

# Research on the legal Protection of Pet Animals

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**Abstract:** With the increasing prosperity of China's economic development and the improvement of people's living standards, raising pets has gradually become a new trend of The Times. With the rise of the pet-related industry, pets have not only brought spiritual happiness to their owners, but also brought great benefits to the owners of the pet industry. Behind all of these, there are also a large number of pets being mistreated and abandoned, living on the streets or being killed by cat and dog dealers, and even a series of social problems, such as the injury of stray animals, the impact on the lives of residents, indiscriminate reproduction, and the bacteria produced by feces and cadavers, which are harmful to public health. In this regard, this paper will discuss the legal status of pet animals from the theoretical and practical levels, analyze the current situation and deficiencies of pet animal protection in China, and briefly discuss the construction of the legislative system for pet animal protection.

**Keywords:** Pet animals; Legal protection; Legislative ideas.

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## 1. Introduction

Human beings and animals are creatures of nature, and every life deserves respect and care. On the road of building the socialist rule of law with Chinese characteristics, respecting life and protecting animals is not only a moral slogan, but also should be implemented at the legislative level to make corresponding legal regulations.

Cruelty to dogs and cats and pet abandonment have been on the news in recent years. For example, in 2012, Zhou abused a cat with a shoe, which caused a huge social impact, and in 2020, a Shandong university student surnamed Fan abused a cat, which also caused public anger. However, the occurrence of such incidents can only stir up waves in the public opinion, and the angry masses cannot find legal means to punish the abusers. As a result, people often wrongly resort to the way of Internet violence in order to get the publicity of justice. In our pursuit of harmony between human and nature, there is not a real "Animal Protection Law" to punish the abuse and abandonment of pets, to protect these small animals' inseparable from human life.

The value and meaning of animal protection for the country and society are not allowed to ignore, the author aims to advocate giving the pet animal due legal status, analyze the current situation and deficiency of pet animal protection, thus proposing some solutions, so as to contribute to constructing the perfect animal protection legislation.

## 2. Discussion on the civil legal status of animals

Animals have always been in the status of legal object in our country. The protection of animals in the civil law is equal to the protection of chattel in general. But animals are fundamentally different from ordinary things. Animals are living beings with common features with human beings. Like human beings, animals can express joy and sadness, and feel happiness and pain. Pet animals are inseparable from people's lives. Most pet owners even treat them as family members and give them meticulous care and love. So can animals enjoy the subject status in law with human beings and be endowed with independent legal personality? Through the ages, many experts and scholars have debated this issue.

### 2.1. Animal legal personality theory

After continuous expansion of the concept of legal personality, not only natural persons as human beings have legal personality, but also some social groups such as legal persons and illegal organizations. Legal personality in private law produces the same effect as civil rights capacity, that is, enjoys legal rights and undertakes legal obligations. On this basis, animal legal personality theorists believe that animals should also enjoy legal rights like human beings and have the qualification of subject of rights. Wang Ziling, an expert on animal subjectivity, argues that the judgment of civil subjects should be based on the capacity for civil rights, rather than the capacity for civil conduct or civil liability [1]. By enumerating groups that have the qualification of subjects but have no capacity for conduct, such as enterprise legal person, mental patient, baby, etc., it is expounded that the rights and capacity of subjects can be separated from the capacity for conduct. Animals, like creatures in nature, naturally enjoy rights. "The law can define animal rights as limited rights and their qualifications as limited qualifications, so a new agency system and guardianship system can be established". [2]

Peter Singer, the representative of animal liberation theory, extended the ethical principle of "equally caring for the interests of all parties" to animal protection, and took the ability of animals to feel pain as the basis for them to enjoy equal rights. Considering the pain of animals is the moral rationality of human beings. [3] Animals are almost the same as humans in their ability to perceive pain. Animals may also suffer physical pain and mental depression. However, humans ignore the feelings and feelings of animals and treat them as ordinary property without life, which is a kind of discrimination and arrogance between species. Human beings will eventually suffer the consequences on the way of disrespecting nature and the environment. By legislating animals as independent legal subjects, we can enhance human environmental awareness and implement the green principle, so as to achieve the purpose of environmental protection.

Animal rights theorists represented by Tom Regan put forward the concept of "subject of a life"[4]. The origin of human rights is that human beings are the subject of life, and animals, like human beings, live in this world as the subject

of life, so animals should also enjoy equal subject status with human beings. Not only that, animals also have their unique value and deserve to be respected and not violated. Just like human beings do not use other people as means of profit, animals should not be treated in this way. Therefore, animal rights advocates advocate the abolition of commercial animal entertainment and feeding industry, the prohibition of live animal scientific research experiments, and the eradication of animal exploitation activities. [5]

Gary L. Francione, an expert on animal subject theory, believes that human always regard animals as human property, and human value demands give animals the value of existence, which is the root cause of the substantive protection of animal rights. Therefore, he believes that when animals obtain the same legal subject status as human beings, human beings will consider the rights of animals equally, so that animals can get rid of the property of "property" and empower their subject rights. Animal protection will no longer be an advocacy slogan. [6]

### **2.1.1. Reflections on the Theory of animal legal Personality**

In today's world, the dichotomy of subject and object is generally used as the basis of legislation, and animals are endowed with the subject status of law, which has certain positive significance. It helps to arouse people's attention to the status of animals, arouse the social atmosphere of animal protection, advocate the awareness of animal protection and the concept of green environmental protection, and enrich the connotation and function of law. However, this theory also has certain defects and deficiencies. First of all, animals have no self-awareness and lack the ability to express their meaning autonomically. If animals are regarded as independent legal subjects, they have no ability to claim rights and undertake obligations, and some criminals may use animals to commit crimes and make animals, as legal subjects, bear criminal responsibilities. It has become a tool for some criminals to commit crimes and a means to escape legal responsibility, which is not conducive to the protection of animals and the stability of social order. Secondly, human beings cannot survive without the consumption and use of animals. If animals are given a legal subject status, and animals and humans have the same legal status, it will cause one kind of legal subject to dominate another kind of legal subject, which is difficult for the public to accept. Finally, although the subject theory of animal law has moral warmth for animals, it has no realistic significance in today's China. It will raise animals from the object status to the subject status. It will also have some impact on the order of the civil law of China, which is not easy to be accepted by the public. It is not practical and operable.

## **2.2. Animal lattice theory**

Legal case is the relative concept of legal personality. Legal personality is mainly based on ethical people, and refers to the status and qualification of people as legal subjects, who enjoy rights and undertake obligations. The corresponding legal personality is the legal case. The legal case emphasizes the entity that does not have the power of rights in law, which can only be regarded as the property opposed to human. Further speaking, it is the qualification of the object of rights and the object of the function of rights. [7] Most animal legal personality theorists take the concept of "animals are not objects" added in Article 90a of the German Civil Code as their argumentation support. Xu Xin proposed that "animals

are not dead yet and their rights need to be protected. And should not be used as an object □ and shall be subject to protect"[8]. However, considering the social background of Germany at that time to understand this provision, it is not difficult to find that animal protectionism was prevalent in Germany at that time, which also affected the enactment of laws to some extent. After Article 90 of the German Civil Code "Objects referred to in this Law are physical objects", lawmakers added Article 90a special provisions on animals. That is, it recognizes in legal status that although animals belong to physical objects, they are different from general physical objects and are protected by law as a special object. It can be seen that the legislative purpose of this article is not to give animals subject status or legal personality, but to emphasize the legal case status of animals, and to give "special things" legal protection to animals. Professor Wang Zejian, for example, pointed out that the clause "aims to show respect for living 'things', so that animals and humans are created together. In civil law, animals are still property (personal property), but the control of animals should be regulated and limited by the special law, needless to say ". [9] Professor Yang Lixin also believes that the original intention of the animal legal personality theory existing in the field of civil law is good, but it will cause chaos in the social order and adversely affect the traditional theory of civil law. Therefore, he proposes that a legal case system should be established and divided into three types of legal case according to the physical properties and characteristics of things. The first type is life case. Including human tissues and organs, wild animals, pets and plants; The second category is abstract case, including virtual property and marketable securities; The third category is general object case, which conforms to the definition of general object in civil law; In particular, he pointed out that pets have the highest legal status, and defined pets as cats, dogs or other animals with the function of companionship, enjoyment and feeding, also known as companion animals. Because they have the closest relationship with human beings and can bring spiritual comfort to breeders, pets should be treated with special welfare. [10]

### **2.2.1. Reflections on animal lattice theory**

The theory of animal lattice not only opposes the granting of legal subject qualification to animals, but also denies the treatment of animals as general property. Instead, it advocates the special protection of animals as "special things" in law. This theory classifies animals according to their basic attributes and characteristics, engenders different objects with differentiated legal status and hierarchical legal protection, and engenders wild animals and pets with the highest case protection, which is scientific and reasonable to a certain extent. It can not only realize the recognition of the special status of animals, but also avoid the confusion of legal subjects. The harmony between man and nature can be achieved without the cost of anthropomordization and subjectization of animals. Only legislation is needed to protect animals as special things and strictly limit the dominating behavior of human beings to animals. [11]

This theory carries forward the green development concept of the new ecological era, contributes to the continuous optimization of the ecological system, advocates people's respect and protection of animal rights, and also strengthens people's concept of animal protection to a certain extent, especially the pet animals that live more closely with human beings. After being bred and domesticated by human beings,

they have no ability to survive in the wild. As a living organism that depends on human feeding to survive, it should also receive special legal protection, and the behavior of mistreating, abandoning, wantonly breeding and selling pets should also be severely cracked down on legally.

### **3. Current situation and deficiency of pet animal protection**

#### **3.1. The legal level**

##### **3.1.1. The legislative system is not sound**

Although there are some laws, administrative regulations and department regulations on animal protection in our country, the legislation on the welfare protection of pet animals is still blank. In the 2018 amendment to the Wildlife Protection Law, the law only targets rare wild animals, excluding the protection of non-wild animals and wild non-rare animals. It can be seen from its history that the rational use of animal resources was the legislative purpose of the Wildlife Protection Law at the very beginning of its enactment in 1988. After the two amendments of the Law in 2004 and 2009, the legislative purpose of "developing and rational use of wildlife resources" was not changed. Until the revision in 2016, the legislative thinking of the law gradually focused on "wildlife is an important resource" and "maintaining ecological balance". The Animal Quarantine Law revised in 2021[12], the Animal Quarantine Management Measures revised in 2019, and the Quarantine Regulations for Dog Origin and Cat Origin issued by the Ministry of Agriculture in 2011 only stipulate the management and quarantine of animals, while the actual protection of animal welfare has not been mentioned. The formulation of these laws and norms serves the needs of social management or the consideration of economic interests, rather than the fundamental purpose of animal protection and animal welfare protection. Such a legislative system will undoubtedly lead to the lack of animal protection awareness and excessive use of biological resources to extract the economic value of animals.

At the local legislative level, many provinces, cities and counties in China have made corresponding regulations on the management of pet dogs, such as Beijing Regulations on the Management of Dog Keeping, Guangzhou Regulations on the Management of Dog Keeping, Shanghai Regulations on the Management of Dog Keeping, Shenzhen Regulations on the Management of Dog Keeping, etc. These local legislations is based on the perspective of pet management, rather than the purpose of pet protection, so it can be seen that China does not have a basic law to effectively safeguard the interests of pet animals as the starting point, and has not formed a complete legal system covering the raising, breeding, shelter, medical treatment, transportation, humane death and body disposal of pet animals. Moreover, the current regulations related to pet animals are scattered among various local laws and regulations, and there are many problems such as inconvenient application or low effectiveness level and difficult to achieve the purpose.

##### **3.1.2. The protection content is not comprehensive**

Throughout our laws and regulations on the animal protection, it is not difficult to see that our country has made legislative norms for wildlife protection, dog management, animal prevention and other aspects, but for other pet animals accompanied by human day and night assume the spiritual trust of the human and comfort the human soul home, such as

pet turtles, rats, rabbits, lizards and so on belong to the blank area of legal protection. The diversity of modern people pet, pet animal variety is great, the law in our country has not yet to screen and classify the concept of animal protection. In addition, our animal protection system mainly focuses on animal registration, management and epidemic prevention. The focus of legislation on animal welfare protection still focuses on the punishment of animal cruelty. For example, the Animal Protection Law (Expert Proposal) drafted by the expert group of universities in 2009 and the Anti-Animal Cruelty Law (Expert Proposal) drafted in 2010, however, there is still no real legislative norm on the qualitative and punitive measures of animal cruelty. Not to mention the laws and regulations concerning the raising, dietary hygiene, living space, breeding, entertainment, shelter and other aspects of pet animal life. Because of this, in reality, there are a large number of cases of cruelty to animals, inhuman means to raise animals to make profits, but it does not constitute a crime, cannot be punished by law, and exploit legal loopholes to avoid legal sanctions. Since the outbreak of COVID-19, there have been rumors that dogs and cats could be infected with the virus, leading to a sudden increase in the abandonment, abuse and killing of pets. Pets are often left on the street or starved to death because their owners are quarantined. In view of this, there is a long way to go in the legal construction of pet animal protection and welfare protection. Professor Qiao Xinsheng believes that "it is necessary for China to formulate special animal protection law, classify and manage animals, and on this basis, formulate specific rules for different kinds of animals, so as to completely put an end to the abandonment and abuse of pets. It is not only necessary to prohibit the abuse of pets through legislation, but also to raise the level of animal welfare. [13]"Therefore, Chinese legislation should try to improve the scope of legal adjustment, including the prohibition of animal abuse and the protection of animal welfare provisions into the law.

##### **3.1.3. Supervision and management is not in place**

At present, the supervision and management of animal protection in our country is a comprehensive coordinated management mechanism of several departments. According to the existing laws and regulations, our country has the management rights to endangered wild animals, forestry departments, industry and Commerce Department and customs department and many other departments, there is unclear management authority and responsibilities between various departments. Lack of a unified animal protection management and supervision department. Relevant law enforcement subjects only take maintaining social stability and order as the starting point, but do not really achieve the law enforcement mode for the purpose of safeguarding animal welfare. Law enforcement often ignores pet abuse if it does not go far enough to affect social order. If the public authority fails to intervene and adjust this kind of behavior in a timely manner, then the private relief will become unregulated and unrestrained. For example, in China, dog lovers often stop the vehicles selling dogs. In order to save the pets or stray dogs stolen by bad dog sellers, they are forced to buy dogs at a high price by speculators who take advantage of their love for dogs and abuse them in public. Even though the call for animal welfare protection is growing, the society strongly condemns the abuse and abandonment of pet animals, but the supervision department has not done real severe punishment and regulation of the behavior, therefore, the supervision and management mechanism for pet animal protection has not

played a realistic role, and the supervision content is also very limited.

## **3.2. Social level**

### **3.2.1. The prevalence of pet abuse**

Animal abuse has become a blank area for legal control in China. In recent years, there have been frequent incidents of cat and dog abuse in Chinese society. Abusers often abuse animals by cruel means such as beating, pick-pocketing, burning and so on to vent their daily pressure and satisfy their distorted psychology. In 2020, Fan, a college student in Shandong Province, was expelled from school for abusing cats, but he was not punished by the law. This made people very angry and confused. Can cruelty to animals be ignored? Cruelty to animals will not only cause bad social influence and violate the social order and good customs, but also often have certain psychological problems in such abusive groups, which may even develop into violent killing of others without intervention and stop. Cruelty to animals is a precursor of cruelty to others, which should not only be adjusted by moral condemnation, but also be regulated by law. This will more effectively establish the awareness of animal protection, create the whole society of animal protection atmosphere, conducive to strengthening the spiritual civilization construction of the whole society and the construction of a beautiful and harmonious society.

### **3.2.2. The prevalence of pet abandonment**

Stray cats and dogs are common in many communities, villages and universities. As raising cats and dogs is not regulated in most areas, some irresponsible owners abandon their pets to the society for various reasons to fend for themselves. Abandoned pets are not trash that is thrown away, but abandoning them is as simple as throwing away trash without any responsibility. Ironically, while litter is now regulated, pet abandonment is not. People's love for pets, on the contrary, is the reason for the frequent stray animals. Pet cafes are thriving. Some speculators regard pets as a means of accumulating wealth, but when the business loses money, they abandon them to the society or lock them up in a certain place. It causes a large number of stray animals to breed wantonly, attack humans, disturb the public, spread diseases and other social problems. The current solution is mainly to rescue stray animals spontaneously organized by animal volunteers or to eliminate stray animals by relevant departments. The effective means to solve this phenomenon is to start from the source, speed up the development of a comprehensive, systematic, operational standard norms covering animal breeding, management, sales, transfer and other aspects, and strengthen the welfare protection of pets is the most urgent task.

## **4. Discussion on the legislative conception of pet animal protection**

### **4.1. The legislative principles of pet animal protection**

#### **4.1.1. Legislation suits the basic national condition of our country**

Chinese legislation on pet animal protection should be rooted in the basic national conditions when our country is in the primary stage of socialism, and it should be adapted to our economy, culture, society, ethics and customs. The legislation of pet animal welfare protection in western developed

countries has been quite mature after one hundred years of evolution. To a certain extent, we can learn from the relevant provisions of western legislation on pet animal protection. However, we must not make it out of the reality of our pet animal protection. We should fully consider the western developed countries' differences in development stage, moral and ethical foundation, national quality, material life standard, legal ideology and our country. Only by reasonable transplantation and reference of law can we work out the pet animal protection legislation which is more suitable for our national conditions and practical. In contrast to the western excessively strict punishment means and governance measures, the legislation of too high standards is obviously not in line with the current social situation of our country, the legislation beyond our national conditions will not make pet animals effective protection, but will aggravate social contradictions to make it difficult for the people to accept, will also damage the authority and credibility of the law, The pet animal protection Act into a "vanity".

Moreover, China is a multi-ethnic country with different ethnic traditions. For example, ethnic minorities in Guangxi Zhuang Autonomous Region have customs such as eating dog meat. The enactment of pet animal protection law should also take into full consideration the traditional customs of all ethnic groups, and gradually cultivate the awareness of animal protection under the premise of respecting the traditions of ethnic minorities. Therefore, the establishment of the pet animal protection law is a process of gradual and gradual exploration. We should formulate, implement and modify it with a level and stage, and then methodically implement the pet animal protection based on our current social development stage, economic development level and national traditional culture.

#### **4.1.2. The purpose of the legislation is to protect the welfare of pet animals**

The legislation on pet animal protection should also take the protection of pet animal welfare as the purpose and non-anthropocentrism as the theoretical guidance, recognizing that animals and human beings are life in nature, animals are not tools for human to use at will, and the pet animal protection law should be formulated with the practical welfare protection of animals as the starting point of the law rather than to maintain human domination of the economic value of animals. Therefore, pet animal protection legislation should not only protect the basic survival interests of pet animals, but also protect the survival welfare of pet animals as the principle. On the basis of protecting pet animals from being abused, abandoned and killed, it should further protect the level of pet animals, living environment, medical conditions, health protection and other welfare measures. The pet animal protection legislation is a symbol of the development of national and national civilization. This also coincides with our country's development concept of the protection ecological environment, which echoes our country always insists on the green development concept of human and nature living in harmony.

### **4.2. Legislative proposals for pet animal protection**

#### **4.2.1. Animal lattice system**

The premise of making pet animal protection law, we should make clear what kind of legal status of pet animals in our country, first make clear the legal status of pet animals, then make concrete protection regulations. The legal case

system proposed by Professor Yang Lixin advocates dividing the system of civil law into general and special things, and regards wild animals and pets in legal case as special things that are different from general things. At the same time, he also believed that "special things" should be regarded as a multi-level open system, and its scope and level should be continuously expanded and enriched with the progress of society. Professor ming-de cao also issued a similar point of view, he advocated "civil code of our country should make the content is divided into ordinary content and animal □ and specific provision for animals should apply special law on protection of animals (including ordinary animals)" by such a system to determine the special legal status of pet animals as the objects of the law is conducive to the further specification of its legal protection. In April 2020, the Ministry of Agriculture and Rural Affairs drafted the official explanation of the National Catalogue of Livestock and Poultry Genetic Resources (Draft for Comments), which specified dogs as companion animals, indicating that Chinese legislative departments indeed have a legislative trend to regard pet animals as special objects in law.

#### 4.2.2. Registration system for breeders

We should establish a registration system for pet owners, and unify the animal welfare administration, including pet owners for the first-time registration, change registration, loss registration and cancellation registration, etc. After vaccination and health examination by animal epidemic prevention authorities, the breeders can register their pets at the animal welfare administration institutions for the first time with the quarantine certificate, which involves the personal identity information of the breeders and relevant information about pets. When the breeder's personal address, communication method and other information changes, it should go to the animal welfare institution for change registration. When the pet is lost, the owner should timely register the pet loss in order to find the lost pet and reduce the generation of stray animals. In the case of death, transfer, donation or legal abandonment of pets, the registration can be cancelled. Moreover, registration is not once and for all. The duration of pet health examination should also be regulated, and pet epidemic prevention and health inspection should be carried out regularly in the epidemic prevention department, and animal welfare institutions should supervise and manage, to ensure the continuity of supervision. In addition, the qualifications of breeders should be strictly limited. Breeders should be people with full civil capacity, no history of animal abuse and abandonment, have corresponding economic capacity, and have a fixed residence.

For pets, it is not only necessary to register the information, because it is difficult for humans to distinguish the identity of pets based on the registration information. When pets are lost or abandoned, it is difficult for relevant departments to solve the problem according to the registered pet information. This shows that merely registering pet information is not enough. China can learn from the western system of electronic chip implantation, which will store the details of the owner and the pet as the pet ID card, and painlessly implant the chip under the pet without harming the animal's health. For example, Article 5 of German Animal Welfare Law stipulates that pet animals should be identified and registered, and chips should be implanted in the loose skin parts of pets such as ears, wings and legs in a painless way. In order to effectively implement this system, western countries have stipulated quite strict legal responsibilities for non-registration and abandonment of

pets. [14] The system allows pets to quickly find their owners when they are lost, which is beneficial to the protection of animal welfare organizations and the management of relevant departments. With the gradual development of science and technology, it may be possible to adopt animal face recognition technology for the identification registration of pet animals in the future.

#### 4.2.3. Public participation in supervision and reporting system

When formulating legislation related to pet animal protection, our country should respect and guarantee the active participation of the masses in the legislation, help to implement the democratic principles of the Constitution and encourage the public to exercise the constitutional rights. At the same time, the legislature can widely listen to the suggestions and opinions of the masses on the pet animal protection legislation, so as to formulate laws and regulations which are operable and can be accepted by the masses.

Due to the extremely hidden behaviors of abuse, abandonment and killing of pets, it is often difficult for the enforcement authorities to investigate and punish them in a timely manner. Therefore, it is necessary to mobilize the supervision force of the masses to timely discover and report such behaviors, and give full play to the joint governance mechanism between law enforcement agencies and the masses. At the same time, it can also exert the supervision role of the masses on the law enforcement behaviors of the law enforcement organs to ensure the exact implementation of the pet animal protection law. The implementation of the system has also played a positive role in the enhancement of the masses' awareness of animal protection. A hotline can also be set up to answer calls 24 hours a day and respond to them in a timely manner. Residential communities also have the right to receive reports from the masses and report them to law enforcement authorities in a timely manner to facilitate the masses to exercise their right to supervise and report. Likewise, law enforcement authorities should also keep confidential the information of informants so that the public can exercise their rights without worry.

## 5. Conclusion

With the rapid development of China's social economy and the improvement of people's material living standards, people's spiritual and emotional needs have gradually become rigid needs. Pet raising has become universal to a certain extent, and pet-related industries have gradually emerged. Stray animals have surged in large numbers, leading to a series of social problems. And what our country faces at present is the contradiction between the pet animal field problem and the current legal blank. Therefore, our country needs a unified and standardized pet animal protection law to protect the pet rights and solve related social problems, from the scope of moral adjustment to the level of legal norms. In this paper, the current situation and deficiency of pet animal protection are analyzed through the theory of animal legal status, and the system suggestion of legislation related to pet animal protection is discussed, hoping to make a contribution to the cause of pet animal protection and promote our society of harmonious development of human and nature.

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