
BEYOND THE PROPERTY-PERSON BINARY: A FIDUCIARY FRAMEWORK FOR INTERSPECIES JURISPRUDENCE

Priyansh Singh, B.A., LL.B., National Law University Delhi

ABSTRACT

The article examines the current jurisprudential landscape analysing the historical classification of animals as chattel and how it is at odds with the emerging scientific evidence on non-human sentience. It argues that the current animal welfare statutes are inadequate and the standard advocacy for a legal personhood is problematic as it faces profound systemic barriers such as the liability problem and takings dilemma.

Through a comparative analysis of the American legal formalism, New Zealand's innovation and the Indian judicial activism, it is uncovered why the judicial declarations, although bold, remain symbolic and unimplementable.

The article proposes a pragmatic shift from the rigid property-person bifurcation to a much more nuanced framework of Sentient Legal Subjectivity. This model integrates three core pillars: (1) a Functional Intelligence Test; (2) a Fiduciary Stewardship approach; and (3) a State-backed Liability Fund.

Ultimately, the article contends that the evolution of interspecies justice requires a transition from "Judicial Leaps" to a robust Statutory Architecture that aligns well the inherent interests of sentient beings and also answers the practical realities of tort, property, and administrative law.

CHAPTER 1: INTRODUCTION

Modern environmental law is structured upon a stark anthropocentric hierarchy wherein the nature and its constituents have been legally defined by their utility to humankind in contrast to their intrinsic value. Non-human animals, the most sentient of these components, have been given the legal status of “property” to be owned, used and exploited and classified as chattel.¹ Such classification is intrinsically the same as viewing forests, rivers and mountains as standing reserves of resources rather than living systems with inherent worth.²

This entrenched paradigm is confronted with a formidable body of evidence from ethology, neuroscience and cognitive science which posit that many non-human animals possess complex consciousness, self-awareness, emotional depth and sophisticated social structures. They can no longer be classified as mere “things” as it is morally and intellectually untenable. The traditional animal welfare statutes regulating cruelty appear inadequate as they operate within the anthropocentric model, which sought to mitigate abuses of property rather than challenging the status of property itself.

Although, the expansion of legal personhood to non-human animals seems like a logical evolutionary step, it brings forth a plethora of legal and social issues in the form of challenges to very foundation of the social contract and the “right-duties” nexus.

Therefore, the central issue at hand is not about the law excluding sentient animals from the ambit of legal personhood, rather, it is about formulating a more nuanced framework focused on establishing interspecies justice. There is a need to shift the legal paradigm from human dominion to co-existence, as animals aren’t resources for human use but are subjects with own interests, liberty and well-being.

¹ Roderick F Nash, *The Rights of Nature: A History of Environmental Ethics* (University of Wisconsin Press 1989)

² Michelle C. Pardo, *Legal Personhood for Animals: Has Science Made Its Case?*, 13 *Animals* 2339 (2023); Gary L. Francione, *Animals, Property, and the Law* (1995).

CHAPTER 2: TRANSITION FROM PROPERTY TO PERSON

A legal analysis, deconstructing the core components of nature of legal personhood, inertia of traditional doctrine, and practical complexities is required to challenge the century long legal paradigm.

Firstly, the erroneous conception of the term “legal personhood”, wherein the word “person” is often conflated with the “biological human,” stands as the primary hurdle.³ The U.S. Supreme Court in *Santa Clara County v. Southern Pacific Railroad* held that legal personality is a functional fiction which is to grant the capacity to bear rights and duties to an entity for the purpose of justice and legal order,⁴ thereby confirming that legal personhood is a constructed tool that can be extended to non-human entities like corporations to serve the social and economic ends.

A brutal distinction shall be made while comparing the corporation to sentient non-human animals as, in contrast to the corporate personhood, granting legal personhood to sentient animals is viewed judicially as a “negative fiction” as it restricts human commerce. Therefore, another ground of an entity’s intrinsic capacity must be taken into consideration to distinguish a sentient being from a lifeless ledger of a corporation.

Secondly, the “traditional legal paradigm” is the most significant barrier to animal personhood, entrenched in the common law principle that rights are contingent upon the capacity to hold them.⁵ The incapacity has been the central argument for refusal in the US. In *NhRP v. Lavery*, the inability of chimpanzees to “bear any legal duties, submit to societal responsibilities or be held legally accountable for their actions” was the basis of denying them the right to habeas corpus.⁶

This rights-duties nexus can’t be an absolute indispensable principle as the law consistently grants rights to humans who lack the capacity for responsibility such as infants, comatose individuals and even non-human entities. Thus, applying this principle with rigid force to animals while weaving it for humans is discriminatory application of a legal standard. In India, whilst the *Animal Welfare Board of India v. A. Nagaraja* recognised that animals have a right

³ Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (2000).

⁴ *Santa Clara Cnty. v. S. Pac. R.R. Co.*, 118 U.S. 394 (1886).

⁵ Pardo, *supra* note 2, at 1.

⁶ *Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148 (N.Y. App. Div. 2014).

to life under Article 21, rejecting the rigid nexus and shifting the focus on intrinsic value and sentience, the lack of a legislative framework to handle animal liability is the core for staying the High Court declarations of universal personhood.^{7 8}

Thirdly, the practical complexities and perplexity over determining the best interests, deciding appropriate remedy for violation of the rights, issue of standing stands as a floodgate argument.⁹ Animals currently serve as a property and a transition to legal personhood would constitute taking of a private property under Article 300A of the Constitution of India.¹⁰ If an animal is construed as a “person,” then the law shall determine the liability for its torts. Our current regime characterizes animals as “nuisances” or “assets” thereby pinning their liability to their owner.

This raises yet another inquiry of whether the mechanism of “next friend” standing or legal guardian be adapted for effective representation? The doctrine of *parens patriae* and legal framework for child advocacy and guardianship are viable models. The decisions of the Uttarakhand¹¹ and Punjab & Haryana High Courts,¹² which appointed the citizenry as guardians in loco parentis, and the legislative solution for the Whanganui River, demonstrate that functional representation is achievable.¹³ The challenge is not an absence of legal tools, but a lack of judicial and legislative will to apply them in a new, albeit entirely logical, context.¹⁴

CHAPTER 3: THEORETICAL ANALYSIS

Speciesism describes the prejudice/discrimination based on species membership which denies fundamental interests to one group while granting to another without a rational basis.¹⁵ The *principle of equal consideration of interests* postulates that the capacity for suffering and enjoyment are the prerequisites for having interests at all.¹⁶ If a being can suffer, there can be

⁷ State of Uttarakhand v. Narayan Dutt Bhatt, SLP (C) No. 23222/2018 (India July 20, 2020) (Supreme Court of India).

⁸ Animal Welfare Bd. of India v. A. Nagaraja, (2014) 7 S.C.C. 547 (India)

⁹ Nonhuman Rights Project, Inc. v. Breheny, 38 N.Y.3d 555, 573 (2022).

¹⁰ India Const. art. 300A

¹¹ Narayan Dutt Bhatt v. Union of India, WPIL No. 43 of 2014 (Uttarakhand H.C. July 4, 2018) (India)

¹² Karnail Singh v. State of Haryana, CR No. 533 of 2013 (Punjab & Haryana H.C. May 31, 2019) (India)

¹³ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (N.Z.)

¹⁴ Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018).

¹⁵ Peter Singer, Animal Liberation 6 (1975).

¹⁶ Douglas O. Linder, *The Case for Animal Personhood*, Famous Trials (2025) <https://famous-trials.com/animalrights/2600-the-case-for-animal-personhood>

no moral or legal justification for refusing to take that suffering into account. This is not to say that animals deserve the same rights as humans, e.g., the right to vote, but that their core interests, in life, liberty, and freedom from torture, deserve equal consideration.¹⁷

The traditional justification for *human superiority* (rationality, language and autonomy) can't be invoked because if cognitive abilities are used as the basis, then infants, individuals with cognitive disabilities shall also be excluded. The basis to grant every species rights such as that of life and security is sentience.¹⁸ If corporations, which possess no sentience, consciousness or ability to feel pain, can be granted personhood to protect the financial interests of its shareholders, then why deny it to sentient beings. Moreover, in India, certain Hindu idols and religious endowments have been recognised as juristic persons, capable of holding property and being represented in court.¹⁹ In admiralty law, ships are treated as legal entities.

Habeas corpus is the most potent legal tool wielded in US for animal personhood. The writ's application has been expanded over centuries with the evolved understanding of "person". In *Somerset v. Stewart*, the English court granted habeas corpus to an enslaved man, demonstrating that the writ could penetrate the veil of property status to recognize a fundamental right to liberty.²⁰ The Nonhuman Rights Project (NhRP) has invoked this precedent raised petitions on behalf of chimpanzees and elephant challenging the detention of these self-aware beings.²¹ Although rejected, the reasoning in *Tommy* case by Judge Eugene M. Fahey acknowledged the dilemma stating that "there is no doubt that it is not merely a thing" forcing the judiciary to confront scientific evidence of animal cognition.²²

Furthermore, to prevent a slippery slope, wherein granting rights to an Elephant would advocate the same for an oyster and an egg and a mosquito etc., a Functional Intelligence Test can be proposed. As per this, law should recognize degrees of subjectivity based on overwhelming scientific evidence of complex cognition.²³ By focusing on proven self-awareness, a boundary can be constructed allowing only the development of a category of

¹⁷ Singer, *supra* note 15, at 1–2

¹⁸ Pardo, *supra* note 2, at 4

¹⁹ See *M. Siddiq (D) Thr. Lrs. v. Mahant Suresh Das*, Civil Appeal Nos. 10866-10867 of 2010 (India Nov. 9, 2019).

²⁰ *Somerset v. Stewart* (1772) 98 Eng. Rep. 499 (K.B.).

²¹ *Our Mission*, Nonhuman Rights Project <https://www.nonhumanrights.org/>.

²² *In re Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054 (2018).

²³ *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555 (2022) (Wilson, J., dissenting)

“Sentient Legal Subjects” who possess a limited set of fundamental rights of liberty and bodily integrity and not the full array of civil rights.

CHAPTER 4: GLOBAL JURISPRUDENCE

The discourse of animal personhood is not in vacuum and transcends the global boundaries. Upon careful deliberation, the barriers to animal personhood are found to be not inherent to the common law, but the result of specific judicial philosophies and constitutional interpretations.

The US inflexibility and Rights-Duties nexus: The American courts have consistently rejected the call for recognition. The legal reasoning has revolved around a single principle of rights-duties nexus.²⁴ The rationale of legal personhood being inextricably linked to the capacity to bear societal responsibilities and legal duties and being accountable has been the reason behind denying an elephant status of a “person” with the right to sue for its own liberty.²⁵ The U.S. courts’ insistence on this nexus when applied to animals, while ignoring its inapplicability to humans, is to preserve the anthropocentric status quo.²⁶ Furthermore, it was the fear of a “destabilizing effect on modern society” that influenced the decisions. The fear exists that granting legal personhood to a limited set of species can have a domino effect, dismantling agricultural and biomedical industries.²⁷

New Zealand stands at a stark contrast to US as major breakthrough with the Parliament providing the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.²⁸ Although it is central to river and not animals, it stands as a functional legal innovation countering the practical objections raised by the US. This model established a co-guardianship framework, providing an answer to the challenge of legal representation for non-human entities. Further, the river is granted with the right to “health and well-being”.²⁹

India has emerged as the global leader in the judicial advancement of animal personhood standing in sharp opposition to American formalism.³⁰ The foundation was laid with the Court

²⁴ Pardo, *supra* note 2, at 1.

²⁵ Nonhuman Rights Project, Inc. v. Breheny, 38 N.Y.3d 555, 572 (2022).

²⁶ *Id.* at 573

²⁷ Richard L. Cupp Jr., *Focusing on Human Responsibility Rather than Legal Personhood for Nonhuman Animals*, 33 Pace Envtl. L. Rev. 517 (2016)

²⁸ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (N.Z.)

²⁹ *Id.* §§ 12–14, 18–20.

³⁰ Stuti Rai, *Legal Personality for Animals in India and Pakistan*, In Custodia Legis (Aug. 1, 2023), <https://blogs.loc.gov/law/2023/08/legal-personality-for-animals-in-india-and-pakistan/>

declaring Article 21, the fundamental “Right to Life”, to include the right of animals to live with “intrinsic worth, honour and dignity” alongwith humans. Following this, the Uttarakhand High Court in Narayan Dutt Bhatt declared the entire animal kingdom to be a legal entity with the rights and duties of a “living person”.³¹ The court appointed the citizens of the state as guardians in loco parentis to ensure the protection of these rights.³² A year later, the Punjab and Haryana High Court in Karnail Singh, followed suit, making an identical declaration. However, the Supreme Court of India has stayed the Uttarakhand order citing implementation difficulties. An absence of a central statute defining how these entities will interact with the penal code, property law and state liability renders these judicial declarations as merely symbolic.

The transition requires more than Judicial Activism. A lack of legislative will and clear directions for a synergistic interoperability of these entities with the administrative and legal system fails to bridge the gap.

CHAPTER 5: DRAWBACKS AND COUNTER MEASURES

The transition from property to person is not a seamless legal evolution rather it is a disruptive proposition that comes with a multitude of challenges.³³ The first and foremost being the *Doctrinal Barrier* as the personhood being a legal concept entailing both rights and duties is defined by participation in a social contract and since animals can’t bear legal duties or be accountable for their actions they must be excluded otherwise, without reciprocity, the very fabric of legal order would falter. However, this is selectively applied and the law doesn’t treat it as an absolute principle.

The second stems out of fear of the slippery slope. This was the rationale in Breheny as a concern about the potential unstoppable legal cascade exists. If as an elephant is a person, why not a chicken, a fish, or a bee? This would require dismantlement of industries; agriculture, aquaculture, biomedical research and product testing. Billions of newly minted legal persons would paralyze the society via litigation. If the state classifies livestock as persons, then it will eventually be required to pay billions in compensation to property owners for the loss of their

³¹ Narayan Dutt Bhatt, *supra* note 11.

³² *Bridging Science, Ethics, and Law: Animal Personhood in India*, IACL-AIDC Blog (Feb. 15, 2024), <https://blog-iacl-aidc.org/2024-posts/2024/2/15/bridging-science-ethics-and-law-animal-personhood-in-india> accessed 26 October 2025.

³³ Breheny, *supra* note 9, at 566, 572.

asset.³⁴ This argument although powerful can be mitigated. It is not advocated that an oyster possesses the same right to liberty as a chimpanzee. The legal arguments for personhood have been for those where there is overwhelming scientific evidence of complex cognition, autonomy, and self-awareness, such as great apes, cetaceans, and elephants.³⁵ The dissenting judges in *Breheeny* themselves proposed a “*functional intelligence*” test as a potential method for drawing a legally coherent line.³⁶ Moreover, legislatures, capable of creating statutory classifications, could grant a specific category of “sentient beings” a limited set of fundamental rights (e.g., the right to bodily integrity and liberty) without conferring the full spectrum of human rights.

The third issue is the failure to address tortious liability. If a dog is classified as a legal person then it breaks the traditional model of treating it as a “nuisance” where the owner would’ve been liable. In light of the stray dog crisis, there is a dilemma wherein there exists a clash between the animal’s right to territory under the Animal Birth Control Rules 2023 and the human “Right to safety.”³⁷ Therefore, we need to be practical and move away from personhood towards Sentient Legal Subjectivity with a state-backed liability fund supporting it. Holding the state strictly liable for compensation in case of dog bites has already been started by the Punjab & Haryana High Court. State shall automatically assume the de facto guardian role and accept the liability for the actions of animals if they grant them a right to occupy public places.

The fourth is the problem of representation. An animal, incapable of speaking for itself, requires a human guardian or “next friend”. This raises two issues, of standing and danger of anthropomorphism. The monkey selfie case, expressed deep skepticism about the standing of an animal rights organisation to sue on behalf of a macaque and the organisation’s motives and ability to represent its true interests were questioned warning that the animal might serve as a pawn in an ideological battle.³⁸ Agreed that a human guardian can’t truly know what is in the best interest of another species without projecting human values and desires but the same framework is applied in child advocacy and guardians for incapacitated adults. The challenge is not impossibility of representation but necessity of an adequate and transparent one. An official Office of Animal Advocacy with ethologists and legal experts can ensure that legal

³⁴ Gary L. Francione, *Animals, Property, and the Law* 45–50 (1995)

³⁵ Wise, *supra* note 3, at ch. 2.

³⁶ *Nonhuman Rights Project, Inc. v. Breheeny*, 38 N.Y.3d 555, 574–75 (2022) (Wilson & Rivera, JJ., dissenting)

³⁷ *Animal Birth Control Rules, 2023* (India).

³⁸ *Naruto v. Slater*, 888 F.3d 418, 421 (9th Cir. 2018).

action is based on their best interests.

One of the major challenges with respect to this regime is the paradoxical position surrounding the status of domesticated animals (pets), which may possess the required cognitive abilities for rights. Pets are indeed classified as property and their owner has the right to make decisions concerning the animal's life such as medical care and humane euthanasia. However, this ownership is not absolute due to existence of animal cruelty statutes. The core conflict is of Right to Bodily Liberty. The primary right of habeas corpus advocated above challenges unlawful detention but the entire existence of a pet is confinement and granting right to liberty goes against the very structure of pet keeping. The key argument of domestication is one of dependency of the pet and looking after its best interests. If, for example, a dog is granted the right to bodily integrity, a slippery slope concerning spaying, neutering, keeping it on a leash is created. A viable option for the above dilemma is the guardianship model wherein the status of human shifts from an owner to that of a guardian with legally recognized responsibilities. Furthermore, another category by German and Swiss law has been created wherein animal are protected by laws governing things unless states otherwise.

Conclusion

The animal personhood transcends beyond just the issue of animal welfare to the future of environmental law. The concept of legal personhood has always been a flexible, functional construct. The doctrines of guardianship and *parens patriae* provide proven mechanisms for representing the interests of non-speaking parties. The comparative jurisprudence from India and New Zealand proves that common law systems have the capacity for this evolution. The transition from a legal system of human dominion to one of interspecies justice will not be simple.

However, the brutal honesty of the inadequacy of the current legal landscape reveals that change is unlikely in the short run. Without the support of the statutory architecture, the liability gap and economic disruptions will keep on increasing. Adoption of the Sentient Legal Subjectivity model avoids an all-or-nothing approach and combining the model with fiduciary stewardship and state-backed accountability would be a major revolution. There is this necessary work of building a legal order that is not only more just to our fellow beings but is also foundational to a truly sustainable, eco-centric system of environmental governance.