence judicial reasoning, legislative priorities, and public discourse, even in the absence of formal animal rights. These provisions depoliticise animal welfare, strengthen the legitimacy of legal challenges, and create space for incremental reforms that progressively shift the balance between human and animal interests. However, the limitations of these provisions are equally clear. Deeply embedded cultural practices, economic structures, and judicial conservatism often restrict their transformative potential, especially in areas such as industrial agriculture, where human interests are heavily protected.

Despite these barriers, the progressive realisation of animal rights is not simply a matter of pragmatic sequencing. It is, above all, a moral commitment that requires clarity of purpose from the outset. The framework's value lies in its insistence on defining the final destination, full legal recognition of animals as rights holders, at the beginning of the journey. It provides a way of holding this objective in focus, even as societies move forward through incremental legal and cultural shifts. This approach ensures that each reform, no matter how small, is aligned with the broader goal of correcting systemic injustices and building a more inclusive legal order.

Progressive realisation also provides a pathway for integrating minimum core protections for animals, applying human rights principles to gradually prohibit the most severe forms of harm and establish enforceable claims to freedom, dignity, and bodily integrity. These foundational steps can progressively erode practices such as factory farming and lead to the development of stronger legal frameworks that affirm animals as subjects of rights rather than objects of use.

Ultimately, the constitutional recognition of animal protection is not the conclusion of the animal rights project, it is the beginning. It signals a societal willingness to question deeply entrenched hierarchies and to imagine new legal and ethical paradigms that extend justice beyond the human sphere. Realising this vision will require persistent judicial innovation, legislative courage, and sustained public engagement. Political will and ethical reflection must continue to shape this evolving discourse, ensuring that the legal systems of tomorrow are better equipped to uphold the moral imperatives of today.