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## Paws and Split: The Fight over Custody

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*In the growing prevalence or occurrence of disputes over pet custody, as an aftermath of divorce and a heightened increase in the recognition of pets as an integral part of the family, the absence of an organized framework dealing with pet custody becomes a pressing issue. Through this article, we intend to explore the need for a structured and standardized framework that actively acknowledges the emotional relationship one holds with one fur companion and prioritizes the welfare and well-being of the animal. Through this article, we intend to explore the untouched realm of disputes over pets and the sudden shift in the perspective or societal attitudes. The report highlights the inadequacies in the present legal system and proposes developing a robust framework dealing with pet custody. It also discusses the importance of addressing this overlooked concept of family law and presents equitable solutions for the same.*

**Keywords:** *family law, custody, pet, animal rights, divorce.*

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### INTRODUCTION - WHO TAKES CUSTODY OF THE FUR BUDDY?

Family law in India has seen a novel issue about pet custody, gaining significant attention amid the escalating prevalence of divorce. Nowadays, several people view pets as an integral part of the society, especially the family. While legal systems traditionally have given due emphasis to matters like property or estate division and child custody, a pet's emotional and practical

significance in households has prompted a closer examination of this status following a marital desolation. Compared to Western jurisdictions, where pets are treated as property units, Indian society has a unique cultural perspective on animals, often considering them integral and vital family members.

The Indian laws fail to produce a distinctive framework for this novel concept. The Indian law system has not explicitly addressed the newfangled question of pet custody as a form of post-divorce settlement. As a result, disputes over companions are typically resolved based on the broader principle of property distribution. However, the absence of a regulated and specified legislature, which is comprehensive, has led to ambiguity in subjective judgments. The courts shall prominently consider the pet's welfare in deciding the custody matter.

Addressing the new answers regarding the emotional attachment people have with their companions and fur buddies, there is a growing call for a novel and comprehensive legislative reform that correctly recognizes the distinctive nature of these relationships. Several advocates have argued for a more compassionate approach while analyzing the custody of pets. They are advocating for the wellbeing of the animals rather than treating them mainly as an asset or the property of an individual. The evolution of society's attitude towards this concept has given Indian courts a new outlook to adapt to the changing landscape. This growing need has questioned whether lawmakers will vigorously report to the requirements for a specific regulation to regulate pet custody in the context of divorce.

### **COMPREHENSIVE LEGAL FRAMEWORK FOR THE WELFARE OF PETS IN SPAIN**

The unique and integral bond between a pet and its owner is significant in Spanish households. The current state of affairs overshadows the positive impact of these effective bonds. It has become a tool to harm and manipulate the vulnerable parties during a family crisis, especially in cases of matters like divorce. Over time, historically, the legal system has treated animals as mere property. However, a momentous shift has been recorded recently in Spain, which now

recognizes animals as sentient beings with legal protections.<sup>1</sup> In matters of family issues, particularly in divorce, determining the pet custody is crucial for the animal's wellbeing. Spain rightly introduced a unique yet comprehensive legal framework to deal with the novel issue of pet custody.

Regulatory agreements about the custody of the animals must be signed by both the owners or the divorcing couples, which outline the fate of their pets and specify clearly which spouse will take care of the alleged pet, the division of cohabitation times, and the financial responsibilities of handling and boarding a pet. In case the results fail to be drawn through agreement, the intervention of the court is essential to decide factors like the primary caregiver, financial circumstances of both parties, visitation rights of the other party, the time that they can devote, and more importantly, the wellbeing and the welfare of the pet.

The complexities arise in the households that financially support the child and their pet.<sup>2</sup> In such cases, it becomes vital and paramount to understand the shared bond between the pet and the child. The novelty in these cases makes the path full of hindrances to creating a schedule in such a manner that rightly aligns with that of the child's time with each parent and their pet, yet it is imperative. In households devoid of children, both parents hold the same bond with the pet, and a shared custody agreement can be created, which is a possible solution.

Several responsibilities align with pet care, prominently financial obligations, including ordinary and extraordinary expenses, which find outward attention in the regulatory agreements. The inclusion of the courts to settle these matters often mandates a judicious distribution of cost, routine care, veterinary expenses, and unforeseen financial burdens that the pet owner or the caregiver is responsible for.

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<sup>1</sup> Amparo Arbaizar 'PETS ON FAMILY LAW IN SPAIN' (*Arbaizara bogados*, 06 May 2022)

<<https://arbaizarabogados.com/en/pets-on-family-law-in-spain/>> accessed 04 December 2023

<sup>2</sup> Linda Hasco, Spain passes new law: Pets will be recognized as legal family members *Penn Live* (18 January 2022)

<<https://www.pennlive.com/nation-world/2022/01/spain-passes-new-law-pets-will-be-recognized-as-legal-family-members.html>> accessed 05 December 2023

Matters of domestic abuse or various instances of criminal offense often create a new legal dimension that further shapes the decision of intricate issues of pet custody. The possible arrangements of joint custody are precluded if a parent is involved in criminal proceedings or poses a threat to the other party or the children. Undoubtedly, there are significant cases that include instances of abuse or apprehension of fear against the companion animals, which majorly affects the judicial consideration, which layers with the influence of the interconnectedness of domestic violence, physical harm to the animals or the psychological state of the couple.

### COMPARATIVE STUDY: UK, AUSTRALIA AND FRANCE

To critically compare the concept of pet custody adopted in New York, the law maintains the view of pets as mere property.<sup>3</sup> In the UK, dogs are given the position of inanimate objects, similar to that of personal items, and the cases involving custody are primarily around the determination of the sole owner. In these cases, the court has the authority to decide who keeps the family pet, or it may even determine the return of the pet or the damages for unlawful detention. However, in reality, the court needs to dedicate time to hearing the matters related to pet custody compared to the view of finances and child custody. In Australia, there is an absence of a specified legal framework to deal with a pet's living arrangements after the divorce. Australia has a high rate of pet ownership, yet the laws remain underdeveloped, and pet ownership is considered private. In contrast, France modified the rules in 2014 to recognize pets as living and feeling beings rather than movable goods. A noticeable shift in the current legal scenario acknowledges the emotional bond between the owner and the pet.

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<sup>3</sup> Anup Satphale 'Separating?... Well, who gets the dog?' *Times of India* (19 September 2019) <<https://timesofindia.indiatimes.com/life-style/spotlight/separating-well-who-gets-the-dog/articleshow/71162009.cms>> accessed 06 December 2023

## CASE ANALYSIS: GIARRUSSO VS MAROLLA 2019

In *Giarrusso v Marolla 2019*<sup>4</sup>, a couple from Greece filed for divorce in 2016 after 23 years of marriage.<sup>5</sup> The dispute led to conflict over the custody of their two dogs, Marox and Winnie. The technical ownership division presented by the court in the initial proceedings was to give the custody of Marox to Giarrusso and Winnie to Marolla. The couple also initially settled on the visitation arrangement for the dogs. Later on, Marolla alleged negligence in taking care of the pet from Giarrusso, resulting in the cancellation of the visitation arrangements in 2017. Giarrusso actively engaged in the legal battle that continued for nearly two years, spending \$15,000 as legal fees to gain the custody of their dogs. The judgment of this decision was declared in April 2019, granting Giarrusso visitation rights on specified days. This case rightly represents the shift in the perspective of pets as mere property to family members, which acknowledges the emotional bond between individuals and their pets in legal proceedings.

## STANCE OF INDIA REGARDING PET CUSTODY

In India, family law matters, including divorce, are regulated by personal laws based on religion, for example, Hindu Marriage Act, Muslim Personal Law, Christian Marriage Act, and many more. These laws have actively developed to cater to alimony, child custody, and estate division matters. Still, they do not specifically address topics such as custody of pets.

The increasing pet population in India at unprecedented rates leads to a novel need for a framework to deal with pet custody.<sup>6</sup> According to a recent report From India's International Pet Trade Fair, the average pet count adopted yearly has reached six lakhs. The statistics have rightly proved an increase in growth rather than a downfall. An Indian family considers pets a legitimate part of the family, which can also be seen through the increasing number of cases involving pet disputes.

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<sup>4</sup> *Diane Giarrusso v Paul Giarrusso* 204 A.3d 1102

<sup>5</sup> Jack Perry, 'R.I. high court rules in dispute over dog visits' *The Providence Journal* (19 April 2019) <<https://www.providencejournal.com/story/news/courts/2019/04/19/divorced-ri-couple-battles-over-custody-of-dogs/5388659007/>> accessed 08 December 2023

<sup>6</sup> *Ibid*

The territory or the legal boundaries about the subject, such as pet custody, remain untouched in a country like India. India has yet to see a form of reformatory legislature to deal with this novel concept. The lack of a definite law dealing with pet custody is overly complicated and often entangled or interlinked with personal disputes, increasing the legal vacuum of a comprehensive framework.

The landscape of pet custody in India has seen development due to increased disputes. The lack of definitive law makes bringing practical judgment while dealing with these cases challenging. The untouched realm of pet custody in India has been brought to the limelight after cases involving influential parties. Unfortunately, Indian law follows the same concept as the common law of terming pets as property; the matter is often decided based on ownership, similar to that of the Estates unless the couple decides to settle through mutual negotiation.

A comparative analysis has showcased that several countries depend on the concept of 'Pet-Nup' agreements<sup>7</sup> that are mutually drafted. India, instead of these forms of agreements, depends on a MoU, often known as a memorandum of understanding, in the custody of the pet, including the cost of medical expenses and the daily need care. Payments are dealt with in a mutual agreement through MoU. The pivotal role in the decision-making of these cases lies in the hands of a lawyer, who acts like a mediator to draft the terms and conditions to protect the interests of both parties. Only in selected cases where the issue escalates do the courts interfere. The current situation views and determines the ownership based on the concept of pets as a personal estate or property, and the decision is to be granted as any other estate or object.

A prominent Delhi-based lawyer, Anshul Gupta, focused on and advocated matters of pet custody in India determined during the terms of a divorce. He introduced the concept of mediation and involving a third party as an alternative to the couples. A different opinion was raised by advocate<sup>8</sup> Vipul Shukla, who advocated matters of pet custody, stating that the legal

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<sup>7</sup> Adv Sonia Rajesh, 'Pet Custody- Who Keeps the Dog After Divorce?' (28 November, *Sonia & Partners*) <<https://www.lawyersonia.com/pet-custody-who-keeps-the-dog-after-divorce/>> accessed 09 December 2023

<sup>8</sup> Vineeta Bhalla, 'Mahua Moitra row: Who has the right to Henry? Here's what lawyers say about pet custody disputes' *Scroll* (29 October 2023) <<https://scroll.in/article/1058197/mahua-moitra-row-who-has-the-right-to-henry-heres-what-lawyers-say-about-pet-custody->

principles adopted to govern the concept of child custody cannot be applied to pets. The court must apply factors such as the person who purchased the pet, the expenses' primary bearer, or the family's primary caregiver.<sup>9</sup> Ridhi Thaker, A Bombay-based lawyer, has pointed out the increasing number of pet dispute cases. She also stated that in most cases, custody is determined based on the divorce terms by mutual consent. She also emphasized that mediation is an active alternative undertaken by couples who decide to share time with their fur buddies.

### **LOOPHOLES IN THE CURRENT SCENARIO OF PET CUSTODY IN INDIA**

Even after recognizing animals as living beings and having a right to live given in the year 2019 by the honorable Punjab and Haryana High Court, animals are still treated as matters of property in practical terms under Indian jurisdiction. India needs a standardized process to register the pets, further complicating the pet custody system. Several countries have specific agreements and procedures for the registry of pets, which makes custody matters streamlined. The complications arise even after the registration of the pets with the municipal authorities as these registrations often include the family as a whole rather than individual family members, making it difficult to establish or determine the ownership.

Ganesh Kawade, an advocate practicing in Pune, represented a similar case Where the wife demanded an alimony of 10 lakhs, which was given up in exchange for the custody of the pet. The wife ordered maintenance to keep up with the living cost of their pet. The husband, in this case, agreed to support the care of the pet by giving a monthly allowance of Rs 10,000.<sup>10</sup>

A highly publicized case of Mahua Moitra versus Jai Anand turned out to be a battleground for the custody of their pets. Both the couples were in a conflict over the custody of a three-year-old Rottweiler named Henry. The case included a range of charges on both parties, for example, corruption charges against Jaya Anand, whereas he reciprocated with charges of coercion

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[disputes#:~:text=%E2%80%9CIn%20India%20there%20is%20no,by%20the%20terms%20of%20divorce.%E2%80%9D>](#) accessed 09 December 2023

<sup>9</sup> Satphale (n 3)

<sup>10</sup> *ibid*

against Moitra. The case raised queries regarding pet ownership and custody in India, bringing the concept into the limelight.

## **STRATEGIC SOLUTIONS IN INDIAN CONTEXT**

The pet custody matter in the Indian context lacks a strategic framework to deal with the intricate nuances. The general perspective of pets as property rather than giving them their unique symbol or status continues. To address the loophole, it is the need of the hour to adopt a multi-faced approach. The most advisable way to handle this issue is to prioritize adopting negotiation and mediation. Through this, both parties can reach an amicable agreement of shared responsibility. The drafting of such contracts, which are detailed in nature, is a tough job. It can provide a foundation or basic structure for each party's responsibilities. The distinction in the roles will simplify the management. In case of irreversible or unsolvable problems, the court must prioritize the pet's interest.

The authorities must advocate for more preventative methods since there is a noticeable increase in pet ownership in India. This may include taking up measures such as adopting pre-nuptial agreements that address necessary issues if the matter escalates to reach the court. Changing and modifying the legal structure to be more inclusive is pivotal. The emotional bond between the pet and the parties cannot be understated, and therapy policies can be crucial to overcoming the emotional and mental challenges post-pet custody implementation. As the perception and societal notions have evolved, stigmatize the masses to raise awareness about responsible pet ownership and catalyze a more informed approach towards pet custody matters.

## **CONCLUSION**

To sum up, the ever-evolving landscape conditions or the realm of pet custody disputes represent a shift in society's mindset about treating pets in these disputes. Through this article and exploring several cases, we can reflect on the prevalence of the deepening of emotional relations between the individual and their animal companions. Through a comparative analysis, we understood the laws undertaken in countries like Spain and France, which actively recognize animals or pets as sentimental beings and have a legal stand, unlike India, which views animals



as mere property.<sup>11</sup> The increasing number of pet disputes has led to the need for a prominent and comprehensive legal framework that prioritizes the pet's welfare in custody cases. India has yet to navigate through the loopholes in disputes such as ownership, liability, or financial responsibility, and the primary party is the caregiver.

Several advocates have actively taken charge of reflecting the need for a legal framework that enables the well-being of the pets involved in divorce matters and a better environment for the parties and all the stakeholders. The court must ensure that it considers the best interests of all the parties. The legislature and the legal system must ensure alignment with the perception of the bond between a human and an animal and a significant shift in the societal perception of this relationship. As the family structure becomes a complicated web, the lack of such guidelines or framework leads to complexities in navigating through such disputes and shaping a reasonable outcome.

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<sup>11</sup> Pamela Babcock, 'Are Pets Assets or Part of the Family?' (2019) 105(5) ABA Journal 18-19 <<https://www.jstor.org/stable/26913427>> accessed 07 December 2023