

# OFFENCES INVOLVING CATTLE: A CRITICAL EXAMINATION OF THE CATTLE RELATED STATUTES IN 19TH CENTURY CEYLON

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The abolition of cattle slaughter is a topic that emerges and disappears in Sri Lankan society from time to time. A quick glance at Sri Lankan legal history would reveal a number of cattle related statutes enacted during the British period. This study focuses on the early attempts of the British colonialists to criminalize the cattle body and the research question is: Why did the British regulate the cattle body despite not having any moral sentiments towards them? The objective of this study is to critically investigate how the cattle body was regulated by the British colonial administration and the reasons for such regulation. This research employed a qualitative methodology to provide an in-depth analysis of the subject. 'Collecting documents as data' is used as the method of data collection, and qualitative content analysis is used as the method of data analysis, taking 12 statutes out of 26 cattle-related statutes enacted in the 19<sup>th</sup> Century as the units of analysis. As the study only focuses on the early attempts of the British (1800-1840), only the Proclamations and Regulations are taken into consideration. Two main data-driven coding categories, *prohibitions* and *property*, are generated. Offences were set out by prohibiting the slaughter, conveyance, and movement of the cattle body, which resulted in the penalization and criminalization of the cattle body. It was further criminalized by being a property that had the potential to be sold, stolen, or possessed. The potential of having a possessed and stolen body enabled criminalization in terms of the general moral wrong and criminal offence of theft or being stolen. The analysis of these statutes reveals that the offences set out were not consistent. They were not general criminal offences but were special and *regulatory offences*. The criminal liability of each offence was a result of provisional, contemporaneous social reality rather than any general culpability or moral sentiment. In conclusion, it can be stated that the British colonial lawmakers enacted the statutes solely on the basis of social realities rather than for any subjective, symbolic, moralist, or Buddhist-Hindu ideals.

Keywords: Criminalizing, Colonial law making, Cattle slaughter, Legal History

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## Introduction

The abolition of cattle slaughter is a topic that appears and disappears regularly in Sri Lankan society. The ideological support for the abolition of cattle slaughter is visible as early as the first half of the twentieth century, and the proponents of Sinhala Buddhist Nationalist ideology frequently advocated for the abolition of cattle slaughter. Anagarika Dharmapala was a pioneer among those proponents. His views for the avoidance and abolition of cattle slaughter and against eating beef were visible in his writings in the late 1920s (Guruge, 1965, p. 29). One hundred years later, the government has made the policy decision to abolish cattle slaughter in 2020 (Bandara, 2020). A glance at the legal history of Sri Lanka reveals a number of cattle-related statutes being enacted during the British period. The regulation of cattle and cattle slaughter began in the nineteenth century, at the outset of the British colonial administration in Ceylon. This study focuses on the early attempts of the British colonialists to criminalize the cattle body and the research question is: Why did the British regulate the cattle body despite not having any moral sentiments towards them? Cattle slaughtering and cattle-related statutes have not received the attention of scholars of legal history, or of historians. The existing literature on cattle slaughter in Sri Lanka is focused on cattle diseases in the slaughtered cattle (De Bont., 1991) and cattle-related consumer demand, meat production, and processing. (Alahakoon et.al., 2016). Rogers' (1987) study which is focused on the crime, injustice and society in Sri Lanka, contains a chapter on cattle stealing through archival documents. It does not focus on the legal aspects of cattle stealing but mainly focuses on the chronological and geographical patterns of cattle stealing. This research aims to contribute to the field of legal history related to cattle which is largely untouched by historians and legal scholars. The objective of this study is to critically investigate the manner in which the cattle body was regulated by the British colonial administration and the reasons for such regulation.

## Methodology

This research employs a qualitative methodology to investigate the ways in which the British colonial administration criminalized activities pertaining to cattle. The qualitative methodology is appropriate for this type of study since it allows freedom for an in-depth analysis from a wide range of historical and legal sources. 'Collecting documents as data' (Rapley, 2018) is used as the method of data collection in this study. After a rigorous search of the statutes (proclamations, regulations, and ordinances) enacted during the 19th century, 26 statutes were discovered as legislation pertaining to the regulation of the cattlebody. Out of those 26 statutes, 12 statutes (1800-1840) were selected as the units of analysis for this study. The 12 statutes consist of the Proclamations (legislation enacted in 1800-1840) and Regulations (legislation enacted in 1805-1833 but some legislations passed by the Legislative Council were known as Regulations for some reason) enacted by the British colonial administration. This selection is based on the fact that the focus of this study is the early attempts of British colonists to regulate the activities pertaining to cattle. Qualitative content analysis (Schreier 2014) is used as the method of data analysis. This method is used because content analysis would permit the capture of historical and not necessarily legal details. The collected data were coded according to the Qualitative Content Analysis method, and in doing so, two main data-driven coding categories, i.e., *prohibitions* and *property*, were generated. It is with broad thematic data coding that the data is analyzed in this study. Further, the intention of the legislature was deduced from the Preamble where it stated the reason for the introduction and

enactment of the laws. The code category *prohibition* includes all the positive acts set out as offences and explicitly prohibited by laws; the category *property* includes sections which contains the offences set out as a result of the consequences of cattle being property.

### Findings, Analysis and Discussion

Table 1 (see below) showcases the statutes enacted regarding the activities pertaining to cattle during the British colonial administration in Ceylon.

Table 1. The statutes (Proclamations and Regulations) enacted criminalizing activities pertaining to cattle in British Ceylon.

Date/Number of the Statute	Name of the Statute	Sections of the Statute relating	Reason Set out in the Preamble
Proclamation on 3 <sup>rd</sup> of February 1801	For encouraging the introduction of breeding cattle	No offences set out	
Proclamation on 28 <sup>th</sup> of April 1801	Respecting the prevalent disorder among cattle	One offence is set out (Offence regarding movement)	...the dreadful disorder lately prevalent among the cattle has again broken out...
Proclamation on 6 <sup>th</sup> of May 1801	Prohibiting the introduction of cattle from the Kandian Territories	One offence is set out (Offence regarding introduction of cattle from Kandyan areas)	...preserve their cattle from the deleterious effects of the dreadful malady which has so long raged among them...
Regulation No.3 of 1814	To prevent the stealing and privately killing of cattle	Three (3) offences are set out	Whereas the practice of stealing and privately killing cattle has become very prevalent throughout the British settlements in Ceylon...
Regulation No.8 of 1815	Prohibiting Cattle from passing out of the District Chilaw	One offence is set out (Offence regarding movement)	whereas a contagious distemper of a very destructive nature prevails at present amongst the Cattle...

Regulation No.4 of 1816	To forbid the slaughtering of female cattle for the ensuing 12 months	One offence is set out (Offence regarding the slaughter of the cattle)	Whereas an extensive mortality has taken place amongst the horned cattle...
Regulation No. 8 of 1816	For Preserving the Cinnamon Plantations	Three (3) offences are set out	Whereas it is of high importance to the resources and prosperity of this Island that the Cinnamon Plantations should be carefully protected from injury
Regulation No.1 of 1826	For amending the 3rd regulation of the year 1814 relative to the punishment for knowingly receiving	One offence is set out and one of the offences was continued to be in force	...continued prevalence of cattle stealing...
Regulation No.6 of 1828	To prevent the slaughtering of female cattle for a limited period	One offence is set out (regarding the slaughter of cattle)	Whereas the mortality which has recently been prevalent among the cattle...
Regulation No.9 of 1833	To provide for the case of cattle Goats and sheep found straying within the Gravets of Colombo Galle Matara Trincomalie Jaffna or Kandy	One offence is set out (Offence regarding movement)	...to prevent the mischief, annoyance ... occasioned by stray cattle...
Regulation No. 2 of 1835	To provide for the protection of cultivated and enclosed lands, and of the public roads and canals against the trespass and	Nine (9) offences were set out (offences regarding seizure, fine for trespassing, branding of cattle and cattle movement)	
Regulation No. 4 of 1836	For preventing the stealing and privately killing of cattle	Three (3) offences are set out	

The first step to answering the research question is to examine the manner in which the activities pertaining to cattle were criminalized by the British colonial administration. Mainly, the activities pertaining to cattle were criminalized in the following manner. Offences were set out in relation to the movement of the cattle, slaughter, and conveyance. It was further criminalized by being a property that had the potential to be sold, stolen, or possessed. This ability to own and possess the

cattle enabled the criminalization. The potential of being stolen makes the cattle fall into two domains. The first is the domain of the moral wrong of stealing. The second is the criminal offence of stealing, which falls into the domain of criminal jurisprudence.

The broad categorizations of the offences as the movement of cattle, slaughter, and conveyance are insufficient to portray the complex legal situation tied to these statutes. The analysis of these statutes reveals that the offences set out were not consistent. Regulation No.3 of 1814 states that there should be a notice given to the Magistrate regarding the slaughtering of cattle prior to the slaughtering of the animal. This is a clear prohibition on the arbitrary slaughter of cattle. However, overriding powers granted in some Regulations led to contradictory legal situations. Regulation No. 8 of 1816 allows trespassing cattle to be seized and slaughtered which clearly contradicted Regulation No.3 of 1814.

The issue of criminalization is a philosophical question that comes within the scope of criminal jurisprudence. In the domain of criminal jurisprudence, many fundamental questions pertaining to the nature of criminal law are discussed. What is criminal law? Which laws can be regarded as criminal laws? What are the features of general criminal law? What should be a crime? Attempts have been made to answer these questions in numerous criminological paradigms. Beccaria (2006) provides an explanation of punishment and legitimacy to punish within the paradigm of the social contract. He states that after the deposit of liberty in a sovereign (p. 5) for defending the public liberty entrusted to the sovereign, the sovereign has a right to punish crimes. Still, that is not sufficient to state what criminal law is. Hart (1967) provides "the disintegration thesis", which provides a moral outlook on criminal law. He states that "[t]he case for the enforcement of morality on this view is that its maintenance is necessary to prevent the disintegration of society." (p. 1)

If Hart's notion is taken seriously and applied to the 19<sup>th</sup> century Ceylonese cattle-related statutes, it would manifest that the criminalization of activities pertaining to cattle is a result of the enforcement of morality. However, what is evident in the British colonial statutes is that a causal relationship is visible than any larger moral values. For example, Regulation No. 4 of 1816 was issued as a result of an extensive mortality among the horned cattle and therefore the slaughter of the cattle was prohibited for a period of twelve (12) months. No. 3 of 1814 and No. 1 of 1826 were enacted due to the fact that cattle stealing discouraged and caused loss to the cattle rarer. What is evident, therefore, is the empirical causal relationship between the statutes and reasons for enacting them. The criminal liability of each offence was a result of the provisional, contemporaneous social reality rather than any general culpability or moral sentiment. This explanation fails to capture the contradictions in the aforementioned Regulations and the nature of the criminal law.

However, the nature of the criminal law is such that "criminal laws are whatever laws the legislature says are criminal law" (Husak 2002, p.15). Interestingly, this out-of-context cited statement would fit as if it were tailored to the manner in which criminal jurisprudence worked in Ceylon and still works in Sri Lanka. It is indeed the positivist notion cited above that is the manner in which criminal law works in Sri Lanka. Criminal law is determined by the legislature. Further, it can be stated that these laws were not general criminal offences but were special and *regulatory offences*" (Husak, 2002).

In conclusion, it can be stated that the criminalization of the activities pertaining to cattle did not solely occur as a result of an anti-slaughter principle or policy. Contradictory provisions in the Proclamations and Regulations show that cattle slaughter in itself was not an offence. Strict liability was maintained in these statutes and only *Actus Reus* was required for penalization and but no *mens rea* was required. It can be further stated that the British colonial law makers enacted the statutes solely on the basis of the social realities rather than for any subjective, symbolic, moralist or Hindu-Buddhist ideals.

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