CJEI Commonwealth Judicial Education Institute

CJEI REPORT

Newsletter of the Commonwealth Judicial Education Institute

Fall 2020

Virtual Training with the Judiciary of the Turks and Caicos Islands

At the invitation of The Honourable Chief Justice Mabel M. Agyemang, the Commonwealth Judicial Education Institute (CJEI) presented two virtual programmes for the Judiciary of the Turks and Caicos Islands:

1. "Improving Judicial Skills – Coherence and Clarity in Judgement Writing" and
2. "Introduction of Case Management in the Civil and Criminal Procedure Rules of the Turks and Caicos Islands".

Improving Judicial Skills – Coherence and Clarity in Judgement Writing

"Improving Judicial Skills – Coherence and Clarity in Judgement Writing" was presented in three parts by the Honourable Mr. Justice Dennis Morrison, President of the Court of Appeal of Jamaica, and The Honourable Mr. Justice Peter Jamadar, Judge of the Caribbean Court of Justice and CJEI Vice President (Programming).

Inside this issue

The first part was a self-directed and focus questions learning event where judicial officers were given two weeks (24th July to 9th August 2020) to read an electronic copy of the 2013 Federal Judicial Centre's Judgment Writing Manual and complete a survey questionnaire. The questionnaire responses were collated and these were used in finalizing the taught modules – parts two and three. Participants were also provided with a copy of the collated responses.

The second part led by The Honourable Mr. Justice Dennis Morrison was conducted using Microsoft Teams on 21st August 2020 from 9:30 am – 12:40 pm AST. It was divided into two modules. The first module "The Why, Who, What, and How of Judgment Writing" explain the four main policy reasons (why do we write, how do we write, who do we write for, and what is the purpose) for writing judgments. The second module "Judgment Writing Toolkit: Things We Need to Do and Attend to" described at least five essential tools and techniques for writing clear and coherent judgments.

At the end of the second part, the participants were required to rewrite, in no more than 500 words, an Introduction to demonstrate the application of the principles of judgment writing taught, and in particular to include (a) a short summary of the relevant facts and context, (b) the issue(s) raised, and (c) the disposition and orders.

The third part "Peer Review Feedback on Judgment Writing Assignments" was conducted using Microsoft Teams on 28th August 2020 from 9:30 am – 11:10 am AST. During this part, Justice Morrison and Justice Jamadar reviewed the application of the principles of judgment writing taught in the context of an Introduction.

The formal evaluations and feedback were very positive and indicated that the programme was excellent as a teaching/learning experience.

Introduction of Case Management in the Civil & Criminal Procedure Rules of the Turks and Caicos Islands

Under the direction of The Right Honourable Sir Dennis Byron, CJEI Chair, "Introduction of Case Management in the Civil and Criminal Procedure Rules of the Turks and Caicos Islands" was held virtually by Microsoft Teams over three days - 7th, 8th and 9th October 2020.

The programme objective was to familiarize participants with the benefits to be derived from the introduction of the Judicial Case Management processes originally dubbed the Lord Woolf Reforms. The objective required that all stakeholders in the judicial process have the opportunity to participate including the entire judicial complement; the Court support staff and the public and private Bar. Approximately 70 persons participated daily.

The sessions were presented by CJEI officials and invited presenters including:

1. The Honourable Justice Madan Lokur, CJEI President, Retired Judge of the Supreme Court of India;
2. The Honourable Justice Peter Jamadar, CJEI Vice President (Programming), Judge of the Caribbean Court of Justice;
3. The Right Honourable Sir Dennis Byron, CJEI Chair, Retired President of the Caribbean Court of Justice;
4. The Honourable Dame Janice Pereira, Chief Justice of the Eastern Caribbean Supreme Court;
5. The Honourable Justice Vasheist Kokaram, Judge of the Supreme Court of Trinidad and Tobago;
6. The Honourable Justice Georgis Taylor-Alexander, Judge of the Eastern Caribbean Supreme Court;
7. The Honourable Justice Lisa Ramsumair-Hinds, Judge of the Supreme Court of Trinidad and Tobago;
8. The Honourable Justice Indira Francis, President of the Industrial Court of The Bahamas;
9. The Honourable Justice Rajiv Persad, Acting High Court Judge, Eastern Caribbean Supreme Court;
10. Mr. Ruggles Ferguson of Counsel, President of the Organisation of Commonwealth Caribbean Bar Associations;
11. Ms. Angela Brooks, Deputy Director of Public Prosecutions, Turks and Caicos Islands; and
12. Mr. Bevil Wooding, Executive Director, APEX.

The sessions consisted of interactive panel discussions on:

1. Introduction of Judicial Court Case Management – Process and Benefits;
2. The Overriding Objective of the Judicial Process and Its Relationship to Measurable Performance Standards;
3. Application of the Principles of Judicial Case Management to Criminal Procedure;
4. Leveraging Technology to support the Judicial Function; and
5. A View of the New Landscape with Judicial Case Management.

The evaluations indicate that the sessions were very informative and well received and overall it was a very successful online training. In the words of Chief Justice Agyemang "it exceeded all expectations, and has created an appetite for change that I did not believe could happen after one seminar."

Message from the Founding President

2020 has been a busy year. Despite the pandemic issues, which limited collegial meetings, Halifax headquarters and Justice Peter Jamadar, Vice President (Programming), researched and studied existing uses of AI programmes both within the judiciary and in judicial education. Problems experienced and positive benefits to be gained were identified.

We were invited to present the results of our study at the High-Level Meeting of the Global Judicial Integrity Network February 24 – 27, 2020 in Doha, Qatar. We were fortunate to have there to represent us President Madan Lokur, Chair Sir Dennis Byron and Vice-President (Programming) Peter Jamadar.

The session was chaired by Sandra Oxner and supported by the presence of Justice Mushir Alam, head of the AI committee for the Pakistan Judiciary. We thank the many judiciaries and judicial education institutes that assisted us with our research. The results of the programme and suggested uses have been uploaded to our website.

The work preparing for the presentation disclosed to us the very important fact that AI cannot be used to train judges to apply the law to new situations. AI is derivative - precedent based. It is extremely helpful for research but shaping the law to do justice in new situations will continue to be an essential judicial skill where training is essential.

We are grateful to Justice Peter Jamadar (Trinidad and Tobago), Justice Dennis Morrison (Jamaica), Justice Madan Lokur (India) and Sir Dennis Byron (Saint Lucia) for their work in developing and presenting two virtual programmes for the Judiciary of the Turks and Caicos Islands at the request of The Honourable Chief Justice Mabel M. Agyemang. A description of the programmes may be found on page 1 and will soon be on our website.

Because of COVID-19, an Intensive Study Programme was not held in 2020 for the first time in 25 years. For the same reason, we were forced to postpone our acceptance of the kind invitation of The Honourable Chief Justice Terrence Rannowane to hold our Biennial Meeting in Botswana. Now that a vaccination for COVID-19 is now available, we are hopeful to reinstate both these programmes in the latter part of 2021.

We were fortunate to have with us as our summer research student, Mr. Oluwaseyi Sanni, a Graduate Student at Dalhousie Law School, who researched and studied the topic "Protection of Animals and Species: Why and How It Needs to be Done". This topic was suggested by The Honourable Athar Minallah, Chief Justice of Islamabad, Pakistan. Though the case instigating the study related to cruelty to animals, we learned that the law relating to this topic is rapidly expanding and now touches environmental law, climate change, wildlife law, food production, scientific experimentation on animals, law of the sea, among others. It includes a reexamination of the jurisprudence relating to animal rights. The attached appendix lists relevant international treaties, national statutes and leading cases as well as references to scholarly articles referred to in the study.

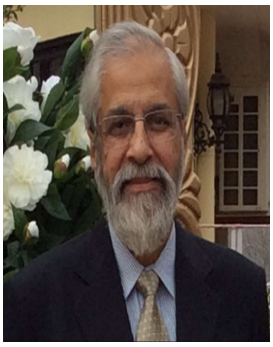
The study report is contained in this newsletter and education programmes are presently being developed to respond to the judicial education needs identified. These will be posted on our website.

We thank all of you who have supported the Institute in many varied ways and look forward to being together in 2021.

The Media Foundation 2020 BG Verghese Memorial Lecture

Preserving and Protecting our Fundamental Rights – Freedom of Speech, Expression and the Right to Protest

by The Honourable Justice Madan Lokur



B.G. Verghese – "George" to his friends, and "Saint George" to his admirers—was one of the most respected names in post-Independent Indian journalism.

He was also a classic specimen of the classic newspaperman anywhere in the world familiar with free press ---a man of impeccable professional integrity, committed to the society's well-being, and, an editor unafraid of the powerful, in and out of government.

And, it is most befitting that the Media Foundation keeps alive the values Verghese Saheb cherished by way of an annual lecture series in his name.

This evening I would like to address a gradual erosion of one of our most precious fundamental rights – the inalienable right to freedom of speech and expression, an erosion that is leading to the gradual destruction of our human right to dissent and protest. This lethal cocktail is adversely impacting the liberty of all those who dare to speak up. Article 21 of our Constitution, the right to life and personal liberty is under a silent threat and we all know the consequence of losing our liberty –

simply put, we will cease to be a democratic republic. Of course, our fundamental rights cannot be absolute and so a few reasonable restrictions have been placed on the exercise of the right to free speech and these include restrictions placed in the interests of the sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence. Yet it is important to note that these restrictions can be imposed only by law enacted by Parliament and the restrictions have to be reasonable.

Our freedom of speech is being eroded and mauled through twisting and turning the law if not abusing it altogether. The law needs to be objectively interpreted but subjective satisfaction has taken over and the consequences are unpalatable: dissent or expression of a different point of view has become an issue to the extent that *bona fide* speech sometimes becomes a security threat. Some cynics glibly suggest that if the speaker is not guilty, he or she will be acquitted of the charges framed, but the fact of the matter is that detention as an under-trial is a gut-wrenching experience for anyone and particularly for a person whose cries of innocence fall on deaf ears. Such a person looks to the judiciary for protecting his or her freedom of speech and liberty but gets overwhelmed by the painfully slow justice delivery system.

I propose to discuss our fundamental right of free speech and expression and the right to disagree in different compartments and I hope the picture will reveal why we might need to conduct an inquest in due course of time.

(i) Free speech and sedition

Ours is a country governed by the rule of law, so let us first appreciate what the law has to say on some aspects of freedom of speech. In my opinion, one of the worst forms of curtailment of the freedom of speech is charging a person with sedition. Way back in 1962, a Constitution Bench of the Supreme Court in *Kedar Nath Singh v. State of Bihar* considered the constitutionality of sedition in section 124A of the Indian Penal Code as a penal offence. While doing so, it was held that the freedom of speech and expression

> "… has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words, which **incite violence or have the tendency to create public disorder**. A citizen has a right to say or write **whatever** he likes about the Government, or its measures, by way of criticism or comment, **so long as he does not incite people to violence** against the Government established by law or with the **intention** of creating public disorder."

A little later in the decision, it was held:

> "The provisions of the sections [that is, Sections 124A and 505 of the Indian Penal Code] read as a whole, along with the explanations, make it reasonably clear that the sections aim at **rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence**. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, **however strongly worded**, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression."

The Supreme Court, therefore, drew a correlation between sedition and violence, sedition and inciting violence and sedition and tendency to incite violence – not just simple violence but violence of such a degree as to bring it within the purview of public disorder. So, when you have rival gangs confronting each other and one of them shouts *maro,* a law and order situation of rioting and attempt to murder arises, not of sedition. The police, lawyers and judges have dealt with all such cases purely as a law and order problem. However, depending on the occasion and context, when a speaker raises a slogan at a public gathering of supporters by shouting *goli maro* a charge could possibly be laid of tending to incite violence or incitement to violence and raising a public order issue rather than a law and order issue. The distinction is quite clear. And should be clear to any policeman and magistrate.

On the other hand, when there is a call to protest for a cause without any incitement to violence, it would not be sedition under any circumstances. For example, when a call was made for large numbers to assemble on the lawns of India Gate to protest against the rape and murder of Nirbhaya, the organisers of the protest were not committing sedition. Similarly, when India Against

Corruption peacefully protested on the Ram Lila grounds, the organisers could not be held liable for sedition. This is extremely important for distinguishing between free speech and sedition, but unfortunately the distinction is being lost sight of by the establishment.

Frequent use of the law against sedition began sometime in 2012 during the India Against Corruption movement. Among the first few persons to be arrested for sedition was a political cartoonist who depicted the national emblem of three lions and the Parliament building in a manner unacceptable to the establishment[1].The cartoonist was charged with having violated the provisions of the State Emblem of India (Prohibition of Improper Use) Act, 2005. I have reservations whether an offence is made out under this law and I will not be surprised if the police also felt that way. But perhaps the idea was to keep that cartoonist in custody by hook or by crook and so the charge of sedition was added. The law was obviously twisted to sustain this charge since the cartoon did not incite or have a tendency to incite violence. But the objective was achieved and the cartoonist was sent to jail for a while. Interestingly, in due course, the charge of sedition was withdrawn against him, but I will not be surprised if the incident had a chilling effect on some political cartoonists.

The companion law adverted to by the Supreme Court, that is, Section 505 of the IPC was made use of against two young girls for a Facebook post in 2012. One of them questioned the need for declaring a holiday on the death of a political leader and the other 'liked' that post[2]. At best this was only an expression of an opinion that one may agree or disagree with. Unfortunately, both the young girls were arrested for creating or promoting enmity, hatred or ill-will between classes. So, the expression of a possibly unpalatable opinion became a criminal offence against the establishment. The Facebook post caused anguish amongst supporters of the political leader and they vandalised the hospital of the girl's uncle. An innocent tweet led to three consequences: silencing the young girls and perhaps many others who held the same or a similar opinion; sending a chilling message to others to be careful about voicing opinions and finally imprisonment and damage to personal property. In one word - tweet at your own risk, a lesson that the Supreme Court sought to teach Prashant Bhushan quite recently.

(ii) Free speech and cooked up cases

In recent years, new methods of silencing speech have been introduced: attribute something to a speaker that he or she never said. I find this simply amazing. Try and visualize a police complaint filed against you for something you never said and you are kept in jail for several months and eventually set free after litigating for your rights. Imagine the trauma that you and your family would have to go through and on the other hand, the police gets away without even a censure. Well, this has actually happened.

A doctor delivered an address to students of the Aligarh Muslim University criticizing the Citizenship Amendment Act and the National Register of Citizens[3]. This was sometime in December 2019. More than one month later, he was arrested for making an inflammatory and provocative speech. About 10 days later, he was granted bail but was not released for reasons that are not clear. However, immediately thereafter he was kept in preventive detention under the National Security Act by an order issued on 13th February, 2020. This is a draconian law and entails detention without trial and is based on the subjective satisfaction of the detaining authority who makes a prognosis of the future activity of the detenu. In other words, the detaining authority says that he or she is satisfied on the basis of past conduct that the detenu is likely, in future, to act in a manner prejudicial to the security of the State or to the maintenance of public order. Therefore, it is necessary to preventively detain that person so as to prevent him or her from committing an offence. The only remedy available to a detenu under such circumstances is to show to the Advisory Board that no case of a threat to national security is made out and after that to show to the Court the violation of procedural rights guaranteed by the Constitution.

The doctor challenged his preventive detention in the Allahabad High Court and by a judgement and order passed on 1st September, 2020 the preventive detention order was quashed. The doctor had been in preventive detention, without trial, for more than six months before

[1] Aseem Trivedi
[2] Shaheen Dhada and Renu
[3] Dr. Kafeel Khan

being set free. After reading the judgment of the Allahabad High Court quashing his detention order, I can safely say that any lawyer trained in the law of preventive detention will tell you that the order of preventive detention could not have been sustained under any circumstances. Almost every procedure known to law was violated. Additionally, on a limited judicial review of the grounds of detention the Allahabad High Court concluded that the detenu was alleged to have said things which he did not. For example, while he spoke of national integrity, he was accused of promoting hatred; while he deprecated violence, he was accused of promoting violence. The High Court said:

> "A complete reading of the speech prima facie **does not disclose any effort to promote hatred or violence. It also nowhere threatens peace and tranquillity of the city of Aligarh. The address gives a call for national integrity and unity among the citizens.** The speech also deprecates any kind of violence. It appears that the District Magistrate had selective reading and selective mention for few phrases from the speech ignoring its true intent."

This is a classic instance of cooking up a case against a person with the intention of putting him behind bars for several months.

Another recent case on the same subject of attribution is that of a student activist, accused among things, of attempt to murder and making an inflammatory speech and inciting violence[4]. The offending speech was made by her on 25th February, 2020 and she was arrested three months later on 25th May, 2020. The Delhi High Court granted her bail after another three months by a judgement and order dated 1st September, 2020 and while granting bail, it was noted that the prosecution had "failed to produce any material that she in her speech instigated women of particular community or gave hatred speech due to which precious life of a young man has been sacrificed and property damaged. Admittedly, agitation was going on since long, **print and electronic media was present throughout in addition to cameras of police department, but there is no such evidence which establishes that the alleged offence has taken place on the act done by the petitioner**, except statements recorded under section 164 Cr.P.C. much belatedly, though, those witnesses were allegedly remain present at the spot throughout."

These cases, and there are others, lead to a frightening inference that if a citizen exercises the freedom of speech and says something that is not even distasteful, yet, he or she can be arrested on the basis of a fairy tale and will have to go through a long-drawn process for being set free. If that person does not say anything at all but is otherwise a thorn in the flesh of the establishment, even then that person can still be arrested and detained on some cooked up or trumped up charges.

Please try and imagine the impact of this and if you are old enough, please compare it to the period between 1975 and 1977 when persons were jailed for allegedly threatening the internal security of the country, without any evidence in this regard. We are witnessing a somewhat similar situation, the only difference being that during the Emergency days the alleged threat was to the internal security of the country and today the alleged threat is to the sovereignty and integrity of the country.

(iii) Free speech and fake news

How does one define fake news and how does one distinguish it from misinformation or disinformation? Passing on fake news by a citizen, if it is narrowly interpreted, could lead to a charge of sedition in a given case. If that fake news is liberally interpreted, it could be described as misinformation and denied as untrue. Finally, a more liberal interpretation could describe that fake news as incorrect and it is not even worthy of denial. How does one look at propaganda disseminated by the establishment? Is it fake news, or misinformation or disinformation? Would it invite a charge of sedition against the purveyor of that propaganda? That question needs to be asked.

A few tweets, believed to be fake news relating to Kashmir have attracted a charge of sedition against a university student and investigations have been going on against her for the last one year[5]. The student tweeted to the effect that the Army was "entering houses at night, picking up boys, ransacking houses and deliberately spilling rations on the floor." She also alleged that four men were called into an Army camp and interrogated (read tortured). A microphone was kept close by so that the screams of those being tortured could be heard in the

[4] Devangana Kalita

[5] Shehla Rashid

area and the people terrorized. The allegations were denied as baseless by the Army and it appears that it had closed the matter and no complaint was filed against her for the tweets. However, some public-spirited person lodged a police complaint alleging that this was a case of fake news that excited disaffection towards the government established by law and is, therefore, sedition. On this basis the issue has been kept alive by the police for more than a year with no effective result as yet. The Army has closed the matter, but the police is still at it.

Three questions arise from this episode: Can the tweets be categorized as seditious in light of the judgment of the Supreme Court? If the Army, against whose credibility the tweets were directed, has dismissed the allegations and not lodged any complaint and effectively closed the matter, should a complaint by a third party at all be entertained by the police? Finally, does it take more than a year to analyze a few tweets to determine if they are seditious or not or are police investigations being used merely to silence her?

Similarly, a person in Punjab was charged with sedition for spreading fake news that ventilators were not available for covid-19 patients in a particular district[6]. Assuming this was not true, it could easily have been denied by the district administration, but a charge of sedition on him?

Contrast this case with another case of fake news where no action has been taken against an elected cabinet minister who made a bizarre claim that a particular brand of *papad* provides immunity from the corona virus[7]. So far, no one has dared to officially contradict the cabinet minister, except the corona virus which attacked the cabinet minister and made him covid positive leading to his hospitalization. The pandemic has generated a tremendous amount of fake news in our country and worldwide and the latest that is going around is that corona were can be cured by snorting cocaine, drinking alcohol and bleach[8]. There is no doubt that fake news must be countered effectively and quickly, but surely, a charge of sedition is not the answer.

Apart from a vague definition of fake news and its subjective interpretation, these cases show that the establishment prefers to act against the weak and defenceless with what was recently described as an iron hand rather than against the privileged who can get away by saying anything. The fundamental right of freedom of speech cannot be applied arbitrarily.

(iv) Free speech and the Press

In last few years the establishment has displayed a new determination and great ingenuity in securing conformity and obedience from the Press. The cumulative effect is chilling. We all recall Mr. L.K. Advani's observation that during the Emergency journalists were merely asked to bend but they chose to crawl. Today, there is no Emergency and nobody has asked the media to bend, yet the perception (maybe wrong) is that they are crawling. It is quite a mystery.

There are two possible reasons: The first is a June 2020 report by the Rights and Risks Analysis Group which recorded that "A total of at least 55 journalists faced arrest, registration of FIRs, summons or show causes notices, physical assaults, alleged destruction of properties and threats for reportage on COVID-19 or exercising freedom of opinion and expression during the national lockdown from 25 March to 31 May 2020." These measures were taken in 20 States and Union Territories and included charges of sedition, promoting enmity among different groups, causing breach of peace and so on.

The second possible reason is that an unseen "iron hand" has been used to silence dissent and criticism.

In May, an egregious case concerning the freedom of speech related to the arrest of the editor of a news portal[9]. His alleged crime of sedition was spreading fake news by speculating that the Chief Minister of the State is likely to be replaced for his inept handling of the pandemic and thereby exciting disaffection against the government. In this particular case, while rejecting the application for bail, the Magistrate is reported to have said that the journalist was trying to **destabilize the government** and what he said was a contempt against the government. Fortunately, a higher court granted him bail but after he had spent about 15 days in custody.

In June, a senior and respected journalist had a sedition charge levelled against him for a YouTube show and had

[6] Simranjit Singh
[7] Arjun Singh Meghwal
[8] https://www.edexlive.com/news/2020/mar/18/can-cow-urine-cure-coronavirus-four-of-the-most-ridiculous-myths-about-covid-19-busted-10747.html
[9] Dhaval Patel

to petition the Supreme Court for staying his arrest[10]. The allegations may have been reckless or bizarre (as they have been described) but the question is whether they can be classified as seditious given the law laid down by the Supreme Court over 50 years ago? The chilling message to the Press is to crawl or else ….

Just a few days ago, the horrible gang rape and murder of a young girl in Hathras resulted in another and rather ingenious method of restricting the freedom of the Press. With a view to prohibit the media from reporting anything about the events, the establishment completely cordoned off the entire area with a few hundred policemen and issued a prohibitory order under Section 144 of the Cr.P.C. so that nobody could enter that area. Some intrepid journalists attempted, individually, to meet the family of the victim without violating the prohibitory order but were stopped from doing so on the basis of some undisclosed order said to have been passed by some higher-ups. This is nothing but an egregious violation of the freedom of the Press through a bizarre abuse of the law.

Everyone is hearing and seeing what is going on, but is anybody listening? The other question to be asked in this context is can any serious journalist function fearlessly if an opinion expressed, however absurd or bizarre, leads to arrest and a charge of sedition followed by a long-drawn battle in the courts? Can such serious charges be levelled so casually – and remember a free Press is the fourth pillar of democracy.

(v) Weaponising the sedition law

The National Crime Records Bureau started keeping a record of sedition cases in 2014 and every year has seen a spike in sedition cases. The number of such cases reached a high of 70 cases in 2018. Figures for 2019 recently released by the National Crime Records Bureau reveal that 93 cases were registered – a 30% increase. Almost every State seems to have weaponised sedition as a means of silencing critics and the numbers are increasing. Any statement is good enough for a sedition case, and this is not in just a few States; it is in almost every State and Union Territory.

On 31st October, 1984 the day Mrs. Indira Gandhi was assassinated, two public servants shouted "Khalistan Zindabad". The atmosphere in the country was charged and yet the Supreme Court held that this did not amount to sedition. The Supreme Court held:

> "It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that in spite of the fact that the appellants raised the slogans a couple of times, the people, in general, were un-affected and carried on with their normal activities. The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India."

How things have changed since then. In an absolutely peaceful atmosphere, a teenager in Bengaluru raised a particular slogan three times and this resulted in her arrest on charges of sedition[11]. Could this ever amount to an amount to an attempt to destabilize the government? But this teenager spent four months in jail before she was granted bail. Again in Karnataka, as many as 85 school children were interrogated by the police concerning a play in which a child recites what the authorities found to be an objectionable dialogue[12]. The mother of the child and the teacher who oversaw the play were charged with sedition and arrested. Please try and imagine the trauma that the school children would have gone through with policemen and policewomen questioning kids over five days in school.

And while we are discussing destabilising the government, does horse trading of MLAs (let me be clear, this is not my expression, but one used by the Supreme Court) does horse trading of a few MLAs with a view to topple a duly elected government amount to sedition? Perhaps. In July the Special Operations Group in Rajasthan filed FIRs against six MLAs for sedition because they had indulged in horse trading with a view to topple the government. However, just before the High Court was to take up the challenge to the sedition charge, the

[10] Vinod Dua
[11] Amulya Leona
[12] Shaheen school in Bidar

allegations were withdrawn[13]. A pity, because it would have been a fun case.

(vi) Free Speech and the Internet

District or state-wide internet shutdowns are becoming a tool to stifle freedom of expression through prior restraint. Shutdowns are effected through blanket orders under the guise of preventing breach of peace. In most cases, they are deployed when the authorities apprehend that people may exercise their fundamental right to freedom of expression to organise a peaceful protest that is critical of the State. An internet shutdown is a highly disproportionate response, since it affects everyone who uses the internet for professional reasons, for communicating with family or friends, for access to education, medical facilities and so on.

In December 2019 there was an internet shutdown across all districts of Assam and mobile internet was suspended for almost a week. While striking down the shutdown, the Gauhati High Court noted that "… mobile internet services now play a major role in the daily walks of life, so much so, shut-down of the mobile internet service virtually amounts to bringing life to a grinding halt." In light of the fact that the prevailing situation was normal and there was no justification for the continuation of the shutdown, the Court directed the State to restore mobile internet services with effect from the evening of the same date[14].

In Allahabad, the High Court took *suo moto* cognizance of the internet shutdown imposed in the city and while issuing notice observed that stoppage of internet services has paralyzed the entire judicial system[15]. I may mention that access to justice is a valuable human right.

In Anuradha Bhasin's case, the Supreme Court in January 2020 while deciding the legitimacy of internet shutdowns as well as physical lockdowns in Jammu and Kashmir stopped short of declaring access to internet as a fundamental right, but declared that "the right to freedom of speech and expression under Article 19(1)(a) and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected[16]."

In September this year, the Kerala High Court recognised that access to the internet is essential for not only exercise of freedom of speech but also the right to education[17]. It was noted that the UN Human Rights Council had declared that right to access the internet is a fundamental freedom.

We have the unenviable record of stifling freedom of speech and expression through the maximum number of internet shutdowns and for prolonged periods in any vibrant democracy.

In Conclusion

There is no doubt that the fundamental right to free speech is extremely important for any civilised democracy to survive. Similarly, the right to protest peaceably and without arms is also an equally important fundamental right guaranteed to all of us under the Constitution. While it is important for each one of us to exercise our fundamental rights within reasonable limits laid down by law, there is a greater obligation on the establishment to ensure that the laws are not twisted, misused or abused in such a manner that citizens are deprived of fundamental rights that impact on the liberty of an individual. We have seen several instances of deprivation of liberty with persons having to spend days and sometimes months in jail for remarks that would perhaps not attract any attention except for the fact that the establishment used draconian laws to silence those dissenting voices and thereby give them traction. It is time for the establishment to realise that the people of this country mean well and as in any democracy, there are bound to be different points of view. These must be respected --- otherwise the fabric of our society might disintegrate and fraternity, one of the key words in the preamble to our Constitution might just become another dead idea.

Thank you and God bless!

[13] https://www.hindustantimes.com/india-news/rajasthan-s-sog-drops-sedition-charge-transfers-horse-trading-cases-to-anti-corruption-bureau/story-MwnTqx0wdSoIXP5m13cccO.html

[14] Banashree Gogoi v. State of Assam, decided on 19th December, 2019

[15] Suo Moto Writ Petition PIL No. 2485/2019: Reference to the Discontinuation of Internet services by the State Authorities, Order dated 20th December 2019

[16] Anuradha Bhasin

[17] Faheema Shirin R.K. v. State of Kerala, (2019) 4 KLJ 634

Welcome to the CJEI Team

I am very pleased to inform you that Anne Fouillard, a distinguished Canadian very accomplished and experienced in international aid projects, has joined our CJEI team in a volunteer capacity. Her first area of work will be an assessment of the state of play of Commonwealth judicial education programming in the area of Human Trafficking. Anne also has much experience in programme evaluation and we hope, in the future, to be able to persuade her to pass along some of her experience in this field. We are most grateful to Anne for this gift of her time and experience and look forward to seeing her when we next gather for a collegial programme. It is also possible that she may make herself available to meet with us electronically during the COVID shutdown.

Conflict Management Strategies

by Dr. Joseph Sadek, Chair of the Education Section, Canadian Psychiatric Association

How do people manage conflict?

People may use different strategies in managing conflict. Conflict with a partner can be difficult and depending on the strategy used to manage it, problems may escalate and damage may deepen.

Below are the common strategies used in managing conflict. Only one of them lead to conflict resolution.

1. **Withdrawal Strategy:** Maladaptive disengagement from conflict, such as keeping quiet, disengaging from the person or avoiding the problem. Withdrawal behaviors predict lower conflict resolution. The emotional and behavioral response during withdrawal may involve decreased emotion expression: Emotional elements of communication are muted and individual attempts to suppress or conceal his/her emotions. There is also avoidance/disengagement: Lack of engagement and dismissing approach to the problem. On the surface, it may look like the problem is being solved but in reality it is not. Communication and any problem solving is superficial, lacks depth, and "skims the surface."

   The outcome is not great. Greater expressive suppression is associated with poorer social relationships and greater depressive symptoms. Expressive suppression is associated with poorer wellbeing is that it undermines people's success in coping with challenges and pursuing important goals across time. Accordingly, emotion regulation strategies that result in lower conflict resolution should mean that the problem spills over from one situation to another.

2. **Aversive Cognitive Perseveration Strategy:** Over-engagement with or difficulty disengaging from negative cognitions (i.e., worry, rumination, low distraction). The person keeps thinking of the problem most of the time and cannot disengage from the thoughts.

   The emotional and behavioral response during Aversive Cognitive Perseveration involve ruminative problem engagement where we are fixated on the problem and on amplifying the symptoms. We keep thinking of causes, consequences, and one's own thoughts and feelings. Sometimes we experience

exaggerated emotional expressions. We tend to have a self-focused orientation, focusing on own desires and needs, such as being heard and cared for by the partner or the other individual in the conflict. We also use rumination. Our thoughts and emotions prevent us from focusing on finding possible solutions. We get stuck on the causes of the problems rather than the solutions.

The outcome is not great since significant rumination contributes to the maintenance of depression.

3. **Destructive Strategy: This is the worst strategy.** "I yelled and shouted at the person, I insulted or called him or her names, I mentioned things that happened long ago, I had to have the last word".

   It has the worst outcome leading to escalation of the conflict. This strategy should be eliminated from our coping techniques.

4. **Constructive or Adaptive Engagement Strategy:** This is the ideal recommended strategy. Constructive and collaborative problem solving that focuses on solutions, along with open expressions and acceptance of emotions. It involves overtly positive reactions to conflict, like active listening, calmly discussing the problem.

   The emotional and behavioral response during Adaptive Engagement involve balanced emotions, open comfortable communication, self-assured expression and acknowledgement of emotions/feelings. Collaborative engagement: Accepting joint responsibilities. Encouraging the partner's contribution to the discussion and problem-solving.

   Operating as a team. It involves approach-oriented problem-solving with direct efforts to move forward and solve the problem without dwelling on the causes and consequences.

   Most important element is cognitive reappraisal by changing the way we think about the issue and staying calm.

   Outcomes associated with emotion regulation are usually great. They may go beyond the initial context enacted by spilling over to experiences and functioning within subsequent social situations and flow on to affect broader functioning. Emotion regulation strategies produce positive changes in wellbeing over time. Cognitive reappraisal predicts better social connections and psychological health.

Questions: Email Dr. Sadek at Joseph.sadek@nshealth.ca

Governance Structure of CJEI

The governing committee of the Institute consists of the Honourable Justice Madan B. Lokur, President; the Right Honourable Sir Dennis Byron, Chair; the Honourable Chief Justice Sophia Akuffo, Vice President (Special Projects); the Honourable Justice Abdu Aboki, Vice President (Outreach); the Honourable Justice Peter Jamadar, Vice President (Programming); the Honourable Justice Kashim Zannah, Vice President; the Honourable Roshan Dalvi, Vice President; retired judge Sandra E. Oxner, O.C., Founding President; the Right Honourable Beverley McLachlin, Canada; the Honourable Chief Justice Ivor Archie, Trinidad & Tobago; the Honourable Chief Justice Asif Saeed Khan Khosa, Pakistan; the Honourable Chief Justice Irene Mambilima, Zambia; the Honourable Mr. Justice Adrian D. Saunders, Trinidad & Tobago; the Honourable Justice Leona Theron, South Africa; the Honourable Judge Gertrude Chawatama, Zambia; Professor Michael Deturbide, Canada and Professor Emeritus John A. Yogis, QC, Honourary Treasurer and Ms. Sandra J. Hutchings, Secretary.

Chief Justices of the Commonwealth countries are Patrons to the Institute. The Executive Directors of Commonwealth judicial education bodies form an Advisory Board to the Institute.

PROTECTION OF ANIMALS AND SPECIES: WHY AND HOW IT NEEDS TO BE DONE

By Oluwaseyi Sanni, a Graduate Student at the Schulich School of Law and CJEI Summer Research Assistant

We are living through an ethical revolution when it comes to animals – shifting from seeing them as objects, commodities and resources to seeing them as beings in their own rights.
Andrew Linzey, Oxford University

The birds that fly in the air and the wild animals that dwell in the jungles have the same rights as you, O great King, to live wherever they wish or to roam wherever they will. The land belongs to the people of the country and to all other beings that inhabit it, while you are only its guardian.
Arahat Mahinda, the son of Emperor Asoka of the Mauryan dynasty, to King Devanampiyatissa of Lanka, c. 250 – 210 BC, found on a rock inscription in Polonnaruwa, Sri Lanka.

1. INTRODUCTION

In an era where human rights are rigorously promoted, the need to preserve the life of animals and their respective species ought to be considered as well. It is a fact that 99 per cent of animal species that have ever lived on earth are already extinct.[1] In the last Two Thousand years alone, almost 11000 species have gone extinct with the numbers rising due to human activities.[2] Whether it is conceived in terms of creating animal rights, preserving animal welfare or the protection of species, a due sense of responsibility requires the need to insist on humane methods in dealing with animals, especially considering their natural vulnerabilities.

Exploring various dimensions to the argument, this article offers the view that the protection of animals and species ought to transcend merely preventing inhumane treatment to conferring enforceable rights on animals. Plausible legal norms that may form the basis for the entrenchments of such rights are expounded, with the aim of ultimately highlighting the instrumentality of the judiciary in animating such norms in view of David Boyd's description of the Judiciary as the "last line of defence" in the enforcement of environmental related rights.[3] Hopefully, this will compel the citizenry's humane approach to dealing with animals and a conscious regard for their sentience.

2. PROTECTION OF ANIMALS AND SPECIES WITHIN INTERNATIONAL SPHERE

It appears reasonable to begin this discussion by exploring what the narrative is at the international sphere, and the work of Bowman is particularly renowned in this regard.[4] He traces the first attempt at protecting animal rights to some conventions made in the 1900s.[5] Although the treaties were deficient in catering directly to issues of cruelty to animals, they at least addressed the need to protect endangered species. The subsequent decades, however, would witness a series of conventions to address this

[1] Robert M. May, John H. Lawton, & Nigel E. Stork. "Assessing Extinction Rates" in John H Lawton & Robert M. May (eds) *Extinction Rates* (Oxford: Oxford University Press, 1995)

[2] Jeremy Wilson, "Continuity and Change in the Canadian Environmental Movement: Assessing the Effects of Institutionalization" in Debora L. VanNijnatten & Robert Boardman (eds), *Canadian Environmental Policy: Context and Cases* (Oxford: Oxford University Press, 2001)

[3] David R. Boyd, *The Environmental Rights Revolution A Global Study of Constitutions, Human Rights, and the Environment* (Canada: UBC Press, 2012) p. 280

[4] M. J. Bowman, "The Protection of Animals under International Law" (1989) 4:2 Conn. J. Int. Law 487

[5] Convention for the Preservation of Wild Animals, Birds and Fish in Africa, May 19, 1900, 188 Parry's T.S. 418; Convention for the Protection of Birds Useful to Agriculture, Mar. 19, 1902, 191 Parry's T.S. 91

loophole,[6] with one of the conventions succinctly giving transported animals the right to be properly fed and given necessary attention.[7]

As laudable as these provisions were, the conventions did not enjoy a protracted lifespan, largely due to lack of support by States and probably also due to the overhaul of the League of Nations, under whose auspice it was created. It was not until 1973, with the conclusion of the International Trade in Endangered Species of Wild Fauna and Flora (CITES), that the discussion on protecting the welfare of animals was brought to the fore again at the international arena. CITES is particularly notable for protecting the survival of wild animals and plants from the banes of international transportation by insisting on measures that minimize the risk of injury and maximize the housing and care for transported animals.[8] Ancillary to CITES are sprinkles of international treaties that address specific kinds of animals such as Whales, Fishes and Birds.[9]

The provisions of CITES and these ancillary treaties appear to only deal with migratory and wild animals, thereby leaving domestic animals out of the ambit of animal protection. Also, the bulk of the protection afforded under those conventions seem to be pre-emptive against possible extinction as opposed to the positive right to be cared for. Although, the 1978 Universal Declaration of Animal Rights alludes to positive rights in respect to all animals,[10] the nonbinding nature of the Declaration renders its provisions suggestive at best.

This has led to the initiative led by Bill Clark of the Organization Friends of Animals, for a comprehensive international instrument for the protection of animals, that adopts the welfare-based ethics of the Red cross conventions and the positive rights approach of the Universal Declaration. The discussion on this initiative began in 1983 during the Gaborone meeting of CITES but has since morphed into a draft treaty with four encompassing Protocols having laudable provisions, such as the prohibition of surgical operations on companion animals for non-curative purposes.[11]

3. A CORRESPONDING DOMESTIC EFFORT

While the idea of tackling the issue of animal rights through international treaties is laudable, and the experience at the international front over the years relatively impressive, yet the need for similar strides within Commonwealth countries is important. The peculiar nature of the issues surrounding animal rights, except in relation to their transportation and trade across States, is more domestic than it is a matter of State interest, and as such it is better addressed at the domestic level.

There are a plethora of animal and species-related legislation across common law countries, some of which border around preservation of species, protection from dangerous experiments, as well as administration and licensing of slaughterhouses. Canada, United Kingdom and Australia particularly stand out in the sense that the legislation is made at the provincial levels and some part of the legislation is specific to the issues addressed.[12] In the United Kingdom, the recent legislation that bans the use of

[6] International Convention for the Campaign Against Contagious Diseases of Animals, Feb. 20, 1935, 186 L.N.T.S. 173; International Convention Concerning the Transit of Animals, Meat and Other Products of Animal Origin, Feb 20, 1935, 193 L.N.T.S. 37; and International Convention Concerning the Export and Import of Animal Products, etc., Feb 20, 1935, 193 L.N.T.S 59

[7] Article 5 of International Convention Concerning the Transit of Animals, *Ibid*

[8] "What is CITES?" online: *CITES* <https://www.cites.org/eng/disc/what.php>

[9] International Convention for the Regulation of Whaling art. IV (Dec. 2, 1946)

[10] The Universal Declaration of the Rights of Animals is reproduced in C. Magel, Bibliography on Animal Rights And Related Matters Para. 2767, at 424 (1981)

[11] The proposed Treaty is the International Convention for the Protection of Animals. Its protocols include Companion Animal Protocol; Protocol for the Care of Exhibited Wildlife; Protocol for the Taking of Wild Animals and Protocol for the International Transportation

[12] For example, in Nova Scotia, there is the Sheep Protection Act R.S.N.S. 1989, c. 424, s.1-18(4), that addresses the issue of

wild animals in traveling circuses in England and Wales is interesting and noteworthy.[13] Also noteworthy is the recent increase in the punishment for cruelty against animals in Trinidad and Tobago.[14] Impressively, about 76 per cent of the Common law countries have legislation that prevents and criminalizes cruelty to animals. Countries like Australia Bangladesh, Canada, Malaysia, Malta, Nepal, New Zealand and the United Kingdom have gone beyond merely prohibiting cruelty to animals to actually imposing some form of responsibility on guardians of animals to deliberately care for them, while recognizing their sentient nature. While this may not suffice as a clear declaration of the existence of animal right, it does serve as a valid premise for such discussion.

4. BEYOND PRESERVATION OF SPECIES AND PROHIBITION OF CRUELTY: A CASE FOR THE RECOGNITION OF ANIMAL RIGHTS

Despite these provisions, it is recorded that elephants in the entertainment industries are often kept in hostile conditions which may include being chained day and night with chains that are sometimes not longer than 10 feet.[15] In cases of domestic violence, millions of pet dogs and cats are noted to have been assaulted alongside their guardians.[16] With such reality, legislation that purport to curtail animal cruelty remain only colourful on paper. Perhaps, this calls for the need to re-think the legal framework for the protection of animals and move from a reactionary sense of punishing inhumane actions against animals to actively vesting enforceable rights on animals, or at least some of them.

4.1 Ethical/Humanitarian Grounds

In further appreciating the need for the introduction of animal rights, the work of Gary Francione is important.[17] He largely draws from the work of Jeremy Bentham and John Stuart Mills[18] in critiquing the utilitarian notion of permitting any form of treatment of animals in so far as it benefits the greater good, since animals have over time been considered scarcely anything more than chattels. Francione argues that such narrative may well translate to an ignorance of the idea behind the abolition of slavery which at the time could have been justified on utilitarian grounds but is obviously reprehensible from a humanitarian perspective. He also argues that to speak any less of the fact that animals deserve the toga of humanity based on their sentient nature would be to put less value on humans who are in unique conditions such as "transient global amnesia".

The humanitarian rationale for the animal rights is further explored in Peter Singer's distinction between intrinsic and instrumental values. He argues that a thing may be said to be of intrinsic value when its beauty and desirability is in itself as opposed to when its value is only in what it may subsequently yield, in which case it would be said to be of instrumental value (e.g. legal tender). He connects the campaign for the shift from viewing animals as merely having instrumental value to having intrinsic value, to the change in perspective of how slaves or persons of other races are treated – as persons of intrinsic value. Just like it took some form of civil revolution, including legislative and judicial activism to get the society to appreciate the intrinsic value of people who were treated as slaves in the past

protecting sheep from stray and wild stray dogs. Similarly, in New South Wales, there is the New South Wales Exhibited Animals Protection Act 1986 that basically regulates the exhibition of any kind of vertebrate animal.

[13] Wild Animals in Circuses Act 2019 Chapter 24. It came into force in January 2020.

[14] This is by virtue of Clause 7 of the Miscellaneous Amendments Act, 2020.

[15] https://www.worldanimalprotection.us/blog/7-animal-cruelty-facts

[16] https://www.humanesociety.org/resources/animal-cruelty-facts-and-stats

[17] Gary L. Francione *Animals, Property and the Law* (Philadelphia: Temple University Press, 1995); Gary L Francione, "Animal Welfare and the Moral Value of Nonhuman Animals" (2010) 6:1 L, Culture & the Humanities 24

[18] John Stuart Mill, "Utilitarianism" in John Stuart Mill and Jeremy Bentham, *Utilitarianism and Other Essays,* ed, Alan Ryan (Harmondsworth: Penguin, 1987); Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (New York: Hafner, 1948)

centuries, it would require similar measures for the intrinsic value of animals to be appreciated.

4.2 Environmental Grounds

Although the basis for the advocacy for animal rights is largely humanitarian, it does have some environmental, political and economic undertone to it. The need to preserve and protect animals from extinction tops the list of such environmental grounds. In 2015, the United States Fish and Wildlife Services had to declare US-based chimpanzees as endangered species. This was after many years of having them experimented upon and subsequently euthanized, or at least until the introduction of the 2000 CHIMP Act which prohibited the killing of Chimpanzees after experiments.[19] One can validly argue that had the chimpanzees been conferred some rights that protected them from such mass killing at the initial instance, they would not be considered endangered species in recent times.

4.3 Political Grounds

From a political standpoint, the work of Sue Donaldson and Will Kymlicka is relevant here.[20] They advocate for an appreciation that judging from the intrinsic moral status of animals and their communal instincts, they are deserving of certain basic universal rights at varying degrees in such a manner as can be likened to what is obtainable among the various classes of citizens. This theory has come to be related to some form of cosmopolitan or "cosmozoopolis" arrangement with an emphasis on membership within various boundaries which accords humans and animals some form of sovereignty.[21] This theory has gained some traction in the academic world and scholars like Eleni Panagiotarakou have attempted to further develop the theory. Panagiotarakou particularly draws on the idea of sovereignty of domestic, liminal and wild animals in their respective terrains and advocates for the theory of Right to Place, which she argues is expedient for their sustainable lifestyle.

Also, from a political standpoint, there is the case for animal rights on constitutional grounds. The words of Laurence Tribe, a renowned constitutional Law expert and Professor at Harvard Law School, is popular in this wise. He notes; "The Constitution is an essentially aspirational document. Its bold language and broadly expressed principles offer themselves to each generation as we struggle to define our national values in an ever-changing world… So it seems to me no abuse of the Constitution to invoke it on behalf of non-human animals cruelly confined for purposes of involuntary servitude."[22] The argument is that the Constitution, as a wholesome document has its underlying theme rooted in some form of emancipation for the oppressed and marginalized, and since it had been proven relevant in respect to categories such as women and African America, its application to animals is logical. Justice Jaffe, in an obiter dictum states that: "Not very long ago, only Caucasian male, property-owning citizens were entitled to the full panoply of legal rights under the United States Constitution. Tragically, until passage of the Thirteenth Amendment of the Constitution, African American slaves were bought, sold, and otherwise treated as property with few, if any, rights. Married women were considered the property of their husbands, and before marriage were often considered family property, denied the full array of rights accorded to their fathers, brothers, uncles and male cousins."[23]

4.4 Economic Grounds

Although the ethical, political, and environmental basis for the advocacy of animal rights are relatively

[19] The Chimpanzee Health Improvement Maintenance and Protection Act (CHIMP ACT) was passed in 2000 to protect chimps that had been experimented on from being killed afterwards but required that they be taken to a natural sanctuary and be given lifetime care.

[20] Sue Donaldson & Will Kymlicka, *Zoopolis*: *A Political Theory of Animal Rights*. (UK: Oxford University Press, 2011).

[21] Sue Donaldson & Will Kymlicka, "A Defence of Animal Citizens and Sovereigns" (2013) 1 LEAP 143

[22] See David R. Boyd et al, *Rights of Nature: a Legal Revolution That Could Save the World* (Canada, Ontario: ECW Press, 2017).

[23] *Ibid*

straightforward, this is not quite so for the economic rationale. Ostensibly, it would appear that the economic advantage is hardly in favour of animal rights, especially when viewed against the backdrop of animals being considered as scarcely anything more than a property and the "object of human material manipulation".[24] Adam Smith is noted to have explored this thought and he is reported to have noted that "The Trade of a butcher is a brutal and an odious business; but it is in most places more profitable than the greater part of common trades".[25] However, Steven McMullen, in his seminal work entitled "Animals and the Economy" argues that an economic analysis that fails to take account of the intrinsic and legitimate economic value of animals within the economic sphere is limited. He advocates for an economic perspective that is consistent with basic animal ethics.[26] Leaning on the reports that show that one third of a certain poll of people are willing to take the position that animals should have the same rights as people in the United States,[27] and another report in the United Kingdome that shows that more people are willing to pay a premium for eggs from hens granted higher welfare,[28] McMullen argues in favour of an economic analysis that favours animal welfare based on these altruistic human preferences.

It is one thing to appreciate the need for animal rights, it is quite another to conceptualized how such rights can be created. Undoubtedly, a bold move to incorporate such animal rights into the constitution of countries would be most effective. Far-fetched as this may seem, there are also legislative and judicial approaches and techniques that may be adopted in the interim.

The proposition to grant animals the toga of personhood in order to avail them *locus standi* in the prosecution or defence of actions and inactions that affect animals is one of such techniques. This notion bears its root in the phenomenon of corporate personhood,[29] and seems to be gaining footing within the environmental law sphere.[30] Stacey Gordon notes how such vesting of personhood is even more ideal in respect to animals, considering that they are more sentient beings than the environment.[31] Lessons can be drawn from other jurisdictions like Argentina, where there was a case of a Chimpanzee (Cecilia) whose right to be born, to live, grow and die in her proper environment as opposed to being tied up at the Mendoza zoo was affirmed by the court.[32]

The issue of locus Standi is indeed a major inhibition in the campaign to legally protect animals and species. This is exemplified in the cases; *Animal Liberation Ltd v Department of Environment and Conservation*[33] and *Australian Conservation Foundation v The Commonwealth*[34], where the Supreme court of New South Wales repeatedly held that an action involving protection of animals in the wild is a matter of public interest which requires the plaintiff to have the Special interest which is beyond mere "intellectual or emotional concern". Interestingly, in the Animal Liberation case, the court had initially granted an interlocutory injunction to cease the aerial shooting of pigs and goats on the basis that they constitute cruelty. However, it does appear that the court was ultimately restricted by the

[24] Nathaniel, Wolloch. "Adam Smith's Economic and Ethical Consideration of Animals." (2013) 26:3 History of the Human Sciences, pp. 52–67.
[25] *Ibid*
[26] Steven McMullen, *Animals and the Economy* (Palgrave Macmillan, 2016.)
[27] Rebecca Riffkin, "In U.S., More Say Animals Should Have Same Rights as People" (18 May 2015) online: *GALLUP* <https://news.gallup.com/poll/183275/say-animals-rights-people.aspx>
[28] "Report on Welfare Labelling" (London: Farm Animal Welfare Council, 2006)
[29] Which according to Allison Athens, seemed unconventional and anomalous at inception. See Allison Katherine Athens, "An Indivisible and Living Whole: Do we Value Nature Enough to Grant it Personhood" (2018) 45:2 Ecology LQ 187
[30] Especially with the recent enactment of the New Zealand Te Urewa Act which confers legal personhood on a river belonging to the Maori Tribe. Gwendolyn J. Gordon, Environmental Personhood" (2018) 43:1 Colum J Envi O L 49
[31] Stacey L. Gordon, "The Legal Right of All Living Things: How Animal Law Can Extend the Environmental Movement's Quest for Legal Standing for Non-Human Animals." (2016) 33:4 The Environmental Forum p. 44.
[32] P-72.254/15
[33] *[2007] NSWSC 221*
[34] *(1980) 28 ALR 257*

technicalities of the requirement of Special interest. Such technicalities can be avoided if non-governmental organizations can be afforded the toga of *guardians ad litem* in respect to the legal protection of animals.

The more recent decision of the Federal Court of Australia tilts more to this narrative. In *Animals' Angels e.V v Secretary, Department of Agriculture,*[35] the court held that Animals' Angels had locus standi because the Australian government recognizes its specific status in respect to export of live animals. The court also considered the objectives of the organization as well as its activities in the past to infer its special interest. The court held that "standing requires a sufficient interest, not one which is a unique interest, or the strongest interest compared with others who may have an interest".

5. CONCLUSION

In summary, conversations around the protection of animal rights are not novel, as States have grappled with developing legislation that sufficiently cover the terrain both at the global and domestic fronts. Moreover, it is also evident that the implication of the discourse on preservation of animals and species transcend generational timelines, hence the need for Commonwealth countries to engage the subject of animal rights with more earnestness. Supporting the proposed International Convention for the Protection of Animals may suffice as a starting point.

Although much of the efforts to be made in this arena falls within the legislative ambits is doubtless, the influence of the judiciary with much training cannot also be undermined. With appropriate techniques such as meandering through the knotty issues of locus standi vis-à-vis the public interest doctrine, introducing of international legal norms as well as the sometime expedient vehicle of judicial activism, the Judiciary can well be a viable channel to herald the much-needed reform in the protection of animals.

While the normative framework for the adjudication of animal rights is definitive, the practical scenarios within which they can be applied are inexhaustible. Examples include enforcing penalties for the killing of pet animals, prohibition of the disallowance of pet animals into leased buildings, providing restrictions on the allowable research activities on animals, application of the duty of care principle on pet owners, defining propriety rights of animals under trust and wills, to mention but a few.

Moreover, we find that a holistic approach to treating the subject of animal rights is contingent on a corresponding treatment of "corollary" areas such as environmental law, climate change, wildlife law, food production, scientific experimentation on animals, law of the sea, among others, and this ultimately necessitates an overhaul of the conception of animal rights jurisprudence.

BIBLIOGRAPHY

Cases:

1. *Animals' Angels e.V v Secretary, Department of Agriculture* [2014] FCA 173
2. *Animal Liberation Ltd v Department of Environment and Conservation* [2007] NSWSC 221
3. *Australian Conservation Foundation v The Commonwealth* (1980) 28 ALR 257

Statutes:

1. Sheep Protection Act R.S.N.S. 1989, c. 424
2. Miscellaneous Amendments Act, 2020.
3. New South Wales Exhibited Animals Protection Act 1986
4. Wild Animals in Circuses Act 2019 Chapter 24.

[35] [2014] FCA 173

Books:

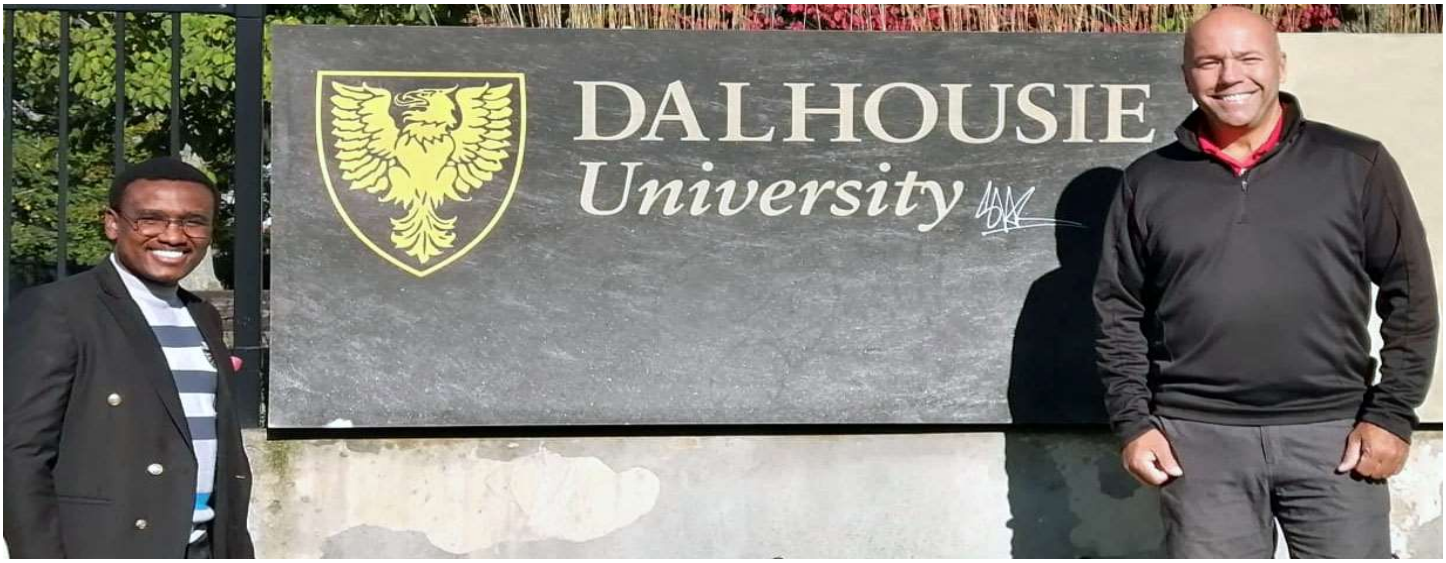
1. Bentham, Jeremy, *An Introduction to the Principles of Morals and Legislation* (New York: Hafner, 1948)
2. Boyd, David R, et al, *Rights of Nature: a Legal Revolution That Could Save the World* (Canada, Ontario: ECW Press, 2017).
3. Boyd, David R. *The Environmental Rights Revolution A Global Study of Constitutions, Human Rights, and the Environment* (Canada: UBC Press, 2012)
4. Donaldson, Sue & Kymlicka, Will, *Zoopolis*: *A Political Theory of Animal Rights*. (UK: Oxford University Press, 2011)
5. Francione Gary L, *Animals, Property and the Law* (Philadelphia: Temple University Press, 1995)
6. May, Robert M. John H. Lawton, & Nigel E. Stork. "Assessing Extinction Rates" in John H Lawton & Robert M. May (eds) *Extinction Rates* (Oxford: Oxford University Press, 1995)
7. McMullen, Steven. Animals and the Economy (Palgrave Macmillan, 2016.)
8. Mill, John Stuart, "Utilitarianism" in John Stuart Mill and Jeremy Bentham, *Utilitarianism and Other Essays,* ed, Alan Ryan (Harmondsworth: Penguin, 1987)
9. Wilson, Jeremy "Continuity and Change in the Canadian Environmental Movement: Assessing the Effects of Institutionalization" in Debora L. VanNijnatten & Robert Boardman (eds), *Canadian Environmental Policy: Context and Cases* (Oxford: Oxford University Press, 2001)

Journals:

1. Athens, Allison Katherine "An Indivisible and Living Whole: Do we Value Nature Enough to Grant it Personhood" (2018) 45:2 Ecology LQ
2. Bowman, M. J "The Protection of Animals under International Law" (1989) 4:2 Conn. J. Int. Law
3. Donaldson, Sue & Kymlicka, Will "A Defence of Animal Citizens and Sovereigns" (2013) 1 LEAP
4. Francione, Gary L, "Animal Welfare and the Moral Value of Nonhuman Animals" (2010) 6:1 L, Culture & the Humanities
5. Gordon, Gwendolyn J., Environmental Personhood" (2018) 43:1 Colum J EnviO L
6. Gordon, Stacey L. "The Legal Right of All Living Things: How Animal Law Can Extend the Environmental Movement's Quest for Legal Standing for Non-Human Animals." (2016) 33:4 The Environmental Forum
7. Wolloch, Nathaniel "Adam Smith's Economic and Ethical Consideration of Animals." (2013) 26:3 History of the Human Sciences, pp. 52–67.

International Instruments:

1. Convention for the Protection of Birds Useful to Agriculture, Mar. 19, 1902, 191 Parry's T.S. 91
2. Convention for the Preservation of Wild Animals, Birds and Fish in Africa, May 19, 1900, 188 Parry's T.S. 418
3. International Convention Concerning the Export and Import of Animal Products, etc, Feb 20, 1935, 193 L.N.T.S 59
4. International Convention Concerning the Transit of Animals, Meat and Other Products of Animal Origin, Feb 20, 1935 193 L.N.T.S. 37
5. International Convention for the Campaign Against Contagious Diseases of Animals, Feb. 20, 1935, 186 L.N.T.S. 173
6. Universal Declaration of the Rights of Animals



Oluwaseyi Sanni, a Graduate Student at the Law School and CJEI Summer Research Assistant, with Andy Fillmore MP for Halifax

Our thanks to Andy Fillmore MP and the Government of Canada for research funds to support Mr. Sanni's work on our project "Protection of Animals and Species: Why and How It Needs to be Done".

This project was initiated by the Honourable Athar Minallah, Chief Justice of Islamabad, Pakistan and supported by the CJEI Executive Committee. Based on Mr. Sanni's research, education programmes are being developed to be sent to all our Commonwealth judicial education partners.

News and Notes

PAPUA NEW GUINEA CENTRE FOR JUDICIAL EXCELLENCE

PngCJE conducted its first virtual training by OLIVIA PARU

The Papua New Guinea Centre for Judicial Excellence (PngCJE) has successfully executed its first workshop via online learning mode. A five-day Training of Trainers (ToT) workshop for judges, magistrates and the court staff was conducted with participants and facilitators from different parts of the world attending and participating online.

Participants undergoing the virtual ToT training in the PngCJE Training Room

Picture by CARIBBEAN PARKOP

In collaboration with the Pacific Judicial Strengthening Initiative (PJSI), the training focused on capacity building on how to design, deliver and evaluate trainings based on knowledge, skills and attitudes. As indicated during the workshop, training of trainers is a vital course for judicial educators where knowledge is passed on to new facilitators who organize and conduct judicial education activities for Judges, Magistrates, Court Staff and the Law and Justice Sector Agencies (LJSA) in Papua New Guinea.

The training was held at the new PngCJE Training Room at the Waigani Supreme and National Courts in Port Moresby, Papua New Guinea from August 17 to 21. Taking into account COVID-19 preventive measures, the training was delivered via the online platform Zoom. There were four facilitators who participated from overseas – three in Australia and the PngCJE Executive Director Mr John Carey who was in the The Bahamas and is a 2018 CJEI Fellow.

Despite the increase in the number of COVID-19 cases in Papua New Guinea, which had an impact on the operation of using Zoom the National Judicial Staff Services (NJSS), the training progressed successfully. The online learning initiative was a first of its kind and a milestone achievement for PngCJE.

Facilitating live from Australia, PJSI Technical Director Dr. Livingston Armytage was the lead facilitator of the event. Dr Armytage has significant experience in judicial education in the Pacific. Co-facilitators were PJSI Human Rights Advisor Dr Carolyn Graydon in Sydney, PJSI Gender and Family Violence Advisor Ms Margaret Baron in Melbourne, Mr. John Carey in The Bahamas, and PngCJE Deputy Executive Director Mr. Samson Kaipu who attended in person.

A screenshot of the virtual training

The workshop was officially opened by 2018 CJEI Fellow Justice Collin Makail. There were 17 participants. Each participant was given an opportunity to do a presentation on a topic based on a session plan. There were also group assignments and assessments where participants were given a topic prior to the commencement of the workshop to research, collate information and give a power-point presentation. After respective presentations, the participants and the facilitators had the opportunity to provide feedback as part of the training process. The workshop was a success with the participants being issued an Advanced ToT Certificate on Remote Delivery of Trainings.

PngCJE continues to deliver Judicial Orientation amidst the COVID-19 pandemic by GIDEON KINDIWA

The COVID-19 pandemic has affected almost all forms of business and altered the normal social and economic order. Despite the challenges it brought, the Papua New Guinea Centre for Judicial Excellence (PngCJE) has continued to deliver trainings and judicial education programs for the PNG Judiciary, Magisterial Services and Law and Justice Sector.

Some of the training programs that were successfully executed were: Judicial Protocol Training for the Chief Justice and Deputy Chief Justice's support staff; Judicial Orientation for new judges; Financial Literacy Training; Training of Trainers (ToT) to deal with Human Trafficking cases; ToT for judges, magistrates and court staff; two Gender Equity and Social Inclusion Trainings; Microsoft Excel Training; Public Service Induction Program; and the recent Leadership, Professionalism and Personal Effectiveness Workshop for managers and senior officials.
The programs were conducted in compliance with COVID-19 preventive measures, and successfully completed with positive feedbacks from both the facilitators and the participants.

One of the highlights this year was the appointment of five new judges to the Supreme and National Court bench. The PngCJE facilitated an orientation workshop to equip the judges with the necessary skills to function in their new roles. "Judicial Orientation is a part of our core courses held on an annual basis for new Judges from PNG and the Pacific Islands", says CJEI Fellow and Executive Director of PngCJE Mr. John Carey.

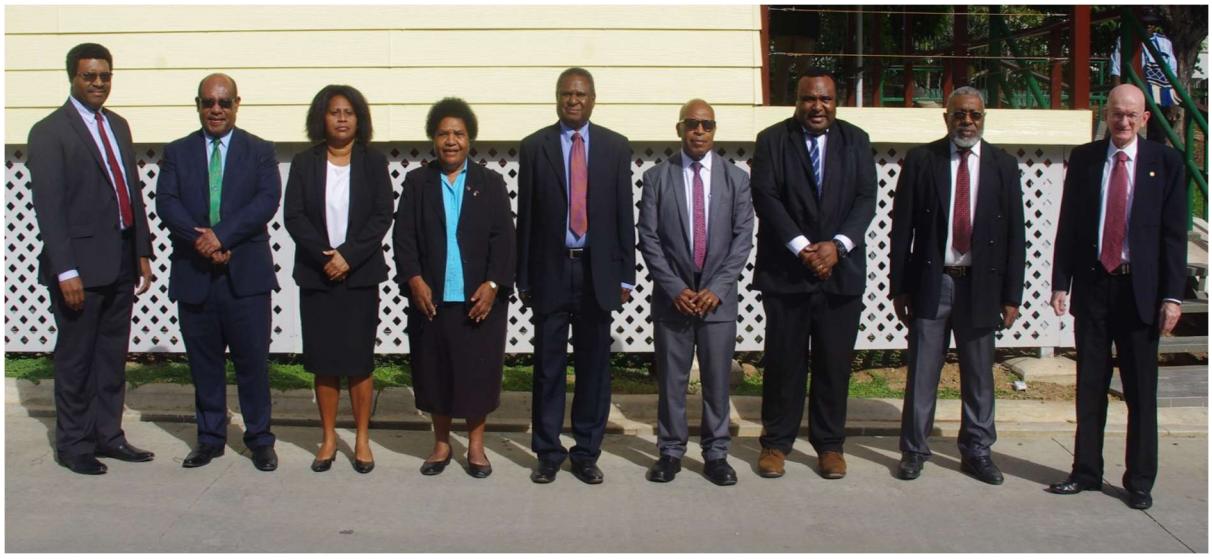
The week-long Judicial Orientation Workshop on June 29 to July 3 was held for Justice Regina Sagu – CJEI Fellow, Justice Dr Vergil Narokobi, Acting Justice Paul Tusais, Acting Justice Elizabeth Nalaii Suelip and Acting Justice Paulus Mapa Dowa. The Chief Justice Hon. Sir Gibuma Gibbs Salika, GCL, KBE, CSM, OBE who is a Fellow of the CJEI welcomed the new judges and reminded them of the judicial power and authority they now possess and the responsibility that comes with it.

"The judicial power and authority of the people of Papua New Guinea has been vested upon you and I. This is a very important constitutional duty for us. We are not mandated by election into office but by the Constitution. We don't go for elections, like in some other countries, but we are mandated by the Constitution upon merit. The judicial power belongs to the people. We are simply custodians of that power," said the Chief Justice.

"Power comes with responsibility. Our role is to use that power with utmost care, diligence and responsibility. We are custodians of the Constitution and of the Rule of Law. To do that, we need to be continuously reminded and addressed of the changes taking place and what is happening around the world and in the country. This workshop is therefore aimed at clearly showing us our roles and duties and how to do those efficiently. Serving judges will tell you of their experiences and how they go about managing their work and dealing with cases.

This week is specifically dedicated to those of you who are now transitioning from the bar to the judging bench. It's a transition for you as new judges to move from your lifestyle of being a lawyer to a new lifestyle of being a judge. It's not an easy task being a judge, it's a difficult job. We were not taught to become judges at university or at the Legal Training Institute, but to become lawyers. You get appointed to the bench to be a judge upon merit. So, I would like to thank PngCJE for facilitating this very important workshop."

Senior judges who who are also Fellows of CJEI that facilitated the workshop included the Chief Justice, Justice Nicholas Kirriwom, CMG, Justice Les Gavara-Nanu, OBE, CSM, Justice Panuel Mogish, CSM, Justice David Cannings CBE, and Justice Collin Makail. Justice Jeffrey Shepherd also facilitated a few sessions.



From left: Justice Collin Makail - CJEI Fellow, Acting Justice Paul Tusais, Acting Justice Elizabeth Suelip, Justice Regina Sagu - CJEI Fellow, Chief Justice Sir Gibuma Gibbs Salika GCL, KBE, CSM, OBE - CJEI Fellow, Acting Justice Paul Mapa Dowa, Justice Dr Vergil Narokobi, Justice Nicholas Kirriwom, CMG - CJEI Fellow and Justice David Cannings, CBE – CJEI Fellow.

SINGAPORE JUDICIAL COLLEGE

SMU | School of Law

MASTERS

SMU Master of Laws

Singapore, one of the world's most cosmopolitan cities, has emerged as Asia's legal and financial hub. As an integral part of the central business district where leading law firms and banks are located, Singapore Management University (SMU) is at the forefront of legal education.

The SMU LLM programme is carefully designed to expand your legal knowledge in classic and novel areas of the law, while simultaneously equipping you with the skills-sets essential to render on-point advice on cross-border transactions or deliver high-quality adjudication and judicial administration results.

LL.M. in Cross-Border Business and Finance Law in Asia / LL.M. in Judicial Studies

Application for the 2021 intake is now open!

APPLY NOW

IMPORTANT DATES

Application Deadline:
10 May 2021

Deadline for submission of supporting documents:
17 May 2021, 1700H

Please review our brochure and contact us. Click on the links below to find out more about SMU LLM Programmes:

Student Testimonials
https://www.youtube.com/watch?v=qp4Ee8uXUss

LLM in Cross-Border Business and Financial Law in Asia / LLM in Judicial Studies
https://law.smu.edu.sg/llm/home

Our professors who have gained insight from diverse work experiences will engage you with their interdisciplinary knowledge. Small class sizes allow for highly interactive seminars that also provide a challenging yet collegial learning environment. The School of Law's active engagement with the legal community, as well as our strong alumni network and the Career Services team, immensely benefit students' future careers.

The SMU LLM will offer you an unparalleled opportunity for advanced legal education in Singapore and Asia!

Upcoming Events

Commonwealth Law Conference	Nassau, The Bahamas 5 – 9 September 2021
CMJA 19th Triennial Meeting	Accra, Ghana 12 – 17 September 2021
NASJE Annual Conference	New Haven, Connecticut 10 – 13 October 2021
CJEI Intensive Study Programme for Judicial Educators	Halifax, Ottawa and Toronto, Canada 5 – 24 June 2022
CJEI Biennial Meeting of Commonwealth Judicial Educators	Gaborone, Botswana October 2022
IOJT 10th International Conference on Training of the Judiciary	Ottawa, Canada Fall of 2022

We are eager to share in the CJEI Report news on judicial education developments, judicial reforms, elevations, honours, or obituaries and other news related to the judiciary such as new innovations to tackle arrears and delays, strategies to improve access to justice, landmark judgments, or recent judicial education initiatives in your country.

Contact us:
Room 306, 6061 University Avenue
Halifax, Nova Scotia, B3H 4H9 Canada
Tel. +1 902 494 1002
Fax: +1 902 494 1031
cjei@dal.ca

Archive
http://cjei.org/publications.html


Season's Greetings
and Best Wishes
for 2021
CJEI
Commonwealth Judicial
EDUCATION INSTITUTE
President
Chair
Founding President
ISP Director
Administrator