

NATIONAL JUDICIAL ACADEMY



Programme Report

Special Event -2

Training of Trainers workshop to build master trainers on Prevention of Cruelty to Animals Act,
1960

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Programme Report

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The National Judicial Academy organized a two days' training of the trainers workshop to build master trainers on Prevention of Cruelty to Animals Act, 1960. Magistrates from each high court were nominated to attend this workshop. The objective of this workshop was to sensitize these magistrates to strike balance between rights of animals and growing human needs that are encroaching on space and territory of animals.

Day- 1

Session 1

Overview of the animal welfare laws in India

Dr. [Prof.] Geeta Oberoi commenced the workshop with self-introduction of the participants and thereafter gave a brief introduction of the speaker.

The speaker Ms. Maneka Gandhi elaborated on the following:

- Why animal rights issue are a pressing concern
- The present law is very weak and does not empower judges to do justice. There is need to improve and amend the law.
- Can we really say that religion is used as an excuse to kill animals

Session 2

Jurisprudence and ethics of animal welfare

Dr. [Prof.] Geeta Oberoi commenced the day with a brief introduction of the speaker.

The speaker, Hon'ble Justice KSP Radhakrishnan deliberated upon these issues-

- There is a trend that arguing a case on the basis of principles or theories is done only at the high court and Supreme Court levels and the practice is not done at district judiciary level. As a judge this could be a very helpless situation when you know that this could be argued under a certain principle or doctrine but are unable to do anything. In such case, what can a judge do without steering the case?
- Should not the State government be made responsible for setting up the requisite number of shelters to deal with animals including stray animals?
- As a judge one has to do their homework. A lawyer may have missed a point but ultimately the judge has to do justice not by the lawyer. The judge has to study the case and there is a Supreme Court judgment which says that if the lawyer has failed to cite a case the judge can repost that case. But this is generally not being done. In this case the judge has decided a case on the basis of judgments that were not cited by the lawyers. In this case the Supreme Court stated that this was wrong and the court should have reposted the case.

- The judges need to use several laws together including the animal laws and the food safety standards to ensure justice. Interpretation of the law is in the hands of the judges. In the current situation it is very risky to take the current act to the parliament as it will be subjected to much change by various lobbies which will dilute the provisions.
- If the owner of the animal does not lodge a complaint about the killing of the animal how can a judge take suo motu action? In case of offence of mischief under Section 428 if there is no loss complained of by the owner what is the means of taking action in such case?

Session 3

Animal Welfare legislations, challenges and case studies

Mr. NH.G. Jayasimha discussed the following

- Religion can no longer be used as the sole reason cited for animal killing. There are monetary and other factors that come into play. Animal killing is not done by poor people. It is a huge industry that is linked to export of meat. Camels are killed for weakening the defense at the Rajasthan border with Pakistan. If you kill that many animals in one day it is creating a problem for farmers and everyone.
- If some animals recovered by the police are kept in the police station to whom the superdari of the animals should be given?
- The superdari should be given to a gaushala or to a registered animal welfare organization. The organization should be identified by the police in case no organization comes forward.
- The Punjab and Haryana High Court has given a judgment that the state has to make infirmaries every 10 kms. More action is needed by the states and the district authorities.
- The animals need not be given back to the owner. However, it is seen that much pressure is put on the judge to return the animals citing various reasons including poverty.
- In such cases the judge should ensure that the animal is not returned to the offender. What can be done is to fine the offender per animal and not for the offence. The judge is empowered to seize the vehicle if it is an overloading case. The provisions of Section 429 Indian Penal code should be used which is a non-bailable offence and carries a punishment of 3 years. Rule 97 of the Transport of animal Rules 1978 authorizes cancellation of permit of vehicles used for transporting animals.
- In cases of animal offences we are not required to give the animals to anyone. The animals mentioned in the first schedule need to be sent to a gaushala and their maintenance is to be paid by the person claiming to be the owner.
- Mischief by killing can be examined even if it not under Section 428 by examining the manner of killing. Also under Section 428 it is not essential to the offence that the offender intends to cause loss or damage.
- Under animal laws most cases the person pleads guilty and pays a paltry sum of 50 rupees. The fine is paltry. Not much can be done as the vehicle is not seized. Also there are no

records of previous offences.

Session 4

Landmark Judgments in Animal Welfare

Mr. Mihir Samson started the session by discussing Animal welfare case laws. He extensively discussed two of the landmark judgements namely:-

- Animal Welfare Board of India v. A. Nagaraja
- Compassion Unlimited plus Action v. Union of India & Ors. [The Jalikattu case]

With especial reference to the 2 cases the speaker discussed these points

- Mere animal existence itself is something with dignity
- Doctrine of Necessity, where the exceptions under the PCA ACT, 11(2), 11 (c) or other sections like 28 are actually exceptions only for the purpose of necessity.
- statutory law override culture and tradition

Thereafter, the speaker elaborated how the Jalikattu Judgment has been followed by the different High Courts like Andhra Pradesh, Bombay, Gujarat in various different context related to animal rights.

Day-2

Session 5

Custody and seizure provisions

Mr. N.G. Jayasimha commenced the session by going through the sections of the Prevention of Cruelty to Animals Act and other Penal Acts. Thereafter he came up with the type of offences related to animals and the provisions of seizure related to those offences. The sections of the PCA Act that were extensively discussed were:

- Section 11 & 12
- Section 19 & 20
- Section 23 & 24
- Section 30
- Section 32
- Section 34
- Section 3 along with Section 11(2)
- 38(1) sub rule 2

While elaborating the provisions of the PCA Act, Mr. Jayasimha also discussed the requirement of SPCA Rules with emphasis on the establishment of infirmaries for animals at every district. Thereafter he explained the importance of the PCA Act and how the magistrates have the power under the act to prevent cruelty towards animals.

Alongside the speaker also discussed the wildlife protection act with respect to the seizure and custody of wild animals. He elaborated upon section 55 of the wildlife protection Act, then he discussed section 40, 42, 43, 49 etc.

Session 6

Maintenance of case property

The speaker Ms. Gauri Maulekhi, started the session by sharing a day old letter issued by the Animal Welfare Board of India to the Prosecution Director Delhi stating the steps that are needed to be taken in cases where the animal has to be returned. The most important issues being the identification of the animal and therefore the animals must be radio-tagged before being given to anyone. As told by the speaker the copy of these steps would be circulated by the AWBI in all the states.

As per the speaker if there arises a situation before any of the magistrate or an order is needed to be passed to get the identity of the animal done then it can trust the animal husbandry veterinaries. The tag costs around Rs.15 and very state has animal husbandry departments, all veterinaries are doing this. Thereafter, it will be easier to get the identity of the animal.

Then the magistrate should try to find the extent of cruelty done to the animal which is produced before him and to question himself whether keeping an animal with lot many injuries would be cruelty or not? And question could be answered by the report of the veterinary officer. The magistrates do have the power to allow euthanasia of an animal if it is in a really miserable condition and keeping it alive will only prolong the agony. Euthanizing shall be done in humane manner. Sec 35(4) makes it mandatory for owners to pay certain amount per day per animal to the infirmary or animal shelter keeping the animal, this amount is decided by the district magistrate, he has the prerogative of deciding and stating an amount maybe for a large animal and small animal separate amount.

In the matter of wild animals the custody is supposed to be given to the forest department under the schedule of the Wildlife Protection Act. Forest department as per the WPA are supposed to have rescue shelters where they would be putting these creatures. There are about more than 250 shelters throughout the country. There may not be within the jurisdiction of your court. But the IO must be tasked to find out which is the best next suitable shelter for animal.

Session 7

Case Studies and overview of Animal Welfare related case flow in district courts

The speaker Mr. Ajit Sharma, deliberated and discussed the upon following points in the session

- what is the process one receiving a complaint
- how do we sensitize the investigating officers and other officers of the court on investigating the offences properly,
- Identifying the offences
- How to take the complaint to its logical end
- Whether it culminates into an FIR or a charge sheet.

While particularizing these points the speakers also discussed about the penal provisions like – PCA Act, WPA, and some of the other enactments and so to know what are the specific penal provisions not just other offences which mandate a particular prohibition to do X YZ but what are the punishments prescribed for those offences.

Session 8

Q & A and case studies

The session started with a question with respect to the conflict between traditional or cultural act and statutory provisions. While quoting the Nagaraja Judgment the speaker made it clear how Justice KSP Radhakrishnan has explicitly held that statutory law override culture and tradition.

Other questions that were discussed are-

- Can the magistrate charge PCA Act with other Act?
- As per the preamble of PCA Act can human beings inflict unnecessary pain and suffering? section 11(3)
- How can PCA Act be called a welfare legislation for animals?
- In case of wildlife protection act, what will be the procedure? 156 (3) would be applicable or not in that case?

Prof. (Dr) Geeta Oberoi envisioned the need for having many more discourse on Animal Rights Jurisprudence for the judiciary. Subsequently, she thanked all for giving that atmosphere of learning to each other, learning from each other, sharing with each other and being such good learners for the 2 days of the workshop.
