

PROGRAMME REPORT (P-1102)

NATIONAL JUDICIAL ACADEMY



WORKSHOP FOR MAGISTRATES ON PREVENTION OF CRUELTY TO ANIMALS ACT, 1960

August 17-19, 2018

At National Judicial Academy, Bhopal

PREPARED BY

**YOGESH PRATAP SINGH
RESEARCH FELLOW
NATIONAL JUDICIAL ACADEMY**

&

**Assisted by
Mr. Mohit Agarwal
Intern,
Jagaran Lake City University**

The National Judicial Academy (NJA) organized a three day “Workshop for Magistrate on Prevention of Cruelty to Animals Act, 1960” (P-1102) from *17 – 19 August, 2018* at the National Judicial Academy, Bhopal.

The objective of the workshop was to enhance and update knowledge and skills of judicial officers dealing with issues involving trafficking in, atrocities on and exploitation of, animals; procedural impediments perceived in adjudication of such cases; evolving strategies to deal with the challenges, in the context of The Prevention of Cruelty to Animals Act, 1960 and The Wildlife Protection Act, 1972 and notifications issued there under.

About 32 judicial officers nominated by different High Courts participated in the workshop. The workshop was divided into eight sessions over the duration of 3 days on *following themes*.

Session 1	Jurisprudence and Ethics of Animal Welfare: Approaches to Legal Reform
Session 2	The Prevention of Cruelty to Animals Act, 1960: Understanding Cruelty
Session 3	The Prevention of Cruelty to Animals Act, 1960: Purpose Interpretation
Session 4	Wild Life Protection Act, 1972: Purpose Interpretation
Session 5	Illegal Poaching and Hunting: An Emerging Threat
Session 6	Importance of Wild Life Investigation to Combat Organized Wild life Crimes
Session 7	Case Studies and Overview of Animal Welfare Related Cases
Session 8	Animals as Property: Ownership and Liability

Session 1

Jurisprudence and Ethics of Animal Welfare: Approaches to Legal Reform

Speakers: Mr. Mihir Samson & Mr. N.G. Jayasimha

- The session began with discussion on jurisprudential aspects under two types of jurisprudence i.e. classical jurisprudence & modern jurisprudence with respect to animal welfare and on the question whether animals have a legal right and later on the concept of animals as property was discussed.
- The historical aspects, origin and development of laws across the globe right from common law system to the passing of Animals Act 1960 in India and its objectives related to animal welfare were explained in detail to the participant judges.
- The concept of cruelty and development of laws to prevent cruelty across the world was also discussed with the participants. Provisions of law pertaining to animals under Indian Penal Code, Constitution of India, Animals Act and some landmark Judgements of the High Court and Supreme Court were also discussed in the session.
- While discussing the Judgement of the Supreme Court in AWBI vs. A. Nagaraja (2014 7 SCC 547) It was emphasized that Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, fall within the meaning of Article 21 of the Constitution and in case of animals, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honours and dignity.
- Attention was drawn to some of the principals laid down by the Supreme Court with respect to treatment of animals such as that Animals are not merely for instrumental value for humans; spirit of humanism and scientific enquiry needs to be developed; Only acts “necessary” as provided under the Animals Act be permitted, Entertainment is not necessary and lastly Statutory law overrides culture and tradition.
- The concept of animals as property and legal personhood to animals in light of Uttarakhand High Court Judgement in Narayan Dutt Bhatt vs. Union of India & others (2018) was discussed with the participants.

Session 2

The Prevention of Cruelty to Animals Act, 1960: Understanding Cruelty

Speaker: Mr. N.G. Jayasimha

- Speaker commenced the last session by explaining the concept of Cruelty. He said there should be a clear distinction of pain and difference between the unnecessary pain and suffering.
- Speaker, through various reports explained that there is a link between Animal abuse and domestic violence in family. From a physiological perspective, he explained that Children who are more exposed to cruelty or abuse on them or on their family members are tend to be cruel on animals.
- The definition of animal and owner was elaborated in the session. It was stressed that if the animal is capable of changing its behavior in response to external stimuli to avoid some problem then the animal is capable to feel about certain thing around. While defining Owner speaker said that owner includes any person being in possession for custody of animal with or without it and animals that are not owned by anyone came under the state government responsibility. To define ownership further section 3 of the Animals Act was explained and elaborated in detail.
- The theory of necessity and rights of animals was explained to the participants, it was stressed that it will be the duty of person to know the animal's rights and express the necessity. There is need of understanding the natural law and the doctrine of necessity.
- It was further explained that the main purpose of this act is to restrict all sort of cruelty upon animals particularly with respect to situation when owner sell the animal as a property and purchaser acts as if he has all right of giving unnecessary pain and suffering to animals.
- Provisions of law pertaining to animals under Indian Penal Code, Constitution of India, Animals Act and some landmark Judgements of the High Court and Supreme Court were also discussed in the session.

Session 3

The Prevention of Cruelty to Animals Act, 1960: Purpose Interpretation

Speaker: Ms. Gauri Maulekhi

- In this session, the concept of case property was discussed with the participants, it was explained that case property deals with any living animal that has been either injured, sick or in case of some violation of its right, comes before the court in very bad condition and require some care and maintenance and in such cases court has to 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.
- While discussing the role of court, it was stressed that the court must assess the condition of an animal on the basis of tempered proof identification, flex tags etc and then health report must be made by jurisdiction veterinary officer of animal husbandry department, in addition photographs can also help the court to understand the condition of an animal.
- Speaker further discussed with the participants 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.
- Attention was also drawn to some of the important principals laid down by the Supreme Court and High Court with respect to case property wherein court emphasized that when the matter is under trial, it is the responsibility of the state government to ensure the well being of animal.
- Some important rules under the Act with respect to maintenance of case property (2017) were also explained to the participants. These rules were as follows:
 - Rule 3: Custody of animals pending litigation
 - Rule 4: Cost of care and keeping of animal pending litigation
 - Rule 5: Execution of Bond
 - Rule 6: Abandoned animal
 - Rule 7: Voluntary relinquishment

- Rule 8: Status of animal upon disposal of litigation
- Rule 9 Process of adoption or other disposition
- At the end of the session, speaker also discussed about the Role and Responsibilities of various department under the Act. These departments are:
 - Animal Welfare Board of India, MoEF &CC – PCA Act
 - State Animal Husbandry Department – District SPCA and State Animal Welfare Board (PCA Act and Orders of the Hon'ble Supreme Court)
 - Local bodies – Kanjhouse and ABC Centers (State Municipal Corporation Acts and PCA Act)
 - Health Department – Food Safety Inspectors (FSSA Act 2006)
 - Department of Road Transport (Motor Vehicles Act)
 - Forest Department

Session 4 & 5

Wild Life Protection Act, 1972: Purpose Interpretation and Illegal Poaching and Hunting: An emerging threat

Speakers: - Mr. Raj Pajwani, Samir Sinha & Mr. Sumanth Bindumadha

- Session began with introductory part of the Wild Life Protection Act 1972. While elaborating the scope of the Act and its applicability, speaker explained the meanings of various terms such as Wild life, Habitat, Hunting and Trade.
- Important provisions under the Act and Constitution of India such as Article-48 A of the constitution which was added by 42nd Amendment in 1976 were discussed in detail with the participants.
- Attention was also drawn to some important definitions under the Act. The definition of animal article was explained to the participant. Under the Act animal article means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal has been used, and ivory imported into India and an article made there from.
- The definition of dealer in context of trade was explained to the participants, it means any person who carries on the business of buying and selling any captive animal, animal article, trophy, uncured trophy. In the definition, any person means if a person buy any animal ivory or demand any part of animal which is prohibited under the act he would also come under the definition of dealer.
- The definition of hunting in context of killing animals for the purpose of trade was explained to the participants. The expression hunting includes;
 - Capturing, killing, poisoning, snaring and trapping of any wild animal and every attempt to do so;
 - Injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, damaging the eggs of such bird or reptiles or disturbing the eggs or nests of such birds or reptiles;
- Attention was drawn to other relevant provisions under the Act such as Section 30: taxidermy; Section 31: trophy etc. While elaborating the definition of trophy, speaker cited one judgement of Delhi High Court, Cotton Industry Exposition Limited v. Union

of India, wherein the 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.

- Speaker also highlighted one area of concern that courts sometimes award less than the minimum prescribed punishment for the offences despite finding the accused guilty and it will not help in curbing the offences under the Act.
- Various facts related to valuable species, hunting and unorganized trade were presented in the session. It was highlighted that more than 35000 of species are valuable species but our law only cover 8000 species. And out of these 8000 species most of them are totally degrade in our nature because of lots of pollution and change in the climate and hunting by the human being for the trade purpose.
- There are statistics regarding the illegal trade of animals which shows that in the past 35 years, 55% of the world's wild life wiped out, and all these had happened due to interference by the humans.
- Two types of wild life trade were also explained to the participants i.e. organised trade and unorganized trade.

Session 6

Importance of Wild Life Investigation to Combat Organized Wild Life Crimes

Speaker: Mr. Samir Sinha

- The session began with a discussion on brief historical perspective of wild life crimes in India. It was mentioned that India has a historical tradition of protection of wild life; however, over the past years it could not be materialized. Speaker cited various names of species that are completely extinct now in India due to wildlife related crimes. Special emphasis was given to tiger hunting wherein a historical record indicates that between 1875 to 1925, over 80,000 tigers were killed.
- It was further discussed that forest doesn't have boundaries, and therefore, even after passing many new legislations and guidelines by the Supreme Court for the conservation of wildlife, forest and species, still the challenge for us is that law has changed but our attitude has not changed.
- It was highlighted that wildlife crimes like hunting, poaching are not small level crime or limited only to wildlife & forest but it also poses threat to nation security as lot of hunters, tribal people and militant groups consider wildlife trade as easiest option for raising terrorist funds and for anti-national activities.
- Speaker in his presentation also explained the misuse of internet in expanding the illegal trade of wildlife and necessity of a good forensic examination. It was highlighted that due to lack of adequate equipment it becomes difficult for the court and forest department to check that the material that is found during the investigation comes under the schedule of the act or not.
- Attention was drawn to some landmark judgements of the Supreme Court and High Court. For instance in Abdul Razak v. State of Maharashtra, 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.

Session 7

Case Studies and Overview of Animal Welfare Related Cases

Speakers: Mr Raj Panjwani & Ms. Gauri Maulekhi

- This session began with the discussion on section 40 of the wildlife protection Act which deals with the declaration. It says that 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 it to chief wild life warden. Section 39(3) of the act was also discussed which says “No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorized officer-
 - Acquire or keep in his possession, custody or control, or
 - Transfer to any person, whether by way of gift, sale or otherwise, or
 - Destroy or damage, such Government property.
- Therefore, under the said sections the chief wild life warden has power to grant permission to any person. It was pointed out that in 2003 last chance was given by the government regarding the declaration of legal custody and since then no other chance had been given.
- 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.
- It was further explained that certificate of ownership to be granted only after ensuring that applicant has adequate facilities for housing, maintenance, and upkeep of animal ownership.
- Judgement of Bombay High Court in Ajay Shankhai v. Union of India was discussed wherein the court 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.

Session 8

Animals as Property- Ownership and Liability

Speaker: Ms. Gauri Maulekhi

- The session was commenced with the discussion on a brief historical perspective of animal, ownership and liability. It was mentioned that property is defined as “possession” and it must be capable of being possessed. The judgement of the Supreme Court in M.C Mehta v. Kamal Nath was cited wherein it was observed by the court 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, animal rights had been introduced by introduction of Prevention of Cruelty to Animals Act, 1960 which indicates that the concern of owner is not paramount and welfare of animal is essential.
- In Laxmi Narayan Modi vs. Union of India, Court issued the guideline for transportation of animals and slaughter houses and responsibilities of animal husbandry department.
- Attention of the participants was drawn to the condition of slaughter houses all over India. It was highlighted that slaughter houses are not following the safety measure and guidelines given by the courts under the Act.
- Legal Provisions for regulation of Slaughterhouses, Meat Shops and penalties for violations, duties of different stake holders, committees under the Act and Rules were also discussed at the end of the session.
 - Prevention of Cruelty to Animals Act, 1960
 - Prevention of Cruelty to Animals (Slaughter House) Rules 2001
 - Transport of Animals (Amendment Rules, 2009).
 - Food Safety and Standards Act 2006