

Animal Welfare and Rights Legal Protection in China: the Problems and their Solutions

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Short Communication

In the West, concern for the well-being of animals has long been attached importance in history. Animal welfare “is a state inherent to the animal itself, which may be good or bad at any given time depending on the animal’s circumstances” [1]. One of the first pieces of systematic legislation to protect the welfare and rights of animals was the Act against Plowing by the Tale, and Pulling the Wool of Living Sheep, passed by the Parliament of Ireland in 1635; after it, in 1822, the ‘Cruel Treatment of Cattle’ was brought by Irish MP Richard Martin to the Parliament of the United Kingdom, and it was known as Martin’s Act. All of these early legislations can reflect that the legal concern has been beyond for the human being to for the animal, and was a concern of some ancient civilizations and took a large place in Western, and it is now a significant focus of interest in various aspects. It is not only a negative obligation for the human being not to injure the animals, but also a positive act duty to protect them. ‘Nowadays, over 100 countries have enacted variety of laws on animal welfare, which not only demonstrates people’s respect for animals but also guarantees the safety of animal derived food’ [2].

However, in China, ‘very few Chinese are familiar with the term animal welfare; the majority believe that every person’s welfare should be improved, no matter the welfare law on Uno human animals’ [3]. The issues of animal protection, in China, are still a social and legal problem. Needless to say the animal welfare law, the animal protection is still remaining in the original phase: cruelty to animal is not considered as illegal behavior; the people don’t need to take any legal positive responsibility to take care the animals. To a great extent, this kind of law is lagged far behind the West and the international trend, and it also results in a bad social impact. Given this fact, this paper would like to examine the current legal protection available to animal and its protection in the first part, and then look to other states for guides and then offer some improving suggestions.

The Current Legal Protection Available to Animals in China

The wildlife animal conservation legislation

The Law on Protection of Wildlife: general protection

China is a state with vast and diverse landscapes and natural wealth, ‘the sheer number of species found in the country is astounding: 580 mammals, 1330 birds, 407 reptiles, 321 amphibians, and more than 3500 fish’ [4]. However, the number of wildlife animals is experiencing unprecedented decline in current decades, especially after 1979, due to the overexploitation of natural resources and unsustainable economic development, followed by severe environmental pollution.

Furthermore, one more important reason for it is the lacking of legislation.

The number of laws and regulations protecting animals in China is very rare. ‘Apart from the Wildlife Law (It is the Law of the People’s Republic of China on Protection of Wildlife 1988, hereinafter the Wildlife Law-the author), there is scant other law available to protect animals in China from cruelty’ [1]. The Wildlife Law is the most important law of the legal system protecting animals, in some sense, it perceivably reflects the level of animal protection in China [5], and it was adopted by the Standing Committee of the National People’s Congress of P.R.C. in 1988, and was firstly amended in 2004, and amended secondly in 2009. From the Wildlife Law, we can know the whole picture of legal system protecting wildlife animal in China.

The Wildlife Law is enacted in accordance with the Constitution Law of People’s Republic of China. The Article 9 of the Constitution provides that, ‘the State ensures the rational use of natural resources and protects rare animals and plants. Appropriation or damaging of natural resources by any organization or individual by whatever means is prohibited’ [6]. The Wildlife Law is enacted according to this provision and implementing this constitutional requirement. The Article 1 of the Wildlife Law provinces its legislative goal, ‘for the purpose of protecting and saving the species of wildlife which are rare or near extinction, protecting, developing and rationally utilizing wildlife resources and maintaining ecological balances’ [7]. Wildlife animal is an important part of ecological resources, and it is also a kind of very important natural resource, and the biological diversity of the wildlife animals is of a significant value to the state and society [8]. Therefore, the wildlife animals in China are deserved to be protected due to the special significance in the terms of species, resources and ecology [9], and ‘they are still remaining on the status of ‘subject’ or ‘property’, and the final legal purpose is not for protecting individual interest of wildlife animal but rather for the ecological balances and sustainable usage of resource’ [10].

As for the protective scope, the Wildlife Law provides a limit number of species, not all the wildlife animals are protected by it. In accordance with Article 2 (2) of the Wildlife Law, the wildlife refers to the species of terrestrial and aquatic wildlife which are rare or near extinction and the species of terrestrial wildlife which are beneficial or of important economic or scientific value [11]. In other words, the wildlife animals which is not rare or near extinction or beneficial or something like this would not be protected, and the people are allowed to use them freely. Therefore, it can be said that the economic and ecological value of the wildlife is only existence while comparing with the human being; and the wildlife animals do not have their own values.

As for the protective measures and ways, this Wildlife Law chiefly adopts the following measures: protecting the environment for the

wildlife survival, prohibiting the illegal destruction by any unit or individual and prohibiting hunting and catching [11]. The wildlife animals are protected under two different classes, i.e., the wildlife under first class protection and wildlife under second class protection, and these two different class are protected by different measures; [11] and taking timely measures to prevent or rescue the wildlife to which the natural disasters present threats [11]. All of these measures are only for the conservation of survival and reproductive environment of the rare or near extinction wildlife animals, but for other facts such as body damage and care the wildlife, this law does not provides. However, in Europe, the UK, USA, New Zealand, Australia and Taiwan, they have already adopted animal welfare law to require that animals are provided with a reasonable minimum level of care [1]. So, in these states, the measures adopted to protect animal are more rational and 'humanity'. 'The present Wildlife Law ignores to protect the inherent value of the wildlife, and it does not satisfy the basic protective requirements of the wildlife, and it thus shows obviously utilitarianism purpose, because the legislator who made this law did not be aware of the wildlife welfare [12].

The Criminal Law of China: the wildlife crimes

The wildlife crime refers to any behavior which contravenes current criminal law providing the protection of wildlife in China, but the behavior which takes the general animals, such as pet or the animals for the purpose of farming, is not deemed as crime. These crimes include crime of unlawfully fishing for aquatic products, and crime of illegally hunting and killing rare or near extinction wildlife, crime of illegally purchasing, transporting or selling rare or near extinction wildlife or the products thereof. Unlawfully fishing for aquatic products is provided like that whoever, in violation of the law or regulations on protection of aquatic resources, catches aquatic products in an area or during a season closed to fishing, or uses prohibited fishing gear or methods for the purpose, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance or be fined [13]. Crime of illegally hunting and killing rare or near extinction wildlife, crime of illegally purchasing, transporting or selling rare or near extinction wildlife or the products thereof are provided like that whoever illegally catches or kills precious and endangered species of wildlife under special State protection or illegally purchases, transports or sells such species of wildlife as well as the products thereof shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined or be sentenced to confiscation of property [13]. In addition, these crimes include also the crime of illegally hunting, which is provided by like that whoever, in violation of the law or regulations on hunting, hunts wildlife in an area or during a season closed to hunting or uses prohibited hunting gear or methods for the purpose, thus damaging wildlife resources, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined [13].

Obviously, we can know that the criminal provisions about the wildlife crimes are very simple and ambiguity from the aforesaid provisions. All of them are provided in the form of blank description of crime, namely, these kind of crimes are basic on the situation that it

violates 'the law or regulations for protection of aquatic resources', or 'the law or regulations for hunting', or 'the law or regulations on protection of wildlife'. In addition, the crime of unlawfully fishing for aquatic products and crime of illegally hunting are the crime with circumstances. Only the behavior cause a serious circumstance can be considered as crime. Most of these circumstances can only be interpreted by the Supreme People's Court thought making judicial interpretations [14]. 'This kind of legislation is so simple and ambiguity that it lead to more practice problems' [15].

The non-wildlife animal conservation legislation

The wildlife animals are an important national natural resource, and they are an important part of biological diversity, therefore, they should be specially protected by the national laws and regulations. As for the non-wildlife animals in China, they also protected by some laws and regulations, but these laws and regulations are very difficultly to called the law for protection animals, and they are at best the law or regulation providing how to use and manage the animals.

Laboratory animal legislation

As for the laboratory animal, the Regulation for Administration of Laboratory Animals (Hereinafter, the Regulation), which was issued by the State Scientific and Technological Commission and approved by the State Council in 1988, is an important legal document providing the usage of laboratory animal, and its goal is very clearly, namely, for 'strengthening the administration of laboratory animals and for guaranteeing the quality of laboratory animals to fit in with needs of scientific researches, economic construction and social development' [16]. However, the Regulation does not provide any provision about how to care the laboratory animals, and how to guarantee their welfare duty to these issuers are not this regulation's goal, which focus on administrating the laboratory animal, and guaranteeing the quality of laboratory animals and protecting the quality of scientific research. Even though this Regulation provides that the laboratory animal should be well fed, given the drinking water that shall be in conformity with the hygiene standards for drinking water in city, and given the bedding materials that shall be kept clean, dry, water sucking, non-poisonous, parasites-free, infection-free and contamination-free [16], they are only for the goal of guaranteeing the scientific research. Theoretically, these provisions contain the concept of animal welfare, but in practice, 'they are hard to carry out due to the lack of the explicit and practicable measures' [15].

In the West, legislatively protecting laboratory animal has a long history with a developed system. The Animals (Scientific Procedures) Act was enacted by the British Parliament in 1986, and was amended in 2012, which is an important law for protecting laboratory animal welfare with the purposes of providing any procedure applied to a protected animal for a qualifying purpose which may have the effect of causing the animal a level of pain, suffering, distress or lasting harm equivalent to, or higher than, that caused by the introduction of a needle in accordance with good veterinary practice [17]. In accordance with this purpose, the thought of animal welfare has already deep influenced on it. The Animals (Scientific Procedures) Act provides a complete licensing system, prohibiting unlicensed undertakings. No experience can be done without three licenses at the same time, i.e., personal license, project license and library license [17]. And this Act also provides that 'the Secretary of State shall weigh the likely adverse effects on the animals concerned against the benefit likely to accrue as a result of the program to be specified in the license' [17]. And the license should not be issued granted unless he is satisfied that the

applicant has given adequate consideration to the feasibility of achieving the purpose of the program to be specified in the license by means not involving the use of protected animals [17], and the license would not be granted to authorize the use of cats, dogs, primates or equidae unless he is satisfied that animals of no other species are suitable for the purposes of the program to be specified in the license or that it is not practicable to obtain animals of any other species that are suitable for those purposes [17]. From these provisions, we can know that it does not encourage the use of animal, and it advocates using other feasible alternative things to the animal. By contrast, China's regulation is too simple to protect the welfare of laboratory animal.

Legislation for the protection of animals kept for farming purposes

In China, the animals kept for farming purposes are not treated as such pet or companion animal as a special kind of animal, so they are not given any special protection, and so there is no special law or regulation providing the protection of animals kept for farming purposes, but only can find some provision in the Animal Husbandry Law of the People's Republic of China (Hereinafter, the Animal Husbandry Law), which is the basic law regulating the behavior related to the production and business operations of stockbreeding, for the sake of ensuring the quality and safety of livestock and poultry products, protecting and reasonably utilizing the genetic resources of livestock and poultry, protecting the legitimate rights and interests of the stockbreeding producers and business operators, and promoting the sustainable and sound development of stockbreeding [18]. The Animal Husbandry Law may be applied to the protection, utilization, breeding, rearing, business operations and transport of the genetic resources of livestock and poultry within China [18]. However, there is not any provision directly providing the protection of animals kept for farming purposes, but only a few provisions indirectly providing it, for example, Article 39 provides that 'Having stockbreeding and veterinary technicians who are working for it' [18]. This provision asks the livestock, poultry farm or raising community to protect the animal's health and prevent the disease. Article 43 provides that no breeder of livestock or poultry may use any fee, feed additive or animal drug by violating any law, administrative regulation, or mandatory requirement of the national technical norms, or feed any restaurant or eatery swill untreated by high temperature to the livestock, or raise the livestock or poultry in a refuse dump or feed the substances of refuse dump to the livestock or poultry [18]. To a great extent, this provision guarantees the safe of water and food for the animal.

However, there is no any special law or regulation protecting the animal's welfare and rights, in particular for the animal kept for the farming purpose. In county areas, instances of animal cruelty have frequently happened, most of farmers do not have any concept of animal right or animal welfare, and they treat them as a tool.

Legislation for the protection of pets

In China, pet keeping is fairly common now, however, there is no any national law or regulation providing how to keep or regulate pet, and even no law or regulation protecting pet welfare. But there are many local governments adopted local decrees to deal with the public health issues caused by the pet keeping due to these issues are widely concerned by the public and society in these years. For example, Beijing local government adopts Beijing's Administrative Measures of Dog-Keeping Registration and Annual Inspection in 2003, Beijing's Administrative Regulation of Dog-keeping in 2003, Beijing's Administrative Measures of Dog-epidemic Prevention in 2003. These local decrees are adopted with the purpose of strengthening the

management of dog-keeping and epidemic prevention and protecting the public health, and remaining the city environment and social order [19]. However, in these local decrees, there are no special provisions protecting the animal's right and welfare.

What are Wrongs with the Legal Protection Available to Animals in China?

The animal should be treated as individual animal rather than pure resource

The animal has long been legally considered as a 'subject' existing without life, and so they get the same treatments. As the development of society, in particular the ethology development, the development of animal awareness research, and the development of veterinary medicine and the animal management, more and more people realize that the animal is the one existing with life and feeling, and they also have physiological needs and psychological needs like the human being. And these two needs decide that the animal has their individual value and protection value, basic on which the animal welfare law is adopted and then confirm the animal welfare and interest. Legally, the animal welfare does not change fundamentally the animal legal status, existing as a subject and property, however, they are distinguished by the law from the lifeless subject, and their life, feeling, emotion and other interests are confirmed and protected by law. By contrast, there is animal protection law in China, but it is still at a stage that treats animal as the natural resource, and the animal individual interest is not been confirmed and protected, which can be found in the legislative purpose and goal. As mentioned by the second part, most of legislative purpose and goal of the laws and regulations are only for protecting ecotype, public health security and food safe. Takes the legislation for the protection of pets as an example, according to Beijing's Administrative Regulation of Dog-keeping, 'only the person with full capacity for civil acts can keep dog' [20], and under the Civil Law of China, the person with full capacity for civil actions refers to citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities [21]. The aim of this provision is to limit the condition of dog keeper, and so that the keeper can control the dog and be liable for the possible damage caused by his or her dog. However, comparing with Great British, according to Pet Animals Act 1951, pets not to be sold to children under twelve years of age, [22] and in the light of Animal Welfare Act 2006, it provides to transfer an animal by way of sale or price to a person under 16 [23]. The aim of these provisions are that 'the legislator thought that the person under 16 years old does not have enough capability to take care of the animal and the welfare of the animal will be damaged'. Except the legislation for the dog, in China there is not any other law or regulation for other pets, chiefly because the dog has attack ability and it can cause damage to other person. So the legislation for the dog is with the utilitarian purpose. And the animal welfare is not paid correspondingly attention.

Legislation reckoning protection of the animal is vacancy and relative scattered

In China, there is not generally specialized legal for protecting animal. The Wildlife Law is a specialized law, but its applicable scope is too narrow due to it cannot be applied to other animal except the wildlife. The other legislations for protecting animals are dispersed in other laws and regulations, including Regulation for Administration of Laboratory Animals, Animal Husbandry Law, Law on Animal

Epidemic Prevention and other local decrees for dogs. These laws or regulations are enacted by different government authorities with different purposes, including animal epidemic prevention, disease control, protecting production quality of animals, and so on, but they are for the protection of animal welfare. In addition, the numbers of legal provisions protecting animals are rare, not enough to protect the animal welfare.

The number of animals protected is limited

The superiority of the animal welfare is that it is not only protecting a certain species of animal, but also protecting all animal individual, regardless the animal situation, which is rare or near extinction or not. The animal welfare emphasize that every animal individual has their own interest and welfare need the human being to respect and protect. However, in China, 'in all the legislation concerning protecting animals, there is not a law or regulation directly protecting animal welfare; and the present legal are focus on protecting a certain animal species or managing public health or food safe' [15].

Only the wildlife animals are protected by a special law, but the number of the wildlife species is also limited, i.e., only the wildlife animals which are rare and near extinction are protected, the other wildlife animals are not protected by the Wildlife Law. In addition, the species of wildlife which is specially protected by the state or local government in the protection list takes only 10% of the whole species of the animal in China. And so it does not contain all the species of wildlife in China. The wildlife protected by the Wildlife Law are only those that is rare or near extinction or the species of terrestrial wildlife which are beneficial or of important economic or scientific value; except these, the other wildlife would not be protected. As those non-wildlife animals, such as laboratory animal, companion animal and draft animal are hard to say that they are effectively protected by law. Even though there are some provisions regarding the animal feed, management, epidemic prevention, they are only for safely use these animals or protecting public health. To a great extent, therefore, strictly, they are not protected by the laws and regulations.

The executive force of the law is not enough

The Wildlife Law is only one law that really protects some certain animals and it even provides with criminal punishment. But these punishment are only limited for some illegal behaviors, including illegally hunting, illegally killing, damaging the environment where the wildlife lives and breeds; for those behavior which directly hurts the animal, it would not be given correspond punishment, for example, the case of 'Liu Haiyang attacked the brown and black bears on display in the Beijing Zoo' [24]. On 29 January 2002, Liu Haiyang, a student of Tsinghua University, went to Beijing Zoo and poured caustic soda onto five bears, and caused the bears suffered severe burn, one later died. However, at that time, China does have law prohibiting and punishing this behavior or even prohibiting animal cruelty. Finally, Liu Haiyang was charged with the offence of damaging state property and was found guilty by the Beijing Court [25]. From this case, we can know the lack of the legislation protecting animal. As for the other laws and

regulations, there is not any provision providing punishment for the illegal behavior concerning the animal.

Improving the Current Legal Protection Available to Animals in China

Now, a majority of states have enacted the animal welfare protection law, even though their names are different, but their goals are to protect the animal welfare. However, China's animal protection law is not in fact the animal welfare protection laws, and the lack of relevant welfare protection law, a lot of cases of cruelty to animals happened frequently but no law can be available to regulate and punish them¹. China needs to establish and improve the current legal protection available to animals, and pay more attention to the animal welfare protection. However, the animal welfare is origin from the West, and it has the western characters, in other words, the animal welfare is hybrid culture and extraterritorial system, and it needs to combine with China's reality, but two basic principles should be followed, i.e., protecting animals from overt acts of cruelty and guaranteeing animal welfare.

Protecting animals from overt acts of cruelty

Anti-cruelty is an important part of animal welfare in nowadays. From one of the first animal welfare legislations, the 'Cruel Treatment of Cattle Act 1822', the overt acts of cruelty toward animal was deemed as offense. This Act prohibited wantonly and cruelly beating, abuse, or ill-treating any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle². If any person violated this prohibition, he shall punish. Anti-cruelty to animal legislation has been enacted by a majority of countries in the world; it is not only in the Western states, but also in some Asian states or regions, such as Singapore, Japan, South Korea, and Taiwan and Hong Kong. The Animals and Birds Act of the Republic of Singapore provides that 'any person who cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animals, or by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary pain or suffering or, being the owner, permits any unnecessary pain or suffering to animal, shall be guilty of an offence [26]. The Act on Welfare and Management of Animals of Japan provides that 'animals are living beings, no person shall kill, injure, or inflict cruelty on animals without due cause, and every person shall treat animals properly by taking into account their natural habits and giving consideration to the symbiosis between humans and animals' [27]. The South Korea's Animal Protection Act (2004) states that 'this Act is to contribute to the cultivation of aesthetic sentiments, such as the respect for life, etc., through protecting the life and safety of animals by prescribing matters necessary for proper protection and administration of animals such as the prevention of cruelty to animals' [28]. The Article 6 prohibits to 'kill animals without rational cause, with cruelty, or with a method which gives other people a sense of aversion, and prohibits to inflict pain or injury upon animals without rational cause, and to abandon animals without reasonable cause' [28]. In Hong Kong and Taiwan have already enacted relevant animal

¹ For example, in 2002, Liu Haiyang, a student from Tsinghua University poured caustic soda onto the Bear; in the same year, another university student allegedly placed a live three-month-old puppy in a microwave and cooked it for over a minute, causing it serious injury; in 2005, Zhang Liangliang, a third-year postgraduate student in mathematics at Fudan University adopted and torture over 30 cats and kittens; in 2006, an unidentified woman appeared in a 'crush' video stomping a kitten to death with her high-heeled shoe.

² Martin's Act 1822.

protection law, for example, Taiwan Animal Protection Law, 1998; Prevention of Cruelty to Animals Ordinance, November 29, 1935.

China's legal protection to animals is lagging far from behind these states or region, but there are some similar cultures, economic and social situation, so China has the same basic situation to enact animal protection law to guarantee the animal's welfare and rights. In 2009, the Chinese Academy of Social Sciences released a draft animal protection law for China's legislator, but it is still in the slowly process. However, this draft 'had been amended to protect animals from deliberate cruelty, but included little to address the positive welfare of animals' [1].

Guaranteeing animal welfare

Animal welfare began to take place in Western public policy in 19th-century Great Britain, and since the early of 21st century, it is a significant focus of interest in science, ethics, and animal welfare organizations. As the development of scientific, the animal welfare standards is improving, but different states have their different standards and use different measures to protect the animals welfare. However, in China, there is not any provision for protecting the animal welfare, let alone to say that animal welfare standard. But China should positively to enact relevant law to protect it, guarantee the animals' getting the humanity treatment. If the draft animal protection law, released by the scholars, was adopted, the animal welfare protection has a great achievement, but now it is still in the process of discussion.

Conclusion

Always, the animal protection hasn't been getting nearly as much attention as it deserves. The sheer size of the animal population is indicative of the enormity of the animal welfare challenge in the state. And rapid economic and social change has produced a majority of conflicts between people and animals. In these conflicts, a lot of biological resources are dethroned. In these years, China's government faces a tough and difficult issue that balancing the increasing societal demand for animal protection and the state's objective of economic growth. In this balancing process, China should learn the animal protection experience from the European states and other states, and should pay more attention to adopt law or regulation to protect the animals' welfare and rights, so that to protect the nature resource.

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