NATIONAL JUDICIAL ACADEMY

WORKSHOP ON ANIMAL RIGHTS JURISPRUDENCE FOR MAGISTRATES

25th and 26th March, 2017

Programme Report

PROGRAMME CO-ORDINATORS

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The National Judicial Academy organized a two day Workshop on Animal Rights Jurisprudence for Magistrates on 25th and 26th March, 2017.The workshop was attended by 54 participants nominated by and representing 22 High Courts.The objective of the workshop was to enhance the knowledge base and skills of the participants for better resolution of cases relating to animals sinceproceedings relating to these legislations are rare and requires comprehensive knowledge of the special legislation along with understanding of the complex provisions involved therein.

DAY I

Session 1

Theme - Jurisprudence and Ethics of Animal Welfare: National and International Standards **Speaker** – Mr. Anand Grover and Mr. Krishnan Venugopal

The inaugural address for the workshop was given by Hon'ble Justice Anjana Mishra who gave an outline of the workshop along with a brief introduction of the speakers. Mr.Anand Grover commenced his lecture by discussingthe development of animal welfare jurisprudence from ancient times and thereafter brought about the distinction between the concept of animal welfare and animal rights. He also highlighted the difference between the western and eastern approach in the treatment of animals. In Western nations animals were considered as property whereas in Eastern nations certain animals were revered as gods. This dichotomy between the eastern and western concept is present due to belief in the concept of transmigration of souls in the eastern culture. He further discussed examples when even inanimate objects have been bestowed legal personality giving them certain rights. It was explained that if animals are also provided with a legal personality then animals would gain rights which would mark a departure from a welfarist model to rights based model for animals.

He further stressed upon living which would be economically and ecologically sustainable. He further explained that fundamental duties can be read into fundamental rights .It was stressed that welfare legislations treat animals as owned by owners He made a reference to Section 3 and 11 of the Act since those provisions provide for duties of owners. He stated that even the killing of animals should be humane.

The second speaker of the session Mr. Krishnan Venugopal brought about the distinction between rights and welfare. He further stated that animals were considered as property. He stated that the International whaling convention was brought into force just to serve our selfish purposes. He also discussed that five freedoms of the animals which have been recognized worldwide by the community.

He lauded the landmark judgment given in the Jallikattu case by Justice K.S.P. Radhakrishnan who strived to and provided the maximum animals rights which can be attributed under the constitution. Lastly, it was stated that at the minimum we should move towards animal welfare even if we are not able to go towards animal rights.

DAY I

Session 2

Theme- Animal Welfare Legislations and Challenges
Speaker – Mr. Anand Grover and Mr. Krishnan Venugopal

The second session was an interactive session wherein various questions/doubts were posed by the participants. The topics which were discussed included classifications of animals for the purpose of animal rights, vegetarianism vis-à-vis non- vegetarianism, Jallikattu and protection of indigenous cattle breeds, notifications categorizing certain wild animals as vermin and reconsideration of quantum of punishment for different offences against animals. Mr Krishana Venugopal emphasized that granting legal personality to animals would have ramifications which include intersection/ conflict between human rights vis-a vis animal rights. He put forth the view that classification of animals for the purpose of animal rights can be either based on rationality or sentience. However he drew a fine line whereby he stated that unicellular and small multicellular organisms can be kept out of the ambit of such protection since it would led to unintended consequences .He also analyzed the justification behind protection of animals and said that such protection is utilitarianism or instrumentalism. He further stated that to actually give animal rights it should be done through constitution rather than statute which are easily amended at the whims and fancies of the government.

He further said that each animal has a role in the ecology and its protection is imperative for the protection of the environment. He stated that most of such preservation is undertaken by humans for their own selfish needs. He discussed that the Environment Impact Assessment (EIA) only undertakes cost benefit analysis rather than the impact on the ecology. He further stated that the dogs in Kerala which have become a menace is due to the human action. Since the human waste has not been properly disposed, the dogs multiply by feeding on the waste which is scattered everywhere. He further said that humans should not encroach upon the habitats of animals since it leads to human animal conflict.

DAY I

Session 3

Theme - The Prevention of Cruelty to Animals Act, 1960: A Welfare legislation for Animals
Speaker – Mr. Nuggehalli Jayasimha andMs. Gauri Maulekhi

This first half of the session was undertaken by Mr. Nuggehalli Jayasimha who relied on various statistics to describe that there is concrete co-relation between animal abuse and violence/domestic violence.He talked about the recent incidents which went viral on social media which showed a dog being thrown off the roof. Thereafter he gave a brief about the various laws related to animals in India including the Indian Penal Code,1860 and the State Acts which include the Police Acts and municipal Corporation Act. He also talked about the regulation of animals in films alongwith the rules for animal experimentation.

DAY I

Session 4

Theme - The Prevention of Cruelty to Animals Act, 1960: A Welfare legislation for Animals
Speaker – Mr. Nuggehalli Jayasimha and Ms. Gauri Maulekhi

The session was devoted to maintenance of case property under the Prevention of Cruelty to Animals Act, 1960. Ms.Gauri Maulekhi commenced the discourse by stating that if the live case property animal require medical attention then there should be an assessment of the condition of the animal by the jurisdiction veterinary doctor of the animal husbandry department. However, if the health of case property animal is so critical that there is a very bleak chance of survival then

under section 13 of Prevention of Cruelty to Animals Act, 1960, the magistrates can authorize the vet to euthanize the animal.

She further stated that the F.I.R. should contain specific identification marks of the animal and mere mention of the color of the animal would not be sufficient for identification purpose. She informed the participants that ministry of agriculture provides a unique identification number system which is available with all animal husbandry departments and hence animals could also be identified with such number. Moreover photograph of the case property animal should be taken at the earliest for the assessment of the actual condition of the animal.

The speaker stated that in case the infirmary in the district is far away then the animal can be sent to the infirmary of the other district which is closer. Although there is a statutory mandate of an infirmary in every district under section 35 of the Prevention of Cruelty to Animals Act, 1960, certain district do not have an infirmary, therefore in such a case the case property animal can be sent to the shelter of the Society for Prevention of Cruelty to Animals (SPCA).

According to the speaker the animal cannot be discharged unless discharge certificate is given by a registered veterinary practitioner. Furthermore under section 35(4) of the Prevention of Cruelty to Animals Act, 1960 the district magistrate can the set rate which the owner must pay for the maintenance pay. However if the owner refused to pay the maintenance cost then it can be recovered as arrears of land revenue. The animal cannot be given to accused till pendency of the case if there is a suspicion of slaughter. The speaker also informed the participants that if the case property animal is native then it should be rehabilitated while exotic animal should be given to the animal department for permanent custody. Finally the various departments which govern the were delineated by the speaker which include :

• Animal Welfare Board of India

• State Animal Husbandry Department – District SPCA and State Animal Welfare

• Local bodies – Kanjihouse and Animal Birth Control Centers

• Health Department

• Department of Road Transport

• Forest Department

DAY II

Session 5

Theme -Animals Welfare – Case Studies

Speaker – Mr. Nuggehalli Jayasimha and Ms. Gauri Maulekhi

The speaker Ms. Gauri Maulekhi commenced her discourse with an analysis of the co-relation between cattle smuggling and terror funding. She stated that the pecuniary value /magnitude of cattle smuggling is very large and is mostly undertaken through the Nepal and Bangladesh border due to its porous nature. It was mentioned that cattle smuggling was a lucrative trade since the beef obtained is very costly and is sold at a premium in the Middle East. According to the speaker such smuggling of cattle across the border result in violation of various legislations which includes:

- Indian Customs Act,1962
- Prevention of Cruelty to Animals Act,1960
- Transport of Animal Rules, 2001
- Motor Vehicle Act,1998
- Indian Penal Code,1860
- State Acts for the prevention of Slaughter of cow and its progeny

The body parts obtained from the animals are also used in a variety of other trades which include leather industry, bone china industry and preparation of ghee. The creation of ghee from animal fat is illegal and is harmful for consumers. The funds generated from such activities were then used to fund terrorist organizations. The cattle which are smuggled are usually transported in pathetic and inhumane conditions which result in a high mortality. However the smugglers are least concerned with the death of the cattle since their basic aim is extraction of meat from the hapless animals. The intra-country transport of animals was undertaken through trucks and train while inter-country transport was undertaken through the borders on foot. The speaker further mentioned that camels are also smuggled from Rajasthan despite a ban in place prohibiting such transport within the country. The speaker finally concluded that such illegal slaughter should be stopped since it is affecting the cattle wealth and well as the security of the

country through terror funding. She also mentioned that irrespective of the fact that oxytocin is banned it is used mercilessly on cattle to extract more milk.

DAY II

Session 6

Theme- Wildlife Protection Act, 1972

Speaker – Mr. Nuggehalli Jayasimha and Ms. Gauri Maulekhi

The last session dealt exclusively and extensively with the Wildlife Protection Act, 1972.The session was initiated with a reference to the 42nd amendment to the Constitution which inserted Article 48-A and moved the subject of "Forest and Wildlife" from State List to the Concurrent List. Thereafter Mr. Nuggehalli Jayasimha gave a summary of the bureaucratic setup of the wildlife department at the Center along with the hierarchy present in the state. This was followed by a discussion of the scheme of the Wildlife Protection Act, 1972 . The schedules were analyzed in detail by the speaker as he reflected upon the distinctions between the various schedules appended to the Act. He stated that the main difference between Schedule 1 and 2 exist in its scope since animals which come under Schedule 1 can only be hunted when there is a threat to human life whereas animals under Schedule 2 can be hunted when there is threat to human life or property. He further examined Schedule 5 of the Act and stated that no specific procedure has been provided for declaration of animals as vermin and therefore it gives rise to serious issues.

The speaker also stressed upon the following key definitions provided in the Act :

- Captive Animal
- Hunting
- Meat
- Trophy

The definition of "trophy"was elaborated by the speaker with examples of musk,horns, rugs, antlers and shells. He stated than controversy regarding categorization of "coral" as trophy is still

not settled and one has to rely on the Supreme Court stay order on such collection. The speaker elaborated the important provisions under Chapter IVA of the Act and said that before its insertion of this chapter,zoos were unregulated. Since the definition of zoos include circuses they also have to be registered with the Central Zoo Authority. The speaker stated that establishments using elephants like elephant camps and temples are not registered with the Central Zoo Authority irrespective of the fact that they fulfill all the conditions provided in definition of zoo.

The speaker also stated that the act put the burden of proof on the accused rather than the prosecution and hence the accused is under an obligation to prove that he has legal possession of wild animal.He discussed the case of Salman Khan and reiterated the observation of the High Court which had held that section 141 of the Indian Penal Code, 1908 covers within its ambit an offence under Wild Life Protection Act,1972.

“Animal article” was another important aspect which was comprehensively dealt with reliance on important judicial precedents. The speaker paid special emphasis on cases involving ivory. The concept of protected areas was elaborated upon with reference to various case laws. The speaker specified that section 39 of the Act is important since it states that every wild animal is government property The speaker also expounded upon the concept of certificate of ownership required for keeping and acquiring captive animals.He further elaborated that any possession or custody of animal or animal article is to be declared to the wildlife warden. A window was opened in the year 2003 to individuals to declare any animal/ inherited article. After the closure of the window the individuals cannot sell or gift wild live animal.He mentioned that in the Sonpur Mela the animals are sold through a gift deed which is actually a sale deed. He even stated that the chief wildlife warden has the power to withdraw the certificate.

He explained the provisions relating to investigation alongwith the procedural aspects provided including cognizance of offences and gathering evidence .The speaker also bought an area of concern i.e. award of lesser punishment than mandated by the statute. He further talked about the lacunae in the wildlife protection act which in view of the speaker include: trade in peacock feathers and snake venom.

The concluding remarks were given by Hon'ble Justice G. Raghuram, Director, National Judicial Academy by summing up the program and thanking the resource persons and the participants. He referred to the Club of Rome report of 1972 wherein it was concluded that the extinction of human beings is essential for survival of the planet.