

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 5 | Issue 5**

---

**2022**

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Jurisprudential Status of Animals

---

ANUJA ELIZABETH JACOB<sup>1</sup>

## ABSTRACT

*In the biological sense, animals are eukaryotic organisms and include all the kingdom Animalia members. In colloquial usage and as far as a layman is considered, the term 'animal' denotes every other being other than Humans.*

*These beings that belonged to the category of non-humans were considered mere things or objects of interest in the ancient world. The human population exploited the animals for food, apparel, and other accessories. The animals are also used for experiments, research studies, transportation, agriculture, and sports. Alongside, a wide variety of animals are kept as domesticated pets, including mammals. Though the ancient view of animals as objects has been diluted, most of these situations have not changed, and a considerable dilemma exists in identifying the animal's status. The role the animals play as a companion to humans often clashes with their existence as individuals that deserve rights of their own. A wide variety of essentials and factors must be considered to comprehend the actual status of animals. The paper attempts to ascertain the present-day status accorded to the animals and how far it differs from the earlier jurisprudential quality of mere property consideration. For this purpose, both the philosophical view of the jurists and the history are traced to get a comprehensive idea about the status that was earlier accorded. Then towards the conclusion, concerning the analysed history, the present-day level of animals is compared and contrasted.*

## I. INTRODUCTION

In the Common law countries, there used to exist a classification for animals in accordance with their nature, as wild animals (*ferae naturae*) and tame animals (*mansuetae naturae*). This classification was enacted in order to constrain a liability<sup>2</sup>. The *ferae naturae* doctrine was used as a defense against the damages done by wild animals and similarly, for the animals tamed and owned by humans, they were held strictly liable for any consequences. This classification has been replaced by modern statutes and now, the most commonly used classification is that of dangerous and non-dangerous animals<sup>3</sup>.

---

<sup>1</sup> Author is a Legal Counselor at Al Jabal Consultancy, Bahrain.

<sup>2</sup> Mulheron, *Liability for animals*, CAMBRIDGE UNIVERSITY PRESS (Aug. 11, 2022, 11:10 AM), [https://www.cambridge.org/gb/files/3214/7610/6092/Liability\\_for\\_Animals\\_Mulheron.pdf](https://www.cambridge.org/gb/files/3214/7610/6092/Liability_for_Animals_Mulheron.pdf).

<sup>3</sup> Abdul Basir Bin Mohamad, *Liability for Non-Dangerous Animals: The Scienter Action in English and Islamic Law of Tort*, 44 JSTOR 77, 77-92 (2005).

However, in the property sense of law, animals were classified as property and the humans were conferred a qualified property right over animals especially animals *ferae naturae*. Qualified property consists in the right which men have over wild animals and this includes the taking or even taming of the animals, making the human who have captured its possession, the owner of the animal *ferae naturae*<sup>4</sup>. Later when the classification terms changed, the humans were offered rights to be keeper of animals that are of non-dangerous category and for the rest of the dangerous animals, the humans may have ownership, subject to prior approval and confirmation.

The rights bestowed to the humans through the laws beginning from the times of civilization, makes it invariably clear that the animals were considered as a subject of ownership.

Apart from the property sense of the animals, it is pertinent to trace the ancient philosopher's thoughts and writings in order to establish the jurisprudential status and the historic progression of laws and precedents is also to be probed in order to grasp the current status that is yielded to the animals.

## II. PHILOSOPHICAL VIEW

Natural law theory had excluded animals from moral consideration, but accepted a duty to not mistreat them based on the effects of cruelty humans are capable of inflicting upon another being. Absence of rationality and use of language were considered to be the two reasons for excluding animals from moral considerations<sup>5</sup>. Aristotle believed in the human superiority and the same finds a place in the book of Genesis in Bible. Man was to have dominion over all kinds of animals present on earth.<sup>6</sup> Aquinas sought this as a justification for the killing of animals for consumption purposes. He also believed that the animals were not subject to Natural Law on the ground that the Law is from God to Human. Another famous thinker and Christian theologian, Hugo Grotius heavily relied on the observation of animals, in an attempt to describe the natural laws. According to him, animals have nothing like justice and are things that may be reduced to a property<sup>7</sup>. Descartes developed the 'Animal Machine' theory that states that the intense squeals of dogs being beaten or tortured were merely the sounds of a broken machine, not cries of extreme pain<sup>8</sup>. Humphrey the priest, spoke of a connection that inevitably exists

---

<sup>4</sup> Eric W. Neilsen, *Is the Law of Acquisition of Property by Find Going to the Dogs?*, 15 T.M. Cooley L. Rev. 479 (1998).

<sup>5</sup> Lori Gruen, *The Moral Status of Animals*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Aug. 11, 2022, 08:21 AM), <https://plato.stanford.edu/archives/sum2021/entries/moral-animal/>.

<sup>6</sup> 2 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 2-3 (1830).

<sup>7</sup> Vincent Chapaux, *Hugo Grotius and the Animals*, WORDPRESS (Aug 5, 2022, 11:15AM) <https://internationalanimals.wordpress.com/2015/02/26/hugo-grotius-and-the-animals/>.

<sup>8</sup> John Voelpel, *Descartes' Bête Machine, the Leibnizian Correction and Religious Influence*, DIGITAL

between the animals and humans which cannot be broken, as it is the divine will. He was of the opinion that the animals should be treated well.

Hobbes, on the other hand, out rightly denied morality of animals, on the ground that they are beings who cannot give proper consent to social contracts on account of them not having a language<sup>9</sup>. John Locke viewed animals as natural resources, like land and trees, which we may acquire as property and have “natural rights” to that property. Rousseau wrote that animals should not be excluded entirely and that they have natural rights to not being wantonly ill-treated. Immanuel Kant thought of animals as “man’s instruments,” deserving protection only to help human beings in their relation to one another: “*He who is cruel to animals becomes hard also in his dealings with men.*”<sup>10</sup> Even when he acknowledged the fact there are similarities between animal and human, he iterated that humans owed no direct duty to animals.

In the positive law theory, its main philosopher, Jeremy Bentham took a different approach, suggesting that mistreatment of animals was akin to slavery and racial discrimination and the ardent follower John Stuart mill professed the same. Auguste Comte believed that the animals and humans have so much in common and that rather than separating and exalting ourselves from animals, we ought to carefully observe and learn from them, as the humans trace his genesis from inferior organisms.<sup>11</sup> Utilitarian theory was willing to consider animal suffering but never purported to place animals on the same moral level as humans. Their lack of reflective capacities and lack to morally discriminate were taken as a ground for addressing the animals unworthy of the notion of public interest<sup>12</sup>.

The view of Salmond is that the only natural persons are human beings and the animals are not persons, either natural or legal. They are merely things which are objects of legal rights and duties, but never the subjects of them. Even if the animals are capable of acts and possess interests, their acts are neither lawful nor unlawful and the only legal rights that can be attributed to the animals are the right against cruelty and right to be a beneficiary under a trust. The community has a rightful interest in the well-being of even dumb animals and in case of conflict between the interest of animals and humans, the latter are preferred<sup>13</sup>.

The gradual acceptance of animals having a couple of rights is the progression that has been

---

COMMONS (Jul. 27, 2022, 10:18 AM), <https://digitalcommons.usf.edu/etd/3527>.

<sup>9</sup> Courtland, S. D., *Hobbesian Justification for Animal Rights*, 2 JSTOR 23, 23-46 (2011).

<sup>10</sup> IMMANUEL KANT, LECTURES ON ETHICS 240-241 (Louis Infield, 1963).

<sup>11</sup> Joseph Kaines, *The Anthropology of Auguste Comte*, 1 JRAI 349, 349-362 (1872).

<sup>12</sup> Julia Driver, *The History of Utilitarianism*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Aug 2, 2022, 04:39 PM) <https://plato.stanford.edu/archives/win2014/entries/utilitarianism-history/>.

<sup>13</sup> GLANVILLE L. WILLIAMS, JURISPRUDENCE BY SIR JOHN SALMOND, 318 (10 ed. 1947).

achieved by the philosophers. There are wave of factors that reasoned their thoughts, which can be brought into light only by analysing the historical development.

### III. HISTORICAL BACKGROUND

In Ancient Greece, animals and trees were tried for offences to human beings and they were considered to be capable of having duties even when they possessed no rights. Even in the middle ages, trials of animals continued. In Germany, a cock was solemnly placed in the prisoner's box and was accused of contumacious crowing<sup>14</sup>. Counsel for the defendant failed to establish the innocence of his feathered client and the unfortunate bird was accordingly ordered to be killed. In 1508 the caterpillars of Contes, in Province, were tried and condemned for ravaging the fields, and in 1545 the beetles of St. Julien de Maurienne were similarly indicted. As late as in 1688, Gaspard bailly of Chamberg in Savoy was able to publish a volume including forms of indictment and pleading in animal trials. In all these circumstances, animals were considered to be capable of sustaining duties and was therefore to this extent a legal person under law.<sup>15</sup>

Tracing the history of English common law it can be seen that some animals were categorised as personal property. Animals were recognised as property at a time when leading philosophers believed that God had given humans dominion over all animals. It was also believed that animals did not have any moral standing because they lacked rationality and autonomy<sup>16</sup>. Greatest protection of being considered as goods were given to those animals designated as useful, whereas, animals of base nature were not regarded as property. Beginning of 1860s saw a change as to the status of the animals. From mere protection of the property interest of the owners and economic value of those interests grew the concerns about the animals themselves. The concern was so well been addressed that this became the period wherein a number of societies, concern groups and activists for the welfare of the animals arose. Till 1900s, dog being an animal under the category of base nature, was not given any protection under the law. Then there were laws supporting animal interest and their existence without pain and suffering, regardless of whether or not they are considered as property of humans<sup>17</sup>.

---

<sup>14</sup> Justice S. S. Dhavan, *The Indian Judicial System a Historical Survey*, ALLAHABAD HIGH COURT (Aug. 18, 2022, 02:36 PM)

[https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem\\_SSDhavan.html#sdfootnote94sym](https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html#sdfootnote94sym).

<sup>15</sup> DR. V.D.MAHAJAN, *JURISPRUDENCE AND LEGAL THEORY* 332-334, (5<sup>th</sup> ed. 2011).

<sup>16</sup> Geeta Shyam, *The Legal Status of Animals: The World Rethinks its Position*, 4 *Alternative Law Journal* 266, 267-270 (2015).

<sup>17</sup> David Favre & Vivien Tsang, *The Development of the Anti-Cruelty Laws During the 1800's*, 1 *Det. C.L. Rev.* (1993).

In first of its kind case, *Stephens v. State*<sup>18</sup>, the court stated that, “statute is for the benefit of animals, as creatures capable of feeling and suffering, and it was intended to protect them from cruelty, without reference to their being property” .

The philosophy behind the animal rights begins with the premise that all animals have value in and of themselves, which is beyond their worth as monetary commodities. The utilitarian theory was given more importance and it fitted well with the changing social values of the society. With animal welfare starting to be a public concern enactment of various legislations like prohibition of bull baiting bill<sup>19</sup>, an Act to prevent malicious and wanton Cruelty to Animals 1809, Martin’s Act of 1822 prohibiting cruelty etc. surfaced.

The interesting point to be noted in these laws so enacted for the animals is that it invariably stated that while maintaining a balance between the human interests and animal interests, there may be situations wherein the human interest may supersede the animal interest and that the pain and suffering may lawfully occur. Another noted exception was that the use of animals for the scientific experimentation, did not violate the law.

Over the years the anti-cruelty laws have been shaped and reshaped many a times. Not only animals are to have a life free of pain but also to have the right to receive adequate food for a healthy life. The extent of punishment itself got transformed from a mere misdemeanour to a felony crime.

With growing social interest and emotional attachments, the laws also grew, making the realm of rights of the animals to expand to include right not to tortured, right to food, water, and shelter, right to veterinary care, right not to be killed without just cause. In 2002, Germany became the first European nation to vote to guarantee animal rights in its constitution, adding the words "and animals" to a clause that obliges the state to respect and protect the dignity of human beings.<sup>20</sup> An example of the rapid changes was reflected in the case of *Noah v. The Attorney General*<sup>21</sup>. In Noah, the Israeli Court Supreme Court held that the pain experienced by geese during the process of force-feeding outweighed the benefit gained from the production of a luxury food, a decision that effectively ended the foie gras<sup>22</sup> industry in Israel.<sup>23</sup> In another case, *ALDF v. Woodley*<sup>24</sup>, a criminal charge suit was filed to remove more than 3000 dogs from

---

<sup>18</sup> *Stephans v. State*, 3 So. 458 (Miss. 1887).

<sup>19</sup> The Bull-Baiting Bills (1800).

<sup>20</sup> John Hooper, *German parliament votes to give animals constitutional rights*, THE GUARDIAN, May. 18, 2002.

<sup>21</sup> *Noah v The Attorney General*, appeal 9232/01.

<sup>22</sup> A food made from the liver of a goose.

<sup>23</sup> Blosch, Marie, *The History of Animal Welfare Law and the Future of Animal Rights*, ELECTRONIC THESIS AND DISSERTATION REPOSITORY (Aug. 5, 2022, 10:23 AM) <https://ir.lib.uwo.ca/etd/803>.

<sup>24</sup> *Animal Legal Defense Fund v. Woodley*, 640 S.E.2d 777 (N.C. Ct. App. 2007).

the defendant's home due to the adverse conditions in which they were living.

Another set of rights that lie in favour of the animals is with regard to the human- created trust for the care of animals, usually pets. In this, the pet becomes a legal being or has limited legal personhood, one who has equitable title in the income and assets of the trust. There are situations wherein a trust was created for the welfare of dogs, cats and kittens, needing care and attention was held to be valid as it was meant to develop the emotions and the finer sense of human nature of which care of the old and sick animals is a manifestation. Similarly, a trust for the welfare of the animals such as cows, buffaloes etc. is a valid charitable trust insofar as it leads to the advancement of the religion.

However, when in the consideration of interests between the human and animals, human interest is given weightage. In the case of *Winter v. NRDC*<sup>25</sup>, weightage of the animals interests was not sufficient to overcome the military need of the state. In another interesting case of *Regalado v. United States*,<sup>26</sup> the Regalado was convicted for beating a puppy and the court opined that it is difficult to draw a line between discipline and cruelty, thereby upholding that infliction of pain as may be necessary for the training or discipline of animal can be counted as an exception to anticruelty laws.

Every state has their own anticruelty laws and in US the laws go well beyond the prohibitions of injury to animals. The owners are imposed with affirmative duties like to provide time for rest, feeding and water every five hours during transportation along with criminal penalties for abandoning a pet or not providing enough sustenance needs. The laws are not without exceptions and provides for the use of animals for the purposes of medical scientific, farming, and as food.<sup>27</sup> The French National Assembly recently adopted a legislative amendment changing the status of animals in the Civil Code. Since the inception of the Civil Code in 1804, the legal status of animals was that of mere objects.<sup>28</sup> The new text adopted by the National Assembly also defines animals as “sentient living beings”.

#### IV. CONCLUSION

Once upon a time, humans owned other humans as chattels and there were times when woman was not counted as full persons. With social changes, these concepts underwent a sea of changes. Similar to this is the concept of the status of animals. Centuries back, animals were

---

<sup>25</sup> *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365 (2008).

<sup>26</sup> 572 A.2d 416 (D.C. 1990).

<sup>27</sup> Cass R. Sunstein, *The Rights of Animals: A Very Short Primer*, SSRN (Aug. 5, 2022, 11:43 AM) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=323661](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=323661).

<sup>28</sup> Code civil [Civil Code], art. 528 [as worded from Jan. 25, 1804, to Jan. 7, 1999; wording thereafter did not change this legal status of animals, however], LEGIFRANCE.

considered as things, later came along the categorisation of animals as property and sooner with growing sentiments towards the animals, they were given value enough to possess legal rights. These include the anti-cruelty laws and the right to be a beneficiary of a trust created by human. In short, the ambit expanded from the regulation of animal welfare to the grant of animal rights. With the possession of rights comes the legal personality that can be attributed to animals. However, the mere attribution of personality status to animals will create a lot of problem and this can be negated by the fact that animals cannot exercise their rights by themselves. It is only through a human that an animal can effectively utilise the rights that is granted to them by law. In essence, humans are the intermediary or rather the necessity factor for the enforcement of the animal rights.

History reveals that presently animals exist in the system as individuals, though not in a wholesome manner. Animals do have interests and certain interests are protected by the laws but they do not generally possess the capacity to understand or knowingly exercise any legal rights given to them and therefore, a human intervention is required to enforce the accorded legal rights, failing which, it would be as if the animals do not have any rights.

The present day social perspective about the legal rights granted and acceptable living conditions of animals, are all subjected to extensive exceptions and are limited in nature. In the growing world of jurisprudence, the desire to ascertain an exact status accorded to animals is an arduous task, particularly when there are activists demanding for the principle of equal consideration for animals as that of humans. The question of whether the human race would be able to come in solidarity with these demands remains a phantasm and we could remain hopeful that these changes will take place once the interdependence chain of humans and animals are broken.

\*\*\*\*\*