

# National Judicial Academy, India



## Programme Report

### WORKSHOP FOR MAGISTRATES ON ANIMAL RIGHTS [P-1029]

18<sup>th</sup>- 20<sup>th</sup> August, 2017

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*Outlines of the Workshop:*

A three days workshop for Magistrates on Animal Rights was organised by the National Judicial Academy, Bhopal from 18<sup>th</sup> to 20<sup>th</sup> August, 2017. The entire workshop was divided into eight sessions. Each session was taken up by different resource persons. The objective of the workshop was to enhance the knowledge amongst the participants for better resolution of causes related to animals.

Day- I

<b>Session 1</b>	Jurisprudence and Ethics of Animal Welfare: Approaches to Legal Reform
<b>Session 2</b>	The Prevention of Cruelty to Animals Act, 1960: Understanding the Concept of Cruelty
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<b>Session 4</b>	Wild Life Protection Act, 1972: Forfeiture of Property, Prevention and Detention of Offences
<b>Session 5</b>	Illegal Poaching and Hunting: An Emerging Threat
<b>Session 6</b>	Case Studies and Overview of Animal Welfare Related Case

Day-III

<b>Session 7</b>	Importance of Wild Life Investigation to Combat Organized Wild Life Crimes
<b>Session 8</b>	Animals as Property: Ownership and Liability

## DAY-I

### SESSION-1

**Theme-** Jurisprudence and Ethics of Animal Welfare: Approaches to Legal Reform

**Speaker-** Mr. Ajit Sharma

The workshop was commenced by the programme coordinator, Mr. Prasadh Raj Singh, faculty at the National Judicial Academy, extending a warm welcome to all the resource persons as well as the participants present in the workshop, which was followed by a brief introduction of the speakers. Thereafter he requested Mr. Ajit Singh to address the participants on the issue relating to Animal welfare and legal reform.

Mr. Ajit Singh introduced the topic and mentioned that animal welfare is something which is often ignored by us and there is very less awareness about it in many parts of the country. He mentioned that in earlier times there was a pre supposition that animal is a property and property doesn't have its own rights. Whenever there was a conflict between the care takers interest and property, the interest of the care taker always prevailed which is not the correct approach. Animals are not property; they are also living beings, this approach is to be kept in mind. If they are not humans, they are not property either.

In terms of prosecuting animal crimes, our approach must be animal centric rather than accused centric for the reason that, victim here is an animal which cannot speak for itself. Animals have no right of their own, but we have an obligation to take care of them in a human compassionate manner. There are some basic obligations which humans must impose on themselves that includes: not to treat them with cruelty, slaughter without pain and not to treat them as property. The veteran speaker further threw some light on the various codifications on animal rights in several countries including India.

He further mentioned the major inadequacies prevailing in the old Act:-

- *It applied only to Urban Areas.*
- *It applied only to the domestic or captive animals and not to wild animals in forest.*
- *Only worst acts of cruelty were deemed to be cruel.*
- *Inadequate penalties in old law.*

Because of the above mentioned loopholes in the previous Act, The Prevention of Cruelty to Animals Act, 1960 was enacted. But if we see the present scenario, the penalties imposed by

Act of 1960 are grossly inadequate and need amendments. Section-2 of the Act also consists of Animal Welfare Board to ensure the proper implementation of the Act as well as to assist the court as how to settle the matter. Speaker then referred the judgement of JaliKatu case where court has conferred five freedoms on animals including:

- *Freedom from Hunger and Malnutrition.*
- *Freedom from fear and distress.*
- *Freedom from physical discomfort.*
- *Freedom from pain, injury, and disease.*
- *Freedom to express normal pattern of behaviour.*

Speaker further added that right to ecosystem and healthy food chain is a part of Right to healthy environment under Article 21, but cruelty to animals damage the whole ecosystem. While using animals for religious purposes adequate care must be taken into consideration.

Lastly, speaker said that there is an urgent need to create awareness not only regarding the welfare of animals, but also to comply with the rule of law. If law has been laid down, it must be enforced and we must comply with it.

## **Session-2**

***Theme-*** *The Prevention of Cruelty to Animals Act, 1960: Understanding the Concept of Cruelty*

***Speaker-*** *Ms. Gauri Maulekhi*

The second session of the workshop was taken up by Ms. Gauri Maulekhi. She started by saying that we had started by making laws for our self, but now we are evolving to a level where we are concerned about environment and other species. She also highlighted that we are one of the rare countries to have Wild Life Protection Act, which is diverse. But despite of having amazing laws, their implementation is really difficult. Thereafter she gave a brief about the various laws relating to animals in India including Indian Penal Code, The State Acts, The Police Act, The Prevention of Cruelty to Animals Act, Municipal Corporation, Act and Wild Life Conservation Act.

Moving further, it was mentioned that animal working in the films have to be registered under the Animal Welfare Board of India. Talking about the experimentation on animals, Ms. Gauri Maulekhi explained that animals can be used by an institution for the purpose of advancement of new discoveries. However, it is mandatory that institutions conducting experiment has to be

registered with CPCSEA, otherwise it will be illegal and attract penalties. It was also observed that sometimes animals are transported in pathetic and inhumane conditions which results in causing injuries to the animals, so in case of transportation of animals a court is required to see:

- *Some kind of document showing ownership of a person.*
- *Health certificate given by Jurisdictional veterinary officer.*
- *Motor Vehicle Regulations, 2015 which gives dimensions require while transporting any animal.*

Speaker also empathetically explained that illegal slaughtering should be stopped and if it is to be done, it must be done without unnecessary pain and suffering on animals. She then referred a judgment pronounced by the Uttarakhand High Court, which says that purpose of killing cannot be anything but for food and manner can be prescribed by religion under section 28 of The Prevention of Cruelty to Animals Act. But rules to prevent unnecessary pain and suffering apply to all cases. A reference was also made regarding the judgment of Lakshmi Narain Modi v. Union of India where repeated instructions were given by the Hon'ble Supreme Court to all State Government to strictly comply with all statutes pertaining to slaughter houses and ensure that cruelty should be totally annihilated.

### **Session-3**

**Theme-** The Prevention of Cruelty to Animals Act, 1960: A Welfare Legislation for Animals  
**Speaker-** Ms. Gauri Mulekhi

Ms. Gauri Mulekhi started the deliberations by stating that case property deals with any living animal who has been either injured, sick or in case of some violation of his right, comes before the court in very bad condition and require some care and maintenance. In such cases court has to be dealt with the matter very differently and not like any other case, because here crime has been committed against an animal who cannot express his pain and suffering. It's up to the court to ensure that animal won't get abused later. The court must assess the condition of an animal on the basis of tempered proof identification and then health report must be made by jurisdiction veterinary officer of animal husbandry department. Photographs can also help the court to understand the condition of an animal.

Speaker then empathetically explained the concept of identification through perma flex tags. These are the yellow coloured tags given by ministry of agriculture department to all the State Animal Husbandry Departments to tag animals which are valuable and now this rule has also been extended to case property maintenance. Veterinary officer of each State Animal

Husbandry Department already have these tags with them. Each tag bears a unique identification number, which can neither be changed nor replicated.

Sometimes these animals come in really bad condition that veterinary officer recommend that it would be cruel to keep the animal alive. In such a situation court may direct the animal to be destroyed without any unnecessary suffering. It was further explained that the custody of a wild animal should not be given to any person, for the reason that, wild animals are quite different from domestic animals and are extremely scared by humans. They might not be able to survive the proximity of humans and may die, that is why the forest department is the best custodian of wild animals.

Speaker further explained that section- 35 of The Prevention of Cruelty to Animals Act, 1960, which deals with treatment and care of animals as well as prescribed for the appointment of infirmaries to be done by government:

- *Magistrate can send animals to infirmaries until it is fit.*
- *Animals sent can only be released after it becomes fit.*
- *Cost of transportation, care and maintenance are to be borne by owner of that animal and cost has to be decided by district magistrate.*
- *In case person is not paying money can be*
- *If owner refuses to pay money or remove animal from where it kept, magistrate may direct the animal to be sold.*

Speaker then referred the landmark judgment for custody of case property i.e. State of U.P v. Mustakeen where Hon'ble Supreme Court declared that animals are supposed to be confiscated from the owner and housed in a gaushala, under the care of state government who was given their charge for the duration of the case. With this ruling the Hon'ble Supreme Court made it is clear that once an animal was removed from person's care on ground of cruelty to his/her charge, the animal not be returned until the case was resolved.

At the end of her presentation speaker also discussed the Prevention of Cruelty to Animals Care and Maintenance of case property rules, 2017

- **Rule 3:** *When an animal has been seized, the Magistrate may direct it to be housed at an infirmary, SPCA, AWO etc. during the pendency of the case.*
- **Rule 4:** *Cost of care and upkeep to be determined by the State Board on 1<sup>st</sup> of April every year.*
- **Rule 5:** *Magistrate when handing over the custody to an infirmary, SPCA etc. shall determine an amount sufficient to cover all cost incurred or anticipated to be incurred for transport, maintenance and treatment of the animal.*
- *The accused owner shall execute a bond of the determined value. Failure to do so, the animal shall be forfeited.*
- **Rule 8:** *If the accused is convicted or pleads guilty he shall be deprived of ownership and the animal forfeited.*

## **DAY-II**

### **Session-4**

**Theme-** *Wild Life Protection Act, 1972: Forfeiture of Property, Prevention and Detention of Offences*

**Speaker-** *Mr. N.G. Jayasimha*

Fourth session of the workshop was taken up by the Mr. N.G. Jayasimha He started his discourse by making a reference to the Article-48 A of the constitution which was added by 42<sup>nd</sup> Amendment in 1976 and also mentioned that through the same amendment the subject of “forest and Wild Life” was moved from state list to concurrent list. The Wild Life Protection Act was a central Act passed on 21<sup>st</sup> August for the purpose of protection of flora and fauna. He then gave a brief explanation about the certain provisions of the Act and discussed the key definitions of the Act including Captive Animal, Hunting, Meat, Person and Trophy. In relation to the definition of Trophy, speaker referred the judgement of Cotton Industry Exposition Limited & Anrs v. Union of India where Delhi High Court held that “the definition of Incurred Trophy, Trophy and Scheduled animal Article are not separate, distinct and exclusive compartments, but are complimentary to one another. Any other construction would defeat the object of Act and intention of the legislature. On discussing about section- 9 and section-11 A which deals with an offence hunting, speaker referred another judgement i.e. State of Rajasthan v. Salman Khan & Ors where Rajasthan High Court observed that section-141 of Indian Penal Code covers in its ambit mischief, criminal trespass or other offences and can very well be applied to an offence of mischief when committed in relation to wild animals also.

Speaker then stressed that in his view, section-40 is one of the most important sections of the Wild Life Protection Act as deals with the declaration i.e. Every person at the commencement of this Act in possession or custody of any captive animal specified in schedule-1 or part- II of schedule-II is required to declare this to chief wild life warden. But the reality is, many people did not declare. In 2003 last chance was given by the government regarding the declaration of legal custody and since then no another chance is given. Moving on, it was mentioned that no person except the person having ownership certificate can keep or acquire any captive animal specified in schedule-1 or in part-II of Schedule-II ,but in case of inheritance declaration of inheritance must be made within 90 days to chief wild life warden. Inherited person can donate or gift the animal but cannot make sale deed of the same.

Certificate of ownership to be granted only after ensuring that applicant has adequate facilities for housing, maintenance, and upkeep of animal ownership. Bombay High Court in Ajay Shankhai v. Union of India held that power to grant certificate includes the power to rescind or cancel the certificate and chief wild life warden can exercise the power under section 42 of the Act. Speaker also highlighted that section-55 of the Act is very essential in relation to the cognizance of an offence. It says that Cognizance of offence can be taken by competent court only upon complaint of authorized government officer and any person who has given such authorized officers at least sixty days' notice of his intention to file a complaint.

Speaker in his presentation also quoted the judgement of Chief Conservator of Forests and Another v. J.K. Johnson and Another (2011), Supreme Court held that a compounding officer has no power to order the forfeiture of property seized, and that he would have to comply with Section 50(4) and present the property before a Magistrate to be dealt with according to law.

Speaker while concluding his presentation mentioned that one issue of concern is that courts sometimes award less than the minimum prescribed punishment for the offences despite finding the accused guilty and also cited cases in which lesser punishments happen to be given and stressed that this should be changed.

## Session- 5

**Theme-** *Illegal Poaching and Hunting: An Emerging Threat*

**Speaker-** *Mr. N.G. Jayasimha*

Mr. N.G Jayasimha commenced the second session of the workshop which was based on illegal poaching and hunting of animals. Speaker started by showing some present statistics regarding the illegal trade of animals which showed that in the past forty years, 52% of the worlds wild life wiped out of existence and the single reason behind such a mass destruction is the human beings. He also mentioned that illegal wild life trade generates between five to twenty billion US dollars annually and is the fourth largest illegal trade in the world behind drugs, human trafficking and arms trade.

Research shows that these wild life trades happen because of armed criminal syndicates linked to drug smugglers and militia, who are running illegal wild life trade globally to raise funds for terrorist attacks.

Speaker in his presentation mentioned that there are two kinds of wild life trade exist i.e. organized trade and unorganized trade, but communal or religious hunting of wild life is also one of the forms of wild life trade. India is a key player in illegal wild life trade in South Asia. Several markets across the country small or large serve as the front for the wild life trade. Poachers and traders also take advantage of lax criminal justice system in the country. Earlier only pet shops used to sell legal animal's species, but now there are many online websites available that sell animals by using code words for them. It becomes difficult to hold them responsible because they usually wash their hands by saying that we are only a market place and give opportunity to others by displaying their products. And that is why, a personnel has been designed to keep constant check on websites as for wild life being sold.

Speaker also gave some examples of wild animals that have been traded trough out world and how their skin, nails or other parts of the body being used for making various products. It was also observed that tribal people are primarily involved in these crimes illegal trades, for the reason, they have lived in the forests for generations and know the locations where they exactly can find the animals. So in order to prevent them from doing so some kind of rehabilitation is required on the part of tribes along with that there must be a law to regulate the entry of outsiders inside the forest for the welfare of wild animals.

Speaker also mentioned the list of agencies that are working in India against the illegal trade of wild animals including State Forest Department, State Police Department, Wild life Crime Control Bureau and C.B.I. out of these agencies Wild life Crime Control Bureau is the only dedicated agency in the country to work against wild life trade and plays the most important part in gathering data, to provide actionable information to state law enforcement officials and work with them to conduct seizures, raids and rescues.

## **Session- 6**

***Theme- Case Studies and Overview of Animal Welfare Related Case***

***Speaker- Mr. Raj Panjwani***

Speaker started the discussion with an important point that whenever we look into any legislation, number of times we do come across a situation when we don't know the answer, and one of the best way to deal with the situation is to identify the mischief. In case of Prevention of Cruelty to Animals Act also, we are trying to curtail the mischief of cruelty.

Speaker stated that the preamble of Prevention of Cruelty to Animals Act aims to prevent two evils. Firstly unnecessary pain and other one is suffering on part of animals. Here suffering not merely denotes to physical, but also to a mental state of animals. He further moved to section-3 of the Act and said it one of the crucial sections of the Act, as it imposes a positive duty to ensure the wellbeing of an animal in possession. Here the word wellbeing means the state of being comfortable, health and happy. In this regard speaker also referred the judgment of AWBI v. A. Nagaraja in which Supreme Court held that sec-3 confers corresponding rights on the animals as against the person in charge or care, to ensure their well-being and be not inflicted with unnecessary pain or suffering.

Moving further speaker discussed the Article-51A of the Constitution provides that it is the duty every citizen to have compassion for other living creatures. Interpreting the word compassion, he said compassion confers all living creatures an inherent dignity, right to live peacefully and to protect their well-being. In relation to the same speaker also referred the judgment of AIIMS Union case in which a question came before the court that Whether Fundamental Duty of a citizen is also a Fundamental Duty of a state? Hon'ble Supreme Court observed that "state is all citizens placed together, therefore duty of a citizen would collectively be the duty of the state." Discussing Section-11(1) of The Prevention of Cruelty to Animals Act declares certain activities as an offence, another judgment was referred by the speaker in

which Bombay High Court cleared that word ‘otherwise’ tend to cover other cases, which may not come within the meaning of preceding clause.

In his presentation he also highlighted the Doctrine of Necessity and then again made a reference of judgment AWBI v. Nagaraja where Hon’ble Supreme Court held that “Every species has an inherent right to live and it shall be protected by law subject to the exceptions provided out of necessity. Animals also have honor and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected.” It was further added that exceptions provided are not absolute and are subject to change.

Speaker also threw some light on various provisions under Indian Penal Code, Criminal Procedure Code, and other Acts in relation to offences against wild animals. A brief account of Delhi Police Act was also given where certain powers have been conferred on Delhi Police to take an action in case of an offence is committed against animals under the Prevention of Cruelty to Animals Act, 1960. On discussing about section-451 of the Criminal Procedure Code which deals with a interim custody, three main things are to be focused:

- *Nature and gravity of offence alleged against the owner.*
- *Whether it is the first offence alleged under the Act.*
- *Condition in which the animal was found at the time of inspection ad seizure.*

Speaker while concluding his deliberations said the court has also a duty under the Doctrine of Parens Patriae to take care of the rights of animals, since they are unable to take care of themselves against human beings.

## DAY-III

### Session-7

**Theme-** *Importance of Wild Life Investigation to Combat Organized Wild Life Crimes*

**Speaker-** *Mr. Samir Sinha*

Mr. Samir Sinha started the session by discussing a brief historical perspective of wild life conservation in India. He said that India has a historical tradition of protection of wild life. Perhaps the first historically recorded reference to wild life conservation is from 3<sup>rd</sup> century by King Ahoka. But unfortunately a time came when hunting of wild animals was considered as the privilege of high and mighty. There is also a historical record that between 1875 to 1925, over 80,000 tigers were killed.

Speaker in his presentation observed that, today we have many new Acts and guidelines given by the Hon'ble Supreme Court relating to the conservation of our wild life, but the challenge for us is that law has changed but our attitude is not. There is no sense of stigma on the part of wild life offenders. Law has been enforced, but there is lack of technical skills to deal with the offences against wild animals.

Wild life crime is not just a small crime but it is a threat to a national security. A lot of militant groups consider wildlife trade as easiest option for raising terrorist funds. The court should also while dealing with the offences against wild life keep in mind that entire thing could be linked to National security. The Act also put the onus of proof on accused to prove his legal possession. Speaker in his presentation also explained the role of internet in expanding the illegal trade of wildlife as well discussed the essentials of a good forensic examination.

Speaker also explained the relevance of evidence of tracker dog he referred the judgment of Abdul Razak v. State of Maharashtra in which Hon'ble Supreme Court held that the evidence of trainer of tracking dog is relevant and admissible but it can't be treated at par with the evidence of scientific experts analyzing blood and or chemicals. The reaction of blood and chemicals can't be equated with the behavior of dog which is an intelligent animal with many thought processes similar to the thought process of human beings. Whenever thought process is involved there is a risk of error and deception. The law is made clear by the Supreme Court by enunciating the principle that the evidence of dog tracking is admissible, but not ordinarily of much weight and at par with scientific experts.

## Session-8

*Theme- Animals as Property: Ownership and Liability*

*Speaker- Mr. Mihir Samson*

Speaker commenced the last session of the workshop by explaining the concept of property. He stated that property is defined as “possession” and it must be capable of being possessed. He then referred the judgment of M.C Mehta v. Kamal Nath in which it was observed that Public Trust Doctrine applies in India and certain things however are not capable of private ownership. It was also mentioned that at common law, animals were treated as property. One had an absolute right to domestic animals and qualified right to wild animals. Then as law emerged, a welfare regime emerged where cruelty is defined in the context of what is necessary and useful for the humankind. In India also preference to animal rights had been given by introduction of Prevention of Cruelty to Animals Act, 1960 which indicates that the concern of owner is not paramount but welfare of animal can be given precedence by Magistrate.

Animals however, are different as they are not inanimate object but living beings. They are created, indeed for our use, but not for abuse. The Supreme Court in one of its judgment opined that so far as animals are concerned in our view, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with human dignity without cruelty. Section 3 and 11 of the Act when read with Article 21 and 51A of the Constitution give rights to animals to life of dignity without cruelty. Speaker while discussing the section-39 of the PCA Act referred another judgment of Centre for Environment Law, WWF Vs. Union of India which says that “No State organization or person can claim ownership or possession over wild animals in the forest”. Animals in the wild life sanctuaries or in national parks are the properties of nation for which no state can claim ownership and it’s the duty of a state to protect the wildlife and conserve it, for ensuring the ecology and environmental security of the country.

Speaker further highlighted the importance of section 29 of The Prevention of Cruelty to Animals Act by explaining that if owner is found guilty of an offence, upon conviction, court may make an order for forfeiture of animal separate from punishment as well as may even direct that person not to have custody of any animal for a fixed period or permanently. Property derived from illegal hunting is also liable to be forfeited and this applies to every person who has been convicted of such offence as well as associates or any holder of such illegal property. It was also mentioned that there are some crucial provisions contained in the Act which are in

essence limit the ownership rights over animal as well as allow the consideration of animal welfare to override that of owner.

The session was concluded by a note from the speaker that there has been a demand all around the world that concept of property must be removed and to accord rights to the animals which are consistent with their existence. Obligation of an owner should be such as the obligation that a parent or guardian would have to a child. Magistrates play an important role in applying the protection to animals and actually check the behavior of owner.

Justice Anjana Mishra and Prasadh Raj Singh Summed up the session by conveying the vote of thanks to all the resource persons for giving us an insight about various laws and for making this entire workshop successful.

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