

# “LEGAL STATUS OF ANIMALS: A MIDDLE GROUND BETWEEN PERSONALITY AND PROPERTY”

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## INTRODUCTION

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Legal status is the position held by something or someone with regard to law. It is a set of privileges, obligations, powers or restrictions that a person or thing has which are encompassed in or declared by legislation<sup>1</sup>. Human beings are giving the status of a legal personality. According to various jurists, legal personalities can be attached to two categories of persons (a) natural person, and (b) artificial or juristic or legal person. Natural persons include human who are born with legal personalities as they are entitled to rights and duties by birth. The second category of artificial legal persons is created by legal fiction which gives an imaginary personality to such entities by attaching rights and duties to it. The most common feature of a legal personality is the ability of law to attach legal rights and duties to it and its ability to enforce those rights and duties. The question arises as to whether such legal personality can be attached to animals and if not is it right to accord them with status of property. The major issue with assigning legal personality to an animal is that they can only be bearers of rights. However, duties and liabilities which also form an integral part of legal personality cannot be enforced upon them. In lieu of this, many countries around the globe confer animals with the status of property. The flaw with this method is that animals are very different from other properties like land, car or machinery which are inanimate. Unlike the above animals are living beings with survival instincts, ability to think intelligently, and can also feel pain and sadness. Thus, animals can neither be conferred with legal personality nor can they be treated as property. This article throws light on the legal status of animals and the need to adopt a middle ground between legal personality and property conferred on animals.

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## WHY ANIMALS CANNOT BE TREATED AS PROPERTY

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Animals are generally considered as property by law. Property is something over which an owner has complete control and he has a right to use it in whatever manner he may deem fit over the

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<sup>1</sup> Black's Law Dictionary. "What is status? Definition of status ". [thelawdictionary.org](http://thelawdictionary.org).(last modified Feb.27.2017)

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absolute exclusion of any other person<sup>2</sup>. No third party has as right to interfere in this control unless it affects their legal rights in any manner. When such a right is bestowed upon the owner it becomes his choice to either treat his animals well or to treat them with cruelty and exert despotic control over them, excluding anybody from questioning his authority. This principal places a very little value upon animals by allowing anybody to exercise even despotic control over a beast or an animal provided they just own it. This does not take into account that animals just like humans are made up of flesh and blood and are capable of feeling pain and suffering. Many animal activists are of the view that this kind of laws which subject animals to the whims and fancies of their owners should be changed<sup>3</sup>. Another major issue with assigning property-hood to animals is that they cannot be assigned with legal rights which protect their interest. A legal right cannot be simply attached on any random object, it is necessary that a legal personality exists for a legal right or duty to be bequeathed by the state<sup>4</sup>. Due to the non-existence of such rights there are no corresponding duties directed towards the wellbeing of animals. According to Salmond, duties towards animals are in fact duties towards the owner of such animals or the society itself because; the society has an interest in the protection of animals for its own benefits<sup>5</sup>. Thus the existing laws which impose duties towards animals are in fact, not a result of corresponding rights of animal but the rights of its owner or the society. A classic example is the beef ban in India, the ban was implemented not to protect the interest of the beasts but to protect the religious sentiments of people belonging to a certain faction in the society.

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### **PROBLEM WITH ASSIGNING LEGAL PERSONALITY TO ANIMALS**

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The most basic characteristic of a legal personality is the ability to possess legal rights and duties. According to Salmond, "A person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person even though he be a man"<sup>6</sup>. This definition makes it very clear that for a being to be considered as a legal person it must be capable of possessing both legal rights and duties. According to KEETON, a duty is an act of forbearance which is enforced by the

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<sup>2</sup> Jerrold Tannbaum, *Animals and the Law: Property, Cruelty, Rights. Social Research*, 539-607. JSTOR.COM, [www.jstor.org/stable/40971109](http://www.jstor.org/stable/40971109). (last modified Feb. 10,2020.)

<sup>3</sup> *Id.*

<sup>4</sup>Geeta Shyam, *The legal status of animals: The world rethinks its position*, ALTERNATIVE LAW JOURNAL., Dec. 15,2015, [www.altj.org/feature-articles/980](http://www.altj.org/feature-articles/980)

<sup>5</sup> *Understanding the concept of legal personality in detail*, LAW NEWS AND NETWORK.COM., Jan.17,2017, [www.lawnn.com](http://www.lawnn.com)

<sup>6</sup> Bryant Smith, *Legal Personality*. 1928 YALE L.J., 283-299.

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state in respect of a right vested in another and breach of which is a wrong<sup>7</sup>. So if animals are accorded with legal personality then they must have legal rights and duties. For instance, if a dog has a legal personality, then it has a right against harm hence, it also has a duty towards others in respect of the same right. Thus if a dog bites someone it has breached that duty which results in a legal wrong and is liable to be punished. But this is not practical as we cannot imprison or impose penalty on a dog. In reality it is the owner of the dog upon whom the liability falls. The Uttarpradesh High Court in *Narayan Dutt Bhatt vs. Union of India and Ors.*, and the Punjab Haryana High court in *Karnail Singh and Ors. vs. State of Haryana.*, accorded the status of a legal personality to the entire animal kingdom, including avian and aquatic ones<sup>8</sup>. It further stated that these animals have a distinct persona with corresponding rights, duties and liabilities of a living person. This judgment is principally flawed because if duties and liabilities are attached to animals as in the case of human beings it may end up worsening the state of animals. This is similar to the ancient Greek law, where animals and trees were tried in court for harm or death done to a human being<sup>9</sup>. This cannot be the case because if every animal is given the fundamental right to live then no animal can be killed even for the purpose of consumption. In worst case scenario animals can be punished for killing other animals, as it will amount to breach the duty corresponding to the right to life of the other animal.

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### NEED FOR A MIDDLE GROUND

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Trying to fit animals into the category of property or legal personality is like trying to carry water in a sieve. They do not belong to either of the two categories. Animals are very different from property; unlike the latter they are not inanimate objects<sup>10</sup>. They are different from inanimate objects due to their ability to feel pain and suffering. Animals also have a certain level of independent intelligence and cognitive abilities. For example, Chimpanzees can quickly recall a set of numbers that is displayed for a fraction of a second. Octopuses can learn to open pill bottles protected by childproof caps, which many humans can't figure out by themselves<sup>11</sup>. Thus, it is extremely unfair to treat them as property. At the same time they cannot be given the status of legal personality as they are different from human beings as well. The cognitive ability of animals differs from one animal to another and they do not possess the level of rationality and

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<sup>7</sup>Avantika Goel, *What do you mean by the term 'Duty' is there a concept of 'Absolute Duty'*, INFIPARK.COM Dec.21,2016, [www.infipark.com/articles/duty-concept-absolute-duty/](http://www.infipark.com/articles/duty-concept-absolute-duty/)

<sup>8</sup> Ananya Bhattacharya. *Birds to holy rivers: A list of everything India considers "legal Persons"*, QUARTZ INDIA., Jun.07, 2019.<https://qz.com/india/1636326/who-apart-from-human-beings-are-legal-persons-in-india/>

<sup>9</sup> *Supra* note 5

<sup>10</sup> David Favre, *"Living Property: A New Status for Animals within the Legal System"*, 2010 MARQ. L. REV.

<sup>11</sup> Gus Lubin, *Animals Are Way Smarter Than We Give Them Credit For*, SCIENCE ALERT.COM., Jan.27.2017. [www.sciencealert.com/animals-are-much-smarter-than-people-realize-scientist-says](http://www.sciencealert.com/animals-are-much-smarter-than-people-realize-scientist-says)

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autonomy which is needed for them to be considered as persons. Animals should be accorded with their own status between that of objects and that of persons, as they do not belong to either. Animals should be distinguished from inanimate properties and accorded with their own status as sentient beings with *partial personality*. Hence law should provide them with rights such as right against cruelty and right against painful death. At the same time animals should not accord full legal personality but, only partial personality to them due to their inability to rational thinking and decision making. Their status in law should be similar to that of a foetus. Unlike legal personalities, duties and liabilities are not attached to a foetus but, law provides certain rights and protection to them. Under Hindu Mitakshara law, an unborn child has interest in its coparcenary property<sup>12</sup>. Section 315 of the Indian Penal Code, states that the infliction of pre natal injury on a foetus which is capable of being born alive and which prevents it from being so could amount to an offence of child destruction<sup>13</sup>. At the same time there are laws which allow abortions under certain conditions. It will be more appropriate if animals are given a legal status similar to that of a foetus that could provide them with certain rights against cruelty and despotic control but, at the same time they can be partially placed under human control for human benefit.

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## CONCLUSION

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Law has been evolving from time to time. There was a period when slavery existed during which even certain categories of human beings were not given the status of legal personality. We have come a long way from that. As animals take the form below human beings in the chain of life they need to be patronized. They are our co-inheritors of the earth. Hence it is not fair to assign them with the legal status of property and they remain at a distance from being accorded with legal personality, but their legal rights should be recognised. It is high time that law starts to recognize animals as sentient beings by granting them, their own legal status, only this can change the plight of animals, considering the fact that millions of them suffer every day. It is very likely that such a change in the current approach can pave the way for a deeper evolution of law.

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<sup>12</sup> Manish Ranjan. *Meaning and kinds of persons*, LEGAL SERVICES INDIA.COM.  
[www.legalservicesindia.com/article/2316](http://www.legalservicesindia.com/article/2316).

<sup>13</sup> *Id.*

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