

Minireview Article

ANIMAL PROTECTION IN BRAZIL: HOW THE LEGISLATION AND THE SOCIETY EVOLVED IN THE LAST CENTURY

ABSTRACT

The aim of this review was to analyze Brazilian animal protection policy throughout history and discuss the importance of some recent events and societal developments in its modernization. A search for the complete legislation and scientific works was performed on the government's website and search platforms (Google scholar, Science direct and CAPES). It was observed that the first Brazilian law on animal protection was published in 1924. After this, several amendments were incorporated. The current Brazilian Constitution, published in 1988, was a landmark in the modernization of animal protection in the country as it allowed the recognition of sentience and thus characterized cruelty and mistreatment of animals as crimes. At the same time, society has evolved, increasing the proximity with animals until the recent development of the concept of the multi-species family positioning animals as family members. Recent reports have shown that animal abuse and cruelty can still occur and the application of the animal protection policy is allowing pursuits and condemnation of offenders. Brazil is a young country but its policy on animal protection and its society greatly evolved in the last century. This progress is still ongoing as the society is taking an active role to push improvements on public policies and surveillance towards animal mistreatments. However, it would be advisable to include the real needs of animals in the reflections, in order to avoid making decisions that are erroneously harmful to animals.

This work was a collaboration between the post-graduation program of the Veterinary school of the Federal Rural University of Pernambuco– Brazil and The National school of veterinary of Alfort - France, from January to August 2024.

Keywords: Animal sentience, animal protection, Brazilian policy, multispecies family, cruelty

1. INTRODUCTION

Animal welfare and animal protection have raised numerous debates within the scientific community due to its multidisciplinary nature - disciplines such as ethics, sociology and physiology all play a part in this concept [1]. In addition, the variety of human-animal interactions raise different issues that must be addressed.

Citizens have become more concerned about practices in relation to animal life conditions. It results in increasing criticism, particularly towards animal production systems. However, as reported by [2], even farmers have recently developed a certain degree of compassion towards animals.

However, other sectors are also concerned. The use of animals in research has been strictly peered, leading to continuous ethical exigences and improvements in animal experimentation protocols [3]. Companion animals, despite not being considered as an

exploitation, are also concerned by these societal changes. Their proximity to humans is resulting in their integration as a family member in the so-called multi-species family [4]. Finally, even though wild animals are not exploited by humans, the degradation of species' natural environments can be a subject of concern because it can affect their welfare due to the destruction of their habitats [5].

The aim of this review was to analyze Brazilian animal protection policy throughout history and discuss the importance of some recent events, especially related to companion animals, in its modernization.

2. MATERIAL AND METHODS

2.1 Research strategy

Firstly, a search was carried out on the Brazilian government's website in order to identify the legislation related to the topic. After that, a search for scientific articles on the topic was carried out in the following databases: Google Scholar, Science direct and CAPES journals.

Portuguese and English corresponding keywords were used in the search: (here only written in English) 'Animal welfare', 'Animal protection', 'Animal law', 'Animal Welfare', 'Environmental law', 'Animal criminal law', 'Environmental crimes', 'Animal production', 'Welfare'; 'Animal sentence', 'Brazilian criminal legislation', 'Animal law', 'Multispecies family', 'Mistreatment', 'Mistreatment and denunciation', 'Animal experimentation', 'Five freedoms', 'Constitutional law', 'Jurisdiction'. These descriptors were used alone and in combination to obtain a wider range of results.

All the references were reviewed and the articles fulfilling the eligibility criteria were included in the body of the review.

2.2 Eligibility criteria, selection of articles and data analysis

Original articles and laws published in English or Portuguese that addressed animal protection, especially in Brazil, were eligible. Theses, dissertations, memoirs and scientific abstracts were excluded of this review. All duplicates were also excluded. No temporal restriction was imposed.

Eligible articles underwent a careful assessment involving three stages: analysis of the titles, the review of the abstracts and, finally, analysis of the full texts.

3. RESULTS AND DISCUSSION

Twenty-two Brazilian laws, as well as books, treaties, international declarations and court rulings on animal protection, animal mistreatment and animal welfare were considered. In addition, 72 articles were eligible, of these, the 25 most pertinent were included in this review. Other articles were included if appropriate to improve understanding of particular ideas.

This literature review was written in chronological order, covering the following topics: conceptual aspects and the history of animal welfare; history of animal protection and its place in the Brazilian constitutional law; the animal in the environmental policy; applicable penalties; the multi-species family; and finally a panorama of mistreatment and/or cruelty reported in the Brazilian scientific literature.

3.1. Conceptual aspects and history of animal protection

Throughout history, activities involving animals have been subject to specific regulations designed to alleviate animal suffering [6]. This concern has arisen as a result of changes in the interactions between humans and animals, as well as the evolution of animal ethics, which aims to recognise the intrinsic value of animals and, consequently, defend the attribution of fundamental rights and ensure better quality of life [7]; [8]; [9]; [10]; [11].

A milestone in the recent history of animal welfare was the book 'Animal Machines' [12], in which Ruth Harrison sought to alert society about the intensification of animal production. The author suggested that farm animals were treated like machines, disregarding their status as living beings.

The reaction to this book favoured the emergence of animal welfare as an area of knowledge, whose founding publication is the Brambell report [13]. This report presented the first guidelines identified as minimum conditions that should be ensured for farm animals and known as the 'five Freedoms', which aimed to ensure that animals had the freedom to: 'turn themselves around', 'lie down', 'stand up', 'stretch their limbs' and 'look after their own bodies' [13].

Broom [14], defined the animal welfare of an individual as its state with regard to its attempts to cope with its environment, this new concept was well appreciated due to the fact that it covered all the situations that the animal could face. Thus, in 1992, with the creation of the Farm Animal Welfare Council, Brambell's 'five freedoms' evolved to assess the environmental and emotional conditions of animals: freedom from hunger, thirst and malnutrition; freedom from discomfort; freedom from pain, injury or disease; freedom to express natural behaviour and freedom from fear and stress [15].

Thus, it is crucial to emphasise that animal welfare transcends mere economic exploitation and should be understood as a balance between the animal and its environment. It is aimed at preventing any form of suffering, keeping animals in physical and psychological conditions that guarantee their quality of life and welfare [6].

These founding texts have led to changes in legislation regarding animal welfare in various countries. Among the main legal developments in the international level we can cite the Treaty of Amsterdam [16], which recognised animals as sentient beings, i.e. with the capacity to have sensations and feelings. The notion of sentience is based on the fact that animals are capable of experiencing sensations and possessing mental states that were previously attributed solely to human beings [17]. In this sense, in July 2012, another historic milestone took place: the signing of the 'Cambridge Declaration on Consciousness' in humans and non-humans [18].

More recently, the 'Five Domains Model', equivalent to the five freedoms, but including the notion of positive and negative experiences was proposed [19] : i) nutrition - availability of water, food and essential nutrients; ii) environment - environmental challenges to which they are subjected; iii) health - diseases, injuries and the functional impairment potentially caused by them; iv) behaviour - the possibility of expressing behaviours natural to the species and v) mental states - positive and negative emotions and feelings.

In this context, it is necessary to emphasise that animal welfare is the result of the environment (i.e. life condition) on animals [20]. This notion differs from animal protection, which refers to a set of rules (laws) aimed at ensuring minimum conditions to prevent low welfare levels and the mistreatment of animals. An increase in knowledge and requirements in terms of animal welfare demands a constant evolution of the minimum rules for animal husbandry and management. Therefore, in practice, animal welfare and animal protection are interdependent.

However, various aspects, particularly cultural and economic aspects, have a direct impact on compliance with the established rules [1]; [21]. The following sections of this paper will discuss Brazilian policy in relation to animal protection and its application by people in society.

3.2. History of animal protection and its place in the Brazilian constitutional law

Brazil is a young country and, as such, has undergone recent changes to its constitutional right. The 1988's Constitution of the Federative Republic of Brazil is the constitution currently in force and allowed important progresses in terms of Animal Protection.

However, the first citation of animal protection in the Brazilian policy is anterior to the current Constitution. The Decree 16.590/1924 [22] regulated Public Entertainment Houses, banning bull, grackle and bullock races, cockfights and canary fights, among other forms of entertainment that caused suffering to animals.

Following the chronological line, in 1934, the Decree 24.645/1934 [23] prohibited mistreating or abusing animals in public or private places, and established minimal standards for husbandry, transport, exposition and slaughtering. This decree also prohibited any manipulation or practices that could lead to animal suffering. Originally in force, this decree constituted the first general legal statute for animals in the country. According to its first article, all animals in the country were protected by the State. Indeed, as provided for in the article 17 of the Magna Carta, the Brazilian State declared itself responsible for the protection of the animals, considered for this purpose as 'all irrational beings, quadrupeds or bipeds, domestic or wild, except those that are harmful'.

This decree was somewhat avant-garde. By comparison, in France, cruelty in the private sphere was only punished from 1959 [24]. In addition, the requirement of minimum standards for the keeping of animals was only established in 1976 [25]. In both countries, the exigencies were partial but represented the first step for progress in the sector.

During the Vargas dictatorship - known as the Estado Novo - the Law of Criminal Contraventions (Decree 3.688/41) defined cruelty to animals as a penal contravention [26].

Progressively, various laws regulated different sectors in which animals could be affected. Until 1964, animals were banned from residencials. The Federal Law 4.591/64 [27] established the right for apartment owners to 'use and enjoy their autonomous unit exclusively and to use the common areas in such a way as not to cause damage or nuisance to other apartment owners or residents'. This law enabled all tenants to decide whether or not to authorise the presence of animals in residential buildings or complexes. Currently pet animals are commonly present in residencials.

Further, the Federal Law 6.638/79 [28] was the first regulation of scientific experimentation using animals. This law allowed vivisection.

In 1988, the new Constitution prohibited the mistreatment of animals and enabled a new legal meaning for animals through its Article 225 that implicitly recognised animal sentience and worth [29]. It provides for protection for all fauna and flora, as a constitutional commandment to be implemented by the nation and establishes the judiciary instruments provided for in the Magna Carta for the defence of animals, supported by specific federal laws [30]. Public civil actions and popular actions are examples of these instruments. Thus, debates on animal welfare are not limited to the sphere of production animals, but also to scientific research using animals, companion animals and wildlife.

Following the introduction of the new Constitution, the Law 9.605/1998 [31], also known as the Environmental Crimes Law revoked the decree 3.6888/41. Through its article 32, this law permitted the criminalisation of cruelty, abuse, mistreatment, injury or mutilation of wild, domestic or domesticated, native or exotic animals. This law stipulated a prison sentence for any conduct that causes injury, mistreatment, abandonment or death of an animal. However, the article 215 of the constitution anticipated an exception to this rule. Indeed, according to this article, sports and cultural manifestations using animals do not constitute acts of cruelty, as long as they are registered as intangible assets that are part of Brazil's cultural heritage. To this effect, they must be subject to regulation by a specific law in order to ensure the welfare of the animals involved (included by constitutional amendment [32]).

Another important alteration permitted by the Constituion of 1988 concerned the field of animal resarch. After 13 years of debates, the national lawmakers voted the Law No. 11.794/2008, better known as the Arouca Law [33] that revoked and replaced the former Federal Law 6.638/79 [34]. Two important elements of the Arouca Law were: 1) the creation of the National Council for the Control of Animal Experimentation (CONCEA), which became responsible for accrediting institutions for breeding and use of animals for scientific purposes and the establishment of standards for the use and care of animals, and 2) the criminalization of vivisection. Indeed, based on the constitutional principles of 1988, prohibiting any conduct causing injury or mutilation in animals, the Arouca law stipulated vivisection as an environmental crime, unless there are no alternative resources. This new vision revolutionised animal experimentation in the country and generated lively debates. Nowadays, each institution dealing with animal experimentation, must have a local ethical committee (CEUA) composed of researchers of different areas (biology, philosophy...) and civil society members. These CEUAs has been active organs on the accreditation of research protocols according to the current ethical considerations and report the activity to CONCEA.

Lastly, the Federal Law 13.426 of 2017 [35] provides for birth control strategies for cats and dogs. It is an important element for future guidelines in One Health area because a large number of stray animals are still present in Brazilian cities. According to this law the federal units and municipal authorities are responsible for implementing population control methods.

In this context, the animal rights are currently addressed in the area of legal sciences in order to regulate rights for all sentient beings, also consolidating relations between humans and non-human animals and to provide a balance for all species [36].

3.3. Environmental and wild animals' rights

Environmental right is considered as a recent branch of Brazilian law, having only emerged in the 1970s [37]. It is based on the need to establish a balance between human beings and nature and to reduce the anthropocentric view of relations between living beings. Thus, it recognises the importance of humans, animals and other living beings for the ecosystem [38].

Legally, it is currently based on the article 225 of the 1988 Federal Constitution, which is considered to be the legal element allowing the connection between animal and environmental law. It states: 'Everyone has the right to an ecologically balanced environment, which is a good for the common use of the population and essential to a healthy quality of life, and the public authorities and the community have a duty to defend and preserve it for present and future generations'. As explained before, the article 225 establishes the duty to protect fauna and flora and prohibits practices that jeopardise their ecological function or cause the extinction of species or subject animals to cruelty [30].

Despite the remarkable progress made with regard to animals, the country's environmental law is highly criticised because it is still marked by a strong anthropocentrism. Although

human beings establish rules for animal protection, these can be directly linked to their use for consumption purposes [39]. Furthermore, many environmental law jurists do not deal with animal issues beyond their role as a natural resource [37], i.e. they do not recognise their importance as agents of biodiversity.

3.4. Animal protection and applicable penalties

The first decrees establishing penalties for mistreatment and acts of cruelty to animals - Decree No. 24.645 of 1924 [22] and Decree No. 24.645 of 1934 [23] mentioned above - were revoked.

Then, Law No. 3.688 of 1941 [40], known as the Criminal Contraventions Law, laid down, in its article 64, cruel treatment of animals, as well as subjecting them to excessive labour. The offender was subjected to penalties (incarceration from ten days to one month) and pecuniary payments.

The Environmental Crimes Law, currently in force, is considered the reference law in terms of penalties for crimes against animals. It provides for criminal sanctions for offences against the environment, fauna and flora. These sanctions include community service; temporary disqualification; partial or total suspension of activities; payment of fines and residence confinement. In the case of imprisonment and residence detention, the sentence can reach five years in the case of intentional offences and three years in the case of culpable (non intentional) offences. The fine must be paid in cash and the amount set by the judge can vary from 1 to 360 minimum monthly salaries. The penalty is increased if the animal dies.

In addition, since 2008, the Decree No. 6.514 [41] provides for fines to be imposed on anyone who exploits, abuses or mistreats wild animals kept irregularly in captivity or through trafficking. However, the penalty is limited to the payment of pecuniary fines, which range from R\$50.00 (fifty reais) to a maximum of R\$50,000,000.00 (fifty million reais), i.e. from 9 up to around 9,000,000 US\$ (current quotation).

In 2019, the Law 13.873 [42] established various equestrian activities such as racing, dressage, polo, lasso, rodeo and vaquejada, among others, as sporting and artistic expressions taking part on Brazil's cultural heritage. In this context, as provided for in the current Constitution, this law established specific animal protection rules and welfare measures, such as: 'providing animals with water, food and an appropriate place to rest; preventing injuries and illnesses by means of suitable facilities, tools and utensils and by providing veterinary medical assistance; using tail protectors for cattle and ensuring a sufficient amount of washed sand in the area where the scoring takes place, respecting a minimum depth of forty centimetres.' Thus, this law has made it possible to exclude these activities from the spectrum of cruelty punishable by law.

In 2020, a Pitbull terrier had its hind legs cut off by its former owner. The animal was rescued and renamed as Samson. This act generated great commotion among the population. In this context, Law 14.064/20 [43], known as the 'Samson Law', was enacted, amending the law on environmental crimes. As a result, ill-treatment of a dog or a cat carries a penalty of imprisonment for two to five years, a fine and a ban on custody. If the offence results in the death of the animal, the penalty can be increased by up to a third.

Brazil is a federal republic composed of 26 States and 1 Federal District. Therefore the federal units have their own laws within the respect of the Constitution. Several States already stated local animal protection rules: Pernambuco [44], Sergipe [45], Paraíba [46], Ceará [47], Rio de Janeiro [48],[49],[50] and Amazonas [51].

The state of Amazonas is highly concerned by the environment and environmental crimes due to the presence of the Amazon Rainforest in its territory. Its law, the Code of Animal Law

and Welfare of Amazonas, 'establishes guidelines and norms to guarantee the protection, defence and preservation of domestic, domesticated and wild animals'. This law includes 1) provisions on the practice of hunting, the use of animals for traction and loading, responsible guardianship, euthanasia, zoonosis control and population control of dogs and cats, animals used for sports or trade, 2) a ban on the introduction of exotic fauna, as well as 3) a ban on exhibiting animals in circuses. In addition, the law defines offences, sanctions and penalties in the event of crimes, with the offender being also responsible for paying for the treatment of the damage caused to the animal.

3.5. Multispecies family: a contemporary concept of family relationship

Scientific evidences have shown that children and non-human animals feel pain, joy and sadness. In addition, as reported by [4], responsible care of companion animals has been increasingly recognised as having a positive impact on the lives of people and animals. As such, companion animals have received legal protection and have become a member of the family. Recently, the concept of the multi-species family emerged and has been increasingly recognised and consolidated within Brazilian society. It consists of considering a family nucleus that comprises human members and companion animals living in harmony [52].

These animals receive affection, attention and treatment similar to that given to children in a context of increasing antropomorphism. Because they are recognised as members of the family, the courts have considered the family bond to be subject to the protection of family law, so that it is up to families to take care of the animals' health and to provide them with housing in healthy environments. In addition, in the event of separation, spouses can request shared custody, alimony and visitation rights with regard to animals [53].

These cases are not covered by legislation and fall under case law. Disputes over pets between couples have been judged in both Family Court and Civil Court. Two cases were recently publicized. One in the State of Paraná [54] where the judge ruled that the custody process of a dog between a newly separated couple should be judged by the Family Court. For this magistrate, companion animals deserve a distinct legal treatment from being considered an "object" since they are sentient beings. The other case occurred in the State of São Paulo [55]. The judge decided on shared custody of a dog between ex-spouses and recognized in the sentence that animals should be considered subjects of rights in family actions, drawing an analogy to the custody of an incapacitated human [56].

Thus, with the growing debate on animal rights, questions arise about their legal status: should animals be seen as objects or legal subjects? According to some authors, [57],[52], if they are recognized as sentient beings, they should therefore be considered subjects of rights. However, the issue of responsibility for acts committed by animals has yet to find a legal consensus.

However, technically, the answer to these societal questions should be also embedded on the animals' needs, without antropomorphism. For example, changes of environment are a real challenge for cats. Would solutions like shared custody be ideal for an animal of this species? In the current stage, it is still difficult to address these questions with the transversality needed (law – sociology – animal welfare science) but it should become a reality in order to avoid antropomorphic decisions that could be deleterious to the animal.

3.6. Overview of Cruelty in Brazilian Society

Despite the legislation providing animal protection, cases of mistreatment and cruelty still exist in the society.

In a retrospective analysis, [57] identified a total of 583 reports of animal mistreatment in Pinhais, a city of Paraná, of which 85.24% involved dogs. Most of these accusations were related to abandonment (26.41%), restriction of space (20.92%), and inadequate feeding (15.09%).

Two hundred and twenty one cases of cruelty were identified in Belo Horizonte, capital of the State of Minas Gerais, from September 2016 to September 2018 [58]. Of these, 59.7% of the victims were dogs, followed by cats (14.9%), birds (8.5%), horses (5.4%), reptiles (2.2%), and others (9.0%). Cats were the victims of the most severe cruelty crimes, such as poisoning, with a higher risk of death.

The legislation cited in this article has allowed for frequent execution of prison sentences. For example, in 2023, a man in the State of Ceará kept animals in an abandoned pool, where there were no conditions for hygiene or feeding. This neglectful situation led to his imprisonment. This case was reported in a dedicated platform that reports the different judgements linked to animal mistreatments in the state of Ceará [59]. Another similar case occurred in 2024 in the State of Rio Grande do Sul, where a man stabbed a dog, which unfortunately did not survive the injuries [60]. These incidents highlight how the legal system is allowing strong actions against those who mistreat animals.

In addition, police reports have indicated that the population is becoming more aware and sensitive to the protection and welfare of animals. This growing awareness is evidenced by the multiple recent examples of animal mistreatment denunciations and the subsequent arrests of perpetrators caught in the act. The rise in these reports and legal consequences for offenders highlights the importance of collaborative efforts between police departments and the general public. Indeed, the role of the police is crucial as they are often the first responders to reports of animal cruelty in the country. Their ability to act swiftly and effectively can deter potential offenders. Public involvement is equally important. Citizens are contributing by being vigilant and reporting signs of animal mistreatment to the authorities.

4. CONCLUSION

Brazil's animal protection policy has existed since 1927 but has evolved considerably, especially with the advent of the 1988 Federal Constitution, which allowed animal sentence to be recognised.

Despite the close proximity between people and animals, especially pets, and the existence of a law that punishes offenders, there are still cases of mistreatment in Brazil.

The society is playing an active role in pushing for changes to the law, but also in making sure that it is respected.

This review also showed the strong antropomorphism, including the judiciary branch, which could be detrimental to animal welfare.

As animal rights issues are gaining importance in the country, it would be advisable to include the real needs of animals in the reflections, in order to avoid making decisions that are erroneously harmful to animals.

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