

NATIONAL JUDICIAL ACADEMY



Verbatim Report

Special Event -2

**Training of Trainers Workshop to Build Master Trainers on Prevention of
Cruelty to Animals Act, 1960**

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NATIONAL JUDICIAL ACADEMY

Session 1

Overview of Animal Welfare Laws in India: Comparison with International Standards

Dr. Geeta Oberoi - very good morning to all of you and happy new year as well this is our first meeting in national judicial academy at least for civil judge junior division and JMFC for this academic year we were not addressing them and this programme gives us opportunity to come back to NJA and first technical session we will right away begin we have our first technical session as you can see our programme schedule mrs. maneka gandhi is addressing after that justice radhakrishnan will be addressing and after lunch we will have other programmes yes thank you so much madam as your introduction part i am skipping it because maybe madam has to go early we will do it in justice radhakrishnan's session thanks

Mrs. Maneka Gandhi - Hon'ble magistrates from all over india mrs. oberoi ladies and gentlemen thank you for giving me this opportunity am very very happy that very happy to come here to address all of you only because this is such an important area of crime and it is increasing all the time and unless you are sensitized what it actually means there is a belief there is a misunderstanding that people who do animal work are doing it because they love animals they are crazy about dogs they are crazy about cats it has nothing to do with that it is a very important it is the largest increasing area of crime in India today I am not going to teach you the law you know the law much better than I do what I am going to do is simply the reason why you should be applying the law and taking it seriously because it has nothing to do with animals nothing would you like me to speak in Hindi or English which one you would like English ok this year in 2016 the fbi of America which you will agree is the premier crime checking body in the world has declared has made animal abuse which of any form they have put it into their a list of crime upto now it has been in the b list municipal crime somebody hit a dog someone decapitated a cat whatever the point is it was in the b list so it was not taken seriously now it has gone in the a list of heinous crime now what is the reason for that why have they put it with terrorism murder arson and rape this is the fifth most important crime that fbi now has a national register anybody committing any crime against animals anywhere in America that name automatically goes into the fbi list now why did that happen they have done it because they have done not one but 17 surveys in the prisons of America and they have found that people who are in for violent crimes mugging with beating, murder arson rape violent crimes of a very bad nature all of them started with animal crime all of them all the serial killers all of them and they are large number all over the world but most of them in America because they report but they have found that every single serial killer started his activities by killing animals and no one corrected him then the police did not take it seriously the parents thought it was a joke his colleagues said `do more it is a form of power when people kill animals or when they have domestic violence let's take it small I'm not talking as a business but even at home when a man first beats a dog or rwa first orders a dog to be killed then it is only about power let's take an rwa I will swing from issue to issue and I will speak for however long I speak and then please ask me questions an rwa who stands for rwa what's it called

well done resident welfare associations who stand for them nobody who is doing a job nobody who has got a business the only people who stand or 90% of the people who stand in the list in Delhi are people who are retired as clerks in the government undersecretaries now they had a certain amount of limited power the power to say no after they retired there is nothing to do now as an rwa it is an unregistered body with no legal standing they cannot change bulbs they cannot repair the road they cannot interact with the police because they have no authority all they can do is 2 things security guards appointment and killing dogs and they get very involved in these two activities and this becomes a form of power but the number of people who are harassed because of this is unbelievable the second form of power a woman 90% of those people who feed dogs for instance come out at 11 o'clock at night because they are so they don't want to get in anybody's way many of them are single women many of them are women who have children are good members of society they come out they feed an animal the minute they do that the minute they come out there will be a man who will chase them attempt to molest them in this way I am not saying rape I am not saying sexual connotation I am saying it is simply a form of power now this the man who does this the rwa who does this you will find that they will be cheating on their records there will be many other crimes that will follow this this is the kind of person they are so the fbi has recognized that violent crime is related to animal ill treatment let's start with that so they have put it on their list now let's come to in India what do we not take seriously every single day we have thousands of trucks on the road who are going to illegal slaughter houses carrying animals illegally what but every time they are caught they got to court they are caught the police catch them the animals are put into a shelter they will then go to a court and then a magistrate 99% of the time will return the animals now why do they do that because A these people pass off as poor people the average cost of a bull or a bullock is 50 thousand rupees nobody who is poor can buy 90 bulls or bullocks at the same time put them on to a truck so that 30 die and then take them to an illegal slaughterhouse but at the same time this mythology continues there are no poor people in the animal crime business not even one we when I was clearing the roads of bears in the beginning the magistrates said return to the bear owner he is poor not now not now when we finished when we did an investigation in to the bear owners we found that they came from 2 villages in baghpat and both of them I am sorry near agra and both of these villages had people who owned 200 bear each and they would rent them out for 100 rupees a day like taxis out of them some die don't die now fortunately the government stepped in and there are no more bear owners on the road but at that time the order from the supreme court that you have to take the bear and give the owner the money so each bear owner was given a scooter was given other things to do by the government. because he is poor not one of them was poor not one of them their average earning in was about 3000 rupees a day the renters the owners you can imagine how much they were you were getting that I wasn't getting that however a colonel in the government of India was not getting that but they were getting it 90000 to a lakh a month so first let's get over this that anybody is poor two why do magistrates return the animals on the basis that they are poor two because police don't make out the case adequately why do police not make out the case adequately because they also don't take it seriously they feel like ok it has to be cut now whether 90 get cut

or whether 300 get cut or 40 get cut they have to get cut this is not correct this is not correct I told you that you can ask me whatever questions you want after this now if you need absolutely to ask me now..... can we do this later this is not you ask me after this no you ask me after this you ask I am trying to say something that how serious it is and what arguments come before you. you can only react on what the police says the police is not interested because A there is a very strong nexus between the truck people and the police and now why is there a nexus because it is not strange truck that are bringing it in into Delhi for instance 300 trucks come every day 300 trucks have been noted hundreds of times they all it is the same truck the same trucks come the same truck get... the same trucks go the police know every single one in this we have found recently sheets of paper with the the SPCA which is tasked with the job of stopping this SPCA had 2 thanas which we have showed to the chief minister in one column people who have paid for today people who have paid this thana and in which the tick mark is there they can come and the ones that don't have a tick mark are stopped and take to the thana to the magistrate so there is a nexus now the point is what is the result of this why do they not take it seriously why the police not take it seriously because they see it as an animal issue it is not shailaja kant mishra is the is an IG and a very senior IG and one of the best policeman in Uttar Pradesh he has written a paper and in that paper he has talked about the nexus between cow smuggling and buffalo smuggling and terrorism all the money that is coming from this illegal slaughter is going towards guns is going towards the Maoist corridor that goes from Nepal right up to Chhattisgarh and he has conclusively proved it that this the entire funding of guns in this country is actually financed by cow slaughter it has nothing to do with Muslims please get that out of out of your head Hindus sell the animals Sikhs and other people drive the trucks Muslims cut it the slaughter houses we have had slaughter houses that are even owned by a Jain so the problem is of money it is a money nexus and it has nothing to do with religion the point is that this nexus is a criminal nexus which is earning more money for criminal gangs than it is earning than drugs than prostitution that any given time there are over 5000 trucks on the road with cows and buffalos on it the problem starts right at the Haat itself government made haats 40 years ago the idea of those haats was to have farmers selling to farmers law is that only 2 animals can be sold from the seller to the buyer now the second law is that no truck should be nearby third the person who buys should take the animal walking now every haat it is surrounded by trucks the only people entering are people who buy 100 at a time 50 at one time load them onto the trucks under the eye of the police take them we will catch them we will go before the magistrate magistrate will say they are poor give it back to them we have had this problem with camels I want to come specifically to one animal and show you what the problem is there were 10 lakh camels till 1990 I think about 1998 because that was when the survey was done today there are 35000 camels and we are listed by iucl which is an international body that the Rajasthan camel is an endangered species how did we get here in 19 now every time there are 16 camels per truck that come every single night out of Rajasthan Rajasthan passed a law last year that it is illegal to take camels out of Rajasthan it is illegal to cut them the fssai which is the food safety security agency has declared that it is illegal to cut camels the municipal law says that camel cannot be cut so it is protected every which way but they are still coming out of Rajasthan every

night last week we caught 250 camels in mewar. every time they pass through haryana they come to Delhi or they go to again the 2 mafia groups running them in baghpat its one village in baghpat which is basically made of people who are not even of Indian origin who anyway you can understand what I am saying we took every time we have taken camels one magistrate has said no no they are poor give it to them a camel costs to buy 40000 rupees it sells for 1 and a half lakh rupees if it goes all the way to Bangladesh which a large number were going but now the Bangladesh traffic has been stopped so why are they increasing why is the number increasing of being caught no body eats camels the meat is hard it is smelly it takes a long time to cook it and has no fat on it the fat is all in the hump nobody eats the hump so what why is the camel being killed so we did a study and we found in 1965 when the raiders came into India the maximum damages to India were on the Kutch side this is where the largest number of raiders came in now that place has got ravines which during the rains they fill up the it has shifting sand dunes which make it impossible for vehicles to be used so it was decided to make at that time in 1965 they decided to make bsf border security force was only created for that range Gujarat Rajasthan to protect that border which is a porous border of about a thousand plus kilometers with Rajasthan at that point they decided they will use camels and how many camels they found that they needed 1163 camels now these camels are trained they are bought when about 2 years old they are trained then and they are tested for surra and other diseases and then they are put on the border and then they are used for 8 years today today as we speak instead of 1163 the bsf has given an official complaint saying that they only have 530 there are just 530 camels the border is all open all over again now this border you know they are not waiting for a fight the Pakistanis send drugs across this border they send spies they send bombs this is the border we have to watch for because the Kashmir border is heavily patrolled the Sundarbans BORDER with Bangladesh is also heavily patrolled but this border can no longer be patrolled because there are no camels could this be the reason could this be the reason why the camels are being cut our studies say it is and it is the only reason now these 250 camels we caught last week by the time the police came by the time we arrived our informer informed us that 250 camels are there what have the people done just simply slit the throat left the dead camel if a poor man had bought the camel he would try to earn some money from it he has bought 250 animals for 40000 how much money is that many lakh rupees he just they simply just slit the throat and left all the camels that are coming across are left as dead bodies after having their throats slit so who is just simply buying camels to slit their throat what could be the purpose behind it this is the purpose behind it please don't think for one minute they are coming for the food or for the bone all the stuff that you see in tourist shops as camel bone is simply cow bone it has nothing whatsoever with camels but the bsf is the target of the camel smuggler now we took an order from a magistrate who had given camels on superdari last year to these poor people and this team of 5 lawyers and police people under the orders of the Delhi magistrate went to the baghpat village where they had taken the superdari the local police said the same man who has taken the superdari of 12 camels 6 camels has got 99 other superdari chits they went to his house not one camel the man said where will we keep I cut it there and left now but every time it is poor people so iam just trying to say to you we have a strong angle with

terrorism we have a strong angle with making India weak in more than one crore cattle are smuggled out of India every year I am not saying this this is the ministry of home affairs official certification in a meeting held in 2006 now weapons when they go out what comes instead weapons drugs no body is paid in takkas from Bangladesh they are paid in things and this is the report given by the home ministry now what is the revenue loss to India let me explain to you illegal cattle trafficking the revenue loss is not in terms of income tax wealth tax because in any case farmers are exempt so that is irrelevant but have you ever thought of one simple thing the animals that are going out to illegal slaughterhouses how many illegal slaughterhouses are there in Kerala alone according to the chief ministers report to me there are 9000 legal slaughterhouses and there 11000 illegal slaughterhouses now just calculate if we put 100 animals per day in a slaughterhouse the how many are you looking at 20000 slaughterhouses legal illegal whatever 20000 into 100 how much is that 2 lakhs 2 lakhs per day what is the consequence on India 2 3 consequences 1 let me explain to you also that all the butchers will tell you all of them all the butchers anybody in the trade will tell you that the aged animals who are legally over 16 years of age they are all killed a long time ago in the 70s itself the ones which were younger than them up to 12 years age they also have also been killed now the animals that are going they are all 3-4 years of age in them males are very less the males that are left we call them cuttering we have changed their name from calf to cuttera because cuttera means that which is to be killed these are the small males there are no large males left what is happening is the middle east where most of these cut animals are going through deonar through Kerala through all these illegal slaughterhouses they want pregnant cows they want pregnant buffaloes every truck we catch has got 50% pregnant animals and in some cases the pressure on them is so much that the foetus comes out now you and I have to die one day should we that our child comes out of our stomach .. with cows going into labour is that what we are as a nation but lets forget that how does it in deonar we have got films 1st the butcher will milk the cow because she is a milking cow he will take a film of that then he will slice the teats off with a knife then he will cut her and then he will put the teats on top of that because she will get more money when the teats are with her to show that she was a milking cow what is the result of that the result is 2 things 1 milk is the most expensive in India your children buy you spend a lot of money buying milk for your children which is not even less than half anywhere else in the world so one you don't have any animals left so therefore your milk has become very expensive you can't have illegal meat slaughter and milk in the same country 2 80% of your milk is fake it is not even correct and this is not my figure if you do remember 2 years ago there were headline fssai did a report which took them 8 years to do they they brought in milk from all over every state in India and they found except for Andaman and microbar and Pondicherry every single state had between 75% fake milk to 100% who are the 100 percenters west Bengal Bihar in up paras milk which is the government of India milk government of up milk is totally fake now I ask you when a person gets up in the morning when we talk of fake milk I don't mean watered down milk I don't mean milk which has 50% or 60% water I am talking of the milk that is made from white paint sugar oil urea these are the mixtures now it is very difficult to make this milkwhy does a person wake up in the morning bring paint pond water they have

to take sewage water because that has far more what do you call it density in it so you take in sewage water paint oil sugar bit of vanilla essence why does he do it because there is no milk there is no milk even the milk that today we are getting in Delhi for example which is called fresh milk we have done studies on it and found that all it is is reconstituted dry milk coming from china which is bought by mother dairy kept put water in and reconstituted and given to us as fresh milk which is illegal to sell but there is no milk in India even Gujarat is suffering from deficiency of milk why because these animals are going for slaughter so you cannot have both in this country what do you want do you want milk for your children or do you want somebody to carry on an industry that is illegal all the owners of large slaughter chain are not even Indians one is a Canadian 2 of them are from Saudi 1 of them is from Dubai al anam al kabeer Punjab meats these are not Indians none of them are Indians they are all residents of owners who live outside now the law says that every organization every slaughterhouse or slaughter company has to be registered in one place and wherever it is registered the vet will come and he will give certification saying that A this animal is above 16 years² this animal is lame cannot be fit for agriculture work 3 the animal is within the rules to cut it is not a bacchada it is not female it is not....these are the various rules now al anam it works out of Kanpur it has 5 or 6 Meerut ..the main slaughterhouse is in Etawah Kanpur and Meerut where are they registered as an office in Karol bagh Karol bagh is a tala lagaod .. room smaller than that room alcove that is locked but that is the registered office of al anam we did a raid we asked the government of Delhi to do a raid on where were they getting the.. because every time we stopped a al anam truck we found cow meat but they filed certification and all the certification was from a government vet in Delhi who is giving 5 to 6 to 10 thousand slips I have given at the beginning of the year saying that I certify that this meat is buffalo meat or buffalos that were well and over 16 years old sitting in Delhi they have nothing in Delhi but the vet is from Delhi every single slaughterhouse goes to the same vet and yet they are passed they are passed because these slips and nobody has said that what is the impact on India what is the impact on India do you release it is not just milk it is each buffalo is now between 50 thousand to a lakh farmers have just given up buying animals given up a farmer now has what is he using before he used to use cow dung do you know that the congress party before we came in had placed an order with Holland to buy their cow dung because we have no cow dung left this cow dung has potassium it has magnesium it has hundreds of things in it that the earth needs but instead of that we are importing one and a half lakh crore worth every year of urea because we have no cow dung so the urea is coming when urea comes in and it is used by farmers then the land gets thirsty when it gets thirsty then you need to bring out more water so that each farmer will get more water to quench the thirst of his field therefore more electricity has to be generated therefore political parties to win election simply say that we will give you free electricity water that is the biggest way to earn to win election is free electricity and water for farmers why it comes right back to the buffalo and the cow being killed if they didn't die you would have had cow dung if you had cow dung you wouldn't need urea if you didn't need urea your land wouldn't be so thirsty and you would need water and electricity you would have the whole cycle comes down to illegal slaughter that is why we work for animals because the entire impact is on human beings I

am going to divert and tell you what I was talking to dr radhakrishnan chief justice radha krishnanji this morning who is one of our greatest heroes he I was talking to him about vaishnodevido you know when you go to vaishnodevi those who are unwell a lot of people go for cure of cancer, aged people go the people who go there go because and they use horses there are 17 thousand horses which are kept in a very very bad fashion but leave that aside the people who ride the horses are not people who are capable like you they are people who are old not well very fat incapable of walking people who have a problem with their bodies now we have found out in research that there is a disease called glanders this disease is a disease is only left in 3 countries in the world India Iraq and a bit of turkey I have a very bad throat I am actually not allowed to talk now we have found that India has had an outbreak of glanders for the last one year last 2 years glanders is a disease which is a virus it is one of the deadliest viruses in the world there is 94% mortality for human beings the horse dies in 2 days or he takes 1 year to die the one that dies in 2 days is lucky does anybody have chewing gum anybody with chewing gum no thank you thank you very much I have to eat this chewing gum to keep my throat moist anyway now this virus is so deadly that in the 1st world war it was the first known chemical weapon used by armies against each other more people died in the Russian army of glanders being sprayed on them the virus was sprayed on them than by any other disease including malaria now glanders after that all the governments started shooting the horses if they showed signs of glanders the horse that lasts for a year you can make out he has glanders because his veins start popping out so the horse has lot of horses in the country their veins are popping out their eyes protrude that is a horse with glanders now this spreads to humans very fast I asked for an investigation by the government of Kashmir this may last may I said can you tell me have you done any work on glanders yes we have we have checked them and we find a large number of horses have got glanders in vaishnodevi you didn't kill them you have to shoot them they said no we didn't why because it's a poor man imagine just imagine your grandmother going to vaishnodevi gets on a horse she comes from Orissa she goes there she comes back the horse has glanders you get it like this it is even worse than the common flu you go literally like this she goes back to Orissa she gets ill after 2 week because the incubation is 2 weeks no doctor in India knows how to describe or prescribe glanders she is dead then you will say old age heart attack some or the other but it is glanders we have gone to court now saying to remove them the point is is it to do with animals or is it to do with human beings every time we have an animal problem it relates to human beings let me come to the simplest one of all which comes before you again and again and that is dogs the government the supreme court has again and again and again and all of you have been party to that said that sterilize them why it is the supreme court not say shoot them finish it they are a damn nuisance they bite they roam bark at night remove them simpler to shoot them for 50 years we were killing dogs we were gassing them we were chaining them we were burying them alive we were doing thousands of things to them why did the supreme court stop them because the studies came from all over the world after 2 years in India from who saying that if you killing dogs is not the only way you cannot get rid of them the moment suppose this room a dog is a territorial animal but he only goes where there is food the food doesn't have to be the roti that maneka Gandhi feeds the food has to be what the

food is I will come back to that later but if this room can keep 21 dogs then if you kill 18 of them 3 run away while catching those 3 will come back here and the female will have within 1 year she will have 20 puppies 21 has to be there now the way we have is either we keep killing which costs us money or we sterilize them and we cheat nature till we can get our garbage systems in order we sterilize the dogs why should we sterilize the dogs why we will kill what is the big deal because again and again it has been proven that a dog is a scavenger it is not dependent on the half roti given by maneka Gandhi he depends on rats you have seen the rats we have not small white rats they are big within a pair of rats within 1 year become 36 thousand they have absolutely no predators left in India vultures are gone kites are going what do you have they live underground they live underground not because they are scared of you and me because they are scared of their predators which are dogs and cats now you will say that this is just a theory whether is it who's theory it is a theory I will urge you many of you are young people younger than me but if you remember Surat does anyone remember Surat Surat collector went and said I am efficient in 3 week I will clean Surat what cleaning did he do not that he touched the garbage 2 things he did the beggars he removed and killed the dogs by poison in 3 weeks all the dogs died and the whole of India applauded that see he did so why can't we do within a week the place was awash with rats awash I have photographs lakhs of rat because the garbage was there then when nothing else was found when people went to garbage bin to throw garbage the rats bit them the whole of India was scared of plague there were plague cases in Surat if you remember the amount of revenue we lost tourists didn't come for 2 years we became infamous we had no way to fight people wore and roam that it will have some effect the most frightening time in India thank you so this is what happened this is why we say sterilize the dogs Chennai found a better solution they didn't kill any dogs they also didn't sterilize there but the dogs disappeared why because they put the garbage in movable very high garbage bins with wheels which they learnt from Singapore so they can be pushed in and overnight the dog population halved but where did they go they would have gone somewhere else where there are rats because the rats could not reach the garbage bins the dogs could not reach the rats no dogs are going to garbage bins to eat carrot and radish or banana peels they are going to eat the rats that eat the garbage and that is why we need them in the city if you don't have them you will get pigs if you will get there has to be a scavenger for the rats we don't know what is going to be if we get rid of the dogs therefore it is easier and the supreme court has recognized this thousand times over that sterilize them and leave them where they are when we take them out of 1 area now some rwa goes to court saying that they are a nuisance 20 dogs are there our children can't come and play now those 20 dogs are there because a people are feeding them 2 they were born there suppose I take out those dogs from here and I put them in the next colony here they know Mr. and Mrs. bagga they know Mr. and Mrs. Kumar they know Mr. and Mrs. Chauhan they will never touch them specially if they are sterilized no sterilized dog till today has ever bitten because their I am going to finish off by telling you the 3 reasons why they bite but if I take them and put them in the next colony forcibly they don't know Kumar bagga Chauhan anand Gandhi they don't know anybody they don't know the sources of food so they become frightened and when they become frightened they become liable to bite there are 3 reasons

why dogs bite 1 the male bites if the female is on heat and he is running after which happens twice a year after that he is impelled by sexual urge and if you come in the way of that sexual urge you will get bitten the second is when the female gives puppies she is frightened to death as we are as women as men that her children will be bitten taken away cross the road hit hurt so she will bite in advance the third is if you go out of your way to hit and hurt an animal ... this word spreads that this man hits and then that person or his family is liable to get hurt so these things are cured by sterilization the sexual urge disappears there are no babies that are born the animals get less by themselves as the garbage situation improves there were 75 thousand bites in Delhi 1 year ago now there are 12 thousand and the population of Delhi has doubled so we are getting there we are getting there the problem we have is government of India put 700 crore rupees a month a month into stopping polio but into anti rabies they have put 1 crore a year for the whole of India what can we do with that an operation take 850 rupees because the anesthesia costs 400 rupees because you have banned ketamine which was the cheapest and the best drug going but we don't have that anymore so we are at problem government won't sterilize they make ngo sterilize ngo sterilize you have to give them money you don't give them money because you have 1 crore for the whole of India so how much can we do if someone comes in and says that you give 700 crore for polio put the same for 2 years into India you will finish off with dogs and rabies and everything else we have to recognize the seriousness of this instead of saying pick him and throw him there now you will come across newspaper articles every now and then saying a child was bitten by a group of dogs you have seen those we have investigated into every single case that we read in the papers because it worries me more than it worries you I like children and it is important to me to find out how a child has been attacked and what have we found we have found that in every single case it has happened before a meat shop the municipal law says there cannot be meat shops in a normal market they have to be in a meat market and the meat market has to be covered with glass it should not be open to the public it should be in a closed building as it is anywhere in the world including Bangladesh it is only in India that the municipal law is never heeded by judges you don't look at it the police don't look at it the municipal man take money 4 garment stores a meat shop 3 vegetable shops and a shoe shop that is how our bazaar goes so when in a meat shop he is got the meat is absolutely open what happens is the flies sit and those red and green flies bottle flies then sit on the vegetables so that most of the vegetarians also get what you call it tape worms in the brain not because they are eating meat but because the fly has sat on a vegetable more importantly a lot of people buy meat in this country that son father is busy go to the shop and get half kg they have running accounts with eh person nobody buys from an unknown meat person you have your person every month you go and pay him or every week but the child or the maid picks it up in many many cases in all the cases across India dogs are sitting in front of these open meat shops because in the evening before going home they give them meat pieces and they are waiting the whole day for this raw meat now they see a small human being a teeny weeny human being coming taking a bag of meat and they start running they run after the child the child starts running the child trips and when the child trips in the effort to get the bag of the child the child is often bitten very severely where does the problem lie not with the child and the dog the problem

lies with the meat shop which should not have been in that area but nobody has bothered nobody has come forward and given a police pronouncement a judicial pronouncement saying remove whether it is here in pilbhit I have been I am the third most senior member of parliament in parliament I have been member of parliament for 7 times I can't get the meat shops off I got there remove all the structures next week I make a surprise visit all are back all you have to do is pay a municipal what you call it worker and you are back again so let's put attention where attention is due these are some of the problems now when you have for instance there has been recently a controversy justice radhakrishnan gave a landmark judgment in which he banned jaliikattu animal racing bull fighting in goa what did he do it for my colleagues now will show you films of what was happening but we did extensive studies it took us 20 years to get to the point where we could go to the court even because we are animal people and we animal people we know you will laugh us out therefore our science and our study has to be 20 times more deep and more science based than anybody else so we went and what do we find cattle racing bull fighting cumbala which is you know what cumbala is you take cows you tie them cows and tie them to a bullock cart and you make them race through this much water now when they race the pressure of the water is so great that they have to be whipped and whipped and whipped so that they can even pass through the water it is not a water animal secondly it is not a racing animal it is a slow moving gentle animal which you are now trying to win a race with now when they are passing through many of them break their legs because they are stuck in the mud over that beatings their legs are stuck they die there the percentage of animals dying in cumbala is about 50% what is the benefit why were these banned because it has nothing to do with farmers it has nothing to do with racing for agricultural pleasure that.... no farmers do this these are special bull cow bullock creator business it is like the bears there are people who raise these animals like vegetable they feed them well they keep them well and they keep them for that one day like they do in Spain they keep them for that 1 day in which they will die and why do they do it because it is one of the largest earners of money in India an average race is between 5 to 10 crore rupees people business people come in from Bombay Delhi pune and they bet you may have read in the newspapers that this year 400 crore rupees was spent in Andhra Pradesh on cock fighting 5 or 6 ministers were there for the cock fighting all of whom are known to be multi billionaires because these are races you go to prison they will be having cockroach races they put their 12 rupees 10 rupees in that these we in Punjab there are politicians whose names I have given to the cbi who are involved in dog racing where do these dogs come from they are being smuggled across the the border in exchange for drugs they are a special type of dog called bully dog which come into India which will kill a human being faster than they will kill anything else and they are being kept by these lafangas rich peoples sons in Bathinda and there they are raced every week and the average amount of money crossing hands with alcohol with gambling drugs in these secret dog races which has now spread to Gurgaon is between 50 lakhs to 2 crores it has nothing to do with those animals they have a face book I will show you where did I get this information from their own Facebook they are writing there hello yaar how did your race go arre yaar I had to give 50 lakhs to someone I am not going to take his name is it then what did you do with the dog he said I was so fed up with the dog

I tied his legs and threw him in the canal they have pictures of themselves standing with guns and the dog which is covered with blood your dog lost 3 races now what will you do I will shoot him anyways 3 more are coming this should should we allow this should we allow this this is what justice radhakrishnan and this the government reopened and then every single senior lawyer not every single but a great number of senior lawyers came and stood free fought this case and got the ban reissued which is an amazing credit to the judiciary but I am saying it is nothing to do with what was the argument that they are poor farmers to give you an example in goa they have declared that coconut tree is not a tree tomorrow they will say maneka Gandhi is not a woman tomorrow they will say that what you wear is not clothes so the tree so no longer a tree when I spoke to the goa government because it is part of my party and said what are you mad or what what are you doing and they said no we are helping the poor people which poor person goes and cuts his coconut tree it is only builders who come from Bombay and Delhi who will cut thousand thousand trees at one time and make some stupid resort and finish off goa so the same thing races bull fighting in goa which I banned who is the main bull owner at that point Churchill alameo who had over 300 bulls in his stud farm Only for bullfighting so he announced and said if Maneka Gandhi comes 2 t to Goa I will have her murdered this is the Chief Minister so I arrived the next day and I stayed in a hotel and I gave a Press Conference and I came back who wants to murder me can stand in line and I stayed there for a week in Panjim till I went away later Churchill came to me Sold His bulls apologized I am became one of the biggest informants that where it is happening secretly these were the races that were banned and when they were banned all the Anti National elements who were there putting their black money in gambling those disappeared so we do things with the science behind them now I want to tell you something because it will come before you all the time there is an act that was passed last here it is called it is called the motor vehicles act in the motor vehicles act the government has made a sincere attempt to try and stop smuggling of cattle and that is now the law no and you must know this no trucks can carry any animal weather chicken or anything unless it is specifically registered as an animal carrier by the RTO it can only be registered with the RTO if it has a special designation color color whatever but more than that it has to be welded partitions this law has come into force on 1st January 2000 and 16 yes and every truck has to have a welded partition switch your carry cows or bulls the losses every truck can carry no more than 6 animals so it has to have partitions now so that 6 animals can be put and not more the losses not more than 40 goats per truck normally normally be illegal smugglers carry between 400 to 500 goats per truck now they have to have partitions which of 40 partitions so if any truck case comes before you it is Per se illegal because the motor vehicles act says you cannot carry anything no truck unless it is registered as animal carrier with permanent partitions let's let me tell you the health consequences of overloading that your boss if you have a boss has called you and is going to beat you like for be the prime minister has called you and you are in trouble what do you feel you get a funny feeling in your stomach I start feeling nervous when I get nervous there is acidity made in my stomach you know that and your stomach goes.... this is a physical condition in which acid is formed when out of here this acid is actual acid if I take it out my

stomach which is cotton epithelial lining which does not allow it to go through the stomach unless it happens all the time in which case people get ulcers but otherwise if I take acid out it will burn my hand now this acid and adrenaline which is formed with it takes 24 hours to come out through the urine overloading the animals and take them it take 4 days to take them and cut them in that 4 days whatever acidity and adrenaline build happens in the animals it will remain in the meat when you eat this meat you are actually eating huge amounts of acid and adrenaline which are so bad for your health that is why all over the world except in India there is a law saying downed animals cannot be killed they die by themselves is different but they cannot be used for meat a downed animal is an animal that has got anything wrong with it anything leg is broken just had a child in the truck itself its eye is ruptured and the only reasoning for a downed animal not to be killed is because it is a health menace but in India bring beat I will show you how animals are taken off trucks pull by its tail because it is not coming out and it comes down they don't know how to get it up to take it to the slaughter house so put chillies in its anus and put acid in its eyes out of sheer fright you take it this is happening in all the slaughter houses whether Delhi whether Meerut whether Pilibhit whether anywhere this is the meat you eat severely dangerous one vet per thousand animals he is supposed to check every single animal that goes to see that it is not diseased animal one vet 30 seconds can he check no no legal entity has ever entered a slaughter house I have gone not once 200 times my case for which mc mehta got an international award shut down idgah so we made another idgah and the law is nobody can go inside it before it used to be a transparent place now but in idgah we found what happens you write government has made the slaughterhouse you write I the legal position is that everyone has an upper limit they can't cut more than that so idgah had a limit of 700 animals a day they were cutting 40 thousand how were they doing that the private person if I want to export peas I will buy a field plant peas I peel it can it take it to the airport I get the license I export it but if I want to export meat then I grow it on somebody else's land send it into the forest so that it cuts down all the small shrubbery of the forest reducing the forest land to a joke in this country removing the rain that is falling so that all my farmers die and then I take this animal I take to a government slaughterhouse I take 500 animals I pay 1 rupee even then I can't cut 500 because the upper limit is 700 and there are other people waiting there so what do I write I pay the vet and I write 20 so the government of India cuts for me 20 but they cut 500 animals of mine it is their electricity and water their scissors their paid for butcher and then I then have it cleaned and packed and then I take it to the airport and how much does the government get 20 rupees how much the loss has deonar produced every year since the day it was made only it gave written undertaking in high court that if we make slaughterhouse because the high court they gave it in writing that we will only have slaughter house to give the people of Bombay food we will not export now 90% is exported nobody has challenged it poor people they it goes out at deonar has a loss of 70 crore a year that's coming out of your pocket and my pocket nobody is allowed to keep tabs how much is coming and going because it is owned by the butchers themselves they will kill you if you go inside same one with the one in Delhi you can't even get inside and come out alive or expect to come out alive and no vet sits there because he doesn't have to check he get his hafta at home

every vet fights with every other vet to get that particular posting so that they can sit at home no need to go is he going to check the upper limit for this one is a thousand animals how many are being cut 50 thousand who is going to check I get money for 50 thousand end of problem the member of parliament get used to get a certain amount because he had it made there this and in return you get diseases you get downed animals your children get cancer you get the problems associated tapeworms acidity adrenaline hormonal imbalance gangrenous meat is the biggest problem but why because all the laws are being broken and every time an animal organization goes to court they will be told they are hurting poor people and their livelihood. this is you have to understand these are some of the issues now I want to give you the last thing there are many many issues but I know that you will bring it up in your questions so I am going to tell you about 1 thing which is killing India which government knows about and don't do anything about which I would expect that sooner or later the court will start taking notice of in 1983 there was a man who used to go door to door to sell medicines small man he had a relative who lived in Canada that person came and he came with another person a Canadian and they organized the sale of a drug called oxytocin how many of you have heard of it put your hands up most of you have some of you have now oxytocin is I as a woman all of us all women have oxytocin in their body this oxytocin is a minimal amount but it only comes into play when we have babies now if I as a mother am having a baby and this baby doesn't come out of my body in 24 hours I am crying and crying and crying and there is I can't bear the pain then the doctor will give me an injection of oxytocin to send my body into spasms the uterus will start working much faster and harder and the baby will be pushed out that is the only use of oxytocin the second thing is that when my baby is hungry my breasts will fill with milk because oxytocin starts working so it creates milk and milk comes it doesn't create it it just helps push the milk out when there is a baby now working on this principle the this company was opened called hemofarba in thane it is German owned the man is an Indian he is become a Canadian citizen he comes and goes now this company started selling oxytocin to dairy people and within 2 3 years the whole India every dairy is giving oxytocin twice a day to buffalos and to cows now what does oxytocin do it helps the milk come out faster normally what used to happen was earlier the calf used to be kept in front of the cow and the cow will see the calf and give milk and that milk you steal and give some to the calf then a new time came that you cut the calf you didn't want to give it so you cut it and put its head on a stick and show it to the cow then also the cow gave milk she knows the baby is dead but she sees his face but the point is it take 2 or 3 days for the thing to start smelling to rot then we came to oxytocin now oxytocin puts the cow and the buffalo into labour twice a day now all of you who are women here who have had children you know how labour hurts its a killer god gives us a short memory that we forget after the child is born otherwise no woman will give birth again it is that terrible so this poor cow and buffalo jump like horses when they see the injection where is oxytocin sold it is illegal to sell it so it is sold in kirana stores paan shops cigarette shops it is called phataphat so you go and ask for phataphat and they will give you a vial which has already got water in it or they will give you a powder one rupee and you mix it with any filthy water you want put it into a used injection and inject anywhere in the body and within 30 seconds to a minute the milk will

start coming even if the cow has mastitis even if the cow has got tuberculosis anything now this milk has got oxytocin in it this oxytocin comes straight into your milk it cannot be boiled out it is a hormone so what all India medical institute and other organizations have done studies and they have shown 2 3 things when the cow has oxytocin every day then she starts getting she starts losing all her ability her resistance to fight other diseases so this what does she get she gets something called ketosis how does she get ketosis this cow becomes barren in 2 years because every day her uterus is going like this so the muscles of the uterus at some point they give away so she becomes barren in 2 years so the man who is giving this injection in dairy nagar in Delhi in Patna everywhere he knows that she is going to become barren so what does he do before he used to give break of 9 months calf is born rest for 9 months then after 9 months get her impregnated now he on Monday she has the baby on Tuesday she is impregnated he wants those children back to back because he knows that after 2 years I have to send to slaughterhouse so when she starts having children back to back she is got a baby in her stomach she is giving you the milk at the same time she develops break down of protein and it is a disease called ketosis when she has no protein left in her body she is then open to any illness 80% of herds in India have got leukemia they have brucellosis brucellosis translates into tuberculosis in human beings the spike in tuberculosis that has come into India despite better feeding less malnutrition has come because of oxytocin and it is the same spike that has come from 84 onwards 83 oxytocin entered India now tuberculosis leukemia all these are disease that we cannot deal with last year in all India medical institute alone there were 60 thousand cases of leukemia which is unexplained unexplained they don't know where the hell it came from it comes from something called blv bovine leucosis and this has been there has been a cohort study done by Berkeley in which they have found women with breast cancer have got bovine leucosis that means they got cancer from the cows oxytocin oxytocin oxytocin we it is banned technically every time I have told the government I have told Mr.____ at least 14 thousand times I have brought it up in cabinet each time there will be 1 or 2 raids or the thane place he will give them he is making between 300 to 400 crores a week because that is the market in India he has a partner in Calcutta they are are not making enough to sustain the whole of India the partner works as a safai karamchari in the Calcutta municipal corporation he has just been caught he has 4 wives 5 wives 6 godowns and the entire oxytocin is coming through FedEx from china it is entirely a hawala operation because it is being listed here everything I am telling you is known it has been brought up in cabinet it is been given to ib to investigate raids have already been started but it is coming and we pay technically the people importing it into India are paying 3 dollars in actual fact it costs 45 dollars per kilo which means the money is going out through somewhere else because 3 dollars is what is being paid from India FedEx brings the whole thing in 1 kilo oxytocin can make 2 crore rupees so you pay 45 dollars make 2 crores because you dilute it like heroin you keep diluting and diluting and diluting mixing with water until it goes this oxytocin is killing India it is giving women miscarriages what does it do to human beings tuberculosis leukemia are big things smaller things all children who are drinking milk now with oxytocin in it have got weak eyesight so more children today are wearing glasses than have ever worn them even when our nutritional levels were low 2 it gives women hair on the

face it gives men baldness and prostate cancer women breast cancer this is one drug now we have said thousand time I have said that let government make it because gynecologists say that we need you can't ban we need it but no woman now even the village women don't wait for 24 hours to have a baby they have cesareans they have 10 other ways of taking out my own son was born through forceps after 10 hours of labour so there are thousands of ways of doing this so we don't need oxytocin but no court has ruled on it the government won't do anything every time we the fssai people raid they come back many crore rupees richer and there is nothing I can do about it we have changed them 50 times round we have put ib cases on those that were posted there all of them have unexplained wealth but we know how to explain it and the man is not even an Indian and he has destroyed India this is some of the things if I say this it is not an animal case even though the animal is suffering and suffering and suffering every time an animal suffers a human being suffers more every linkage we see whether it is dog do you know that we are the only country in the world in which it is legal there is an act in parliament which makes it legal that in your rice and wheat you have 5% rat droppings are allowed you are allowed to eat rat feces you cannot go to court why because rats are in your silos and why are they in your silos and cant come out because we kill the snakes those are the only ones that can stop the rats in the silos. but instead of having when Rajiv Gandhi wanted to kill wanted to clean the Ganges nothing worked nothing worked 17thousand crore 20 thousand crore no difference he came across one idea he put turtles into the Benares part of it the Benares part of the Ganges in spite of being downstream from so much filth became the only clean part the only clean part and then what happened within 4 years all the turtles were poached and take to west Bengal where they eat turtles and every time we caught them caught trucks with turtles they would give a 50 rupee magistrate saying they are poor but the Ganges went I am just saying that we tend to understand when I am speaking to you all I am trying to do is to open the universe and say everything is linked to everything we allow something illegal to happen because we feel for inequality in human beings but we create a situation which is bad for all I am going to stop talking now and I would like to thank you all and Mrs. oberoi for giving me this time and I would like to ask me whatever questions you would like. We may not get this opportunity again so therefore please ask me

Participant - madam I am bhupendra kumar nath I have come from Assam I have come from the state of the famous one horn rhinoceros so madam despite by the various measures taken by the state government the rhino poaching in Assam is still rampant so is there any action plan on your part to tackle the menace of rhino poaching that is my question

Mrs. Maneka Gandhi - no I can't do everything I wish I could but

Participant - That is why madam

Mrs. Maneka Gandhi - let me explain to you let me explain to you what is strongly feel about it china is eating us is killing us dead every the rhino the horn of the rhino is mainly is only made out of hair now if I tell you to take this hair and eat it chi is my reaction right if I tell you to eat

my finger nails will you eat no but the hair normal hair keratin is what the nose is made of the horn but the Chinese have a dreadful thing called like our Ayurveda they have quack Chinese medicine in that they use the horn for everything not only horn pangolin you know what a pangolin is you may not have seen it it is so big it is very shy it has scales on it it is the only animal in the world which has scales 20 thousand pangolins are going every year from India to china they are using it just simply for headaches take a disprin why you need to eat pangolin but they are going and the pangolin for us is a very important animal it is the only animal in India that eats termites so therefore it is saving your forests but they produce one baby every 2 years how much can we keep pace same problem you have either you order as a judge one day no guns in Assam nobody is allowed to have legal or illegal then we will know how to save the rhino let me explain to you one small thing Russia upper Volta Africa there is an illness a very serious illness in the villages and people started dying they found that it was a particular worm and why and where did they suddenly get this worm from till then that part of the I think it was called the I forget the name of the river but their river used to have hippopotamus in it and this in Zimbabwe now Zimbabwe had opened the doors to kill it and somehow this had spread and in this country they had tourists were allowed to come and shoot rhino is vegetarian animal it is called the water horse the hippopotamus it lives why am I saying rhino sorry hippo it lives in the water now till the time hippos were there in the river so they walk in the water and they scramble the water like this while walking its a mammal which likes being in water so when they were doing this the worm which was at the bottom could not take root because there was constant churning of the sea bed of the river bed the minute those hippos were killed the worms went into the water the villagers all died so we don't know the elimination of the rhino what will happen to give you one example the hornbill of the north east the most beautiful bird I have seen the horn bill has been killed and killed and killed because it has become a symbol of power so every village Pradhan is wearing this stupid cap with a hornbill on it it is you have seen that right everybody from the north east has seen that there are less than 500 hornbills left in India and now we have discovered that the hornbill is the only bird in India in the world that can eat a peepal seed and when it falls out of its stomach from its anus it will grow the peepal by itself once the hornbill is extinct we will have to plant the peepal because we cannot possibly have nature do it for us because no other animal spreads the peepal tree and that is the ficus religiosa so we don't know what the rhinos disappearance is going to do but it will do something when the vulture went none of us said anything ... such a ugly animal smelly eats meat the leaving of the vulture the disappearance of the vulture has created one huge problem every village in north India is now under threat because when a cow died or a dog died or any animal died the vultures came in 15 minutes and cleaned it up and went now the corpse remains for 10 days 15 days flies sit on it sometimes some fool will throw it into a water body staining the whole water body but what to do no one else is willing to do it so therefore the vulture itself has created a huge amounts of diseases the disappearance of the vulture anyway so I'm sorry I can't save the rhino but you can save the rhino by going back and giving an order that there will be no guns after all the dog sterilization was given by one magistrate it was not the supreme court that did it it was a Delhi magistrate called ck chaturvedi who gave the first order saying I have

read this entire thing I have read the who there will be no more killing of dogs on that we started building the cases

Participant - madam thank you for being so eloquent ma'am thank you for bringing things in perspective thanks a lot for being so eloquent and putting so many things in perspective but being a resident from Assam I humbly request you to take up the issue of rhino poaching

Mrs. Maneka Gandhi - everybody has taken it up

Participant - right forum I know if you take it up the issue then something will happen

Mrs. Maneka Gandhi - ok I will take it up

Participant - that is my strong belief in you

Mrs. Maneka Gandhi - do you know that I built the rhino shelter in kaziranga I built it yes that's right which vivek menon is now taking care of and that is the only rhino shelter in the world I built that and I wish I could do more if you can just stop the road I think one judge has now passed an order that the road has to be closed you know the road that is going next to kaziranga

Participant - yes yes

Mrs. Maneka Gandhi - because when it floods the rhinos come out when they come out all the shooters are sitting on the road to shoot it

Participant - I have a strong belief that if you take up the issue then at least something

Mrs. Maneka Gandhi - will you take it up and ban the road

Participant - yes

Mrs. Maneka Gandhi - if you ban the road I will do the rest

Participant - ok let us do it together madam

Mrs. Maneka Gandhi - deal deal we need to be in partnership to change India we need to be in partnership

Participant - good morning ma'am I am debasis kashyap from Assam only I would not like to ask you any question but I would like to bring to your notice another aspect related to rhino killings actually recently it is reported in the newspapers and media that it's not the rhino poachers that are killing rhinos in Assam actually extremist organizations from manipur

Mrs. Maneka Gandhi - it is the bodos

Participant - yes

Mrs. Maneka Gandhi - and they are getting money from china to carry on their agitation it is only like the cows giving money for the whole corridor of anti-nationals yours are being funded directly your terrorist organizations and the rhino nose is being exchanged for guns you know that and I know that it has nothing whatsoever to do with villagers killing poachers killing it is straight terrorist organizations

Participant - and I have heard those extremist organizations are being helped by the local villagers but actually they are bangladeshi immigrants

Mrs. Maneka Gandhi - because they will get a percentage see it is not even just the rhino horn in itself it is also the fact that china is pouring in money there to continue with the terrorism so that we are unstable in the north east you know that

Participant - There is another aspect ... illegal foreigners from Bangladesh

Mrs. Maneka Gandhi - yes absolutely absolutely they get the money

Participant - that is also an issue

Mrs. Maneka Gandhi - I agree there is nothing that you are saying that I don't agree with you know that and I know that but the point is we need now in the absence listen to me you are really important people sitting here which is why cabinet minister has given up the day in which I have a cabinet meeting to come here to speak to you because you are so important in the absence of any political will it has to be the judiciary that steps in and you are amongst the important levels of the judiciary that make law yeah

Participant -....the law has to take a more stringent aspect as in like to give an example subject to correction the prevention of cruelty to animals act defines only pain it doesn't go into the aspect of hurt grievous or otherwise do you now think that it is time to have an overhaul of this act

Mrs. Maneka Gandhi - no the point is I am so scared that if we take it to politicians to overhaul it all the vested interests sitting in parliament will say no no strike it down totally remember this when it came out in 1960 we had a different quality of politicians pandit nehru took where did this act come from it was an independent act its the only independent act which the government took what is called suo moto and said yes rukmani devi was an independent member of parliament she brought it on friday you know when those independent acts come in which no minister even looks at no government looks at you just throw it into the dustbin pandit nehru heard the act and said let us adopt it it was then adopted from and it has been the only act the only change he made to it was that he took it to cabinet as it should be and they agreed that the fine should be 50 rupees yes and it was 50 rupees at a time when my father who was a colonel in the army was getting 1200 rupees that is how important they thought it was now 50 rupees if you give to a beggar he will spit

on you so the point is yes secondly the act has a grey area in section 28 which says should you return the animal superdaari to the butchers or not now fortunately we have we have precedents called mustakeem and other in which the judges the high court of supreme court has ordered that no animals are to be given in superdaari to the criminals otherwise this is the only act in which the man is saying yes I am a criminal take 50 rupees and give my animals back to me and he takes them back the man had 99 camels

Participant - just a second part although it may sound controversial

Mrs. Maneka Gandhi - I cant take the act to parliament because I am too scared

Participant - second part although it may sound controversial but can we really say that religion may be used as a excuse to kill animals although supreme court has because section 28

Mrs. Maneka Gandhi - religion if it was a matter of religion if it was just eid I would say ok fine but are the hindus not killing in animal sacrifice in temples

Participant - I am talking religion as a whole ma'am

Mrs. Maneka Gandhi - no I am saying religion has to be divided it has to be divided it can no longer be used it should no longer be used to kill animals because it is destroying India if you kill that many animals on one day you are creating a problem for farmers for everybody else but unfortunately the Hindus are giving up animal sacrifice see uttarakhand has ruled no animal sacrifice himachal they have ruled no animal sacrifice Maharashtra I think now they have ruled magistrates have ruled specifically so sooner or later it is going to be given up it is getting less and less and less we can't do anything about bakr id because it is mandated by law iam saying even if we just stick to the law and stop the illegalities under which people say I'm doing because I am a Muslim I'm doing because I am a Muslim that perhaps we should get above

Participant - Thank you ma'am thank you so much

Participant - good morning ma'am I am from Punjab my name tps randhawa and I my question is just related to his query like if some animals are recovered and the police they are kept in the police station and what to whom the superdaari should be given

Mrs. Maneka Gandhi - superdaari should be given to a gaushala or it should be given to an animal welfare organisation which is registered with the animal welfare board

Participant - but if nobody comes forward

Mrs. Maneka Gandhi - You should tell the police to find somebody that is not your job but you can't use it as an excuse of giving it back to the butchers there is no gaushala give it to the butcher

but at the same time I don't think the municipalities are doing their job there is stray cattle accidents people are being killed in accidents but the municipality they are not removing those animals

Mrs. Maneka Gandhi - Answer to it is not to give it to butchers

Participant - No that s but the state government should be impressed upon that there should be proper cow sheds cattle shelters where these animals should be moved and kept

Mrs. Maneka Gandhi - Punjab the high court Punjab and Haryana high court 10 years ago has given a striking judgment saying that the Punjab and Haryana government have to make infirmaries every 10 kilometers for animals to be taken and put in

Participant - But I don't think

Mrs. Maneka Gandhi - They have not done it

Participant - Yes they have not

Mrs. Maneka Gandhi - Either you as a magistrate go for contempt lets start using contempt there are wonderful laws that your courts have made government doesn't give a damn

Participant - Thank you

Participant - I will give little more clarity to this question because for purpose of doing any act in pursuance to the question asked by my learned brother we have to differentiate or rather it is already has been differentiated in the act the species of animal once you are coming from bovines are separated from other animals some have been put into list of these you can treat it as food there is section 11 d in

Mrs. Maneka Gandhi - can I interrupt I am just going to interrupt for 1 little bit and that is suppose we don't give any protection to the buffalo suppose but the buffalo has the protection that if it is going in vehicles only 6 can go in a truck now from that you remove 80 is it not patently clear that they were going for food you have to use that cruelty not to give it back to those people we are saying cut them but cut them under the law

Participant - beside that this section 11 we can also work 429 suo moto

Mrs. Maneka Gandhi - absolutely

Participant - thats not the problem

Mrs. Maneka Gandhi - Yes now you have mustakeem from the Supreme Court I leave this here

Apart from that even for the cruelty also if we are prosecuting any person for section 11 c d or e whatever that maybe we can also invoke 429

Mrs. Maneka Gandhi - Absolutely

Participant - but regarding the answer of my learned brother we want to say that we are not required to give animals to anybody not but those are not the animals which are put into first schedule those are to be given to gaushalas or the infirmaries and the maintenance of those animals has to be paid by the person who claims himself to be owner

Mrs. Maneka Gandhi - Absolutely

Participant - Of that animal

Mrs. Maneka Gandhi - Absolutely sir absolutely

Participant - And it is not the case that we are going to give it

Mrs. Maneka Gandhi - but what is happening I have sanjay Gandhi animal care center the courts keep ruling against us give it back give it back now what is happening a man will come we have held his buffaloes for the last 4 months he won't pay anything we have fattened them up he will take and go

Participant - I think I am the first who has given the compensation or rather maintenance charges to you for per day first order was regarding the birds and thereafter

Mrs. Maneka Gandhi - But you still give them back the superdaari you still give them back to the butchers

Participant - Birds cannot be given back to the butchers

Mrs. Maneka Gandhi - you will give them to the pet shop I am saying you take the animals from us put them in spca or any other place we don't get any joy out of this if I had to earn money then I would start a business I would steal in politics directly or indirectly but keeping those animals for me is a big headache and it breaks my heart it kills me when I have to return it to the butcher it is better that you take a limb from my body no I am not arguing it

Participant - no no I am giving I am trying to give you 2 ways in which you can improve the things to utmost betterment number 1 in Delhi directly or indirectly you are having some say in spca

Mrs. Maneka Gandhi - I have no say in SPCA I have no say in SPCA SPCA is the most corrupt organization in India

Participant - For its improvement

Mrs. Maneka Gandhi - just listen we have now changed a few things but the person we put new it took him 10 minutes I will just tell you how it does spca has 70 people this spca was made by Indira gandhiji in order and used to be the best spca and it went under a man called mathuria put an order that he wants daily 20 lakh rupees I will tell you how it gets the 70 people go to the areas where the trucks are going to enter they sit inside the truck if the police man is honest stops the truck cow is going to jama masjid the spca person will say you don't have to stop it spca has stopped it before they will escort the van to jama masjid

Participant - it is the case now the person has been sacked rather the only thing is to be done for prevention of all these things is to give direction to all these spcas for maintenance of previous conviction records and I have already passed that

Mrs. Maneka Gandhi - I was the head of spca I was the head of spca I brought computer we made a list of all the records one night somebody entered and destroyed all the computers this is the only spca in India what to do I have gone mad

Participant - In case the SPCA maintains this records then no trucks can be used second time

Mrs. Maneka Gandhi - Exactly

Participant - No person can convict second time

Mrs. Maneka Gandhi - who is keeping the records who is keeping the records they will not keep the records because otherwise it is the same 300 trucks each one has been caught 55 times we photograph them then also it makes no difference

Participant - now your government is in center you can do that we are trying we will try our government is not in Delhi yes I am not arguing I deeply appreciate that you are trying to help me I am just trying to tell you my problems and to you know and I will try and improve

Participant - _____ is a idea of India and my question is that the birds like chicken can we give them these rights

Mrs. Maneka Gandhi - Yes they have rights

Participant - So the chicken that get cut every day is there any government thought on them

Mrs. Maneka Gandhi - I was the in charge of spca every day we used to stop chicken from Haryana vans of chicken would come we did a study and we found that 69% of all chicken entering Delhi had a broken wing or a broken leg which means that by them time they would be ready to be sold they would their whole body would have gangrene so we started stopping them the law

under the act is that only 1 chicken per khana in actual fact they put 10 to 12 and when they pick them up and put them they will pick them up with a wing or a leg and stuff them inside now they bring them all the way from Haryana in cages that have got wiring underneath so their legs get cut by the time they reach your table they have been wounded much before they were killed so therefore you are getting a very diseased animal I started stopping them and confiscating them shab singh verma was the chief minister of Delhi at that point I was the spca head when we stopped our 50th or 60th truck and said you will follow the law they went in a delegation to sahab singh verma and the next day I was removed so that is how politicians work that is why we need the judiciary

Participant - It is a toothless act it does not have teeth

Mrs. Maneka Gandhi - Give it teeth an act is only as good as its interpretation interpret it

Participant - Legislature is not giving teeth they have created section

Mrs. Maneka Gandhi - legislature use 49 now use the rto use fssai use the supreme court mustakeem you have masses of anterior acts now coming along lets use those forget the pca I am also disappointed with it

Participant - I am tajuddin from Chhattisgarh I want to let you know 2 things there is cock fighting are you aware of that in a=our place the cock fighting happens in their feet they tie knives

Mrs. Maneka Gandhi - And they are given alcohol they lock them in a room in the dark and make them mad and then they are thrown

Participant - they bite it is a part of gambling and the second thing is when animal cruelty offence cases come there are 2 witnesses seizure witness and one io the seizure witness becomes hostile naturally and I o will also become hostile not hostile but absolutely

Mrs. Maneka Gandhi - io it is better if we don't talk of ios

Participant - We have to educate them also coming from the police or investigating agency we have

Mrs. Maneka Gandhi - we have now started training like I am here today here I go myself and train ios I train police people but there is only one of me and so we need you now for instance there is cock fighting as a magistrate if you just give one order saying there will be no cockfighting the high court in Andhra Pradesh has just ruled that there will be no cock fighting in Andhra in spite of that there was now the high court has issued a contempt notice for the chief secretary now if the chief secretary goes to jail if god wishes then we will have a much more action next time we need one magistrate like c k chaturvedi who is the much lower than you I think he was a

I know what he was the first level no he was much less what you call the whatever he was he was a truly good human being he was the one who started this whole dog thing you start I will take your judgment and go round India seriously

Participant - ma'am I am om prakash jaiswal also from Chhattisgarh we have a local act in Chhattisgarh_____ most cases have been registered under this local act we are facing a problem there is no proper record maintained nor is there any other information as per the law that they should inform the courts my humble submission is that can we at the district level can we have some houses for them where when we get cases we can send in these houses

Mrs. Maneka Gandhi - it is like this there is a law under the municipal act every town has to have a kanji house you know that now most of these kanji houses don't exist as magistrate if you just order that a kanji house has to be built in the next 2 months it will be built you order

Participant - But its judicial magistrate first class level ma'am at judicial magistrate first class level it will be ordered

Mrs. Maneka Gandhi - of course it will be it doesn't matter which level you are in you give a judicial order that this has to be done then no one will overturn it we will take your order and scare everyone the day you give the order I will scare everyone like I told him you go for contempt from 10 years that act is there infirmaries one why don't they make

Participant - But is it not better that at the state and central level we can do something

Mrs. Maneka Gandhi - Yes I agree we have written the Supreme Court has given order that animal welfare board should be made in each state

Participant - In every district also ma'am

Mrs. Maneka Gandhi - it has to be made in every district but it has to be made in the state but only half have made half are still thinking if they make also some politician will be put or some gausevak who is 90 years old it's just the question is this is the highest earning method in India illegal transport illegal killing illegal slaughterhouses illegal butcher shops the judiciary is the only untainted part of us as yet start making pronouncements at whatever level you are

Participant - Ok

Mrs. Maneka Gandhi - _____ can I take it Yes it is very good

Mrs. Maneka Gandhi - Thank you any other questions ok please one second tell me

Participant - Yours is a majority government you are an activist minister dealing with

Mrs. Maneka Gandhi - But I don't have that portfolio I don't have that portfolio and in this government please understand one of the ways of every government has its own way of administration in this government there are very high walls between one ministry and the other

Participant - I felt sad when you said you fear of storm in the parliament

Mrs. Maneka Gandhi - I do

Participant - I did not expect such things

Mrs. Maneka Gandhi - I feel very scared of parliament

Participant - when a case comes under section 11 of the prevention of cruelty to animals act he pleads guilty and allow him to pay fine of 50 rupees and you give him back the animals which is not legal he goes the only thing we can do is for first offence 50 rupees there is no record of his second offence

Mrs. Maneka Gandhi - I agree but sir you can also do 50 rupees per animal it's not 50 rupees for the offence

Participant - That too is not sufficiently deterrent

Mrs. Maneka Gandhi - I agree but then use section

Participant - What happens to the case property the owner comes after disposal and 452 crpc we don't have special provision to seize the vehicle and the property and the things are allowed to do in the same manner in which they do

Mrs. Maneka Gandhi - sir you do have the ability to seize the vehicle which was an overloading case you do have the ability to not give the animal back which you do anyway you should be using 429 which is deliberate cruelty and carries a 3 year nonbailable offence you shouldn't wait till the second offence because there is no records of any animal crime with the police at all if I as an ngo suppose I come to your court that his is the second time that this has been caught you are the first person to tell me that you have no locus standi so you will not even take my evidence even if I have films to back it up

Participant - Change the law make him

Mrs. Maneka Gandhi - Boss if I could

Participant - Change the procedure

Mrs. Maneka Gandhi - Do you think that I enjoy the law

Participant - Deterrent

Mrs. Maneka Gandhi - I have gone mad to doing the law I have gone mad do you think I enjoy the law if I take it to parliament today I am telling you 20 of them own slaughterhouses there are any number who will say that they want the vote of Muslim in the wrong belief that Muslims are pro illegal stuff there are 20 who have come to me kp singh and all that we do animal sacrifice how dare you disallow it there are 20 who will say that I am Jain you are disallowing that peacock feathers should not be sold because the national bird is the only bird that is legally allowed to be strangled to take out those peacock feathers and you are saying to disallow it all our gurus wear the feather you tell me which organization is not going to come forward with a vested interest that is why the judiciary has to approach it in another way that is why I am in court all the time

Participant - No we are bound by the law we cannot go beyond the law

Mrs. Maneka Gandhi - no you can interpret the law no you are not bound by the law unless you have no imagination you are now operating all the magistrates will tell you please tell him which are the others

Participant - Even ma'am

Mrs. Maneka Gandhi - You tell him

Participant - There is rule 97 which authorize cancellation of permit or authorization of transport of animal rule 1978 which deals with vehicles

Mrs. Maneka Gandhi - there you are you read the act it is you have 20 rules which will overcome this this act itself in all the subsidiary acts in all the other acts use those don't say maneka Gandhi go and change the law

Participant - We have the second question also you allow the meat to be exported

Mrs. Maneka Gandhi - I am so sad about that I can't tell you our own people are dying our forests are being raped our lands are going fallow we have no manure there is no rain because of this meat export we are the largest meat exporters the bjp has in its manifesto that we will stop meat export not stopping we give subsidies the congress gave subsidies to start slaughterhouses I don't understand how can we do this when it is destroying our country the chief minister of Kerala told me and he is a good human being oomen chandy he told me he said I will order right now we will show you a film of one minute only 1 minute if any of you can see this film without crying I will show you a film of how they are killed in every slaughterhouse in Kerala oomen chandy saw it he said he passed an order that same day alright saying that stop them no more killing like this will happen what is legal tell them to do it properly those that are illegal should be closed our team went with the order of the supreme court that every illegal one should be closed who were the owners bjp people in Kerala so I am not attacking I am a bjp person I am a committed bjp person

I am just saying that every which way you come across political vested interests the only vested that don't happen are in the judiciary you have no vested interest god has put you here therefore do your duty instead of saying one change the law you say ok I am going to change the law for this area I will take your judgment and use it somewhere else I took ck chaturvedi's small little judgment to stop dog killing in Bombay it was as simple as that now Bombay has ruled no more horses in Bombay and I tried to use that judgment to stop the horses in Delhi because every single horse according to not me but icar has got arthritis to the extent that they put their foot on tar it will die he is in pain all the time plus he has glanders

Participant - Thank you

Mrs. Maneka Gandhi - Nobody now tell me you are in the government change the law please don't

Participant - Ma'am I am upadhyay from Chhattisgarh first of all thank you that when we came to know of this programme we were not able to understand that why we have been chosen so first of all thank you for telling the importance of this subject

Mrs. Maneka Gandhi - why you alone Mrs. oberoi fought she said you are not a lawyer he is not a lawyer he is not a lawyer so I said we don't want to become a lawyer we are only giving you an overview

Participant - the second thing since you have said that we should not tell you to change the law actually there is a major problem cruelty to animals we only focus on a few animals but I would like to tell you a small matter when I reached the place of my posting the second day a case came before me that a truck hit a cow when I used to go from the court to my house I used to see that all the animals were on the road no one keeps their animals in the house then I talked to the local municipal officer got the kanji house done up some animals started going in the kanji house after some time the in charge of the kanji house came before me with folded hands that we have difficulty as to how to feed the animals because the owners of the animals were not coming to take them so my first request is if possible at least if they can be removed from the municipal act and if the state brings some act and I am not saying that you do something at the central level

Mrs. Maneka Gandhi - some states have done it like Gujarat every animal that is caught whether a kanji house or a gaushala they give 20 rupees for a day for keeping now they started it Uttar Pradesh has now started it the point is if you say according to the law every municipality has to make financial provision for animals that are caught they have to they just don't make it you just have to pass the law saying forget the kanji house you have to first make financial provision so they will make Ghaziabad has done it

Participant - There is a small problem which I would like to share that all my brother judges will share

Mrs. Maneka Gandhi - They will agree with you

Participant - we are a rule of law country and our job is to implement the rule of law many times judicial activism is at the higher levels but magistrate level if we can't get into judicial activism and take suo moto action we can't take action while walking the streets that this cow is roaming outside or this bull is out action should be taken suppose if I tell you the dm in Raipur he took out a notice that the way chicken were tied on a stick on a motor cycle and hung by the legs and taken that is wrong and should not be done after that I thought if Raipur dm has done it so other district dm will pass similar orders and the sad thing is that when I went to Raipur again after some time the same situation continued

Mrs. Maneka Gandhi - it is like this murder is wrong you rule on that daily but murders still happen but as we proceed 10 years ago would anybody have thought that we could stop bullock carts their racing that we can stop jallikattu we had not thought it India is moving in a civilized good way if you believe that we don't do judicial activism we can only do interpretation of the law then also in our laws you will find 400 different ways to aid you the problem is if you don't mind my saying so many magistrates are so overburdened that they don't search that bring this law bring that law and there are not many animal welfare groups who can come and assist you if you allow in the supreme court they put what is that assistor amicus if keep an amicus you are allowed to do that are you allowed to do that

Participant - No

Mrs. Maneka Gandhi - Without money you are allowed you are allowed

Participant - It is not allowed anywhere the legal aid has to be provided by legal services authority which is run by state

Mrs. Maneka Gandhi - Ok I am not saying I am not saying that I have an answer to this I am simply saying start reading the other laws if I have when

Participant - It is itself in this law may I

Mrs. Maneka Gandhi - We have a book we will show it to you

Participant - What is definite is that on returning back from this programme whenever animals regarding cases come before us we will be more than 100 times sensitive and work and will now try to do so

Mrs. Maneka Gandhi - and you one this book I wrote when it started it was a small book now it has become so big and this is the last copy because the new one will come by universal press next week so 2 things are happening sir which I will tell you a the bar council has agreed that animal crime is now so rampant that now animal welfare will be taught in all law colleges so Bangalore

has agreed Delhi has agreed its an optional subject but it will be taught in every one of the law colleges from July 12 this will be the book that will be the basis so maybe the new generation of lawyers some of them will know how to our lawyers are not able to represent properly police oneside you tell us that we don't have locus standi

Participant - You are having very good lawyers very good lawyers Mr. vinglesh is I think it is a gem of lawyers

Mrs. Maneka Gandhi - He is a good man he is a good man but now we have many people in the team the problem is we also did not know how many lawyers we had how many laws we had until we started looking

Participant - Everything is on steps

Mrs. Maneka Gandhi - That is right

ma'am I was just saying that if in some states where the letter has reached to attend this training programme the letter you have sent is also included in which you have written to Hon'ble law minister and I think it is an initiative on that letter because of which we are here in this training programme so if such efforts are done in states as far as possible if stop it in the states

Mrs. Maneka Gandhi - I will do that sir I think we should have it state by state we will try

Participant - Thank you very much

Mrs. Maneka Gandhi - I think this gentleman has been waiting for a long time you ask

Participant - Ma'am this is sharad kumar vyas from Rajasthan thank you very much ma'am for sensitizing us about animals

Mrs. Maneka Gandhi - Thank you allowing me to

Participant - madam in Rajasthan we have a lot of animal fairs after these animal fair when the people come to take the animals so cases of this come before us the prevention of cruelty act provision is applied but mostly the provision that is used is section 5 7 8 9 of bovine animal legal transportation act 1957 of Rajasthan

Mrs. Maneka Gandhi - there is a separate act for haats

Participant - Yes that is a Rajasthan act

Mrs. Maneka Gandhi - Use that too I told you that more than 2 cannot be bought they cannot take in trucks etc. that is the separate act

Participant - but the police when they present the matter before us section 5 7 8 9 of the Rajasthan act are used now in the law says that if any man takes a cow for killing from Rajasthan then it becomes an offence now in my 5 years of service I have seen that the bail application is mostly rejected but at the time of judgment we have to acquit because it is not proved that they were taking the animal outside Rajasthan exclusively for slaughtering of cow the second thing is that it is genuine fact that if a person buys an animal he will make some arrangement for take it the police make a case that you are taking it so you must be taking it for slaughter that comes in and we the judges are supposed to adjudicate the matter we cannot supposed to judgmental we think we are sensitized towards animal and we think that whoever has the animal and is caught he must be taking it for this purpose exclusively

Mrs. Maneka Gandhi - Sir it is like this I can't answer this you know and I know that those going from haats are only being taken by butchers

Participant - Yes ma'am

Mrs. Maneka Gandhi - if you use I don't know which acts you can use maybe you could have a discussion around this the police are not going to assist you because the police are standing there when they are being when what happens I will tell you the method police is standing and not saying anything sp won't say anything sho won't say nor the police standing there when they come out a have to now he will purposefully in front of you section 2 3 5 he will present so that the acquittal happens now I am going to be a little bit vulgar what is there that story about the feces lying on the ground so the man saw that the feces is there then he tasted it is feces he saw it is feces smelt it it is feces still he did not have proof that it is feces or not because no lab told him the point is we know that haats are only for slaughterhouses we know that overloaded trucks are only going for slaughter because they don't care if it dies on the way or when it reaches so the question of acquittal doesn't arise but in most cases acquittal doesn't happen because once you give superdaari then they are gone you tell me that the thousands of cases that have come to you in which you have given superdaari to the butchers have you ever asked them to show the animal we are told to show the animal if we say that it died then we are looked on with suspicion when the animals come to us in such bad state and my hospital is so crowded with these animals that all my salary I don't have a house I sold my house to run this hospital everything I have go there I have no jewelry I have nothing and yet we are told bring the animals back we know that you must have sold we know you must have done it why should we if I have to earn money I am maneka Gandhi I can earn in a minute you know it and I know it 4 times I have been a minister but the point is so you have to the feces is there you can smell it taste it see it don't wait for lab evidence take it for granted that the police are not going to help you let the gauvansh people don't say that you are what you call it you are not involved what is the legal word locus standi you have no locus standi they have caught you tell them to give you proof you need to now widen your horizon and see one judgment of yours can change Rajasthan but the problem is that one judgment has to come and anybody who has given animals on superdaari every 3 months you should get after them call them

show the animals bring in a truck however we don't care show us the superdaari the moment you start asking for superdaari you will finish the trade in India that I guarantee

Participant - That can be

Mrs. Maneka Gandhi - Can you do that?

Participant - After passing order on superdaari we can do this

Mrs. Maneka Gandhi - Every 3 months to bring

Thank you ma'am thank you

Mrs. Maneka Gandhi - Thank you Ok I am going to take one more question because it is 12 11

Participant - I would just like to refer 3 provisions ma'am where legislature has acknowledged that animals are mute and magistrates need to be proactive and within limits we can do it that limit is in section 11 read with 33 and 34 these 3 provisions are very important 11

Mrs. Maneka Gandhi - Please write this

Participant - 11 section is so wide the legislature has used the words that everything is covered unnecessary pain covers everything then no sympathy but empathy which is section 34 and suo moto provision which we call section 33 now in this provision the legislature has covered second class first class sub divisional magistrate commissioner of police everybody no one is left and in it preventive about to if you think it is going to happen then also you have the information in writing 190 read with this and be proactive then questions come that 452 if we see with section 29 and read with 35 3 stages are given veterinary officer take his assistance if it needs medical treatment like old age home for animals we have pinjrapole before that suppose I am a magistrate and I order that APP I direct that take it to the infirmary the owner does not deserve it and the definition of owner in section 2 is very interesting it is not like a normal owner and the power to deprive owner section 29 the power is given because it is mute and you are a greedy business man and to control that in section 35 you can just say to the APP that I have given direction to take it to the infirmary or pinjrapole or destroy or euthanasia whatever then the government does not do supreme court I need not to tell my friends already knows there are lot of judgments you have to implement the order of the magistrate and have to create infirmary pinjrapole or for destroy

Mrs. Maneka Gandhi - I would like to say one more thing from this really valuable information and that is you say that police should keep records of second third offence but in many places before the same magistrate the same people come don't be blind you have seen the man before you have seen his lawyer for the same offence you should also start looking at your previous records that which cases of animals you have done and take them out and say bring back from

superdaari because all are on superdaari do this when you go back recently the magistrate who gave the order on the camel after we have lost over 3 thousand camels in the last 2 years that give it to the butchers and that one judge who has said go and see the superdaari then we came to know that 1 man had the superdaari of 99 camels same way please ask superdaari whoever you have given to let your clerk take out all the cases and ask for them back and lets see where it goes

Participant - ma'am good morning this is durga prasad from state of Andhra Pradesh I want to put my question in such a way that where the change should start from whether it is from the judiciary or from the executive or legislature side because already before this act we have article 21 which gives right to life and dignity etc. etc. not only to the humans but also to the animals etc. but you spoke about the cock fighting which is prevalent in Andhra Pradesh and I want to put it in such a way that the supreme court has given a direction to ban jallikattu in Tamil nadu

Mrs. Maneka Gandhi - And cock fighting

Participant - Yeah but subsequently the government existing in Tamil nadu now has passed a legislation to revoke the order

Mrs. Maneka Gandhi - No they have not they have not and they cannot they have not

Participant - Ok I mean they are

Mrs. Maneka Gandhi - what had happened was the high court unfortunately said we don't understand dr radhkrishnan's order and let it go then when the second order came after this jallikattu was banned and the new order came from justice Mishra and the second judge second member bench then the high court said the cock fighting thing that it is banned and told the chief justice chief secretary to stop it now it is up to you to file contempt

Participant - See being a magistrate we have so many parameters and limitations wherein we cannot give

Mrs. Maneka Gandhi - See

Participant - We have to follow the act we cannot give orders I mean we have to follow the act and we cannot give directions to stop

Mrs. Maneka Gandhi - I'm saying you now have an act you have an act you have a supreme court order an act already the act already existed in the pca cock fighting is specifically forbidden by name please look you see and tell him section 11 cock fighting is forbidden by actual by saying cockfighting you are not making a law you just have to interpret it that is all

Participant - Last question ma'am in how many cases you have went for appeal when a matter is acquitted

Mrs. Maneka Gandhi - I went for all

Participant - Then what is the result

Mrs. Maneka Gandhi - We always win our cases but we win them with great effort you know

Participant - Thank you

Mrs. Maneka Gandhi - yeah last question

Participant -... we are a border state so and recently there has been an increase in smuggling not animals I think we haven't come across as such or they have not been brought to the notice of the courts but then there has been cases of gold smuggling from china to India through the nathula border and then also a consignment of sal wood was caught so I mean we I think kind of foresee special people who know the law foresee a situation where we these kind of animal trafficking wildlife specially these kind of cases might come to the

Mrs. Maneka Gandhi - They will now

Participant - courts although it is there it is happening now the thing is I think that like we specially in the border states and specially in the lower courts we are not sensitized towards how to implement international laws relating to animals

Mrs. Maneka Gandhi - You are right

Participant - So maybe like in the future you could

Mrs. Maneka Gandhi - we have one law which you should know and that is the CITES law it is we are a signatory to it the under the CITES act no exotics please listen to this now many times the forest department they will take enough money from the pet shops because they will say there is no specific law regarding exotic birds so if we bring in a cockatoo or we bring in the small budgerigars the magistrate will say there is no law regarding it because the police will say there is no law regarding it but you have to look at CITES all the birds which we regard as exotic in India are not bred in India they are smuggled through the Calcutta port Calcutta port is the main smuggling center for all animals including chimpanzees we have just recently found 4 chimpanzees brought in here for rich people for their farmhouses in Bangalore this these budgerigars cockatoos cockatiels small monkey tamarin monkeys they are all coming in through there I want to tell you how dangerous this is firstly in Gujarat I will show you a picture a man has just been killed by an African snake called black mamba no not black mamba no this is a it has got a long name he was just bitten by it it is not native to India it is not native to India it has come in through Calcutta airport Calcutta port to a man called ashok kumar rai ashok kumar rai is the biggest importer of snakes illegally in India he gets them he sells them to rich people who leave them in the forest after their children are tired of looking at it it is the latest thing for rich

people to have a lion above a swimming pool a chimpanzee in a cage a snake in the bed room because what to do sofa everyone has gold everyone has silver everyone has servants everyone has Bentley every ones dad has it so what to do the latest exotica is animals now these animals are being left what to do when I said don't bring emu to India so they were brought in as chicken at madras airport now those 9 foot animals are roaming in the jungle because everyone has gone bankrupt with emu farming they have left it now the leopards are in trouble because in uttarakhand they are coming down to catch the emus and they are getting killed this is a major problem this man has been killed by a an African snake when I release an exotic owl an exotic cockatiel 2 things will happen either the kite will eat or it will kill some other bird exotics have no place in India at all none of them are bred here none they are all coming in through Calcutta this man is bringing in snakes he has 20 cases against us we raided him he locked up my people and beat them up he is sandeep dixit's partner he they run a business importing animals exotic animals through Calcutta every single time we catch a wildlife person not me every body will tell you these are the 2 people involved and yet he has taken a case to supreme court saying that no bird that Gujarat judge who passed that fabulous judgment saying birds should not be in cages he has challenged that in supreme court and along with that he has put maneka Gandhi that in sanjay Gandhi they have forcefully taken the birds and snakes he runs this place in a basement in mehrauli and he supplies snakes across India this man who was killed has been killed by this man and yet the supreme court has admitted it we are fighting the case and they have clubbed these 2 cases together maneka Gandhi forcefully took away the birds birds should not be in cages now a lawyer is trying to separate because one has nothing to do with the other but I am telling you every time somebody comes to you for exotics do not take the excuse saying there is no case go to somewhere else go to section 11 go to 429 go to anywhere else exotics are killing India we now have exotic do you know our bees honey bees or bumble bees who pollenate our biggest pollinators at some stage in the 70s some idiot of a bureaucrat officially brought in Italian bees those Italian bees have now killed all almost all the Indian bees but they are not acting as pollinators therefore you have a problem now if you lose pollinators you will lose wheat you will lose all your trees and flowers and yet we don't understand how terrible exotics are when I was the minister we have as you all we have a parthenium is the weed which has a white cap some people call it congress wheat some call it and it is said I don't know where it came from but it is said that when America under pl 480 in the early 60s was giving wheat then it came in that can be possible because this is a weed in America it came to India it has taken over whole of India you have seen that if you touch it you get eczema if you don't touch you get asthma it you have to burn it you have to but nobody will take it out so it is spread now a group came to me when I was a minister of environment and said that we have done lot of research we have a beetle that we have brought from south America and in our research laboratory this beetle only eats parthenium so if you give us money then we will multiply the beetle and end parthenium I said if you come to me with this again I will get you locked up for treason literally I was that I said you are anti national you don't understand anything you just get out of here so they did what sensible people do they waited till I lost my job and they came to my successor my successor was a business man called Kamal nath and Kamal nath doesn't

understand what hurts India because this is a very complicated exercise because we are like a house of cards as I have been explaining to you today a cow goes ... what is the way I have tried to explain to you so he gave the money they multiplied these beetles and 2 years later they released them in Karnataka they now I tell you to close me in a room and you give me only ladoo I will eat only ladoo but if you let me go then I will eat sweets dosa this and that those damn beetles didn't touch parthenium they went straight for the sunflowers till today we have a sunflower crisis created by those beetles we can't do anything about those beetles nothing in that way when I bring to you a case in which I have raided a pet shop and I have brought all these birds out don't tell me under the law that I can't do it think of a way in which you can penalize the pet shop the pet shop rules are now coming out we have had a big big fight because Mr. Javadekar did not want to bring out at all 22 people came to him with a written letters who are these 22 people all of them said it is against our right to income what is it called our right to trade all 22 have been to jail about 10 times they run the 22 biggest smuggling markets in India of birds Meerut hathibagan Crawford market Lucknow what you say in Lucknow nakhas these are some of them and said that these were the owners the heads of the markets and they gave this our right to trade so using right to trade he is now allowing illegal market so we went to law ministry we have now had it done and hopefully this act will come out sooner or later about pet shops but I am trying to sensitize you about exotics an exotic doesn't mean a little budgerigar secondly please remember anything that is an exotic in India is a rare a rare species in its own country in Australia they now have no budgerigars left because they have all been smuggled out in south America they have no tamarin monkeys left because they have been smuggled out Singapore is the biggest smuggler and America America and Singapore in India what are we doing do you know we have something called the glass fish its a transparent fish you will put on the net right now in your mobiles and you will see what are we doing we take injections and take wall paint with needle we inject those small glassfish to put dots or colour them red or yellow or purple and then we put them in our aquariums as exotic lakhs are going and how do they get these fish fish do not react to cyanide we put cyanide in the water fish become unconscious we pick them and sell them in aquariums and the cyanide kills the rest including the tribals who will drink from the water and that come here but the aquarium fish if I bring it to you you will say there is no law against this make make let it come through precedents

Participant - Legislature should also make

Mrs. Maneka Gandhi - I am saying use pca pca there is no point telling me that legislature should make I am not here for argument I am trying to simply open your eyes into how the world is dying and how we are dying every time you buy a fish for an aquarium for the lawyers common room for instance you have killed a tribal because that fish has not been bred that fish now for instance Chinese fish have come to the malls you go they will say come and sit we will clean your feet and you sit down and put your feet there and this fish will come and eat the corners of your feet and you enjoy it these fish are being smuggled in the original fish was from Egypt Egypt has now put a ban it has been replaced by china china is smuggling in fish here these fish give you aids they give you hiv straight as nobody thought of that we have written about it and written about it and

written about it it is banned in most countries India we haven't banned it it could be banned quite easily but if the legislature is not going to take the action the judiciary must think of ways a clever judge can find a way because there is law covering most everything very very thorough in providing you millions of laws question is of reading it what is killing us cyanide in the waters aids from Chinese fish those exotic tamarin monkeys that have come in south America has less than 200 left each and every animal is like the hornbill they are responsible for spreading seed they are I am going to finish now I am going to finish because they are way past my time and thank you but I am going to tell you one story before I finish so that you remember it covers everything Mauritius Mauritius had a bird called the dodo this dodo is a big duck like bird this big it can't fly Mauritius was the richest country in the world why because it had a tree called calveria major calveria major is the most hardwood in the world much much harder than teak ebony mango everything all the ships that were coming to this side china and everywhere used to stop at Mauritius and stay there for 4 5 months while new ships were being built they were building all the ships for all the invaders that came this side for the Portuguese the English the French they and for repairs and for building new ships they would stop there and they would money was coming in now the Portuguese when they stayed there they were meat eaters they like eating meat there was no cow or anything because it is an island so they started eating the dodo and the local inhabitants said nothing there was no maneka Gandhi there to scream and shout so the dodo one day they woke up and he was finished it was finished so they said the birds gone so other will come what happened when the dodo went after 2 years they discovered that calvarea major tree which they only cut and sell every one had to 15 they grew on their own no one could grow them its like the teak tree the sagwan it has to come by itself you cannot plant it I'm sorry the sal so they found that it was not growing and they had cut it down it just remained cut so then they found out that the only way the calvarea would grow is if the seed was eaten by the dodo and it would come out through the feces and then the tree would grow so what did they do they went mad they from India we sent mynas chicken I don't know we sent 300 kinds of birds china has sent America has sent Singapore everybody is still sending for them to experiment with the seed that whose stomach it can come out and grow but it didn't happen no other bird can do that no other bird what is the result that calvarea major tree has become extinct when it became extinct long before it became they got scared what to do no one was coming the island became ill financially no one stayed tourists stopped coming then they thought that for food what do we do then somebody came up with the bright idea that sugar is needed why not grow sugar cane now sugarcane where do we get it from so they came to Indian and 300 years before or 200 years they took sugar cane from here now they were not in the habit of working so they got Bihari indentured labour from Bihar now the Bihar culture is very strong where they go they adopt it what did they do slowly the government became Bihari sir harry ram Ghulam became hari ram haran a Bihari became the prime minister their language that was French became .. it became a from creole it has descended into English Bihari the entire political level is Bihari every one comes here to see their ancestral places the dining table belonging to indiraji that was made by a Mauritian from wood that from the last calvarea major tree so the entire way of life changed their way of living their language

their economy the way they structure their lives everything because one bird died remember that when we lost when we lost the vulture we lost our last ability to clean the villages whether it is swachh bharat or not when we lose species like that when we get budgerigars here which have come in smuggled and we say exotic what difference does it make they die Australia has lost a bird remember that when ... something lang the snake ends with a lang when that snake killed somebody remember who brought it in and remember how many are the snakes I have just raided a place in hubli what did we find a boy called Manju found a factory running manned by Chinese who are making keychains out of exotic insects our insects to take back to china as exotic insects every year the French and the Germans come to India pretending to be tourists they go to himachal they go to Sikkim they pay children 100 rupees a day to go and capture butterflies each butterfly and they have a list they take it out in suitcases and through FedEx one suitcase carries 50 thousand butterflies 100 rupees it has cost them Frankfurt go to the Frankfurt insect fair which take place every April may each butterfly is selling for 50 thousand rupees and ours have disappeared we have lost 3 species so far and when we lose a butterfly species we lose the plant we lose the plant because that butterfly can pollenate only that plant we lose the insect on that plant when we lose the insect we lose the bird that eats the insect when we lose the bird we lose the seed of the tree when we lose the tree you lose the rain when you lose the rain then we die and that is what is happening to us this is why animals are important and that is why animal crime we caught all these Germans Calcutta caught the magistrate let them go saying superdaari not that he gave them back the butterflies but said that he will go and will come whenever we call him no one has ever come back thank you

Dr. Geeta Oberoi - Now we have a lunch but before lunch we go and assemble for a group photograph and then we go for lunch and after that we assemble back at 1. 40

SESSION 2

Jurisprudence and Ethics of Animal Welfare

Dr Geeta Oberoi - Good afternoon You all had lunch Now we have Honourable Justice K P Radhakrishnan, former judge, Supreme Court of India, and from your own family, head of your own family, judicial fraternity Now nobody will ask you issue contempt notice So we will talk senses now, and nobody will tell you appoint amicus curie also We will talk what is permissible in the law Yeah So with this, I pass over it to Honourable Justice Radhakrishnan.

Justice Radhakrishnan - From which--

Participant - Because morning we skipped that

Justice Radhakrishnan - From which state you are coming

Participant - If you can introduce yourself sitting there in your seat, tell us your name and--

Justice Radhakrishnan - Okay You can start from here

Jwala Thapa: Good afternoon everybody My name is Jwala Thapa I have been recently appointed, still on the training, will be taking charge from February onwards, and I have been appointed as Civil Judge cum Judicial Magistrate in West of Sikkim

Participant -Good afternoon everyone Good afternoon Lordship I am Ranjita Pradhan I am also from Sikkim I am also a trainee Civil Judge cum Judicial Magistrate in Gangtok

Justice Radhakrishnan - Okay, okay

Participant -Myself G J Shah, Assistant Director, Gujarat State Judicial Academy, and I am--

Justice Radhakrishnan - You are on the Gujarat state – Gujarat

Participant - Gujarat State Judicial Academy.

Justice Radhakrishnan - I was there When did you join

Participant - Yes.

Justice Radhakrishnan - At that time you were there

Participant -Yes I was there.

Justice Radhakrishnan - Okay, okay, okay

Participant -And I am in the cadre of Additional Senior Civil Judge

Justice Radhakrishnan - I see, okay

Participant -Good afternoon ma'am Lordship, good afternoon My name is Neelu Mainwal from Lucknow As a Judicial Magistrate I am posted there.

Justice Radhakrishnan - I see, okay

Participant - Good morning ma'am S L Thakker, Assistant Director, Gujarat State Judicial Academy, Additional Senior Civil Judge.

Justice Radhakrishnan - Oh, both of you are in the Academy Okay.

Participant - We both

Justice Radhakrishnan - Very good, yeah

Participant - Good afternoon, sir Myself Janak Hidko, posted at JMFC, Korba, Chhattisgarh

Justice Radhakrishnan - Chhattisgarh

Participant - Good afternoon to all of you I am Tajuddin Asif, Civil Judge Class II cum Judicial Magistrate I class, posted at Janjgir in Chhattisgarh.

Justice Radhakrishnan - Chhattisgarh, okay.

Participant -Good afternoon sir I am Chavan, Joint Civil Judge Senior Division, Latur, Maharashtra Joint Civil Judge Senior Division, Latur, Maharashtra

Justice Radhakrishnan - Maharashtra

Participant -Good afternoon I am Rajendra Hastekar I'm posted at Civil Judge Senior Division, Niphad District, Nashik, Maharashtra State

Justice Radhakrishnan - Maharashtra, okay

Participant -Good afternoon, sir Myself Sudhir Bhajipale I am Joint Civil Judge Senior Division, and Additional Chief Judicial Magistrate, Amravati, Maharashtra

Participant - Good afternoon, sir Good afternoon, ma'am I am Sangita Shinde I am posted as CJM at Jalgaon, State Maharashtra

Participant - Good afternoon, sir Devendra Singh Panwar from Rajasthan Judiciary, and posted as Civil Judge Judicial Magistrate, Desuri, Pali, Rajasthan

Participant - Good afternoon, sir Sharad Kumar Vyas as Civil Judge Junior Division and Judicial Magistrate at Bhiwadi, Alwar.

Participant - Good afternoon, sir Good afternoon, ma'am Sir, I am Balkrishan Katara, JM, Thanagazi, Alwar.

Participant - Good afternoon everybody I am Amar Singh Champawat, Civil Judge cum Judicial Magistrate from Rajasthan

Participant - Good afternoon, everybody I am Ajit Pal Singh, posted as Additional Civil Judge Senior Division cum Subdivisional Judicial Magistrate at Subdivision Garhshankar, Hosiarpur District, Punjab.

Justice Radhakrishnan - Punjab

Participant -Good afternoon, sir I am Rajesh G, Assistant Director, Kerala Judicial Academy.

Participant - Good afternoon, sir I am Prem Prakash Chaturvedi posted as Judicial Magistrate at Howrah

Justice Radhakrishnan - Yes.

Participant - Good afternoon, Lordship Myself TPS Randhawa I am posted as Additional Civil Judge, Senior Division, Khanna, Ludhiana, Punjab

Participant - I am Bishnu Prasad Mishra, Sub-divisional Judicial Magistrate, Athmallik, Angul, Odisha.

Participant - Himansu Sekhar Singh, S.D.J.M., Bhadrak, Odisha.

Participant -Good afternoon, sir Myself Abdullah Ahmad posted at Katni, working as Civil Judge Class II and Judicial Magistrate I class

Participant - Good afternoon, sir I am Shaurav Saha from Tripura Judiciary I am posted as Civil Judge, Junior Division and JM, 1st Class, Sabroom, South Tripura

Participant - Good afternoon, sir I am Monalisa Maibam from Manipur Judicial Service posted as Civil Judge Junior Division cum Judicial Magistrate 1st Class Thank you

Participant -Good afternoon, sir I am Debaleena Kilikdar from Tripura Judicial Service Presently, I am posted at Sub Divisional Judicial Magistrate at Sonamura Subdivision

Participant -Good afternoon, sir I am Lanleima from Manipur Judicial Service posted as JMFC cum Civil Judge Junior Division.

Participant - Good afternoon, sir I am Amaresh Nayak I am presently posted as Sub Divisional Judicial Magistrate, Rourkela in the state of Odisha.

Participant - Good afternoon, Lordship Myself Arun Vohra, CJM, Uttarkashi, Uttarakhand.

Participant - Lordship, pranam I am Neeraj Kumar I am from UK and posted as Civil Judge Junior Division and JM in Gopeshwar, Chomali.

Participant - Good afternoon, sir I am Avinash Chander Presently, Deputy Director, Himachal Pradesh State Judicial Academy.

Participant -Good afternoon, sir I am Hoshiar Singh Verma, Himachal Pradesh Judicial Service, presently posted as Civil Judge Senior Division cum Additional Chief Judicial Magistrate, Solan.

Participant - Good afternoon, sir I am Hitender Sharma, Additional CJM, Hamirpur, Himachal Pradesh.

Participant - Good afternoon, Lordship I am Dhiru Thakur, Additional Chief Judicial Magistrate cum Civil Judge Senior Division, Shimla, Himachal Pradesh.

Justice Radhakrishnan - Shimla.

Participant - Good afternoon, everyone I am Debasish Kashyap, Judicial Magistrate, 1st Class, Assam Judicial Service

Participant -: Good afternoon, Lordship and everybody I am Birthoilal, Civil Judge cum JMFC and Principal Magistrate in JJB, Champhai, Mizoram

Participant - Rudra Prasad Mahapatra, SDJM, Anandpur, Odisha.

Participant - Good morning, my Lord Good afternoon, my Lord Good afternoon, madam I am Bhupen Kumar Nath I am from Assam Judicial Service Presently I am working as a Deputy Registrar, Gauhati High Court.

Participant - Good afternoon, sir This is Mahajan R A., Principal Civil Judge & JMFC, Udupi, Karnataka.

Participant - Good afternoon, everyone My name is Preeth, Civil Judge & JMFC, Udupi Distriect, Karnataka.

Participant - Good afternoon, sir I am Hanamantarao Ramachandrarao Kulkarni from Karnataka, presently working as Additional Civil Judge & JMFC, Bhatkal, Karnataka.

Justice Radhakrishnan - Karnataka

Participant - Good afternoon, sir Myself Sandeep Chaudhary, Metropolitan Magistrate, Kanpur Nagar.

Participant - Good afternoon, sir Dinesh Kumar Gautam, Judicial Magistrate, Gorakhpur.

Justice Radhakrishnan - I can't – can you just stand up I can't see you

Participant - Sir

Justice Radhakrishnan - Yeah, very good

Participant - Dinesh Kumar Gautam, sir, Gorakhpur, Judicial Magistrate.

Justice Radhakrishnan - Judicial Magistrate, okay

Participant -Namaste, my Lordship Namaste, madam And good afternoon, all my friends I am Leelavathi Tata working at Dharmavaram as Junior Civil Judge, and it's in AP, Andhra Pradesh Thank you

Participant - Namaste and good afternoon, sir Good afternoon, ma'am and one and all This is Bindu Madhavi from AP working as a Judicial Magistrate of I Class from Guntur Thank you

Participant - Good afternoon, Lordship, ma'am and all my colleague friends I am T Kesava working as III Additional Junior Civil Judge, Nellore, Andhra Pradesh

Participant - Good afternoon, my Lordship Good afternoon, ma'am Good afternoon, everybody This is Durga Prasad working as Junior 1st Class Magistrate, Sangareddy in the newly formed State Telangana

Participant -Lordship, I am Kanagaraj from Tamil Nadu State Judicial Service, Principal District Munsiff cum Judicial Magistrate.

Participant - Good afternoon, Lordship I am Daoudh Ammal, Judicial Magistrate, Tindivanam, Viluppuram District, Tamil Nadu Judicial Service.

Participant -Good afternoon, Lordship I am Ruskin Raj from Tamil Nadu, JMFC, Valioor.

Justice Radhakrishnan - Okay.

Participant - Good afternoon, Lordship I am Sankar, District Munsif cum Judicial Magistrate, Tamil Nadu State Judicial Service.

Justice Radhakrishnan - Okay

Participant - Good afternoon, Lordship I am Vinay Sharma from Haryana Judicial Services, posted as Judicial Magistrate at Faridabad.

Participant - Good afternoon, Lordship Good afternoon, ma'am I am Ashok Kumar, Civil Judge Junior Division, Almora, Uttarakhand

Participant -Pranam Lordship My name is Durga Sharma I am from Uttarakhand I am posted as Judicial Magistrate, Haldwani, near Nainital.

Justice Radhakrishnan - Nainital, okay

Participant -Good afternoon, Lordship and ma'am Good afternoon, everyone This is Manglesh Choubey from Haryana, Civil Judge Junior Division cum Judicial Magistrate 1st Class.

Justice Radhakrishnan - What about you What about you

Participant - Good afternoon, Lordship Myself Sudipa Banerjee I am from West Bengal Judicial Service, presently posted as Judicial Magistrate, Hooghly.

Justice Radhakrishnan - Okay.

Participant - Good afternoon, everybody Myself Avik Kumar Chatterjee, Judicial Magistrate, Chinsurah, Hooghly, West Bengal.

Justice Radhakrishnan - Okay.

Participant -Good afternoon My name is Jayasimha I am a lawyer and Member of the Animal Welfare Board of India.

Participant -Good afternoon, sir Myself Umesh Upadhyay, presently posted as a Judicial Magistrate, 1st Class, and Civil Judge Class II at Rajim, District Raipur I am from Chhattisgarh Judiciary

Participant - Good afternoon, sir, ma'am and everyone I am Priyank Dubey from Madhya Pradesh, posted as JMFC and Civil Judge in District Bhind

Participant - Good afternoon, sir I am Ajay Malik, M.M., Delhi

Participant - Good afternoon, sir I am Harendra Ojha, JM, Allahabad.

Participant -Good afternoon, sir, ma'am and all my friend I am Om Prakash Jaiswal, Civil Judge Senior Cadre, and presently posted as a Deputy Secretary State Legal Service Authority, Bilaspur, Chhattisgarh Thank you.

Justice Radhakrishnan - Thank you It's over It's over Anybody No It's very pleasant to meet all of you I think you are representing almost all the – all the states are represented, isn't it All the states in the country You are all sitting judges I am a retired judge That makes lot of difference So I have retired about one and a half years back So after retirement I, of course, I have more contacts with the public rather than the judges now So the feedback, I have a lot of feedback over judicial system judges and all that when we were in the office, when you are holding a post as such, you may not have much public contact, is it not So our moments are restricted Contacts are restricted, but once you go out of judiciary, you get a lot of feedback from various quarters, good and bad, sometimes good also, sometimes bad remarks, so many things So one thing I would like to highlight to all of you, you are all very young judicial officer You are long – you need to go You are the backbone of the Indian judicial system, isn't it Especially the Magistrate – magistratory level So one or two aspects I would like to highlight before we deal with the subjects, I don't know, I was – I could not participate in the morning session, so I don't know what was the main topic you have discussed may be of the subject and elsewhere See whenever apart from subject as such, apart from this Prevention of Cruelty to Animals Act or other subjects, see you had to be

extremely careful now nowadays in future, say around decision may be due to various reasons You may commit mistake Nowadays when you make a mistake, it has a lot of interpretations It was not so earlier Earlier suppose you commit a mistake because everybody is known by their ...of a Judicial Officer over a period of years because Judicial Officer is presumed to be totally non-corrupt, informed of all the law and procedures So nowadays whenever you commit mistakes, people tend to believe various things May be honest mistake Maybe very honest mistake Somebody will say that he doesn't know the law Basic facts he has not properly assessed or understood Somebody would say that he is totally unaware of the law Somebody would say that he is lazy He has not done any homework, so many things Somebody would say he is subject to an influence That is what is happening all over the country I am just telling you what is happening

Another view is that somebody will say, it's all depending on person to person Somebody will say that is because you can file appeal If he commit a mistake, the judgement is wrong, you can go and appeal and get it corrected That is also one view of that, very, very conservative view Somebody will say suppose we are not stating reasons for your order, then you were trying to find out fault with you because we are on expressive reason It is an arbitrary decision Suppose you are express reasons, then you aren't very strong footing -- very strong footing So I've to appeal all of you to see that whenever a decision -- when you take any decision on any subject, you must be thorough with the facts as with the law That will appeal to a conscience And you make reason decision If there is a reason to say anybody can look into that decision, any appellate court can look into that decision may be a wrong That's a different matter If you have given some reasons, which appeal to suppose your decision may be reversed by the District Judge or maybe the High Court or ultimately the Supreme Court may appeal Lot of instances where Supreme Court is upholding the decision of a Magistrate So reasons should be there That is very important. Now so far as this topic is concerned, I don't think that much of you are very familiar with the subject as such I don't know how many magistrates have dealt with the animal right law as such Maybe very few, isn't it Not much That's why we will not find much precedence also So we'll have to interpret various provisions on the basis of first principles Of course, some of the provisions are in the IPC Some of them are in the CRPC, and some maybe the civil law also some also And apart from 1960 legislation of the Prevention of Cruelty Act 1960 as well as the subsequent rules framed under that, I have come across much decisions on this area also when I wrote judgement But if you can read through some of the judgements of Supreme Court, recent judgements of Supreme Court on environmental law, as well as on this Prevention of Cruelty to Animals Act, you get a broad idea of how to interpret any provision, or how to interpret any matter, which comes before you on the judicial side I don't know how many of you have gone through the judgement of the Animal Welfare Board of India versus Nagaraja Anybody has gone through it fully You have gone through Anybody You of course, you may tell You are the member of the Board and lawyer No, no, I am just asking Judicial Officers So that is very, very important So only if you go through such decisions then only you will be able to properly understand the various legal provisions Then only you can as I initially has said, you shall not commit any mistake in your decision making process Suppose you pass an order contrary to the judgement or contrary to the principles laid down by

judgement, people will suspect Either they will say you might have been influenced, or they will say that you are totally unaware of the law They will say that you are totally unaware of the legal principles So it is extremely important that all these judgements of Supreme Court, I don't know how many of you are subscribing SCC or SCR Most – I think most of the judicial officers are getting now SCR and SCC, isn't it Most of the judicial officers, even the magisterial-level also So you can go through the subject If you read the judgement of these, not only these judgements, there are lot of other judgements also Not that maybe handful of judgements, still that will give a broad idea If you have gone through the judgement of the Supreme Court in that Gujarat Lions' case -- you are from the Gujarat Have you gone through the judgement of the Gujarat Lions' case It's very important judgement where we have laid down lot of principles, important principles Eco-centric principle we have laid down, and what is the rights of animals Before that also -- anybody from Chhattisgarh Have you read that wild buffalo case judgement Wild buffalo That is the National Animal of Chhattisgarh, isn't it But you might have read the – you should have read that judgement, wild buffalo, that is the problem See difficulty, that is on the very outset I want to impress upon you that you shall not commit any mistake If you commit a mistake, lot of other interpretations may carry Either you say that you have not studied the law or some, some people will say you have been siding with somebody else So why should you unnecessarily invite these criticisms when you are honest to your conscience So wrong decisions always carry various interpretations That is why on the outset I wanted to impress upon you Now that is the recent trend because I'm outside the system now There haven't really many of them are saying that I heard very -- it's not very happy to hear also because you might be true to your conscience Whenever a decision is bad, various interpretations follow That is because of the fact that you are not properly appreciating the legal principles, properly not appreciating the judicial precedents So that is why I specifically asked from Gujarat you have not read the judgement That is regarding the translocation of lions from Gir Forest to Madhya Pradesh, to Kuno in Madhya Pradesh Anybody from Madhya Pradesh Have you read that judgement that translocation of lions from Gujarat to Kuno in Madhya Pradesh See, it's a very important judgement It was published in the newspaper If you had read that judgement, you could have properly appreciated what is the, I mean, animal law jurisprudence, or what is the various provisions of the Prevention of Cruelty to Animal Act So this is the problem This is the difficulty So neither people from -- the representative from Gujarat, nor from Madhya Pradesh totally unaware of judgement, and that Chattisgarh also But that may be -- but in a Judicial Academy, normally, this must be debated Isn't it It is a very live issue In that case stand taken -- I am sorry to say that somebody has filed a contempt, because that judgement had to be fully implemented due to various reasons, which I do not want to disclose it No, that was a case where Animal Welfare Board has specifically found that there are only a handful of lions in Gujarat That is only 411 or so It's endangered species under IUCN list This is a red list of endangered species So over the last 20 years, the environmentalists in this country and abroad, wanted to save this species from extinction, the Gujarat lion It's called Gujarat Asiatic Lion So after 20 years of research, after 20 years of study, ultimately, they found out a place in Madhya Pradesh, where historically there were lions, historical presence of lions were there in Kuno Sanctuary After

making a survey of all over the country, they initially, they found some in UP, some other in Rajasthan, and ultimately, they found this is the place where originally they had lions So ultimately, the lot of money has been – 1,500 square kilometres were set apart for this only for translocation of lions from Gujarat to Madhya Pradesh Lot of villages were displaced to have this sanctuary exclusively for lions About more than 100,000 crores of rupees has been spent for that Ultimately, due to various – there was strong objections from the Gujarat government You must be aware, very strong objections, strongly apart from very higher quarters, highest quarters in the country, strong objection as if it is a pride of Gujarat that is what say, since it is a pride of Gujarat, we cannot – we don't want to part with the lion In that judgement, we said there is nothing pride in an animal What we have to say, what we examine is the best interest of the species And we have also held in that judgement that no state can claim ownership on an animal, no state claim It is a national wealth To a larger extent, we extend that principle, it is the wealth of the universe Nobody can claim ownership, especially, animal in the wild, wild animal So in that judgement, we have specific – we have established various principles One principle to be applied is the best interest of the species, and not the interest of the state, and not the interest – we are least concerned with the interest of the state We are least concerned with the interest of the state board We are least interested We are primarily concerned with the interest of the species That is a prime consideration where we have applied the principle of best interest of the species, and we have also enunciated the principle of eco-concentric principle The same principle we have applied in wild buffalo also That is the national animal of – your state animal.

Participant - State animal.

Justice Radhakrishnan - The state animal where we have laid down the principle that we have to follow the principle eco-concentric principle, not human interest principle The principle that earlier applied, it was anthropocentric principle that means human focused, because that was the thinking among everybody That is why I want to enlighten you You must understand all these principles, basic principles Everybody thought even the animals exist for human beings, benefit of human beings That was the thinking at that time In other words, animals were treated as only an instrument -- for the instrumental value only to the human beings They exist for the human beings It is not so It is the otherwise The human is only one of the species So the principle that was enunciated not only by the ... it's the fundamentally wrong principles In Gujarat case and subsequent judgements, we have even gone to the extent of – we have even went to the extent of saying that even many of the principles laid down by the United Nations starting from Stockholm 1972 Stockholm Conference, the sustainable development principle was laid down Subsequently, Supreme Court had laid down so many principles on Polluter Pays Principle, sustainable development, public trust doctrine, intergenerational equity, so many important principles are laid down, and all these principle have some fundamental mistake So there is a rethinking among the nowadays all over the world that while framing these principles, sustainable development, these are all human focused, were human focused principles, and these principles are fundamentally wrong principles So something wrong in the various -- principle laid down by the various United

Nations bodies including Stockholm Conference, Rio Conference, Delhi Conference, there are so many conferences So there is a rethinking among intellectuals, environmentalists, and from judicially or juristic point of view also that we have to apply altogether different principles when you apply the rights of other species. I have told you one of the principles of best interest, we have to apply the best interest standard, species interest That is the prime consideration Secondly, we cannot apply the principle of anthropocentric principle, we cannot apply We have to apply the eco-centric principles So these principles have been judicially recognised in this country, has been laid in various judgements So only if you read -- only when you go through the judgement, you will be able to understand these principles It's extremely important And don't think that these Constitutional principles, which you find a place in Article 51A, (g) and (h) compassion and humanism, humanism and 48, Article 48, now all these Constitutional principles are not meant for High Court judges, Supreme Court judges alone It is meant for you It is just that you have to bear in mind all these Constitutional principles when you decide any issue of rights of human beings or right of any species The difficulty I find many of the difficulties with these judgements, the Supreme Court judgement is law as good as a legislation It is a law As good as a parliament legislation You have to follow that So that's the difficulty you see Not only that – I am talking about this subject So you have to read through all of these important principle laid down by the Supreme Court You have to read down all these principles of the Constitution principle This is the mother of the all legislations Then only you can render a correct judgement Otherwise, at the very outset also there is different interpretations would follow Either they will say you're totally ignorant of the law They will say you're ignorant of the judicial precedents They will say that due to various reasons you have -- they may even go to the extent of saying that you are influenced also Why should you invite this criticism, which you do not deserve I also do not deserve You also did not deserve Is it not So there is a perception among public when you make a decision, if you have – if as far as possible you may commit mistake Anybody can commit mistake, but your judgement should reflect all these principles That is why I asked you that have you read all these judgements That affects the quality of your decision-making process So it is extremely important that you must be aware of these principles And there's a lot of other important aspects also I'll come to this latest decisions later, but I will just take you to the -- if you have not read, you just go through this (2013) 8 SCC 234 It is an interesting reading also It is not like any other judgement It is interesting It will give you a very interesting reading also where I will just only take a few paragraphs In paragraph 30 of judgement, we have elaborately discussed the various legal principles Paragraph 30, we have given the caption legal framework, and we have referred to the various international treaties, conventions, including the convention on biological diversity called CBD We have also referred to the Convention on International Trade in Endangered Species shortly called CITES, C-I-T-E-S We also referred to the IUCN list in paragraph 39 - 35 judgement we have noticed that the – we have noticed about India's document about 91,200 species of animals and 45,500 species of plants are documented in IUCN list 2008, and we have also referred to the National Wildlife Action Plan 2002 to 2016 These view, if you go through the judgement, you'll get a broad idea, and we have elaborately discussed the principle anthropocentric principle versus

eco-centric principle, we have dealt with This is the judgement This is not the judgement 15.04.2013, let me see This is the judgement 15.04, yeah, that's right, 15.04.2013 You take a paragraph -- para 30 Paragraph 30 In para 30, 3-0, 3-0 Paragraph 30, legal framework What is the paragraph A different paragraph no No, that starts with legal framework This paragraph may be something else That is right This is legal framework, correct, where we have discussed all important principles We have referred to the entry also, that list entry 17B7 schedule that we have raised it Then we have referred to the Section 5 of the Wildlife Act We have referred to the earlier judgement of (2010) 10 SCC I am not taking all those things, but if you just go through this, then you will get a broad idea of what is the basic legal principles Then paragraph 45 where we have discussed this sustainable development, and we have even went to the extent of saying that -- and that is the uniform -- international recognised also Now there is a rethinking in the United Nations also That is regarding the ownership and possession of wild animals So no state can claim ownership No state can claim ownership of a bird, migratory bird Migratory bird, no country can claim ownership of a migratory bird We have lot of birds coming from Siberia We have birds coming from China This is all international recognised principles That is regarding ownership and possession of wild animals So that is one of the principles whether you have got an ownership of wild animals Then we have also referred to this historical habitat, So if you go through this judgement, you get a broad idea of what are the animal rights This is one judgement Then the latest one where also we have -- before that also there are few other judgements regarding slaughtering of animals That maybe a common issue probably we will have to deal with, slaughtering of animals, slaughterhouses, is it not That probably some of you might have dealt with that issue When a case came before us, before any of you on slaughtering of animals, they are not properly maintaining the slaughterhouses because basically that come under municipal laws, corporation laws or municipal laws.

Participant - ... owners have claimed for the possession of that bulls, and they have claimed it for -- they want it for the agriculture purpose It was described like that I rejected the application on the ground that the veterinary doctor has given opinion that all the bulls are below the age of 3 years, and as per rules, the bulls which are above 3 years, they can be used in agriculture purpose So I rejected--

Justice Radhakrishnan - Only above 3 years.

Participant - Above 3 years So I rejected that application that on the basis of which they have claimed the possession if it is given to them, then it would amount to cruelty to the animals So on that basis I rejected In fact, in 5 trucks 109 something bulls were kept, and almost 25 have died So it was natural that it was for slaughtering purpose, so I -- other two magistrate in adjoining taluka have granted the application I have rejected, and that three orders were -- my order was challenged by the owner, and that two orders were challenged by the Panjrapole, and then my order was confirmed by the appellate court that the reasoning is proper

Justice Radhakrishnan - See under the Prevention of Cruelty Act 1960, isn't it 1960, Prevention of Cruelty to Animals 1960, there are only two exceptions, human necessity because it is used for meat that it becomes a human necessity also, meat eaters It's become a human necessity That is a legally recognised Then the experiments These are the two exceptions, and there is one more Section 28 for religious purpose, the manner in which to kill an animal There are two views on that Very sensitive issue, Section 28, how far Section 28 is permissible under the Act Anyway, the legislation has given some -- one provision Section 28 say for religious purpose we can kill an animal, and the way manner in which that religion advocates the manner in which it has to be killed That is Section 28 of the -- that let it be like that Anyway there are a lot of criticisms about what assembly has to challenge that Section 28 to what extent Still even if it is religiously that is a religious practice, even then to what extent we can inflict pain on animal at the time of killing

Participant -

Justice Radhakrishnan - Himachal

Participant - Himachal.

Justice Radhakrishnan - Himachal, yeah That is regarding the, I mean, slaughtering the animal in religious, in temples, temples and all that

Participant - Giving reference to Article 26 and 3 judgements Honourable High Court has used Acharya's case and Laxmi Narayan case and Tilak case, and Honourable High Court has clarified that even Honourable Supreme Court has said in the name of religion, what is the essence Essence is not to sacrifice, and there the judicial intervention can, and then total ban has come in our state

Justice Radhakrishnan - That they've followed the Acharya's case, isn't it They've followed the Acharya's case Shirur Math, Shirur Math case also they have followed Yes Now these are the -- but leave aside that for experimental purpose and for religious Section 28 Leave aside that there are lot of rights on animals Even regarding slaughtering houses also, see if since animal can be killed out of necessity, that is what the Act says, but don't inflict pain and suffering on animal when you kill it, at least to that extent Even in many of the Western countries, they will not inflict pain or agony to an animal They may kill it You kill it and eat it, but at least you can avoid pain and suffering on animal To that extent at least you must have some humanism And Article 51-A(h), there is a Constitutional principle At least show some humanism to an animal before killing it You kill and eat it, but don't inflict pain or suffering on animal, to that extent at least, on which we have issued a -- we have -- it is my judgement We have issued direction to all the states, and committee under the law, under the rule say committee has to be, society has to be constituted to examine as to how these slaughterhouses are being functioning, whether it is an animal is killed in the presence of another animal, and the manner in which an animal is being killed So it's a barbaric, sometimes barbaric, the manner in which -- there is one -- I think it's one Kerala, I have seen one television in news channel that at least 10 times animal was tried to be killed It was shown in the

TV for some time. So it's a horrific scene Nobody can – you cannot see this next time. Such type of manner in which the killing is horrible, you must go and see in a slaughterhouse, the manner in which they are killing an animal. That's why we have issued a direction to all the states. It was not compliant initially. Then we have to ultimately summon the secretary of the particular department of the Supreme Court to see that these committees are constituted, statutory committees. Ultimately, the statutory committees were constituted to find out how the slaughterhouses are being maintained, how the animals are being killed for a, I mean, for a meat. That was not functioning well, not functioning very well. Then we have passed another order directing all the Chief Justices of all the states to constitute a committee headed by a district judge, retired district judge. A sitting judge or the court may not get time. So a retired district judge was appointed as a convener of this committee who have been directed to examine all over the country, all over the state, and this committee was directed to see and on the spot examine every slaughterhouse and submit a report to the Supreme Court to find out as to whether, anyway they are killing it, because they can kill it, to show that, to see that modern methods are used so that you will inflict only less pain to the animal. One study, there was one study conducted by Dr Broom who is the professor of animal psychology in Cambridge University. He said the pain suffered by a human being similar to the pain suffered by animal. If you cut your hand, you will get pain. If you've got a tooth ache, you will have pain. Same in the degree of pain suffered by an animal if you inflict any injury or a harm to animal, same, the pain that we get, a human being get the same pain. See this is – is it human I am wondering myself. It's inhuman. We are seeing 21st century. That is why it is one of the species. And somebody say this is our culture. You say this is a culture. Can we say we are cultured. We are cultured. Killing an animal before a deity, is it the culture. No, but I think, it must be there once upon a time, maybe slaves were there. In every country slaves were there. That was they are done away with. In the judgement we have a speciesism, we have discussed speciesism. Casteism was there. So many such evils were there, but to kill an animal, this professor has made an extensive research, and he has said the pain that a human being suffers equal to that the pain suffered by animal. So these are some of the very, very important aspects, which we have elaborately dealt with in the latest decision on Animal Welfare of India versus Nagaraja. We have all elaborately, we have each and every sentence was that I don't know whether anybody has read that judgement except barring very few. You are in Nagaraja's - you have read. I'll just read some of the paragraphs. So this judgement basically originates from few activities carried on in some states, in Maharashtra, some Tamil Nadu and various other states. And the question to – initially, it was thought that initially, it was a notification by the MoEF including it is a list that it can't be used as a performing animal. Bulls cannot be used as a performing animal. Then we have studied the behavioural ethology of bulls, and para 16 of the judgement we have elaborately examined its natural instinct and everything. We will come to that later, but I would like to highlight only the legal principles we have laid down.

Participant - 80

Justice Radhakrishnan - 80, no, [inaudible 00:45:17] I'll just tell about only the principle first Then I'll come there First of all, you must understand this PCA Act is a welfare legislation If you are in doubt, you are in favour of a welfare legislation, don't err in against the welfare legislation So para 33 of judgement we have elaborately discussed We said it is right law that these are the very important principle laid down by Supreme Court, which you can apply whenever any issue comes before you on the rights of animals We have specifically said in the matter of welfare legislation, the provisional should be liberally construed to see a construed in favour of the weak and infirm See even if you are in two minds, err in favour of welfare legislation, because it is an infirm It's weak It's human being has a domination Then we also said court also should be vigilant Court means every court Court also should be vigilant to see that the benefits conferred by such a remedial and welfare legislation are not defeated by subtle devices So in a welfare legislation you find so many subtle devices that defeat a welfare legislation So we have said the court has the duty that in every case where ingenuity is expanded to avoid welfare legislations, to get behind the smokescreen, and see substance of the device for which it has to pierce the wheel and examine whether guidelines or regulations are framed so as to achieve some other purpose than welfare of the animals Then we have said, regulations or guidelines, whether statutory or otherwise, is the purport to dilute or defeat the welfare legislation, and the Constitutional principles, the court should not hesitate to strike them down so as to achieve the ultimate object and purpose of welfare legislation The court has a duty under the doctrine of *parens patriae* to take care of the rights of the animals since they are unable to take care of themselves as against human beings So these are the basic principle you must always bear in mind Then we will not commit any mistake Then again, we have -- each and every section was thoroughly discussed Section 3, Section 11 and so many sections This is what I was talking about that this is what Dr Broom, I'll just read this para 40 The pain and suffering are biological traits Pain, in particular, informs an animal which specific stimuli, it needs to avoid An animal has pain receptors etc The Professor of Animal Welfare, Dr Broom of University of Cambridge in his article appearing in Chapter 14 of the Book "Animal Welfare and the Law" Cambridge University Press says, I will quote Behavioural responses to pain vary greatly from one species to another, but it is reasonable to suppose that the pain felt by all of these animals is similar to that felt by a man Same pain Then we have examined the doctrine of necessity Then every clause has been examined, and we have also referred to the natural instinct of an animal What is a – we have to study the natural instinct That also elaborately discussed It's a very lengthy judgement Then in paragraph 53 and 54, the stock defence So in all these type of cases, including the one we find the killing animal for the religious purposes or to please the deity, the stock defence is always there is because of culture and the tradition That also we have answered in the judgement We have said in the PCA Act, the present act, it is a welfare legislation Now you overshadow or override the so-called tradition, culture, because we are interpreting a welfare legislation, and further we have said we have a history of doing away with such evil practices in the society assuming such practices have been supportive of culture and religion, et cetera Then we have even went to the extent of examining the Upanishad, Isha-Upanishads of 600 BC, where the Upanishads also says, this is what the Upanishads say, I would

say caught from the Upanishads This is what they say The universe along with creatures belongs to the land No creature is superior to another Human beings should not be above nature Let no one species encroach upon the rights and privileges of other species This is what the Isha-Upanishad teaches us And Father of the Nation, Mahatma Gandhi, you know, Mahatma Gandhi had said the culture of a nation depends upon the manner in which you treat animal That is what Mahatma Gandhi says So, so many, and if you go through our literature, any religious text, nobody has said that you must inflict pain or a suffering to an animal Nobody had said so So these are the basic important principle, and there is lot of international approach to animal welfare also There are a lot of changes in the attitude of human beings towards the other species The various paragraphs have been said in judgement I am not taking all of those paragraphs If you read from paragraph 57, where that evolution of human interest reason for environmental protection, so many principles are being discussed, and four judgements Supreme Court is what been referred, (2002) 3 SCC 277, (2012) 4 SCC 362, (2013) 8 SCC 234 and so many judgements also And we have even went to the extent of examining the Animal Welfare Law of other countries, including that of UK, Germany, Switzerland, various other countries, and even that is why in international arena also they are rethinking in this principles So that is why he said in paragraph 39, based on these eco-centric principles, the rights of animals have been recognized in various countries Protection of animals has been guaranteed by the Constitution of Germany, in the Constitution of Germany just like the fundamental rights They have even recognized the right of animal to have – it has got its own dignity It has got an intrinsic worth It is not merely a matter of instrumental value to the humans You must respect the species' right also So in Germany they have given Constitutional status to the rights of animal just like human beings This is followed by various other countries also That also we have dealt with in Switzerland For example, countries like Switzerland, Austria and so on have enacted to include animal welfare in their national Constitution so as to balance the animal owners' fundamental rights to the property and the animals' interest in freedom etc., so and so, so and so So in the international arena also there is a rethinking, and in paragraph 61, we have specifically said when we look at the rights of animals from the national or international perspective, what emerges is that every species has inherent right to leave, and shall be protected by law, subject to the exceptions provided out of necessity Animal has also the honour and dignity, and cannot be arbitrarily deprived of, and its rights and privacy has to be respected and protected from unlawful attacks And after that we have also referred to the Universal Declaration of Animal Welfare Then there are five freedoms, just like fundamental rights that is uniformly recognised, that was recognised in a conference of OIE of India is also participant where it is called Brambell's Five Freedoms These Brambell's Five Freedoms are – these are the five freedoms One, freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal pattern of behaviour Natural instinct And after referring to these Five Freedoms, we have come to the conclusion in that judgement that these Five Freedoms finds a place in Section 3 and Section 11 of the PCA Act, Prevention of Cruelty to Animal Act Rights and freedoms guaranteed to the animals under Sections 3 and 11 have to be read along with Article 51(g), Article 51A(h) and these

Five Freedoms, which ultimately we have come to the conclusion this judgement is a magna carta of the rights of animals This is a magna carta So these are the.. Then we have referred to various other important principle, compassion, Article 51A(g) was interpreted Then we have interpreted Article 51A(h), what is humanism Then we have elaborately discussed what is speciesism All these -- then ultimately, we have also examined what are non-essential activities What is right to life Article 21 So all these legal principles have been elaborately discussed in the latest judgement, which will get you a broad idea of to how to deal with the question of any, any issues comes before you in the judicial side with regard to animals You are in favour of the animal because they are in distress They are weak And just like a minor, the court has a duty to the animals If a minor is brought to you, brought before you in the court, you have got a duty to protect the animal because parens patriae principle you have to apply Same, in the same logic we have to apply in the case of animals also So every judicial officer dealing with any issue on animals have got a duty to protect the animal First and foremost, your approach should be to see that the best intra-standard is to be applied in favour of the animal, not against the human being Many a times you will find so many issues we have come, and I have also, I have read also the judicial officer is generally in favour of the human beings You impose some fine and leave it Don't impose some fine and leave it If you go through the provisions of the -- I can even take the provisions also under the Indian Penal Code You have the discretion You have the discretion even to imprison a human being You give imprisonment Why are you imposing fine alone You read this principle Article 51A(g), (h), Article 21, Article 48, and various judicial pronouncement into the, for example, we'll take one or two provisions of the Indian Penal Code, and I'll tell you how to apply that Indian Penal Code Section 47 defines an animal, what is an animal, where animal denotes any living creature, other than a human being Then for example, we'll take one or two provisions Section 428, mischief by killing or maiming animal of value of 10 rupees etc So mischief by killing, or maiming animals or inflicting pain Now you have a -- this is a cognizable offence, and you have the option This say, whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees and upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with fine Generally, what we do We impose a fine Why not you apply the alternative Why not you give imprisonment Help the animal Help the right of other species So you must use a discretion in the light of these Constitutional principles, in the light of these judgements of the Supreme Court, in the light of these international principles And mind you, you are interpreting a welfare legislation of a infirm and a weak Always human has domination So when you have an option, you exile discretion in favour of the infirm and weak So don't just impose a fine and leave that person You should have some humanism You should have some compassion Article 51A(g) says compassion to the living creatures, so apply So it's only one of the examples, Section 428 So whenever you appl Section 428, always you must keep in mind Article 51A(g), Article 51A(h), Article 48, and it's a welfare legislation, and the various principles laid down by the Supreme Court, judgements I have already referred I have not taken through the entirety of the judgement There are lot of other principles we applied So you exile the discretion in favour of the weak and infirm There is 428 There are lot

of other provisions in the Indian Penal Code also where we'll have to deal with, and there are lot of other rules also under the Prevention of Cruelty -- that is the prevention of cruelty to animal in the slaughterhouses You can examine Go behind the small screen, and find out how the animal has been killed In the slaughterhouse, you must find out whether what types of methods are used to kill this animal In that process, have they inflicted pain or suffering on to the animal You must go through that You must find out that You are a human being You must see that unnecessarily pain shall not be inflicted to the other species I think my heart bleeds when I hear it I've seen some of the photographs definitely because otherwise we are not human beings Go behind the small screen Whenever a matter comes before you that on a slaughtering of an animal, you find out, just ask him what type of methods you've used And you find that the method they use is barbaric or inflicted pain and suffering You punish him If possible, give an imprisonment Who is going to ask you You have to do that You have to do that You have to. When we decided Sahara matter, when we sent him to jail, we had different difficulties He is in prison now I have to send him to jail I was heading the bench Even now he is in prison Two years Somebody said we have exceeded the brief Maybe, but we are convinced You have to exercise You are a judicial officer You have to exercise a discretion God has given this opportunity to you You are not responsible to nobody You are not responsible to the High Court You are not responsible to the District Court You are not responsible to the Supreme Court It's a divine duty of discharging So when you deal with a Prevention of Cruelty Act, it's a divine function you are discharging Is it not You have to ask your conscience Ask your conscience This species is a helpless species You can't inflict so much of pain So that is why these principles you find a place in the judgement Go behind the small screen Find out how the animal has been killed Then I told you, I referred to some other provisions If you can put him behind the bar, put him behind the bar Nobody is going to ask you And fine they can afford to pay They can throwaway the money to you Don't worry They don't mind Money is there Everybody has got the money These persons are big people They have got a lot of money Fine is nothing. So these are some of the very, very important aspects you must always bear in mind, and if you go through these judgements, you will find your personality will differ, and your approach to other human beings -- in the morning session, I am sure they might have told you also, so the normal, the [inaudible 01:03:20] study shows the maximum number of criminals of persons who have committed these type of crimes against animals Somebody might have told you in the morning session, isn't it There is a latest research study shows those who have killed animals indiscriminately, they've got always this instinct They don't mind in raping a girl They don't mind They don't mind in killing a person for ransom, kidnapping a person because they are not human beings This is how you start This is how they start. And if you go through the Jallikattu case, you go through the report submitted by the Animal Welfare Board to the Supreme Court, I think you cannot read twice The type of injury they inflict to an animal, it cannot be explained So cruel, barbaric So we can't think a human being can be so barbaric to a helpless animal That is why we have to ban these type of, I mean, in the name of this enjoyment, pleasure, human pleasure So these are some of the basic principle you must always bear in mind whenever any issue comes before you on the -- now the present larger issue is the street dogs In various high courts, lot of

cases are pending Stray dogs, stray dogs, whether to kill the stray dogs also So these are -- you must be – I am not taking much of this time, because if you go through the entire – my flight is at 3:50 It's time to go Time to go

Dr Geeta Oberoi- Time to go

Justice Radhakrishnan -Time to go My flight is 3:50 I will miss my flight.

Dr Geeta Oberoi - Yes.

Justice Radhakrishnan - Anyway, if you go through these two judgements, I have given citation latest one (2014) 7 SCC 547 This is the latest one If you go through the judgement, I am sure that you will get a bear idea, and what are animal laws, how to apply the laws -- apply the laws, and that will, of course, in tune with the Constitutional principles So err in favour of those who inflict pain, no, even if you are in favour of the animals, even if you are – so that is very important And if you go through the judgement, you get a broad idea of the legal principles, international principles, the principle you apply the Constitutional principle Is it in line with the Constitution Nothing We are not important to anything Our Constitution say so, and we must thank – I would say that we must thank this parliamentarians who enacted 1960 Act, 1960 We are in 2016 It contains almost all important principles, this small book If 2016, I don't think they would have legislated this legislation.

Participant - Lordship, just I have a small question, and I'll take only one minute

Justice Radhakrishnan - I can't hear Yeah Yeah

Participant - Lordship, anybody who speaks about animal rights basically draws an analogy between the welfare of the human and welfare of the animal So part of custom I have heard that we should have an eco-centric approach rather than a human-centric approach.

Justice Radhakrishnan - Absolutely, absolutely, absolutely.

Participant - So your Lordship has already recorded some judgements So apart from those judgements also, what your Lordship thinks whether the development of jurisprudence pertaining to animal welfare is in the right direction

Justice Radhakrishnan - I think in the right direction Absolutely right direction Only thing, you must apply the principle laid down by the Supreme Court in these two judgements Then we are in the right direction Apply this principle Apply this principle So now you can boldly act because this is – Supreme Court – this is the law of the land now.

Participant - Yeah.

Justice Radhakrishnan - This is the law of the land now You can apply

Participant - Thank you.

Justice Radhakrishnan - Even if you err it in favour of the animals, so let us see what the appellate court says Okay Thank you Thank you very much Okay Thank you

Dr Geeta Oberoi - Thank you, sir Can we have a big round of applause for Honourable Justice Radhakrishnan Flight is late by half an hour You can talk--

Justice Radhakrishnan - Flight is late by half an hour I can afford to be 10 minutes more Okay Any, any, any, any questions Half an hour, huh

Dr Geeta Oberoi -- Half an hour, sir

Justice Radhakrishnan - So by 2:45

Dr Geeta Oberoi - You can leave at 3

Dr Geeta Oberoi - ... so the flight is late by half an hour.

Justice Radhakrishnan - Hereafter, you must apply this principle correctly So don't avoid all criticisms because it's paining me also when I hear from various quarters about our judicial officers, because one of the reason is that because you say that various reasons because nowadays it is very, very difficult Judicial decision-making process is not that easy You have to invite lot of criticisms, but don't worry about that If you are true to your conscience, I think nobody can question you, and you have to build up a credibility of your own Overnight you cannot because being I was the Chief Justice of Gujarat High Court I was the Chief Justice of Jammu & Kashmir High Court I was the Chief Justice of Kerala High Court See over a period of time, say five years, we create our own impression about every judicial officer over a period of time from various quarters because I had a very interesting case from Gujarat One judicial officer, he is no more now He was in the habit of granting bail, maybe genuine cases He was a honest judicial officer He used to grant bail In one very, very sensitive matter he granted bail that is not to the liking of one of the judges of the Gujarat High Court So he initiated some action against him, and convinced few of the judges that he might have granted bail in taking money, or he might have influenced the matter It's a very sensitive case, he granted bail He's a very honest officer, absolutely honest officer, and he was kept under suspension Ultimately, he was under suspension for about 10 years It came before me and the judicial side when I was the Chief Justice there I have gone through the entire records, his past records, his family background, his -- from various quarters I collected materials I have found he is an absolutely honest officer. True he has granted some bail in few cases, but ultimately, I found the person who had taken action against him, he is the dishonest officer in the High Court, but all of a sudden he could create a credibility of his own Ultimately, I rendered a judgement in his favour, and I have awarded cost against the High Court -- against the High Court

The matter was sent to the Supreme Court Supreme Court upheld my judgement, but unfortunately, he is no more now He died See you have to build up a credibility of your own over a period of time say, five years, or 10 years or 6 years, so nobody can point any finger against you That is how we used to assess because when we are the judicial officer, we know who is who after over a particular – we will also collect information from various quarters, from his colleagues, from the bar, and ultimately, we form an impression, yes, this judicial officer is honest Even if they take a decision, it might have been reversed by the High Court or Supreme Court makes the matters little That is his view So you have to build up the credibility So even if somebody say so he is a corrupt judge, or somebody say he is subject to influence, I don't think any, any sensible judges in the High Court or Supreme Court believe that because we have got an impression about a particular person So that impression you must develop over a period of time That how you develop that, because one of the reason is that you have to have -- your decision will definitely reflect your reasoning, your application of law, your understanding of the fact So one of the facts is, and generally, your behaviour in the court, the bar, not merely granting any order to just for asking, but you can create -- you can develop a credibility of your own over a period of time So even if a stranger says that since we granted bail, nobody's going to believe the judicial officer is going to believe But there of course, unfortunately, there are lot of vested interest creeping into our system These are part of life Everybody knows that Any High Court we will not tell you You must also be knowing that due to various reasons, because generally, the standard of not only judiciary, all system, all, I mean, the standard of parliamentary has gone down All system it has gone down So naturally it affected judiciary, but by and large we must if only we can say, confidently, we can say ours is the best system Judicial system in our country at least Judicial people still has got faith on the judiciary It is the only place we can go Those who can have -- those who've got political power, or got the money power, they can go elsewhere, and get relief, but not now But ordinary people, average people, they have no other place to go, but only the judiciary So that you have to always keep in mind when you discharge the functions, and try to see that as far as possible, you must keep a little bit of distance from the war Of course, you cannot – that means not completely aloof from the society, but little bit of that your judicial office requires a little bit of detachment from the Bar as well as society, and you must develop a personality of your own, and you should not be seen in some places which you should not visit So that also add to your character, your name and all that, that you have to cultivate, you have to develop Then I think you can boldly decide any matter, and don't bother about anything You do not bother about the consequences, but you do according to your conscience, but you must be thorough with the legal principles That is one at the very outset I wanted to convince you, because your judgement must be reason -- you should give proper reasons to the judgement. You must apply the correct principles If you apply a wrong principle, take a decision, people will say many things If you complete -- if you omit a direct decision of the High Court or a direct decision of the Supreme Court, people will say, nobody will believe that you are unaware of the judgement Ordinary people will believe So they say judgement directly on the point, but he has completely missed that deliberately People may say many things So that means you must educate yourself That's why this Academy exists here You

had a wonderful platform here Otherwise, when we were in the initial stages, we don't have such a platform You have got the state academy is there Large amount of money is being -- public money is being spent for this, for training judicial officers See the establishment, it's a world class Is it not The judicial academy is a world class When you have those person from Sri Lanka and various other SAARC countries have come here, and it has got a tremendous name all over the world, this judicial Academy has got So you have got this platform, wonderful platform, where we can meet all your colleagues from all over the country That's a great educational process, you know, so many person from Kerala, from Tamil nadu, from Sikkim, so many persons we come into contact, that itself a great education You can safely go to Sikkim We have got a lot of friends from Sikkim Anybody if you want to visit Sikkim, we can go there You are there You are safe, like you can also go to Kerala Lot of persons over here It's a wonderful platform And state judicial Academy is also coming up very well Recently, last week we have inaugurated the Kerala State Judicial – Cochin State by Chief Justice of India It's come up very well Tamil Nadu Judicial Academy, Karnataka and all over the country now So you have a wonderful – so you can't now say that you're unaware of the law The later principles we can come to here You can participate in the conferences, workshops You improve your knowledge Update your knowledge for a correct application That is necessary See how the matter is that what type of cases are coming over to the Supreme Court, High Court and various courts, commercial litigation Now we have got commercial courts now.

Participant - Yes.

Justice Radhakrishnan - Almost say from the district level as well as High Court level only dealing with the commercial matters So lot of opportunities are there Lot of different types of cases are coming before the court So you have to improve your bestowed knowledge You have got the platform You have got a beautiful library here So these are – you cash this opportunities

Dr Geeta Oberoi - Also you have these laptops.

Justice Radhakrishnan - Laptops.

Dr Geeta Oberoi - Please use them, and nobody, like yesterday some person told me, oh, this judge, this magistrate, we went to that magistrate, and they didn't know what is PCA Act is I was like left defending, you know, no, all of you have laptop, and all of you know what it is PCA Act At the click of a button, you have these Acts So never reveal, I mean, I don't know That lady is not there She told me Srirangapatna, right, madam

Participant - Yes

Dr Geeta Oberoi - She told me that one magistrate told her that I don't have Act, and bring copy for me Is that true So yesterday I was defending you I think this should never happen, if it has happened I don't know Seriously

Justice Radhakrishnan - And most of the youngsters, I think, you can come out

Dr Geeta Oberoi - You are young

Justice Radhakrishnan - They must also come out It's even if you commit a mistake, don't worry because we are the family members here Don't worry We are not always going to find out fault with you So by mistake you study Is it not Anybody can commit mistakes, but it cannot be a deliberate mistake That is all Innocent mistake can always be condoled

Dr Geeta Oberoi -Magistrates should use laptops

Justice Radhakrishnan - Laptops And they are providing laptop free Isn't it

Dr Geeta Oberoi - Yeah.

Justice Radhakrishnan - To all judicial officers, yes

Dr Geeta Oberoi - Yes Under e-Court Project 2, yeah, everyone has now Phase 2

Justice Radhakrishnan - I think, I also just pack up and go, and take my luggage.

Dr Geeta Oberoi - You have a question Sikkim girl has a question for you Sikkim Magistrate

Participant - Lordship, when it comes to argument of any facts of a case or a case, you know, on the basis of substantive law, which the Supreme Court has laid down, I have noticed that the trial courts actually do not really do that either through reading the files in the High Court, or, I mean, my experience of reading the files in the High Court, or even my -- during my training, I have noticed that there is this kind of an attitude that, you know, argument, I mean, argue a case on the basis of principles which are theories is only, you know, at the level of the High Court or the Supreme Court The trial courts are just supposed to deal with facts and what is the written law is So as a judge, I mean, I have felt like, you know, it could be a very helpless situation where you know that this case could be argued on the basis of a certain principle or a doctrine, but then you are not able to do anything because none of the parties have brought up that matter before the court So in that instance, what can a judge do sitting at the bench where you are not actually steering the case, or not even putting the thing in the mind, but then you know that it could be argued on the basis of a certain doctrine or a principle, like the things which you have talked about, so what can you do as a judge

Justice Radhakrishnan - No, as a judge what I was doing, my practice, what I was doing, even the Supreme Court also, or even the High Court level also, and I also want the judicial officers has to follow that See even if the lawyers both sides argue and go, you must be – it's after all your judgement Your judgement So you have to do your homework Probably that lawyer might have raised a point He might have missed a point Ultimately, justice has to be done by you Not by the

lawyer on either side or by the -- you have to go through the entire facts You have to study yourself Then find out whether there is any, any relevant point which the advocate has missed Now there is one Supreme Court judgement that suppose say the advocate has failed to cite a decision to the point, we must repost that case, but this is not generally being -- not being done, because we have few instances where there is one Supreme Court judgement say that one High Court judge has decided a particular case based on some decision, which was never cited at the Bar So he made his own research He made his own research, and he found out some decisions to the point and he decided One of the grounds taken before the Supreme Court was that this decision was never cited at the Bar by either both the sides The judge himself picks up some decisions Judge himself apply that principle and decides that, which the Supreme Court at that time Supreme Court, one judgement Supreme Court said it is not correct In such a situation, you must have reposted the case Put this decision to the lawyers So probably lawyers could convince still those judgement is not applicable It's not applicable, but this is not generally being done I never used to do that I never used to repost Of course, I decide myself Let the appellate court correct it So always you must bear in mind, it's after all your judgement, and the appellate court is always -- appellate court is not concerned with whether the advocates argued or not They look at the judgement, and you know what is happening in the appellate court The advocate will come We have raised - specifically raised this point that the judicial officer did not consider that point So, so many arguments we cannot defend in the appellate court So, so many arguments are, but by and large, you must – if you are convinced important point has not been raised, if you've got the time, you repost it and hear it Hear the party once again, or else in a given circumstance, I used to do that Even if it is not reposted, I used to apply myself I used to apply the decision, decide it Let the appellate court correct it That is the only way I think I can just rush off here Sorry, I want to spend a little more time, but because of my other -- my flight is at 3:15 I think

Participant - Yes.

Justice Radhakrishnan - The flight Like we can't predict

Dr Geeta Oberoi - He has one question.

Participant - Sir, my question is regarding Section 428, 429 IPC How can these two sections be helpful in preventing the cruelty against animals

Justice Radhakrishnan - No, you can apply the Constitutional principles Nobody, no bar--

Participant - Actually, sir, my contention is--

Justice Radhakrishnan - Is there any judgement say -- is there any judgement say that the Munsiff or Magistrate shall not apply the Constitutional principles No judgement has said I have never come across

Participant - No, sir, actually, these two sections are the offenses against property.

Justice Radhakrishnan - See, property.

Participant - Property.

Justice Radhakrishnan - Property.

Participant - So here the animals are treated like a property, and the person who has been the victim of--

Justice Radhakrishnan - It is not a fundamental right anyway It is not a fundamental right Property is not a fundamental right It was earlier So he has no fundamental right to say that is my property

Participant - If a person kills an animal, and the person who has sold that, he has no any problem He has not lodged any case Then how can we sort of want to take action under this section

Justice Radhakrishnan - No, see killing of animal is not prevented There is a Section 28 says another provision to PCA Act itself says we can kill an animal for meat For meat The manner in which it's being killed, that you can examine

Participant - Actually, sir, these two sections, so far I could read it, I totally concerned regarding the loss So if any person suffers the loss only when these two sections apply If no loss is there, this section does not have any function

Justice Radhakrishnan - What loss I didn't understand your question What is that

Participant - Mischief

Participant - Mischief

Justice Radhakrishnan - That is 428.

Participant - Mischief

Participant - Mischief

Justice Radhakrishnan - 428, isn't it Mischief.

Participant - Yes, 428, 429 Both are concerned regarding mischief

Justice Radhakrishnan - No, that's right Let us see Let us take that provision I'll just read that provision You have got the – just read Whoever commits mischief by killing.

Participant - Yeah, whoever commits mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse or mule, buffalo, bull, cow or ox, whatever maybe the value thereof, or any other animal of the value of 50 rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both Now we have to go through the Section where the mischief has been defined, Section 425.

Justice Radhakrishnan - What does the mischief says Read Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of a property, or such change in a property or in the situation thereof destroys or diminishes its value or utility, or affects it injuriously, commits “mischief” Then explanation

Participant - But the explanation says it is not essential.

Justice Radhakrishnan - Not essential.

Participant - Not essential.

Justice Radhakrishnan - Mischief by killing, no, if you read mischief by killing, killing or maiming a cattle who commits mischief by killing -- what is that mischief by killing You can kill an animal Nobody can – if you own an animal, you can kill it.

Participant - Yes.

Justice Radhakrishnan - Subject to whatever exceptions, exceptions I can kill an animal No problem But the manner in which we are killing an animal, that you can always examine Even if it is not in 428, even if it is not there in 428, still you can examine Suppose he is inflicting pain and suffering on an animal before killing it, you can examine

Participant - Yeah.

Justice Radhakrishnan - You can examine even if it is not there in 428 That is the prime consideration That is the prime consideration

Participant - But how can – it is covered in the section

Justice Radhakrishnan - You can – what it says It only says mischief by killing.

Participant - Mischief, actually, my focus is upon the word mischief Mischief must be there, and mischief can be caused only when the loss is there

Participant - No, no Explanation 1 says no.

Justice Radhakrishnan - No, no, it is not essential to the offense of mischief that--

Participant - Contrary to Explanation 1 you are saying

Justice Radhakrishnan - No, just read Explanation 1 and 2

Participant - Likely to cause

Justice Radhakrishnan - It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed

Participant - Yeah Opposite to what you are saying.

Justice Radhakrishnan - Opposite, opposite, yes You read Explanation 1 and 2

Participant - Actually, what the explanation says, it means intention maybe whatever it be, but damage must be caused

Participant - No.

Participant - Intention whatever it may be, intend to cause

Participant - No, no.

Justice Radhakrishnan - You read that illustration.

Participant - Illustration G

Justice Radhakrishnan - A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z A has committed mischief A introduces water into an ice-house etc., etc., etc., etc Whoever commits mischief shall be punished with imprisonment for a discretion which may term, which may extend to 3 months, with fine, or with both Offense in Section is a non-cognizable, bailable, and compoundable and triable I think some element of killing means it's not normal killing You're committing some mischief Otherwise, they do not use the expression poisoning Why they have used the expression poisoning So intention is different Can you poison an animal and kill it Is there any law permitting to poison an animal No.

Participant - Actually, to take again if a person--

Justice Radhakrishnan - So mischief has some other meaning here.

Participant - Mischief means like revenge, taking revenge on your neighbours You don't like neighbours--

Justice Radhakrishnan - Something else Otherwise, they need not use the expression poison.

Participant - You are putting poison, mischief

Participant - Actually, what intention I see here, the intention is that to cause a loss to a person, intention, whatever it maybe, but damage or loss must be there, because if you see the--

Justice Radhakrishnan - Anyway, as I have already said, you err in favour of the animal

Participant - But Explanation 1--

Justice Radhakrishnan - Explanation 1 and 2 Okay Shall I go Okay, thank you Thank you very much

Dr Geeta Oberoi - Thank you We do – we take because you had a very short lunch break, only 15 minutes, we understand that So we take one hour break, and you all come at 3:20, is that all right You can have a good tea break, and discussions among yourself

Participant - 3:30.

Dr Geeta Oberoi - 3:30

Participant - Yeah.

Dr Geeta Oberoi - Okay, 3:30

Dr Geeta Oberoi - Thank you very much Yeah Thank you very much See you at 3:30 then.

Session 3

Animal Welfare Legislations, Challenges and Case studies

Mr. NG Jayasimha -good afternoon judges thank you so much for providing me the opportunity to talk today my name is jayasimha I am a lawyer and I am also a member of the animal welfare board of India every day as in I only take up animal cruelty as well as welfare related issues and policy work and every day we come across many situations from people across the country as to what is the problem they are finding to implement the prevention of cruelty to animals act and the wildlife protection act sir with your permission what I am going to deal is what are all the various provisions of the pca act and the wildlife protection act but more so with the wildlife protection prevention of cruelty to animals act and also just talk about the general problem that a normal animal activist or spca inspector faces in the court as we speak just to say there was hearing today for example in jmfrc Nagpur with relation to a circus a circus is camping in Nagpur we did an inspection and we found that there were many animals kept in horrible ways we found that the elephant had maggots in its mouth so they were literally maggot wounds in the mouth the

police refused to file an FIR but with great difficulty they did go ahead and file the FIR but then since then the IO has been asked to investigate and today we have realized that the IO has filed a report which primarily says that no cruelty has been meted out and it's a challenge that we are facing and the matter is now posted for February 3rd this is just a one example of many many many that are there wherein we find that the animals are the animals custody continues to remain with the person who is accused it is very difficult to get cooperation of the investigating officer for whatever reasons primarily because they are also over worked and with the extra over worked judicial systems it becomes a real problem to kind of get the reliefs that we want and all the time running up to appellate courts and high courts become a problem as well so just to kind of talk about all the problems we are and of course most importantly I don't have the solutions to these problems sir we will only give you the problems and if you can kind of help us develop what the solutions are because we also conduct similar training programmes for animal welfare officers we conducted training programmes for police we conduct training programme for SPCA inspectors and the insights that we develop with your guidance is something that we can go back and tell our animal welfare officers as how to deal with these cases more effectively primary the 3 kind of cases that we deal in relation to cruelty second is with relation to wildlife and third is in relation to control and this is a very broad categorization primarily because there are three sets of legislations that would deal with each of these issues with relation to cruelty the mother act is the prevention of cruelty to animals act wildlife there is the wildlife protection act and with relation to control it is more to do with the municipal corporations and the acts by municipal corporations relating to street dogs stray animals or wildlife conflict that happens many a times and the three separate sets of these sadly the problem is that with relation to cruelty cruelty is listed under in the concurrent list and you have a special act that is brought in that is the prevention of cruelty to animals act the biggest problem that we find is that there is no implementation body for this other than the police officer whereas in the wildlife protection act there is the entire forest department who has been established whose job is to implement it whereas in the prevention of cruelty to animals act we find that it is not there and mostly because even though some police acts have got corresponding offences created under the police acts not all of them do have so majority of the time our police inspectors are only used to charging under IPC or they are used to charging under the police acts they are not used to even writing of charges under the prevention of cruelty to animals they don't understand how it needs to be done it is a new act for them and at writer level it becomes difficult for us to get him to understand what we are talking sir and that becomes a big problem third in relation to control and there again it is more to do with executive actions picking up of street dogs killing street dogs and many a times these people end up being public officers even when you go to the court and seek relief they will say we need permission to prosecute and it gets stuck up at the initial level itself we can go and file a complaint against a municipal commissioner for poisoning giving order for poisoning but then there is really little criminal remedy that we get because the magistrate the first thing that the magistrate says is he is public officer we need permission to prosecute we can do anything about it then the only relief we end up getting is a writ remedy and going to the high courts and getting a writ action but the 90% of the times what we

have seen is that even the high court and the supreme court can go ahead and give the directions but on the ground level that is not implemented if it is not implemented the only action that is left is with relation to contempt and we all know how difficult it is to get so what we really end up doing is the whole dichotomy between the police not cooperating the appellate courts and the writ jurisdiction passing out really voluminous judgements which to read are fabulous but that not being implemented on the ground and not having resource to go and get that implemented on the ground in 200 the supreme court of India said that every district has to have an spca it is 16 years now majority of the districts in this country don't have an spca the only remedy we are left with is the contempt remedy and when you go and do it they will just show some paper they have made it is there in paper but nothing in actuality so the huge widening gap between what is being said by an enacted legislation or by the judgments of the court but the actual implementation in the ground becomes a huge things as in our honble judges from Andhra Pradesh will agree with relation to cock fight the supreme court said that there can't be animal fight there is a statutory prohibition on animal fights but on the ground the animal fights take place in eluru and other places it happened in huge stadiums like cricket matches I mean like there is a stadium full of people mps and mlas went and inaugurated it the ios did not take cognizance and we couldnt really do anything about it at all so one thing is to have a supreme court judgment in this as to how the legislations second is to how to actually implement this on the ground and most importantly how do we get the police and the ios to kind of get their acts together so that they are able to produce a case properly as a needless to say this is just to enrich starting from the constitution to the local municipal corporation act there is something with relation to animal cruelty I list down crpc because many with relation to removal of nuisance with there are many issues where animals do come and for example Bombay removing horses from juhu beach in Bombay it was done under the crpc provision of removal of nuisance because they were causing a whole lot of nuisance there as these many provisions and tomorrow mr dutta will give a specific thing on wildlife protection act but I am going to overall cover all of these just to needless to say with relation to directive principles in the fundamental duty probably we are the only constitution in this entire world which has got this duty of being compassionate to all living creatures then comes this issue with relation to ipc this is probably most important I know that there is a problem with relation to charging this and I would like to clarify that these are 2 sections that we use all the time in any case in 428 or 429 we definitely put charge 428 and 429 primarily not just 429 because we don't want to give the loophole that we have charged the higher section but this person will come and say that the value of this animal is less than 50 rupees then because we have not charge 428 at the trial stage we won't be able to add 428 into it and people have left as in with that experience what we do is you end up charging both 428 as well as 429 and the magistrate gets the choice to either pick 428 or 429 during wither sentencing or at that point of time now the question really comes with relation to mischief who is the mischief has to be done against does it have to be done against the owner of an animal or is the mischief on the animal the second important point comes with relation to killing when a killing is sanctioned by a law or is done as per the law does that come up to the matter of mischief the and I am happy to share many judgments that have come out on

this but the primary understanding there is this one case where we charge 428 and 429 on one particular person who had poisoned the couple of dogs and what was interesting was that the person who had actually poisoned the dog was the owner of the dog himself so we charged him 428 and 429 along with various provisions of the prevention of cruelty act the owners lawyers came up and said well there is no mischief because I was the owner of this particular animal and I have had no loss at all so you can't charge 428 and 429 on it maybe there was cruelty so you can charge me under section 11 various provisions I have no problems with that but you can't charge these 2 because it is primarily I am the owner because I should have come damage there is no damage and in fact one of the learned magistrates went ahead and said he removed the charge of 428 and 429 from it primarily you can't charge this because the owner was the person who was done this we appealed on the particular matter and the sessions court again when we went on this matter and again it said that and this matter went up to high court and its Karnataka high court I don't have the judgment of that it is not reported but then what it finally ended up saying was that when it comes to 428 and 429 it went to the explanation given in the ipc itself saying that it is not mischief on the owner of the animal its the mischief on the animal the offence is not on the owner the offence is not against the person who has the animal but the mischief or the offence is against the owner itself and they relied heavily on the explanation provided in the ipc and I think if we have the time if we go through that explanation I think that could give very clearly sir with relation to ipc 428 and 429 sir the explanation I don't have sir it says that it is not essential to the offence of the mischief that the offender should have intended to cause the loss or damage to the owner of the property injured or destroyed it is sufficient that he intends to cause or knows that he is likely to cause wrongful loss or damage to any person by injuring any property whether it belongs to the person or not so whether it belongs to the person second it says mischief may be committed by an act of affecting property belonging to the person who commits the act or the person otherwise jointly so these 2 explanations were read together and it said that because here there was an animal that was involved the mischief or the offence of mischief is on the animal and it is not against the owner and hence even when an owner commits an offence itself he can be charged under 428 and 429 in fact tomorrow I can try and find that case law if I can find a non reported judgment on this can I go to next slide sir thank you with relation to other animal protection acts yes sir

Participant - ...damage to any person

Mr. NG Jayasimha - yes sir

Participant - and in the definition of person animal is not included

Mr. NG Jayasimha- sir 428 425 is different sir

Participant -...

Mr. NG Jayasimha - 425 is defining what mischief is sir it defines what a mischief is but as 428 and 429 are the only other sections where the mischief is not for a property if you look at all other mischief that is being done it is the mischief against the property that is owned by a person so there is with relation to punishment of mischief of like you know causing with relation to property with relation to works of irrigation dam so the entire property talks of all of these things the only place where it actually talks about the fact that it is with relation to an animal which is living being with relation to 428 and 429 and at that point of time it is said that you don't have to necessarily show and the other related judgment was with relation to what happens when there is a public utility a public utility and you do a mischief to damage and the damage is not necessarily done to an individual but to the public at large could you charge that and I think many courts have held that you can go ahead and charge that you don't necessarily have to it is a civil actionable claim you don't necessarily have to show that there was this particular act civil claim against this particular person which can be defined in a particular amount because it is not a civil action I completely agree sir that if it was a civil claim that was being done then we would have to identify as to what the mischief was what the damage was and what was the amount that .. to that particular thing and then only there would be any claim that would be there for example in relation to consumer protection act sir if you do something and it has to be an actionable claim and the particular amount has to be quantifiable but because it is a criminal thing there is not necessary for any quantification that needs to be happened the fact that whether mischief took place and who whether the mischief took place against the owner or does it take place against the animal is the question and the real point comes up when the owner is actually the person doing the mischief and that or the mischief is being done with consent of it and that against goes when you read it with the definition of the word owner under the prevention of cruelty to animals act again I draw your attention to the definition clause

Participant - in the wild life protection act 19.. that all the wild animals and wild life are the state property

Mr. NG Jayasimha - state property correct sir

Participant - but in ipc there must be for the offence of mischief there must be 2 person the person who is causing damage and the second the person who is inflicting wrongful loss in that case who is inflicting wrongful loss

Mr. NG Jayasimha - the animal itself is getting inflicted wrongful loss

Participant - but animal is not the person

Mr. NG Jayasimha - sir but limited to 428 and 429

Participant - second part explanation if you look at explanation 2

Mr. NG Jayasimha - yes sir

Participant - explanation 1 .. wrongful loss or damage to any person by injuring any property so there differentiated the property and the person

Mr. NG Jayasimha - correct sir

Participant - so the property is not included in the person the property is the animal and the person is different from the animal

Mr. NG Jayasimha - the person is different from the animal I agree with you but only thing is with relation to 428 and 429 specifically I completely agree with you it is not with relation to that with relation to other property as to what is the mischief been done is the question that needs to arise and the courts have constantly held that the mischief is on the animal and it is not on the owner of the particular properties yes sir

Participant - for mischief 2 things are required for mischief as already been discussed 2 things are required one is person another is property

Mr. NG Jayasimha - correct sir

Participant - a animal can be a property but the life of an animal cannot be considered as the property of a person the life of an animal is the property of the state because in ipc also a person cannot make suicide because his life is the life of the state under that concept if we consider the life of that animal is the life of is the property of the state then if the owner caused the death of that animal he has caused loss that is wrongful to the state and he can be punished if the death is caused in contravention to the laws because the prevention of cruelty to animals act provides

Mr. NG Jayasimha - I want to clarify that this the killing of an animal is covering under 428 if I want to cover that is mischief it is covering under mischief and maybe tomorrow when we have ... we can go through and I am happy to pull out more case laws and we can decide on that but overall this is what we have been doing and I am happy to get the Karnataka high court order on this sir but anyway going ahead with it further with relation to the prevention of cruelty to animals act again it pertains to captive animals and domestic animals it defines what a captive animal and a domestic animal is the wildlife protection act defines what both animals are both flora and fauna and is aimed with conservation of animals and habitat with relation to the police acts there again with relation to police acts as many police acts which empowers police officers under pca act and they differ from state to state I'm not getting into details of it for example when a cow is left tied or something at that point of time the local police act will allow the police to go and take particular action state laws you know its ambit the bigger question comes with relation to municipal corporation act because the municipal corporation acts many a times because they are a verbatim replica of what the British brought in and they have very rarely been updated there is always a

conflict between the municipal corporation act and the central acts sir that is a common thing that you find with relation to for example dead animals that is out of the purview of what we are talking but most importantly the municipal corporation acts also cover issues like establishment of veterinary hospitals cattle farms farms dairies municipal market slaughterhouses what is interesting is almost each of these particular issues that are dealt under the local municipal corporation act there are also specific rules which are laid down under the prevention of cruelty to animals act the prevention of cruelty to animals act has an animal birth control rule which talks of how to deal with street dogs there is a registration of cattle premises rule which deals with how to .. have to be done there is with relation to so and also the spca rules talks about establishment of infirmaries and stuff like that the biggest conflict which comes with the municipal corporation act is with relation to killing of dogs many municipal corporation acts provide the power to the municipal commissioner to destroy animals unwanted animals it says that if he can take particular action to destroy them and that became an issue in many high courts and now this whole matter is now clubbed and pending before the supreme court because many state governments went ahead and said that because the municipal corporation act allowed for certain killings they can go ahead and kill using that particular provision this got challenged in many places and now this matter is clubbed together our stand has been before the supreme court and which has been upheld by the Bombay high court is that because when there is a conflict between the state acts as well as the central act and the central act is more than the state act then the central act should be allowed should have precedence over the state act but that is something that we will have to see how the court will go ahead and think that is a matter that is clubbed and pending for a long period of time but in the last order that was issued by the honble supreme court they said that the animal birth control rules have to be followed no dog killings can be allowed and it has to be that is something that they did issue now some pictures as to how dogs are kept in dog pounds you can see how dogs are collected being kept there they are overloaded and they are given these injections to kill these and all of these is particularly prohibited under section 11 of the prevention of cruelty to animals act so this falls within the definition of the word cruelty and if any person catches this particular animal and kill them then of course they can be charged under cruelty this is just some of the killing places as to how killing of dogs take place in this country and it happens even as we speak sir in many many places again the salient features as going ahead is that this act is applicable across the country with relation to there are various chapters under this act chapter 4 deals with experimentation of animals chapter 5 deals with performing animals performing animal registration if you really go through it is a really really simple act as in chapter 1 deals with preliminary chapter 2 deals with is about the establishment of animal welfare board of India 3 deals with cruelty 4 is experimentation of animals 5 with performing animals 6 is got miscellaneous which has things about cognisability search seizure saving clauses all of them so it is really a 41 section act it is really really simple yes sir yes sir

Participant -... whether an owner can be charged for killing his own dog or not one example I know my dog to be ferocious recently has bitten 2 or 3 persons I kill that dog not for the purpose of causing any loss to any person or any society I kill for the purpose of my own safety correct sir

what 425 defines mischief it contains 2 parts one mens rea second is actus that actus is the destruction of any property or any such change in the property of the or in the situation thereof as destroys or diminishes value or utility

Mr. NG Jayasimha - correct sir

Participant - or affects is injurious the mens rea is the intention should be to cause injury to cause loss or wrongful damage to the public or to any person or he has the knowledge that it is likely to cause damage to public or any person

Mr. NG Jayasimha - agreed sir there is no doubt about it

Participant - if you read 425 along with 428 or 429 we will quote the language of 428 into 425 into 428 what it means whoever commits mischief means actus destroying or causing loss or whatever it is mentioned in 425 it talks about the actus who ever commits mischief and the manner while killing while poisoning while maiming or rendering useless any animal or animal of value 5 10 or upwards the distinction becomes clear you have to fulfill 2 conditions either you kill the animal you poison the animal you maim the animal or render it useless by any act and the purpose should be mischief that is wrongful loss or damage to any person

Mr. NG Jayasimha - of course sir if I can

Participant - and killing the animal for the purpose of my own safety I am not liable to charge 428

Mr. NG Jayasimha - that is correct that is what I said the 428 and 429 cannot be put when you have a provision that allows for the killing that needs to be done it is an exception so for example even in our prevalent pc act if you look at section 13 of the pc act it talks about destruction of suffering animals so one is where safety second is where the animal himself or herself is suffering when you look at when the owner of an animal is convicted of an offence under section 11 it shall be lawful for the court to satisfy that it will be cruel to keep an animal alive to direct that the animal be destroyed and to assign the animal to a suitable person for the position for the purpose second it also goes ahead when any magistrate commissioner of police or district superintendent of police has reason to believe that an offence under section 11 has been committed on an animal he may direct the immediate destruction of animal in his opinion then it again goes ahead so primarily I am not saying that there is any prohibition on killing of course there is no prohibition on killing

Participant -...

Mr. NG Jayasimha - sir no sir c is with relation 2 1 is with relation to conviction 32 is with relation to when he believes the magistrate commissioner or district superintendent of police that there is cruelty c with relation to any police officer above the rank of constable

Participant -the belief is based on evidence

Mr. NG Jayasimha - the belief is based on evidence the belief is based on evidence that the animal is suffering enough that keeping that particular animal would cause more suffering because finally the act the aim of the act is not to keep just the animal alive and continue the suffering the aim of the act is to prevent cruelty and many of times it is not the quantity of life but it is the quality of life that really matter so when if a magistrate or in many cases as it is given in section 13 feels that there is a veterinarian for example 13 c talks about a veterinary certificate a veterinarian comes he looks at an animal and he says that to keep him to continue this particular animal alive is going to continue to cause more suffering of course he is well within his rights to destroy that particular animal using section 13 3 when a matter comes up before your sirs and if you feel that a particular animal is suffering and but it needs to be destroyed you could also give an order that this particular animal has to be destroyed sir a good example of this `the elephant in Delhi the elephant in Delhi and also a similar case happened in Bombay sir an elephant in Delhi was just walking on the street begging a truck came and hit the elephant and the elephant collapsed on the street and the elephant was just lying down on the middle of the road and nobody was able to pick it up as it was an injured animal nobody would euthanize the animal because people were scared that if they kill the animal then charges of wildlife protection act would possibly be put on them because it is a scheduled animal and killing the animal would mean that you have hunted the animal down and then there was a magistrate order that was given under section 13 saying that there was no offence it was general suffering that this particular animal can be destroyed and that particular animal was destroyed the same thing happened in places where there is a cattle preservation or let's say cow slaughter prohibition act many a places where cow slaughter prohibition act cows or other animals enter into accidents and fall on the street keeping them alive would just continue the suffering and it would actually increase veterinarians and other people are really really scared they are scared because if they euthanize and put down the animal then they could later on be charged under like a cow slaughter prohibition act and some states in India cow slaughter is like a really really serious offence in some states in the country especially in the north so they get really scared and at that point of time we have to as in we have moved applications under section 13 many a times the magistrate or the sp asking that an order be given that a particular animal be put down because the objective is not to keep the animal alive but to prevent the suffering of the animals with relation to animals in experimentation there is chapter 4 which sets up a body called the cpcsa that is the committee for the purpose of control and supervision on experimentation on animals chapter 5 talks about performing animals we will deal with this in detail now comes to the wildlife protection act and the wildlife protection act is comparatively trickier act than the prevention of cruelty to animals act primarily because as in just to start off I would like to draw your attention to section 55 of the wildlife protection act sir it talks about cognizance of offence it says no court shall take cognizance of offence under this act except and it gives out conditions as to who can under whose complaint such a cognizance can be taken it says director of wildlife preservation or any officer authorized on his behalf by the central government member secretary of the central zoo authority in matters relating to zoos member secretary of the tiger conservation authority

director of the concerned tiger reserves chief wildlife officers or officers authorized on behalf of the state government with relation to zoos an officer in charge of the zoo but the most important thing for a normal person comes up to the issues is any person who has given notice of not less than 60 days in the manner prescribed of the alleged offence and his intention to make a complaint to the central government or the state government or the state officer authorized aforesaid and this actually becomes a huge bottleneck many a times with relation to wildlife crimes sir we know for example and we will talk further where there is a bird market we know for sure parakeets or star turtles that are offence that are actually illegal are being sold there you call the ccf and tell him the conservator of forests that there is an offence that is being done the ccf does nothing he just turns off his phone he will not act at all at that particular point of time all that we are left as animal activists is to issue a notice to the concerned person that an offence is taking place wait for 60 days and then come before you under a private complaint and that becomes a huge problem because if I give 60 days notice to a wildlife officer who is not willing to take action the chances are very high that the information will slip on to the person who is conducting the offence and he will not be there the one thing about the pca act is that if the police refuses to file an fir which 99 out of 100 times they refuse to file it at least we have the option of coming before you under a pcr and when we file a pcr 99 % of the time the magistrates typically ask the io to investigate and file charge file the report at that point of time the io is bound to do something as in he is not going to just throw the matter away but under the wildlife protection act what we find is that it is not possible to do that because we can only come before you after giving 60 days notice to the officers and the entire purpose of the act itself gets defeated a good example the way we found around this was in mandya itself in relation to the ... elephants there were these 5 elephants who were kept tied below a flyover who were from a circus the circus is abandoned these elephants they were kept below a flyover one of the elephants actually collapsed and died this 4 elephants continued there many letters were written to the forest department to take action under the wildlife protection act the forest department refused to take action many complaints were made to the jurisdictional police station the jurisdictional police station refused to take any action at that point of time the Karnataka high court took up a suo moto cognizance of this reading an article with dealing with another matter and issued notice but then that matter was coming up when god knows but this animal was suffering as we speak then we went down and first shreya went down to the magistrate and we filed a pcr and based on the pcr the magistrate and to be honest he had never leave alone the wildlife protection act the pca act he had never had a pcr before him for ages together and he says private complaints are very rare you know very rarely people come before us with that and especially under the pca act where you want us to take custody of an animal and direct the state to put the take it because there was no infirmary as well but finally the magistrate did issue an order saying that these animals have to be moved to an infirmary as under the prevention of cruelty to animals act not under the wildlife protection act he said that because there is cruelty that is happening and these animals were then picked up and moved to a rescue center that was set up by the Karnataka forest department and the cruelty cases kind of continuing as of now ... a 2 10 application was filed to merge both the fir and the pcr together and now this matter is

continuing so wildlife what we end up doing is that when there is cruelty involved as well and when we get road blocked by section 55 and we are not able to take cognizance then you go more on the pica act itself and work towards section 35 of the pca act which is with relation to seizure of animals or depriving a person of ownership of the animal again the salient features of the wildlife protection act is that the schedule 1 2 3 4 the protected species schedule 1 the offences as in a repeat offender can get up to 7 years 25 thousand rules are there for protected areas again just an information the reason why wildlife crime should be protected after narcotics and drugs it is one of the second largest illegal trade that takes places with relation to it live animals form a really small part of the trade a lot happens with relation to trophies trade occurs at all levels it necessarily occurs at all levels the biggest problems that we also find in wildlife crime is with relation to identifying the species because finally when it comes to sentencing at that point of time you need to know whether this particular species belonged to schedule 1 schedule 2 or was it an exotic species or not and 90% of the time that knowledge is not available and that becomes a problem we had a problem with as in leave alone in lower courts we had a problem in the Hon'ble gauhati high court where even though bulbuls were specifically protected under the wildlife protection act the court went ahead and allowed for fighting of bulbuls and then a division bench then struck down the particular order so But then that's the problem that has happened because people do not realize as to which animals are protected under WPA and if they are protected under then what? The general rule of thumb is that if the animal is native within the country and if it's not a crow then it is protected under WPA that's not a crow or a common pigeon then it is protected under WPA, that is the general thumb rule aaa on dealing with this. The next issue comes in relation to CITES, the CITES is the convention on international trade of Justice Radhakrishnan has mentioned about this as well, where again it talks about international trade, this again is a big problem because the cognizance under this can be taken only by the customs and it is going to take at the customs defined area. So if a CITES species bird is sold in an open market then there is no violation of the WPA because they are not listed under WPA, so they can only be caught by the customs and the customs notified area that then it becomes violation of the CITES aaa as of now the wildlife protection act has no provision wherein you can take cognizance of the violation of the CITES as such. The revision that is being proposed there is a particular provision that has been there, one can take cognizance at the airport levels. So if the customs officer confiscate these animals and brings a matter before you aaa then aa you can definitely take the matter but then the aa that is under the CITES regulation not the customs act sir, aaa because as of now there is no enabling provision under the wildlife protection act where you can take the offence aaa cognizance under the CITES aa it is something that is required aaa as per the convention that the India signed the convention aaa one of the things that requires all teh member countries is to bring in an enabling legislation but sadly as of now, on CITES protected areas that is customs declared areas you are not able to take actions sir. Sir aa this is the law as of now sir. So with relation to CITES you can only take action if there is aa only aaa because it is a convention of international trade associations, it should be made by the customs. SO aa there again aaa as I said the WPA with relation to this is aa when it comes to you as in what can happen is that we can go to the customs. Sir aaa so what

happens is that when there is a CITES listed bird being sold, we don't go to the police sir and we don't go for the PCA Act sir, what we do is we go to the customs people. And a good example was in this case in Dhanu sir, in Dhanu what happened there was that there were particular people who were selling lemurs who were actually imported from Madagascar and they were selling it in a particular farmhouse, when so when they had put it up on olx and other things they were selling other than lemurs there was this tiny animals which are very expensive. And then we came to know that these lemurs were being sold. Of course we went to the police but the police had no jurisdiction because unless we can show that these lemurs were being kept cruelly. These animals were kept in a cage but there was no cruelty that we could show in evidence itself. [Participate- no offence can be constituted at that time because human intention is missing that time. There are migratory birds also] With respect to the migratory birds India is the signatory to the convention on migratory species, CMS we call it as, there again we are having a bit of a problem, what they have done is that all the typically migrated species that come into India, they all will be listed in the wildlife protection act sir. for example the painted stock, the painted stock comes from all the way from Russia to places in Andhra Pradesh. For the longest period of time the painted stock had no reference under the WPA, so people would actually destroy the nest of these animals to collect their eggs and eat them, but we could not do any particular action at all because they were not protected under WPA. Then they amended the WPA and the schedules were updated, under this convention of migratory birds species that we have signed that all the migrated species that come into India were listed out and an appropriate addition was done under the schedule to add them. So the migratory species are kind of taken care of under the CMA correction that was done under to the schedule of WPA sir. The problem comes in when a non-migrating species which are coming in relation to trade and these are your African grades, African grades don't migrate to India at all or let say for instance lemurs or certain varieties of tortoise and turtles, they do not come to India with relation to migration at all. These are brought in through trade. Now the issue is where has the offence taken place? And where can they take cognizance. One is that lets say that they are being sold at Crawford market, is there an offence being taken place, of course there is an offence which has taken place with relation to the PCA Act because they are probably kept in a small cage, there is no food there is no access to water all up is there. But could you charge a CITES violation in Crawford market? Probably not because there is no international trade is happening. But let's say that we catch them at the Madras Airport, which happens all the time. You catch these animal at the madras Airport then you can also say that it is the violation of the CITES thing. Now the things with this CITES thing is that it does not have any penal provision in it, as in it doesn't say that if a person signs a CITES convention then he will be charged with thing as in because that's the sovereign function of the government and no international treaty you can create penal provisions. But what the CITES does is that if I am a person you can put these people into the red list of these terrorists wanted people who are there and then you can also exchange data through Interpol. The Interpol, has a wildlife crime wing, which keeps the data of all the people who violate CITES, and then that data is also kept. So CITES has that particular

role, rather than a role at this stage, at this point of time sir. No no, because the definitions are very clear under the WPA. It could happen that when an Indian *Totta*, when he is in Singapore then in Singapore then this *Totta* becomes an exotic species but not in India, but he is in India and he still continues to be aaa specially it is also with relation to the aaaa marine mammals are protected under the WPA, they can aaa they continue to be protected species when they are on an Indian flag barring ship as well. So aa many a times, we find that people smuggle sharks from India and aaa there are times when shark consignments have been caught, when they are downloaded aaa offloaded in Hong Kong, but they have been brought back and charged under the WPA because at that point of time, the offence has still taken place and the planned shipment has taken place. The problem is that when you are in international waters and shipments that happen, then aa those are the gray areas that are there sir. Still it is an offence. Sir, aa international sea if the aaa if the aaa the flag that the vessel has that country can take out the vessel sir. So if an Indian vessel who is in international sea, at international waters let's say just beyond India's exclusive economic zone but they are not within the territorial water, but then these are catching sharks and the customs has gone there and they have caught aa let's say there is cost guard at that point there is aaa no custom of coastguard. Let's say that the cost guard has gone ahead and caught aaa sharks being caught there or whatever smuggling that does happen aaa that point of time they can still be charged under the WPA, flag should be Indian flag sir. But if it's a non-Indian flag in international waters then we can't do anything. But if it is a non- Indian flag within India's exclusive economic zone or within India's territorial water or if it holds an Indian LOP, then you can take action. AAaaaa with relation to errors of application of animal slaws particularly aaa as I said that these performing animals etc so these are rules that exist aaa the funny thing about this act is that the offence or the rule and the rule is more stringent when it comes to penalty then the act because if you read section 38, PCA Act, it says Rs.100 fine for a rule being violated, whereas for an act being violated, it is between Rs 10-15, and then for second offences so aaa the offence under the rule is an offence under the act. You have the performing animal rule, the drought and pack rules,, the transport of animals rules, the slaughter aaa then you have the companion animals, wildlife, fishing, zoos and experimentation of animals. Aaaa with relation to performing animals any animal that is being performed needs to be registered under the performing animals registration rule, if the animal happens to be a wild animal, let's say an elephant then it not only needs to have the performing certificate under the PCA Act, needs to have a aaaaa certificate of ownership under the WPA, then they needs to be housed as per the central zoo authority guidelines and if they are being filmed and to be shown on a silver screen they are also bound by the cinematography act. And the reason why I put this is that in many times they just put charging it becomes much easier, to know that there is a film that's being shot where let's say a bear is being need to dance, then it is an offence under the performing animal rules, WPA, central zoo authority guidelines and the cinematography act all of which have the sort of penal provisions which are there sir. Aaaa so aaa as I said, with relation to performing animals registration with the Animal Welfare Board of India is mandatory. Lions, tigers bears panthers monkeys and bulls are completely prohibited from any sorts of performance like jallikattu and all, they are all prohibited. It is applicable to all kind of performances- circus,

madaries, kalanders, films, movies, advertising. Aaaaa with relation to performing animal sas I said they are all wild animals they are government property, permission from the chief wildlife warden is required to keep these animals. So, typically with elephants, we find that 99% of these elephants don't have any paper work at all and that's a matter before the court. Aaaa with matters relate to snake charmers, parrot fortune tellers there is this aaa it is completely prohibited under the WPA as well as PCA Act. Aaaaa so the common instance that we find with relation to performing animals is animal racing, section 11(1)(a), bull fighting aaaa or section 11(1)(n), PCA Act with relation to Cock fighting, with relation to section 11(1)(m). Then you have these partridge fightings, so they are interesting because the first three what we saw is that our domestic animal so there is no WPA which is put in. But when it comes to porridges or bulls that are fought, it is not only an offence under PCA Act but is also an offence under the WPA. Aaaaa in animal sin films, there was a landmark judgement aaaa given by the Bombay High court which then got upheld by the Supreme court which said that, any film that uses animals, the Central Board of Film certification the censor board needs to see an NOC from aa the Animal Welfare Board, that is something which is there because of a thing. Just you say the kind of cruelty that does happens in circuses aaa we saw that particular elephant like this, birds kept in cages like this aaa there is absolutely no opportunity for them to perch, the wings are clipped, dogs are kept in cages there is no food, no access to water, no running, nothing that's provided to them as in you can see how cruelly these animals are kept. Similarly with relation to elephants, they are usually tied with all 4 or 2 of their legs, people use spiked pits so that they don't move and aaaa they are continued to be kept like this and aaa in horrible place and the biggest problem there again is with relation to enforcement. When we come before you under the PCR, aaaa as it happened in Nagpur and you ask the IO to go ahead and investigate, the IO will take the local veterinary and then go. Majority of the time the local veterinarian is being the veterinarian of the circus anyways. So, what happens is that they aaa he land up saying that the animals are all in good condition, then it comes down to a matter for your judgment as to whether the animal has to be removed or not, but aa this is the problem that we find with relation to circus because they give free tickets to people these veterinarians and they are typically in their pockets they are many a times. Aaaa with relation to animal fights as Justice Radhakrishnana said there is landmark judgment which talks about animals fights. There again aa this a new trend that we are finding wherein the lawyers come out and they misrepresent what happens in the court and this happened last year in Andhra Pradesh, aaa the Andhra Pradesh High Court has said that no cock fights can happen because there was a statutory prohibition, there was an appeal that was first filed in the supreme court. The Supreme Court sent the file back to the high court to be adjudicated but they said that teh status Quo had to be maintained. The lawyer's or the people who wanted to hold the cockfight, came and organized for a press conferences primarily saying that because status quo meant that cockfights can be done and that there were cockfights that were organized, so aaa and of course the police turned a blind eye. We have now filed a contempt aaa in the Mihir the person who is going to speak right after id doing the contempt petition, so aaa that is something that is there. Be it with relation to Maharashtra all of these places what happens is that, there is already a statutory prohibition,

animals fights have been prohibited since 1960 and we constantly have to go back to the court to seek the directions under 226 aaaa to get these aaaa just to give you examples as to how cruel aaaa as you can see the nose of this particular animal aaaa I did not put Gauri's pictures, I just put aaaa some , as I said tail breaking is something that is very very common, you can see that most of these animals tails are broken , just when they are made to run, cock fights you'll see that blades are put to the leg and then aaaa then they are made to fight and this is what happens and then they are cut and eaten. Aaaa same thing with bulls fights you'll see that aa there is a huge amount of cruelty that happens to these animals and majority of the times the value of these bulls in Jallikattu or bulls fights is only when the animal is able to fight or run aaa I have been to many Jallikattu events myself and right after the event across the fields you see animals whose legs are broken, who are just left to die because they are no value to pick them up and to go anywhere. aaaa with relation to drought and pack there is a table that's given under the draught and pack rules about what is the weight that every animal can do with relation to aaa whether it is a pneumatic tyre or not but there again that is something that is very difficult to implement aaa then comes with relation to transport of animal there has been a lot spoken about it, probably one of the largest cruelty, there again I would say, it's our legislative system that's the reason for this because every state has its own slaughter legislation. So ek state says that you can prohibit cow slaughter the minute that happens they smuggle the animal to another state where there is aaaa no cow slaughter. So primarily what end up happening is that for example: anybody that goes up to Shillong as in you just drive up to Shillong and you see animals being walked up from aaa Assam because Assam has a very strong cow slaughter prohibition act, whereas Shillong it does not, so you see these animals being send, in Nagaland aaa any tribe in Nagaland and I was there a couple of months ago, dogs being sent to Nagaland for meat is something that is very very common so, aaa it is illegal to do in some place. The law officers turn their eye aaaa so therefore land transport is probably the biggest issue and the cruelty in this happens in all 3 places that is the animals markets, where the transport takes place and also in the abitur there is lot of cruelty with relation to transport of animals. Like there is transport of animals by foot rules, you can read it, I am not going through it but what commonly happens is that when these animals are smuggled from one state to the other they are needed to walk and then cross the border like there is one animal that runs the other does not, you can actually see closely and the pictures that you have seen and that you see here are taken by me, aaaaa i think I am running out of time aaa in 5 minutes I will finish then aaaaa this is something very common again aaa you will see that when these animals are transported they collapse and to me as horrendous is to see that there is also a person sitting in that truck, as in if you can see that actually the person who is unloading it, it's a horrible for him as well as he is not a rich man in that sense a person who is transporting the owner of it is really a rich man. Ninety percent of the people who do this transport work who are or aaa who work in slaughter house end up being bonded labour aaa who have no sense of any security aaa as in once I sat in a truck from Orissa to Kerala and it was horrible I mean these people have to unload these animals and load these animals many many times and aa it is really hard to take and they end up in treating badly. This is very common nay boarder you can see trucks which are full as you see in Tamil Nadu again a lot of animals going to

Kerala from Tamil Nadu. The laws says that not more than 7 animals, now with the Motor Vehicle Amendment it says that it has to be specially designed, 90% of the time never very rarely it is actually implemented aaa animals are injured during transportation. These are simple things as in there are no loading ramps in many of these markets in aaaaa animal markets these animals are tied where there is absolutely no water or shade provided to them they are tied too closely, all of them are tailored to use nose rings, there is no unloading ramps therefore, these animal shave to be literally pulled down and then where the law say not more than 6 they are literally packed as much as they can and you will see how and I guess, the reason why I do want to show you sir is because when the custody goes back to teh people, these animals have to relive this entire thing. So what happens is that we catch the truck, we confiscate them, take them to the nearest gaushala, infirmary or whatever with the help of police, they are unloaded, next day morning this person goes the local court will say give the custody of the animal back, we are aaa sometimes we appeal sometimes we can't, when we can't these animal shave to be loaded up back again and then the kind of journey continues and if sometimes we get an order saying that *nahi nahi janwar wapas lena chahiye*, we have to go back catch these people and this entire cycle keeps continuing. And aaa you will see that aaaa sir ninety percent of the animal taken from infirmaries are taken by foot sir. No butcher loads an animal in the infirmary, what they do is when you come to the infirmary to take the animal what they do is because they would have gone before the magistrate and they would have told the magistrate that these are all aa a *yeh to humare agricultural janwar hain to wo truck main load kartey hi nahi hain* what they do is they take these animals and they will walk them to a particular distance and that's why you say that foot animal aaa at least in some places at least in cases where we delivery what happens is aaaa correct sir and it is another thing that we keep debating and of course I would need your assistance as to how to do it is that I know that it is one instance of cruelty. But them they really need that act which says that no person shall treat an animal, be it kicked or override. So all these animals have been hit, their tails have been broken. Charging doing aaaa one charge of fifty rupees is something that is not right at all. My submission has been sir and if it can be allowed is that he needs to be charged separately for the animals, each animal to whom the cruelty has been done. In that way what will happen aaa they will seize to do all that because what happens is that when we do the seizure report anyways it is not done *ke chalees janwaron ko humne kardiya*, every animal that does come in aaa there is a medical report done for every animal sir because there are many ways, one is that many gaushalas do that they put a tag to the ears sir so when they come they immediately put a tag and there is a tag number that is given to them. Some places you can say that *ke kaala hai*, there is a sort of identification that is being done. In Uttarakhand for example, [Gauri Maulekhi- there is a tag which is fifteen rupees that is non-tamper able , generally it is quite safe, but even whether an internationally acceptable is the RFID- Radio Frequency Identification Tagging, which is done in most of the captive elephant cases and in all aaa you must have heard of Kennel Club dogs, they are all radio chipped, that is just an injection it costs about a Rs.110/- and through an injection behind the ear a little chip can be left which can then be aaa thereafter read with aa reader size of a telephone] but the good thing about that kind of charging is because we don't have to wait for the second offence

to happen and the data to be available at some point of time because very rarely you will find a person doing one offence on one animal as in aaa there is probably one guy who has a dog at home who is kicking the dog at home and they are not the major chunk. The majority of the chunk are the circus people, the people who transport the animal aaa it's the people in the race courses, people who fight the animals, and very rarely there is only one animal that is involved. So as a matter of fact if the charging is done in the right way, you will actually see just in one instance of cruelty there is many more and he is already found guilty of one. SO you know in subsequent aaaa punishment that can be done, you could do more sir. But, then what we do find is that many a time's people book this as one offence.

Participant- Sir , you are from Animal welfare Board, the actual lacuna lay from your side again, not from any other side. In case you maintain the record like SER, it is very simple note can be again taken up for that purpose, no person can come again for such kind of charges. Despite specific order these are the welfare boards who are not taking steps and not making the proper records. They are simply, you can say they are nothing that nothing just they bring the trucks with which they are not having good terms, okay these are the violators and just punish them.

Mr. NG Jayasimha - I I aaaaa cannot as in I wish I could disagree with one thing that you are saying sir

Participant- In case if you maintain like records like SERP, there is no need of such kind of conferences.

Mr. NG Jayasimha - Sir the problem being that it is not the Animal welfare board, it is the district SPCAs because the AWBI is a national body which has got 18 members who sit in Madras. But aaaa basically the problem is aaa I agree with you with relation to the district SPCAs and the collectors because as per the SPCA Rules, it is the district SPCAs which are to be formed, they need to maintain this particular data, record. The infrastructure just do not exist, there is no enforcement.

Participant- It is not the matter of infrastructure, the act is applicable. It came into force in 1960 and till date there is no act as per section 35, no DM is specified any type of maintenance charges or order, there is no such kind of notification.

Mr. NG Jayasimha - Some DMs have sir, for example in Andhra Pradesh RDMs have set for example per day, per cattle they have fixed the rates aaa in aa infirmaries have done. Uttarakhand have done it. I agree Rajasthan has done it. So it is not that no DMs have done it and that draws to other issue wherein it comes to the fact that most of the act as you have very rightly said that they do the raid and they forget to come to the court to actually do this further *raid kiya janwar liye bhul gaye* lets go to the next truck and the prosecuting department doesn't care about this issue at all. All these are not brought before the magistrate at all and I think what we do is not just

conferences but we are trying to build capacity with our own people because there is no doubt that the biggest fault lies in how to implement this better and but you also play a very important role. So there is no denial to the fact that animal welfare activists, SPCA officers, honorary animal welfare officers, police, RTA need to be a lot more sensitized and so that when they come before you, you'll get a dossier which is well researched with notification and I completely agree with you sir. Another thing that is very common is with relation to the law say no animal less than 6 months can be sold for slaughter, all bull calf's are sold. In abitur as they says there is no proper holding area, there is cruel handling I am not even showing. After this there were 8 pictures which are deleted because which is there is no point to just see the cruelty that does take place. With relation to this environmental hazard you'll see that there is no proper carcination center, dogs are entering into slaughter houses this is in Ooty. I was a couple of months ago in Ooty. As I said the slaughter house rules very categorically says that it cannot happen without a license. The PCA Act has got a slaughter house rules and again with relation to animals sacrifice again I will say this is to be done in the slaughter house. Now the other thing is another interesting point that comes out is with relation to section 30(a), I mean that is something section 28 and that constantly keeps summing that with relation to bakra-aid or any sacrifice that happens you know there is an exemption with that but you really look at it, it says nothing contained in this act shall render in an offence to kill an animal in a manner required by a religion or a community sir. It doesn't say for furthering the religion or required by the manner. It says in a manner required. So primarily for example, be it goshar or halal killing there is a particular manner that is required when an animal is killed. Which requires that a particular animal has to be casted in a particular way, in direction that it is blend to death, then only the animal will get the Goshar or halal certification. So what whereas in there are very common when killing when it happens in Jatka where the animals are beheaded in one way, which is comparatively less cruel than halal because they and they halal if the cut is not done properly it can take two or two an a half minutes to see whether the animal is dead or not. Whereas in jhatka because the spine is cut the animal is dead immediately. So my analysis of section 28 is not that it allows for it's not a waiver for anything. All it says is that if a particular religion prescribes a manner in which an animal has to be killed, so be it with relation to bleeding, or be that in relation to Jhatka or however that particular religion requires then that should be allowed it's not it is not saying that if you do it for religion then PCA Act is not applicable at all. Again with WPA, it is applicable everywhere, it includes all tribes because it is something which is commonly set that tribes hai to you know there is an exemption to it there again hunting is again there is a presumption of hunting Mr. Dutta will deal in details with this I am not going to go. Again very very common you'll see that like a bleeding trunk of an elephant, these elephants are not made or designed to walk on tart roads and walking on these hot road, they literally burn their in fact we have videos which will show that they have take a torch lamp and they literally burn the foot of these elephants when they are made to walk gain with relation to wild life. This is an African grade and because of the stereotype you can see that this bird has no wings because it is bored and this bird lives as much

as human beings does and a huge problem you will see in another thing. A very common Totta as in a very commonly sold in markets, there again the problem is that 55 bars taking cognizance and this is obvious that there is overcrowding. You read section 11(1)(e) read with various provisions of the PCA Act to take up action. Similarly with relation to star tortoise a it's a protected and a it is sold openly. A the important thing is that when even cutting a tress that has a nest is an offence a they cannot manufacture and there again under the WPA the presumption of a there is no presumption a basically the deal is that the person who is being charged has to prove that a he did not conduct. A very commonly you will see these kind of things being sold in markets, some of them are probably true some of them are wrong. A same thing with zoos a as in there is a central zoo authority but you see that zoos are pitiful prisons a these animals are kept in solitary confinement, bar biting is a very common thing that happens in the zoos. A the law says that no zoo can be kept a no animal can be kept solitary. Till one a till this day we have not been able to convict 1 zoo director under cruelty because they all say that they are public servant and no action can be taken against them a even if we a we have had some magistrates who have written saying that a asking for permission to prosecute when we do PCR but the prosecution department s and their higher have never give them permission so the matter gets stuck there. You'll see that these zoos are dirty filthy and these animals are kept there, people go in and teas the animals as in people are throwing food at them even when the animal is in cage. The law is very clear it says that imprisonment up to 25,000 it's a compoundable offence, a some zoo directors do use this and they compound at. A with relation to the experimentation of animals every place the experiments needs to be registered. A with a India has now banned a cosmetic testing etc. and there are cruelties which we do not come to know and nobody is ever charged with anything because these things happen behind doors and collecting of evidence becomes almost impossible. This is an eye test, this is a skin sensitization test so a this rabbit skin is removed and sensitization done, this is an eye irritation test where everything like chemicals to paint are put in the eyes of the rabbits to find out what happens a a again in another skin irritation test they are going to take gunny pig a there was a huge lot of dissection that used to happen now we have realized that a UGC to a better the counsel are now removing this section from their curriculum and it does not exist anymore. Well this was something that is common where live animals are dissected for a thing. So a yeah this is my quick a summary of all the laws that is there and various provisions that are there sir. There is no doubt that the lacuna exists within the enforcement mechanism, there is no doubt that the law needs to be a revamped, this is the time for animal welfare bill to come. In fact Justice Radhakrishnan, in his judgment asked and urged the government of India to bring in a new PCA Act, there is a draft that is there but all things meaning same we just need to make things better for the animals with what we have and a our humble request and the reason why we have come here is to seek your assistance and guidance especially going back and taking to your brother judges as to how they can make best of what is existing and enhance the welfare legislation that it is primarily our request. Thank you so much. I'll be here again. Thank You.

Session 4

Landmark Judgments in Animal Welfare

Mr. Mihir Samson- Good Evening everyone my name is Mihir and work with the Lawyers Collective, there in an organization based in Delhi and I am also a practicing lawyer I practice at the High Court and the Supreme Court and I will be discussing some landmark judgements that have been delivered by the supreme court and the high court particularly of late that have been a trend of very progressive judgments so there are some interesting judgments and I know you had Justice Radhakrishnan who had himself come and discussed with you so I am nobody to follow up but the first one that will be discussing is the judgment itself which was delivered in 2014 that is AWBI v. A Naggaraj, so these are basically cases that have come up from Tamil Nadu and Maharashtra. So Tamil Nadu main Jallikattu I know you have discussed and Maharashtra had Bullock cart races. And there have been judgments of the high court which have come to be challenged in the supreme court. Now in terms of the legal dispute there was an act passed by Tamil Nadu in 2009, which allowed Jallikattu but subject to certain regulations. So according to them that was sufficient to deal with any cruelty concerns. Now in 2011 I know Jayasimha has pointed out Sec 22 to you under the PCA ACT. The Central Ministry of Environment and forest had issued a notification and in which they said they had dealt amongst others bulls for not to be used as performing animals. So, terms of the PCA ACT it does apply to all the states as well. So, in Maharashtra the government accepted the decision of the MOEF they issued further circular banning bullock cart racing in the state but Tamil Nadu was vehement in arguing that Jallikattu had to be organized. Now the arguments of the petitioners were that just before the supreme court that holding racing events which are entertainment are per se violation of the act. You need not show anything further in terms of ill-treatment of the animals or anything like that but merely making animal race for the pleasure of human and violates the section read with sec 11 (1) (m). There was also a discussion and evidence produced before the court that bulls are otherwise gentle animal, they if left alone they would graze and not aggressive and wouldn't fight on their own. They are as Jayasimha discussed they are animals for those there are specific rules in terms of how much load can be put on them and what kind of work they can do. And actually to get to race you have to scare them and induce a sort of fear a terror in them so that they start to fight in terms of the event that is being created. Now the AWBI during the course of the litigation had inspected some events and they found that large number of cruel acts which are done to the bulls which is over and of course above the racing itself. Now that included cutting of the ear so that they could hear better, so that large sounds were made they would get more scared. Fighting and twisting of the tail, now the tail is a sensitive part of the bull so just before there they would bite the tail to sort of get it to become scared. Then during the break they would beat them, use loud sounds, put things in their eyes and noise to irritate them to certain mood to get them to that mood. Of course the use of nose ropes to handle them very roughly pushed them around, control them and they would starve them, not give them water on the other hand give them things like alcohol and of course there was no control over the crowd so often there was huge number of people completely unregulated around the bull screaming at it shouting at it kind of participating in the event. Now AWBI concluded that

there was definitely fear , distress and pain in the bulls and it caused not only injury and death to the bulls but also to the humans w ho were attending and participating in Jallikattu. Now as against this Tamil Nadu argued in the supreme court, that this part of their culture and that's why the act was enacted as well and it's been organized for many many years and many people are coming in it's a huge popular event and it a great source of revenue. They also argued that aaa the cat itself allowed for inspection and condition and therefore there was no need for any further provisions of the PCA ACT to apply, the cruelty aspect was taken care of . Now there was a small argument under section 22 that there were no tickets being sold so that was not an event in terms of performance event. Now the MOEF who has actually passed the notification came to court and in the Supreme Court suddenly said that no it is fine aaa the act aa a the Tamil Nadu Act we are okay, the event could take place subject to regulation are used at the instance of the MOEF. Now as you know the judgement was delivered in May 2014 and it is really one of the most progressive judgment that I have come across and one of the most interesting passages aa which I am sure you all have dealt with but I just read it out aaa "Article 21 of the constitution while safeguarding the rights of humans protects life and the word life has been given an expanded definition. Any disturbance from basic environment which includes all forms of lives fall within the meaning of Article 21 of the constitution. So far as animals are concerned in our view life means something more than mere survival or existence or instrumental means for human beings. But to lead a life with some intrinsic worth, honor and dignity. Now we are all taught from the beginning that 21 being the dignity for humans which is more than a mere animal existence and so here the Supreme Court judgment has said that mere animal existence itself is something with dignity. Something like that you are not there just for the pleasure of human beings or you are just not a life for the sack of it without any value for your life. So what the Supreme Court has said and this is something which is important when you all are applying the act, is that the sections 11, 22 must be read with the context of the purpose of the cat and the purpose of the act is to prevent cruelty. So they must be given an expensive definition. aaa when you read 3 and 11 you read them with 21 and 51 A of the constitution and therefore these are actually rights which are possessed by animals. Aaaa also very interestingly, Justice Radhkrishnan has read the 5 freedoms and this is something which is very interesting when we look at the international developments and international law in the field and read that these 5 freedoms they are actually the part of the statutory provisions and the constitutional protections that have been given to animals. So that is the freedom from hunger, fear and distress, physical and thermal discomfort, injuries and diseases and to express normal pattern of behavior. Now, I mean they look very basic but actually if you look at all the judgements in terms of the supreme court and the high courts they have actually come back down to this. Is it natural for an animal to behave like this? Is it aaa I am mean are they free from fear, hunger, discomfort, pain etc. So in terms of what the provisions of PCA ACT is trying to achieve is aa this is really a good guidance. So aaa one of the very important case aa judgement is that animals are not only for the instrumental view of the aaa value for humans. Now this is something which is very important for us because in terms of the way animals are treated in different industries like in egg producing, meat industry they are treated only like sort of live ;less beings only for food

and for the produce that they have. So it is a very important thing that when the judges recognize that actually they are living beings and they have life and then Justice Radhskrishnan has said that there are exceptions, ofcourse there are places where you can allow the death of the animal for particular treatments of animals but that is actually what he terms as the Doctrine of Necessity, where he reads the exceptions under the PCA ACT, 11(2), 11 (c) or other sections like 28 are actually exceptions only for the purpose of necessity. So enjoyment or just like pleasurable view is not necessity in that sense. So he has given a statutory basis and a clear understanding to what exceptions there can be to cruelty. Now of course he held that, a statutory law override culture and tradition. So when there is conflict over the cultural right with statutory provision the statutory provision will override and he found that bull performing I mean using bulls are performing animals is cruel because it is not natural to them and interestingly he held this not only from Maharashtra and Tamil Nadu but all similar event as well. Now in terms of the interpretation of section 22 and the tickets he dismissed in saying that it is actually a very narrow and technical reading of what the section was intending to do. So merely because the tickets are sold or not sold does not actually have a difference in whether the bull should be used or not. Of course the Tamil Nadu Act was struck down as being in conflict with the PCA ACT. Now so all things were good till January, this year when the ministry of environment and forest issues a fresh notification suddenly, they went in for a new exception for events like Jallikattu and bullock cart racing in Maharashtra. Now this is actually in effect that, executive administrative order barring a judgement of the Supreme Court. So, within a few days we had all go to the Supreme Court on behalf of the animal rights organizations. AWBI itself filed a petition and the Supreme Court heard it on an urgent basis on the 13th the next day and stayed the order of the new notification, the 2016 notification, where they have tried to allow Jallikattu. The next day again the lawyers came down from Madras a fresh petition was filed again it was sort in the supreme court that they vary the order, vary the interim order allow jallikattu with provisions with a regulations but the supreme court has declined so at the moment this is the status it is stayed. The new notification is stayed and the judgement is in full force. Now the effect that importance of the Jallikattu judgment is that there are a lot of orders in the high court which have followed it in different context. SO will just deal with 1 or 2 of them. The first one is the cock fight one, I know Jayasimha showed some of the photos and this is prevalent in many parts of the country. The cocks are trained to be aggressive, they are given substances that will make them more aggressive, they are pushed to fight instigated to fight and people come to watch it. So this case is in the Madras high court where the judgement was given and again there was a reference that it is part of the culture tradition of our country and particularly of that state and the Hon'ble madras high court after going through the provisions of the act held that it was cruel and the court again quoted the Nagarajja Judgement and also held that actually when you are promoting events like this you are really communicating to people and to children that cruelty is something it is entertainment. So it is not something that is part of our constitutional provision that we have to promote such entertainment but is what really he says and the conclusion is that the court is not just the custodian of the rights of citizens but also of voiceless animals. SO

it very important to the fact that it is also for the animal and what is being communicated to the people that really it is not cruelty but compassion. That is what really I wanted to talk in terms of the constitution. AAA sorry jayasimha just pointed out that we are fighting it in the Andhra Pradesh High court and the AP high court has given an order staying cock fights. Now, the organizers have approached the Supreme Court which then demanded the matter back to the high court saying that there would be status quo. Now when status quo was given there were no cock fights taking place despite that the other side held repeated press conferences, amidst a lot of information saying that actually the supreme court has allowed cock fight to take place in AP and then proceeded to organizers. So that is something we are still fighting and spending in the AP high court and also a contempt petition has been filed in the supreme court. Now this is a case about actually they used horses and ponies for carriage and transport and actually what the court found that it is actually not the practice, what has been is that in the older parts of Bombay there were horse drawn carriages, there were people who would take ride around for pleasure in terms of just seeing the city. So the court looked at the use and they really found that something that was not necessary but was a joy ride so it then looked at expert opinion to see the doctor said that for horses to run on the hard surface of the roads is very injurious to them, it creates very serious injuries in terms of their legs so that was very cruel. It also looked into the conditions in which the horses were made to work. There were being overworked, without any breaks for numerous hours a day and also the stables were kept in very terrible conditions. So, the court held that this was actually an avoidable activity because it had no actual use and it was only something for pleasure so they banned it and they were of course concerned about the people who are employed in providing these rides and it was their livelihood so they asked the state government to provide a compensation or a rehabilitation kind of package to see how they can be employed in other areas. Now this is an interesting order from Gujarat and I would like to have your opinion about it. It's actually a case where a large no. of birds were seized from a person and they were found to be kept in very cruel conditions. They were in cages, their wings were cut, they were tapped, there were rings on their legs and an FIR was registered. Now the birds were taken into custody and they were given to a voluntary organization and the person who, of course that came before the magistrate's court and he directed that they may be released into the open sky. Now, they then went in revision to the session court who said that you can't release them in the open sky, you can give them back to a voluntary organization. It then went to the Gujarat high court and the Gujarat high court gave both the options they said that - if you give it back to the original owner considering the cruel conditions that they were in, it is very likely that this cruelty is very likely to be alleged on them again but if you give them to the NGO they may perish. Plus birds have the right to fly and not be caged and therefore, keeping them with NGO while the case is going on can actually allow them to perish or release in the open. So it's a very progressive order and sorry here what is actually new is that the case is now concluded. So, under the PCA ACT there are provisions for it to go I'll tell so what the court discussed was generally what you would do is either you would allow it to go back or you would allow it to go to an NGO to be preserved till the conclusion. This is some more under the WPA and some

what under the PCA ACT. So what the court said that there is also that there is a provision under 451 Cr.P.C. where you may dispose of the property anyway. But all of the birds were not under the WPA. So under the WPA you can release them but under the PCA ACT this is new because it not something that is done generally. We are always fighting so that they do not go to the original owner. [Participant- but they would be trial by whom?] See they will be trial by different persons but both the cat swill still apply. They don't get merged. So therefore this is different so, it's the aaa also the recognition. there are 2 things one is that, they allow them to be free, it is also the recognition that it's natural for birds not to be caged and therefore just keeping them as case property as if it's some stolen car is completely irrelevant as the point is that it defeats the purpose of the acts. The provisions seems to be as if they are for life less things.

Participant - for non-living things the judgment of Manjit Singh is there.

Mr. Mihir Samson- so aaa any ways the basis of it is both the PCA ACT and the CR.P.C which allows you to give these kind of provisions. Now a similar thing is in the Delhi high court now this hasn't been passed aaa again birds were seized aaa from a shop in Delhi and aa the owner moved the application to get the birds back. Now this was allowed by the trial court and the petitioner , the original complaint moved the Delhi high court and what the single judge has held is that he only stayed the order he has not held anything , so I am just saying that it is still an interim order, it is not the final order that is doesn't have any judicial value in that , no precedential value that to him the birds should not be kept in small cages for business. So it is against and what they actually possess is the fundamental right to fly. SO to have them in cages is first of all violation of their right. Secondly, during the process of the case aaa again to keep them into cages would be aa problematic and violation of the provisions so now it is being examined in the Delhi high court. SO he has only stayed the lower court judgment and it I being considered. So this aaaa some of the most recent orders to do with birds and animals which are confiscated and how they are to be dealt with. Now, aa these are 2 judgments that Jayasimha touched about a little bit and of course Gauri would be in a much better place to talk about it because she is one of the petitioners aaa this is from Uttarakhand and Himachal Pradesh and basically they have held that animal sacrifice for religious purposes is illegal. SO the first point of the petition seeking that bad is animal sacrifice in the temple, the Uttarakhand High thing I am giving you first and the court considered it aaa they looked at the provisions and they read the PCA ACT only to to allow killing of animals in term of aaa for food. again the Doctrine of necessity without stating it and aaa they said that any killing has to take place it has to be in the slaughter house. It cannot be at a temple with many people and children looking at the sacrifice but in lance manner. so based on that they banned sacrifice of animal for religious purposes. There was a discussion on Section 28 as Jayasimha was talking about that actually 28 is not talking about, but if it for a religious purpose everything is allowed but it is the manner of killing. A similar petition which is now in the Supreme Court came upon in the himachal high court and there the order was similar but the aaa high court actually looked at the Hindu religious text and examined the question because this is actually in article 25 issue whether the practice of sacrifice is integral essential to the religion? and after going through the

text it came to the conclusion that this is not the essential practice of the religion, it is not central to the religion and that was not protected under Article 25 and therefore, held that actually animal sacrifice of animals is bad and nobody can officiate the sacrifices. The state government was asked to be pro-active and actually prevent them and publicize these orders, this is now subject to the supreme court's order. I am it is now pending. The next issue is of stray dogs and that is actually something very contagious and is being fought all over the country and you must have seen it in the paper. Really now it seems to be a fight between some citizen groups who want to see dogs as a nuisance who are biting people and should be eliminated. On the other side at the moment in the court are animal rights activists asking for the enforcement of the PCA ACT. So under the act there are some provisions and then there are the animal birth control rules of 2001, where there is a scheme which is based on international guidelines actually. You capture a dog, treat it if it is unwell, sterilize it and you put it back to the same area and in that way you have a sort of controlled population because you are always doing birth control. So there is sort of balance between the animals and to see no cruelty to them and humans. Now on the other hand there are actually municipal acts in the many many states where animals which are strayed like birds, pigs or dogs and can be summarily eliminated on the orders of the commissioner. So there is a conflict and some states have tried to use the power that is the municipal act to eliminate dogs. So now there is a judgement of the Bombay and Karnataka high court, both of them are in the Supreme Court and have been stayed. There are also some judgments of Shimla and Kerala. So now there is a big batch of matters in the Supreme Court. Just recently on Nov. 18th 2015, the supreme court had said that the interim ABC rules that is the sterilization must be followed and at the moment no high court can pass the interim order because of this order. So this is something we will develop over the year. March is the hearing at the moment and it's a big big sort of contagious issue and let's see what happens. Now the last thing that I will deal with is then I will leave for any questions, is that the supreme court has also been concerned with actually the implementation of the law and there are many orders like licensing of zoo, slaughter house etc. There are 2 interesting orders one is the 2008, where the supreme court directed, it came to notice of the supreme court that the district SPCA ACTs are not being set up and it said that the state governments have to have them they have to ensure that the district SPCA ACTs are set up. Now in 2014 in which again Gauri is a petitioner that is the gaddimai matter where we are trying to prevent animals being taken to Nepal for religious slaughter one of the things that came to the notice of the bench of the supreme court was actually the district SPCA ACT has something pointed out in the previous session and the State Animal Welfare Board aren't actually functioning so, in that sense they were worried about the implementation and directed again that these bodies are set up. So that is role any questions? some of the cases are attached in the reading material, full text is not there thought of course we can get that. No payment of maintenance charges is one of the aspects of the measures. I have the order, it is not that they are concerned about the payment. Okay so will tell you what is recorded in the high court's order maybe it is wrong or may be right. I have got the order with me. So actually the contention is actually the custody of the birds the original owner. I have the original order of

you want to see it, it's recorded in Justice Manmohan Singh's order that actually the custody and I will just explain to you in two minutes, you may disagree with me. The custody was asked for by the original owner, given without hearing the NGO, directed to be given by the NGO. The NGO then comes to the court. It is recorded in the high court's order, either parties must have misinterpreted, you may see

Participant- the intention is only payment

Mr. Mihir Samson- Should I read it, I'll just wait for it to come here. I think maybe because the matter is pending so we should not get into too much detail but aaa I just read out the High Court's order. So the facts of the case is that an intimation was given to the SHO Lajpat Nagar under the provisions of the so and so rules, FIR was filed and the same was shifted aaa sorry seized birds and animals sorry on 13th od October seized birds and animals, registers FIR the same was shifted to a recognized body of the Ministry of environment and forest. The owner moved an application for the release of the birds under supredaari under the same was allowed by releasing the birds. Now the complainant has files a revision petition which is aaaaa para 3 it is argued by the so called owner that they were given the supredaari without hearing the petitioner which is the PF before the high court. Now what the learned single judges says is aaaa after hearing both sides this court is of the view that running the trade of birds is the violation of the rights of birds. They deserve sympathy. Nobody is accruing as to whether they have been inflicting cruelty or not despite being aaa despite the settled law that birds have a fundamental right to fly and cannot be caged and will have to be set free in the sky. Actually they are meant for the sky but on the other hand they are exported illegally ban foreign countries without the availability of proper food water, medical aid and other amenities as are required by law. Birds have fundamental rights including the right to live with dignity and they cannot be subject to cruelty by anyone, including claim made by the respondents. Therefore, I have cleared my mind that all birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages. For the purpose of that business or otherwise. The petition requires considerations. Issue notice so and so and it strayed. Now this of course is aaa pending in the high court at the moment. So, the judge concerned is saa actually what happens to the birds to the pendency and whether they are in the custody of the owner or the NGO or are they allowed to fly? So really that is something what the high court will decide and if goes the way what it seems to be going that is the way of the Gujarat High Court it may be pleased to set them free. Any other questions? Okay Thank you so much.

Ms. Shruti Jane- Just wait 5 minutes aa our director would like to speak to you. So just aa hold on for 5 minutes.

Dr. Geeta Oberoi- So long day is over and now you can go back to your room but aaa the request that 7:45 we will start a movie. So kindly be there at the auditorium and aa in between we will give a break and you can have dinner there only. Special Dinner would be served there itself. So please watch the movies which is shown with a purpose it's a part of your course curriculum, not

optional and you have a a small one and a half day 2 days to don't think of shopping. You won't be able to shop properly. We will call you for a longer programme, then you do shopping. Yeah Okay then Thank you very much, see you then.

Session 5

Custody and Seizure Provisions

Ms. Paiker Nasir- Good morning aaaa shall we begin

Mr. N.G. Jayasimha - So what I thought of doing today was to kind of go through the Sections of a prevention of cruelty and panels act and most of importantly comes up the factor once we know the offences taken place what happen is how are we able to go away with the seizure provisions such provisions and stuff like that before that I thought to draw your attention to some important provisions within the prevention panels act with kind of different in definition than others sir I would request you to take the books and look at the definition of the word owner that is sec. 2f. The reason as in I won't read this out owner. owner is used to the reference to the animal includes not only the owner but also any other person for the time being in possession or the custody of an animal with or without the consent of the owner, and I think this becomes very important to naming the accuse many a times what happen is that they say this is not an owner. ye owner ne nai kiya hai kisi aur ne kiya hai, So what is very important is just that we understand that when accuse are necessarily named that definition of the word owner is pretty broad to include not only the person who would generally be the owner of an animal but also with the relation to person who has is wait for.

Ms. Shruti Jane- Aaaaa this seat is vacant please come in front, come in front if there seats are vacant here. Continue na

Yeah thank you.

Mr. N.G. Jayasimha - So and this becomes very important because when we look at sec. 11 there are certain aa aa aa aa provisions which specifically says that the being the owner of an animal there is something and the it becomes very important because many a time what happens is especially when we catch a lest say a circus and there is something that happens very often with circus the owner of the circus is never there within the premises or he never travels he probably sitting in Kerala or where ever he is braced it off and when the charges done the new the accuse is what happens is either that they put the manager or the person who is actually training the person and he happens to be the lowest rugs so he really has no control as to what kind of cage can be provided what kind of food is to be given to these animals for an example in Nagpur as a state

saying yesterday again there was a hearing the elephant the aa aa the camel had magnets in his mouth literally we could see the actually see the worms eating away the animal alive . The owner was not present at all the owner was living in Bombay some where he is not visited the circus in years and when we actually went there what we finding where is absolutely were poor people who were taking care and there were the ones who became the accuse and the IO did not charge the owner and then we actually have to go back and say to you will have amend that charge and include the actual owner the proprietor of it because that is the definition that includes it's not only the person who is the actual owner but it's also in charge of this particular thing and because it is so then what happens is that a most of the times same thing like transporter of animals bill jiske naamse pe kaata jaata hai never gets charge it all in sub being the driver and sub being the person who is actually handling but when you really look at being the person who is owner of the truck or the owner who is actually taking the consignment to transfer from one place to another they never get charged at all similarly it happens wild life cases as well the person who is dealing get caught but the person who is running the store lest say shaartoj sale karrahe ivory sale karrahe hai the person who actually owns the shop never gets done so I guess it becomes very important just to understand the owner the word owner is kind of very broad here it says here that it includes not only the owner but also other person for the time being who is in possession or in custody of an animal whether with or without the consent of the owner. The second thing is with relation to very generally and very broadly sec. 3 of the act its says that it shall be the duty of the person having the care or charge of any animal to take all responsible measures to insure the wellbeing of such animal and to prevent aa prevent the infection on such animals unnecessary painning suffering and this again is kind of broader than sec. aa 11 which kind of says bleeds , kicks over ride over drives because it the use two words particularly they use care or charge so even is the animal not necessary having the care but if the person is charge of the particular than the animal then he is still responsible and has the duty for care and this becomes aa for example in a laboratory cases is that could be one that come in a million that comes up let's say a lab let me show you some pictures aa aa last week we rescued around twenty nine beagles from one aa lab in Bangalore what they were doing was they were running the these experiments illegally they were feeding pesticides to these dogs not getting the permission from the CPCSE at all and again what happen is that because these are contract research organization that lab only kind of gets the hit but not the organization who was actually in charge of this whole thing being the directors be the people actually kind of perpetuating these crime and it becomes important to us to understand that it's the duties not with the person at that point taking care of the animal but it is also the person who is charge who has a charge of taking care of the animals so that again is very important because it is kind of aa draws up the liability to someone who probably had the intention of doing things and the corresponding provisions to this is that the relation to sec. 11(2) if you look at sec. 11(2) it says for the purpose of sub section one: an ownership deem to committed an offence if he has fail to exercise the reasonable care and supervision with the view of prevention of sec. So very many a times this happens with in aa Orissa hehe day before yesterday when we were here we went to the S.P. we had a reason to believe that a crime was supposed to take place we had reason to believe

around 200 cows were illegally transported we call SP and told the SP that why don't you take action , SP said no I am not going to take any action because the crime has not happen yet and we said that you don't have to wait for the crime to happen because what is important it says here is that the owner has to take exercise reasonable care in supervision with you to prevent such cases , the owner is not taking care to prevent the thing we know the thing the SP was like jab tak we please call when the truck comes and the animals are being loaded we only go at that particular time and stop , it happened with cock fitting cases all the time with us we call the police up and say this happened to us thane we call that thane police and we went to the police station and say they were pamphlets being distributed of different parts of the villages and thane that there was a cock fight was going to be organized on so and so date we went to the pamphlet to the SP and SHO and then to the SP that here is a pamphlet why don't you just call the person and ask him not to organize it that's the simplest thing that you can do the SP turned and said that just printing the pamphlet it's not an offence and I can't do anything you tell us when the cock fight is happening we at that time we will come and do the chaapa then we took us lot a time to explain to him that the intention of law maker was not to wait for the crime to happen because otherwise they would not have said prevention of cruelty to animals they probably have written as detention of cruelty to animals or something that will affect so a just just and and but when they did not come back to us and ask aa as to what is the legal standing and this is just your interpretation and we fall back on sec.11(2) where it says when the provision of sub section 1 where it talks about all the cruelty that is there the ownership deemed to have committed an offence if he has fail to commit exercise reasonable care and supervision with a view of prevention of such of offences.

So the only reason why I am trying to draw the attention of all of these is that a lot of things s make come before as private complaint as well and the only time when animals activist comes before the magistrate and the private complaint is when the police has completely refused to take action , and that is after we being we being tried 100 times going up to the superiors trying to get people to call then talk to them reason out with them and when the police completely whatever is the action that they do that the last resort for any animal activist that's what we tall him in every training is to move the magistrate directly with private complaint go as a complaint case and there are the that part of time we do emphasis and request that a you know a these are things specially comes prevention of an offence that does happen it is important that if you can just understand this because what we inter doing otherwise is the only remedy that ends up with leaving with us is 226 remedy and we can't be possibly running to high court every single time we know that we have said that multiplying no. to report of cock fighting and animal fighting dog fighting and we get calls all the time at least two to three calls every day saying that there is being a bull fight being organized in this particular place , do something about it and when we call the police they beggarly leads than under a political or a local person who is pretty influential kind of organizes it and then when we go seek relief from the courts, (Participant- may I help you in this aspect) sure sir.

Participant - Open sec. 32, yes sir if the police officer not below the rank of SI or any person or high berg state government has reason to believe yeah that in offence I sec. 1 of sub sec. 11 is in respect of such crimes is referred in sec. 30 being forest about to be where there is only limited to sec. 30 crimes and in certain sec. 30 crime is prevention of guilt relation to meaning of vote of a cast section 11 no sir section 30 clause 1 of subsection of section 11 , in respect of any such animal as referred to sec. 30 so we have to read this 32sec. in reference to clause 1 of sec. 11 read the section 30 and sec. 30 is presumption of guilt only limited to goats and cows and other thing so it does not apply for cock fighting and other type of cruelty of course I agree with you sir which comes to let's say that there was an issue with exception of sec. 30 says if any person is charge of offence of killing a cow or its progeny contracted to the provisions of clause 1 of section 11 then sec. 30 kicks in and when sec. 30 kicks in then of course the sec. 30 kicks in because the police officers have naturally the power but only thing is that this the very rare case that happens because even this happens typically the state cow protection and cattle protection acts are much more stronger than the PCA act so it was the cow and the progeny you were charging them with the state cattle protection of cow acts which are lot more stronger than the protection of animals acts so detention become comparatively easy most of us search and seizures act for us to relation to sec. 34 if we look at sec 34. is here majority of us happen where there is general power of examination it says that any police officer above the rank of a constable or any person authorized by the state government in this behalf who has reason to believe of an offence under this act has been or is been the committed in respect to any animal may opinion circumstances may require seize the animal and produce the same for examination before the nearest magistrate or by such veterinary officers as may be prescribed and such police officer or authorized person may when seizing the animal required the person in charge therefore to accompany to such place for examination , so aa the and when the next session Gauri will talk about how this is done on the ground so what typically happen is that when there is offence that this taking place and we want a search seizure to be happen then we always go to the police and ask them to use the power vested with them under 34 and then take animal either before the district veterinary officer or before the magistrate but the problem really comes is when the offence is not taking place we want to prevent the offence from taking place because 34 will only be kicking in when there is an offence that is taking place ,court corrects corrects so sec. 3 has to be read with sec. 11(2) because what happen is that majority what people see does not have a penal provision this act is written in very old school way where in as in newer acts that came in all the penal provisions were club to together and put into one particular section aa that's all probably the wild life protection act and all new provisions came in , this act was written in old school way , so did they was the created penal provisions sec. to sec. chapter to chapter aa they did not club it all together but what they did was ended the sec. and begin a new chapter but they did not give a penal clause for sec.3 so what happen is if I say aapne sec. 3 ko offence kiya hai par uska koi penal provision nai hai sec. ne aapka kya hai apka bas ye keh rahe hai ki you say this is a duty for it so there is no offence right under sec. 3 if ypu dont read sec. 3 along with sec.11(2) sec.11(2) read with 32 with relation to search and seizure, for penalty purposes correct problem there the practical problem there be that majority of these

offence happen middle of the night or it happens in very secluded places so let's say a bull fighting in Goa it happens in really secluded place and in happens in middle of the night or lets say transport that happen typically you ended up complaining truck in middle of the road on a highway it is very little chance to actually go and get an order under 33 but definitely the circuses we use 33 all the time now because in circuses what we do is we go to the police tell the police exercise to their power under 34 90% of the person the police were not exercising the power under 34 then what happen is when we make the application in PCR the application will always refer back to 33 and request that the magistrate orders under 33 read with 35 along with various other provisions for doing because the police themselves very rarely come and ask for 33 yes yes yes mam all of this require is matter up the bringing before you and the biggest problem that happen is that point of time is the IO develops a kind of a cold fleet and the IO does not do anything at all the IO's immediate response to the an IO when you call him is that he will say offence ko hone do as in that is there absolute initial that they will say yes sir ... very little very very few and there already there in sec 31 says that not anything containing CrPC the offence punishable are this are cause in any O sub. sec. 11 and sec. 12 are cognizable so I think it all relation to animal fights only.

Mr. N.G. Jayasimha - Animal fights use of aaa are the only 2 provisions which as in shooting matches aaaa these are the only provisions. correct correct only related to animal fights they definitely can because CrPC provides them for that aa then comes aa an important other provisions of relation to it is sec. 13 (2,3) because lot of these times specially I was explaining yesterday aa there is a provision related to this destruction of animals and it becomes very important because aa there are two things one the owner of the animal is convicted and f the magistrate feels it is cruel to keep this animal hen it can be destroyed but when a magistrate or commissioner of police aa has a reason to believe an offence under sec. 11 has been committed then what it is but the third one is necessary where there is not necessarily offence that is committed but there is generally suffering that is happening that is happen , so a lot of time what would happen is that there is not necessarily an offence that is committed ,the animal that's y in his own health or whatever reason is suffering to an extent that it needs to be put out of its suffering and then again you will see that team deals with that issue aa any police officer above the rank of constable or any person authorized by the state government but in his behalf finds any animals so deceased or so severely injured or is in such physical condition that is in working in cannot removed without cruelty may if the owner is absent or refuses his consent for destruction of the animal for fit summon the veterinary officer in charge of the area in which the animal is found and if the veterinary officer certified the animal that is not only wounded or so severely injured or so is in cruel condition that is will be cruelty to keep alive that the police officer or the person authorized as the case may be after obtaining the order form the magistrate destroyed the injured animal aa or the animal inured or the case aa are caused to be destroyed as the manner prescribed so that's basically what it is but sadly there is no manner prescribed currently by center government you could just use veterinary medicines to destroy and even three is no offence that is being committed that the police officer can come before you with veterinary report and request that an animal be aa destroyed or put to sleep .

Participant- Correct.

Mr. N.G. Jayasimha - Using the power under 38(1) sub rule 2. Correct but they only the manner is prescribed for street dogs there is no manner prescribed for cattle ,birds infect the animal board of India has developed Euthanasia rules and have submitted to the central government but the central government has not brought it out as if now , as how to how euthanasia can be done aa certain manner are now being started to prescribed for lab animals because what happen with lab animals is that currently they use pithing where they basically just take a hit stick and hit the animal to kill it . They call it putting or they bag them and put them in but now there are CPC drawn prescribed for the lab animals but other than dogs which are there , there is only one thing with relation to dogs they don't necessarily have to come and seek the application under 33 because the rule kind of gives the abc monitoring committee aaa discussion as to if they feel it needs to be done so they don't necessarily have to come and apply the application under33 before the magistrate aa the other important provisions is relation to a sec. 20 because there again it's just a penal provision much larger penal provision aa but this limited only to aa experiments that are being conducted if says if any person contravenes any order made by the committee that's the committee for control and super vision and experiments of animals under sec. 19 commits a breach of any condition imposed by the committee there in hat sec. he shall be punished with the fine that may extend to 200Rs and with contravention of breach of the condition has taken place in any institution the person in charge of the institution deemed to be guilty of an offence shall be punishable accordingly , so this kind of comes into being when lab animals are involved a specially. The next provision is related to sec.24 and this again is very important sir because we be always go before the magistrates for exercise of this particular power there is power of the court to prohibit or restrict exhibition of training of animals. So the animal welfare board of India place a regulatory role with relation to performing animals underperforming animal registration rule , any animal that needs to be performed a train has to be registered with the prescribed authority that's the animal welfare board under the performing animal rules , now the problem where arises that the animal welfare board of India goes ahead and gives the performance license to lets say circus or a film shoot or whatever it is but then we you actually go on the ground and see these people continue a lot of cruelty let's say aa the AWBI says that you can't make dog jump inside fire but then these circuses very commonly make dog jump inside the fire the AWBI certified that you can't have an animal fight within circus but it is very common that they will have animal fights within the circus or elephant walk on its two LEGS again which again AWBI says if you can't do as in the performing animal restriction rule says , but the problem really comes in when we go and see something that is being done there is only two remedies that is left either we go back and complaint to them as prescribed authority and request prescribed authority to take action the only thing that the AWBI can do is actually just withdraw the registration that's given to them but that's it but they can't they obviously don't have the powers to withdraw ownership or all take the animals at all , and that again is very combustion long process because the principal of natural justice require that we need to call circus owner giving him a hearing , issue a show cause all of which you replicate one to one and a half year at least on any complaint which given because three

hearings are to be given then there is an appeal provision given to secretary in no year o, aa but there is a particular chance where in in twenty four if we do find a and is for example when there is a performance or training that happening which is in contravention the magistrate can declare and ask that this particular performance we stop so sec. 24 where it is provided to the satisfaction of any magistrate one complaint made by the police or an authorized person or officer authorized in writing by the prescribed authority that is the AWBI referred in sec.23 that's a prescribed authority that the training or an exhibition of any performing animal has been accompanied by unnecessary pain or suffering and should be prohibited and allowed to only subject to condition that court can make an order against a person to respect to whom the complaint is made prohibiting the training or exhibition or imposing such condition in relation there too as may be specified by the order any court by which the order is made under this sec. shall cause the copy order to send to the prescribed authority. So this again we comes very important aa lot of times when a circus is being performed and we see the performing animals were injured poor broken leg , animals have magnets the only option that is left with us is actually comes before you sec. 23 and seek for immediate relief so I just thought it is impotent top draw your attention to this and sec.24. Next again again with relation to sec.26 aa these talks about the various offences aa if a person is performing not being registered under this chapter exhibits trains being registered under the act exhibits of train animals with respect of manner which is not registered and it goes out to say and where the he says that he shall be punishable upon the conviction of fine which may be extend to 500Rs with imprisonment which makes three months or with both now the important thing again here is that there is no requirement for aa prior offence under this whereas under sec.11 they talk about there is some sort of things with relation to prior offences being required but here it says that he shall be punishable on conviction of fine and there is an imprisonment given the first at point of self aa then aa then comes sec.29 to 34 I guess which again is aaa very very is again very important because aa it's the power of the court to deprive a convector ownership of an animal so there if were owner of an animal is found guilty of an offence under the act the court upon his conviction there of things fit in addition to any a other punishment make in order that the animal with respect to aa which the offence was committed shall be forfeited to the government and makes such orders to the dispose of the animal as it made things fit under the circumstance , so the power is given to you is really really wide in this sec. one is the you can give it to the government or you can make such order for the disposal as you may deem fit , if the government is not willing is the Gaushala is willing to take it or if an another animal welfare organization is willing to take it or if they are dogs or other are willing to adopt this animal and if you feel that they are bonafide people who can take care and you definitely can give it to them do not necessarily have to give it the state itself because the power its vested on you is really really wide it then it goes said , but it go said that no order in sub. sec. 1 is made unless it is shown by evidence took that previous conviction under this act or entering thus very important many a times what happen is that people he took previous offence nai tha to hum iska defame nai kareinge iska ownership but it's not and the the the qualifying that it says is no order under sec.1 shall be made until it is shown by the evidence has to to the previous conviction of this act or entering thus very important many a times what

happen is that people he took previous offence and the the the qualifying that it says is no order under sec.1 shall be made until it is shown by the evidence as to the previous conviction of this act or as the character of the owner or otherwise as to treatment of the animal that the animal left with the owner is likely to be exposed for further aaaa, there again a lot of discussion given if you feel like of course in your judgement if you like that this particular person has aa let's say aa taken care of an animal in a really really bad way if you feel that curing the back will continue aa let's say breeder of a dog aa the fact is there is some time when case will come up where a person like I have a dog at home and I don't take care of it and you know a chance is that I might have change of heart and I will take care of the animal well but there are certain people who primarily continue to treat this animal and SC has laid down as to what the three test should be in state of MP Vs Islam 2007 15 SCC 58 its says that the jurisdiction is confront of the part of the court past forfeiture order on satisfying three specific conditions namely evidence as to the previous conviction or as to the character of the owner as to the treatment of the animal or animal if left with the owner are likely to be exposed for further cruelty in majority of the cases the third point becomes true the animal is left with the owner I likely to be exert for further cruelty this becomes true with pet shops exotic birds seller aa all of these guys whose trade in business is to be , it is not possible to others something which is cruelty for example a person who is aa who has who who habitually conducts fights is in there is no way to give animal back to him and hope that there is better care they will give of course the judgment is with some people who without any intention of others to neglect and don't take care of the animal but there are proportion in trade which kind of continue with this kind of particular thing and there is a judgment aa definitely take on aa call that you can take up. Again comes to sec.30 there is a presumption of guilt and certain things but then aa as I said very rarely sec.30 is used because where an offence under sec. 30 happens a typically aa co relates to other stronger offence under state cattle preservation or the cop slot or probation act , so that the charger end up being of that sec. 30 aa we spoke cognizable of offences as to what offences are cognizable and what not aa then comes 32 , now the power of search and seizure under 32 is primarily linked with sec.30 so aa so 32 has to be only read with sec.30 and aa also read with sec. 12 a aa only as in so this 32 power and search is not a wide search and seizure sec. 33 with relation to search warrants as I said the marriage should be first class or second class or a presidency magistrate or a sub divisional magistrate or a commissioner of police or district superintendent of police upon having information in writing and after such inquiry has he thinks necessary has reason to believe that an offence under this act is being or is about to be or has been committed in a place he may enter upon himself and search or by his warrant authorized in any police officer not below the rank constable to search the lace and of course it says the provisions which are in CrPC are also applicable to this there again aa it is the only the way typically work of course the SP or the police are very proactive and they go ahead and do it and they do it if there is gambling because they fins gambling is a larger provision for them but otherwise typically only happens when there is a private complaint done and other private complaint is for order given is to go search and this typically what happens a aa then of course comes with sec.34 where there is general power of

seizure of examination any police officer above the rank of a constable or any person authorized by the state government on this behalf and how has reason to believe that the offence under this act has been committed in respect to an animals may if in his opinion to circumstance required seize the animals and produce the same for the examination to the nearest magistrate or by search veterinary officer as may be prescribed and such police officer or authorized person may when seizing the animal require the person in charge thereof to accompany to the place of examination then finally comes and 35 something will come that Gauri will go in detail with because that again is a huge thing as to how on seizing is one fourth of the work and once seizing have the animal with you what is a treatment and care what you do first convention tendency litigation and if there is no convention if the person is just not for guilty then what is the thing under this Gauri will take aa next but a again other peal previsions is with relation to sec. 30 (a) aa so under sec. 30 (a) the central government is authorized to make a lot of rules and we say these rules yesterday aa with relation to prevention of animals act aa there with relation to brought and pack animals that is the animals food the bhoja krte hai you have with relation to performing animals , animals work controls slaughter house rule licensing of various rules transformation of animals food rule there is huge amount of rules that have been developed but aa the again one of the nice thing about thing is that the penal provision that's already been created for these rule under sec. 30 (a) 3 three says if a person contravenes aa rabbits the contravention of any rule made under this sec. he shall be punishable with fine with Rs.100 or with imprisonment for a term which may extent to three months here again prior convention is not required so it's an interesting I don't know interesting badly drafted because in the main clause of penalty they kind of put in a sec. 11 which we also barely hold to close on our heart the conviction got is much lower is whole lot of catches in put in but when you loaf other provisions of penalty and even look at the rules penalty when you really sees if there is no requirement for prior conviction for imprisonment can happen directly and the fine goes up to Rs.11 where in other cases it goes to 50 -100 so interesting thing but the question I think that absolutely comes in every body mind why dis how could parliament can pass an act where in penal provisions which are the sovereign functions of the government have been delegated as in that something possibly comes in that's a question we being asked saying that how can you has that a rule has been violated the rule is delegated legislation and when there is a nn delegated violation how could you possibly draw clause that is there a question normally comes up and the answer to that has been given in sec. 30 (a0 if you really look at and there are many case laws which you probably know is because there are two sort of rule one purely delegated legislation where the executive brings aa rule but those rules are not necessarily laid before the parliament where is these rules are different that which are made under the CPC because the chapter on experimentation the central government has given the powers for rule but there is no penal provisions that have been created further only there is a violation of the act because those rule are not laid before the house the parliament whereas 38 (a) make an exception and says that the rules and regulation laid before the parliament and that creates a bitter for differentiation among the rules itself and the many a times when this is been challenged in courts it is been upheld when you look at 38 (a) where they talk about the fact that they need to be passed it kind of becomes

that hence becomes penal provisions which are there in aa 38 (2) is kind of applicable because there is 38(a) which backs up the fact that all of these are rules have been made are made placed before the house of parliament

Participant- Yes

Mr. N.G. Jayasimha - sir if the birds are covered some like aa animals are recovered particularly in relation to birds no claimant come forward to claim them we cannot hand over to the person they have been recovered , then how to like dispose them of , because nobody comes forward

Participant- You can give it to anyone as you feel like for the act says

Another Participant- Can we hand over them to the like like wild life authorities, district regional officers?

Mr. N.G. Jayasimha - Definitely sir , because if you aa look at the sec. with relation to search and seizure and also with depriving the person of the ownership which is there first of all if there is nobody comes up its there is nobody comes because it will be a big problem to find willing like organization some NGO. If it is a wild animal or if it is a bird the best thing is to hand out to the state because it's not you're...

Participant- Hand over to state means aa these wild life authorities

Participant- You can hand to to the forest authorities especially wild animals it is there duty to take care because the wild animals are the state property

Mr. N.G. Jayasimha - now the issue comes with if it is a domestic like say we have 500 murgi the forest will probably take it and feed it to the pythons aa but aa ammm at that point of time I think you can hand it to the state and tell the aaaa

Participant- we will have to hand it over to some official which official sir typically what happens is that in many cases the magistrate has told PP saying ki aap pata kro get instruction as to where these animals has to be done and by the time they go back and they fire at a particular place and we will show some of those orders and Gauri's thing it happened in which was the place.....

Mr. N.G. Jayasimha - in Firozpur issue happens a camels were confiscated in it show the particular order camels were confiscated and there was no place to send these camels in Firozpur and that point of time the IO was given an opportunity that the IO and PP have to find the where you want keep these animals and get back to us at that point of time they went ahead and they found a place in sirohi Rajasthan aa where these animals can be held and the magistrate had in issue an order that these animals have to be transferred from Firozpur to sirohi Rajasthan and all of these animals were transferred to sirohi Rajasthan of course needless to say that when you

transferred the animal you still have to take the bond session 5 aaaa the organization which is taking the thing will issue a bond that this is not their property and they will give it back to you if they say there is an order from the court. So aaaa the best thing is that aaaa Gauri will deal with it but aaaa if you look at the PCA Act SPCA rules, the executive magistrate has been given certain responsibilities thereof which include setting up of setting up of an infirmary, SPCA and aaaa I think an order by you the executive magistrate saying that you have a statutory duty to establish this particular place, here is a case property animal that I have please deal with it.

Participant - But an infirmary cannot be set up in one day

Mr. N.G. Jayasimha - Nahi wo beech main kuch kar detey hain sir for example, in Uttarakhand they have list of progressive farmers who do organic farming and stuff.

Participant- How to check that the person to whom the custody has been given is taking good care, he has not disused the animal s further

Mr. N.G. Jayasimha - I think aaaa every 3 months if you ask your court master to the roaster and keep the IO to go and check on the animals then there will a fear. OS I am not saying that aaaa there are chances that your first 2-3 orders is chaos but ones the executive magistrate realizes that this is happening he is going to get his act together and get his veterinary officers .Har distict main har Taluka main kuch nahi to ek vetnary officer to hota hi hai sir, the district or block officer. WO artificial insemination ke alawa kuch aur kaam karta nahi hai and sells oxytocin at a lower rate. There are a lot of resources that a district vetnary officers have and also in many of these places there is a common land that is available. For example in Karnataka there is a big deal with relation to Gomada lands. So it I snot that the base and the resources are not available, it is just that nobody has held them responsible to do it other than the very big supreme court direction ki bahiii aap karo and nobody in the district has that sort of thing, so feel that and that there are hundreds of case laws that you know which is now upheld that the order from you has to be executed and if it does not executed then what can be done. SO I think that order coming from your office saying that these animals needs to be housed in an infirmary and you are not asking them to do anything more than what is all this statutorily required.

Mr. N.G. Jayasimha - Kindly provide e that judgment also in which it has been directed that infirmaries and pinjrapoles are mandatory to set up. Yes yes there are 2 judgements. It is there in the compilation that is given is Geeta Sheshwani V. UOI and Others, second is one of the case Gauri Maulekhi V. UOI & Others. the Judgement Geeta Sheshwani V. UOI and Others is not reported aaaa in that particular judgement aaaa the supreme court directed every state that need to establish a District SPCA and the state board and the statutory provisions is aa that is there in the aaaa one is with respect to the establishment of infirmaries itself and second is the SPCA rules aa if you look at the PCA establishment of SPCA Rules that is page 87. It says that aaaa every state government shall by notification in an official gazette as soon as may be within 6 months from the

commencement of these rules set up a society in every district that's the SPCA. Then it goes ahead and says that who is the managing committee to the SPCA and Rule 4 of says that every state government shall provide adequate land and other facilities to the SPCA for purpose of constructing infirmaries and animal shelters. Every infirmary and animal shelter shall have full time vet nary doctor and other staff for effective running and maintenance of such infirmary, an administrator who shall be appointed by the society, every society shall through its administrator or otherwise supervise etch the overall functioning of the infirmary and animal shelter under its control and jurisdiction. All cattle ponds, pinjrapoles owned and run by the local authority shall be managed by such authority jointly with the society or the animal welfare organization. So there is a statutory provision in Rule 4 in the bare act. This is statutory provision that requires that state government has to establish these infirmaries. There are 2 Supreme Court orders which require that this has to be enforced and aaa so aaa you could definitely direct the local authorities saying that you please keep these animals in an infirmary that you have set up. Agar unhone set up nahi kiya hai to bolengy ki set up nahi kiya hi, but if you issue 3-4 orders after one point they get their acts settled sir.

Participant- Sir, if lion nail and tooth is recovered, then what would be done after the disposal of the case.

Mr. N.G. Jayasimha - aaa destroyed sir. Lion nails, ivory any sort of aaa ones the case is being disposed of it needs to be destroyed sir.

Participant- And they should be handled to the wildlife authorities.

Mr. N.G. Jayasimha - No sir, you should give orders for destruction

Participant- Under Section 13?

Mr. N.G. Jayasimha - No under the wild life protection act sir. The aa there is a particular provision for the destruction of seized property under the wild life protection act in fact. I come to the end of PCA, as I said that, it's a really simple legislation just needs implementation. Yes sir

Participant- Where is used for executive magistrate or judicial magistrate? How can he make it certain?

Mr. N.G. Jayasimha Sir, it is actually not true in many places where there actually talk about executive they do say executive magistrate or district collector as it may b. aaaa for example in the SPCA rules itself in where is come for administration they say the district collector and I think in general interpretation of statue requires that when a magistrate is sent it is always magistrate with the power of adjudication. It is kind of said, it is always a judicial magistrate and the executive

magistrate because the executive magistrates powers are being specifically said that the executive magistrate has to do itself.

Participant- In the section I saw it is given any magistrate has been used. Under section 13 (2), when any magistrate aaa any magistrate means judicial magistrate executive magistrate both? And sub-section 3?

Mr. N.G. Jayasimha - Sir, this I agree with you because if you look at the reading this is not an adjudicating power that is given sir. If you look at section 13(2), it says any magistrate plus it goes ahead and give to police as well. So if you read that particular section then you will interpret it

Participant- But what about section aa sub-section3

Sub-section 3 is any police officer

Participant- But from a magistrate there is no term, from a magistrate

Mr. N.G. Jayasimha - yeah from a magistrate because here the police officer is direct reporting would be the executive aaa if you really look at the district hierarchy. The district hierarchy would require that the police officers who directed report to the commissioner of police or the district superintendent of police, who comes under the executive control of the executive magistrate. As they are kind of within their control. So here aa three what is required is it creates a checks and balances sir. Wherein what happens sir the police officer goes and does it and then he gets an order from the magistrate.

Participant- Actually I find only section 24satisfactorily it is that it is used for judicial magistrate because the term court has been used.

Mr. N.G. Jayasimha - 13"(30 is definitely judicial magistrate because there is no way that the police officer can go back to the thing.

Participant- Sir, can I answer this?

Mr. N.G. Jayasimha - Yes sure sir

Participant- Sir, section 3 of Cr.P.C. comes to rescue where aa jahan oe jaise prevention of animal cruelty act hai it is not clear about the magistrates then in the context except section 33 where it is specifically mention second class first class , SDM otherwise the magistrate shall be constituted as judicial magistrate as the penal clause is also there. So it has to be construed as judicial magistrate only unless there is specific provision like aaaa

Mr. N.G. Jayasimha - two may be because it says any magistrate or commissioner of police or district aaaa but typically when we go to the collector or the district collector also delegates it to police and other. The only place where we have seen the collector comes and does it is for removal of nuisance. Can we aa now we will go the wildlife protection Act very quickly. aaaa Wildlife Protection Act [WPA], now this is an interesting act primarily because it's a state subject whereas PCA is concurrent. WPA is state subject because the states agreed to have common aaa law and this particular law has been brought in and this kind of makes it more difficult primarily because the implementation is completely with the state government and the state bodies. So to start off with our discussion the most important point that comes up under the WPA is with relation to sec55 of the WPA. so, sec 55 says that no court shall take cognizance of an offence under this act except on the complaint and I think the reason also why they said no court they said magistrate because there are certain offences that can't be tried in magistrate court because they are higher offences, so they have kind of used the word court and don't say no magistrate, that says no court shall take cognizance of any offence under the act except on the complaint of a person other than the director of wildlife preservation or nay other officer authorized on his behalf by the central government. The member secretary central zone authority, matter relating to violation of provisions of chapter 4 A which is primarily with relation to zoo. The member secretary of the tiger conservation authority, the director of the concerned tiger reserve, the chief wildlife warden or any other officer authorized on his behalf by the state govt. subject to the conditions as may be specified by the government. The officers in charge of the zoo in respect to violations and any other person who had been given notice not less than 60 days. Now aaaa many times what happens is that small cases does not come before you at all because there is compounding that is given. Sec 54 talks about compounding. SO be it with relation to zoo's, sometimes even for entering in national park , drinking alcohol in a national park aaa they aa majority of the time what happen is that the forest department kind of just compound the offence then and there. Aaaaa it could be driving at night inside a national park aaaaa a lot of this is also to be read with the forest act of the states. So aaa because of the compounding that is there they kind of each one of them they prefer to compound this matter when they come. The animals and also very rarely other than monkey, elephants and birds, live animal swill come before you in this aa because the huge part of trade that happens in will animals is with relation to trophies aa the only small part that does happen with relation to them is with relation to monkeys because there is a lot of monkey trade that happen in keeping them as pets, dancing on streets. There is a huge wildlife trade that happens with relation to birds, start tortoise and things like that ad of course the biggest problem is the elephants itself because that has become a huge nightmare for us is that the population of elephants in this country is only growing aaa because of various reasons and across the country and aaa earlier what would happen is that the elephant problem was limited to Rajasthan, south, northeast.. Now what is happening is that huge amount of elephant issues are coming across the whole country and we were surprise to see that Bihar tops in captive elephants because of the sonpur Mela that happens. Another problem with relation to this is that because it is the state subject the ownership certificates are issued by various state departments and are typically in local language because of which there

is a huge amount of illegality that happens because local language of Assam cannot be read in south and the certificates carried by the owner are a zerox copy which is very difficult to examine for its authenticity. Most important things with relation to elephants which I would deal to aaa is sec 39(1)(a) WPA, wild animals to be government property what sec 39 says. Every wild animal other than a vermin so that is very important because aaaa vermin is again which is defined in schedule if you go into last schedule of the WPA other than the vermin, the vermin that is shunted under section 11(1) or (29) or 35(6) or kept in captivity or hunted in contravention to any provision of this act or rule or order made thereunder killed or by mistake, animal article trophy etc.,..... shall be the property of the state government and where an animal is hunted in a sanctuary or a national park declared by the central government such animal or animal article, trophy etc. derived from such animal or vehicle shall be the property of the central government and this becomes very important because it is not just the animal, it is also the property that is being used. So let's say in Andhra Pradesh, very common to find red sander scale smuggled all the time and the trucks that smuggle it also becomes the property of the central government. Similarly for people who are trapping the animal, the traps can be confiscated under aaa sec 39(1). Any person who then aaa so there is a lot of case law in this. Now sec 40 talks about the declarations, so a lot of people will say ki hum to iss janwar KO we declare it we have it in our custody rightly. It says that every person having the commencement of this act the control custody of a captive animal specified in schedule 1 part 2 of schedule 2 so primarily what happens is that we have keep looking into the dates. I mean the last scheme that the government of India has brought in was in 2003 wherein they brought in the declaration of the wildlife stock rules 2003 which there is in this. SO, what happens is that if you have an ownership certificate that is issued post 2003 or declaration certificate majority of the time it is always fake possibly because you can issue after 2003 that was the last time such scheme was brought in. So any other animal that has bene there since that, if you get an ownership certificate which looks like the animal is only 2 years old that particular ownership certificate is totally wrong. Again section 42, if you were to read, it says that no person after the commencement of aa require, receive or keep in control custody and possession, sell, offer to sell or otherwise transfers or transport any animal specificities in schdeull or part 2 of schedule 2 or any meat or trophy derived from such animal or salted or dried skin of such animal or musk or horn be of rhino except when provisions permitting in writing from the chief wildlife warden or the authorized officer. Now a lot of this that you will see is that they say the ownership certificate was transferred, bol rahe they ki kissi ne hume de diya. But if you look at section 43(1) sir, it is with relation to transfer of animals etc. it is completely wrong for this to happen so no person can trade that particular animal, so you can't say that I sold it and I(bought it. Now aaaa with relation to if you let at aaa aaa we aaa sec 49 of this act purchase of the wild animal other than the licensee, there is no authorized seller to sell wild animals. Now coming to 40(2)(a) & 2(b), this is interesting aaa they are kind of bringing aaaa while you can do gifting and all that with elephants but the only thing which you can do for acquiring in inheritance. Earlier they said that there can't be any commercial transaction but you read it with sec 40(2)(a). But the biggest problem is section 2(b). So there again if you see this whole thing what happens is that the only

way a person could acquire the animal is that if you have prior to 1972 through inheritance. After 2003 you can't make any declaration. If you do such declaration then it becomes illegal. Now will you charge him with penal provisions or not? You can't charge him for hunting and all but does that person legal hold that animal after 2003 then you cannot. Finally there are many many lacunas in this law with relation to aaa it keeps silence with aaa relation to animals like what happens when you have 2 elephants and a baby elephant which was born post 2003 what happens to that particular elephant. These are the kind of grey areas that kind of do exist. But again with relation to the transporting of animal, if you look at sec 43 aaa sub section 2 of this particular act, you will see that this is something that never happens. similarly if you look at 48 (a) and that makes a specific provision which comes in when we deal with western railways, central railways all the time. Similarly under sec 50, this is the last section that I want to deal with aaaaa it talks about power for entry and search and aaa so a sec 50(c) kind of allow for seizure as well aaa so there again it is important for us to know that that when a wild animal does come before you, you can kind of arrest this kind of a particular person and to take what every arms he used. So aaa gain the WPA is aaaaa probably the best piece of legislation this country has seen. They say that the reason why this was done was that just after 1972 they wanted to after the rajas and maharajas who held so much of the wildlife and then they brought in this legislation to achieve the target. So it is a very well drafted legislation in that way you would say. The only lacuna is with relation to taking of cognizance, huge power with the forest department, much larger power vested with the courts depending on the offence. So aa that is about the WPA. Please put some questions. I am happy to answer.

Ms. Gauri Maulekhi- Any questions yes.

Participant- The nails of the lions and other parts aaa t5hat is to be destroyed but sec. 39(1) (a) says that it is the ownership of the govt. so it includes the animal article any animal article.

Mr. N.G. Jayasimha - But when the magistrate or the court feels that the ones the case is over having this particular thing will fuel trade. So one of the order that they can issue is to destroy the stock because there is a whole rule with relation to destruction of stock as well in this which talks about the fact that if you keep them in custody the chances are they will be back in trade.

Participant- Kindly see 50(g) management of property seized or forfeited under this chapter.

Mr. N.G. Jayasimha - The state government may by order publish in the official gazette and appoint as many officers to perform the functions of the administrator. There is an administrator but the only thing is that if you look at the penal provision and further things with relation to forfeiture of property, it says that the court may issue other orders as it may deal fit. If it is the live animal it should be send to the forest department

Participant- Sir the owner of the vehicle, he is not the accused in this case. Whether you can confiscate the vehicle

Mr. N.G. Jayasimha - You can sir, because the vehicle was used for the offence

Participant- Sir another question, the property is produced before me at midnight at that time I cannot hear the matter means domestic matter is put before me at mid night at that time I cannot pass any orders, so I have to give interim custody. Whether that domestic animal can be handed over to the police, when the case is placed before tomorrow?

Mr. N.G. Jayasimha - Of course sir you could. Aaa there are two things if you are having an animal that is coming to the custody a live animal because if it is a trophy or article it doesn't matter. The issue really comes in with relation to aaaa live animals now there are two cases that really comes in if you have to Technically you have to deal with them as perishable goods as in what you would do with perishable animal you would dispose the goods or auction or something like that. Now if you will not consider the PCA that is Because it is a perishable goods especially when it's a livestock. But because there is a provision of search seizure and also there are many Supreme Court judgements which says that pending litigation with respect to the custody is they should not be hand it over back. So the responsibility lies as we said that under the aa rule 4 of the SPCA Rules where the district collector and the state government to establish infirmary. You could definitely hand it over to the state government and say that you house it in the infirmary. Needless to say sir that any sort of case property which is given is we are still bound by the Cr.P.C, so we'll take the bond of the person who is taking the custody of the animal saying that he has no ownership of this animal and he will also execute a bond which will say that if the court tell him to produce the thing and if he does not go by that legal remedies does exist. SO the deal would be that the general rule the thumb rule is to identify an animal welfare organization or SPCA and give the animal to them under a bond saying that you will house these animals as under the PCA. Thank you very much

Session 6

Maintenance of Case Property

Ms. Gauri Maulekhi - It's a first of all let me say that it is huge honor to be able to put forth our views before you. I am very grateful to National Judicial Academy. I will give a brief introduction about myself. I have been working for the animal welfare for the past 2 decades and I have the fortune of working with many many organization and various govt bodies. aaa statutory and otherwise which have been tasked with aaa protection of animals such as the AWBI the national Tiger consolation authority, various other state slaughter house monitoring committees etc. cow protection commission which I have been part. I have also at various times been fortunate to have been given a chance to assist various high courts and the supreme court in their process of coming

up with landmark judgements for the benefit of animals. So aaa whatever little knowledge we have collected we will putting forward to you. I am sure this is a subject that will be of interest to you because these are the cases that come before the district courts every time. In fact, the bulk of cases aaa that come require the animal to be seized and you know to be placed somewhere which is a logistical nightmare we understand in most districts. So, how to overcome that and where to place the animals is what we are going to discuss today. aaaa I am sure there will be lots of questions too. aaaa first of all when an animal is seized the primary is welfare legislation before anything is done we need to ascertain what is the condition of the animal and whether it requires any help that has to be given to the animal Asap. if there is a truck full of animals there are 15 buffaloes in a truck and it should be 6, it is taken for granted that they are not in a good condition and they need to be given food water space, veterinary attention everything. / SO if there is an FIR which is expected from the police is the seizure memo is made, a panchnama is made, and identification of each animal is secured aaa health report is made and photographs. Now these may not have been written explicitly in the PCA but these are the creative ways in which aaa can be used to make sure that the case property is safe and handled in the best possible way. Now regarding the case property aaa the identification and what to do with property. There is this yesterday the AWBI at our request has issued a letter to the prosecution Director Delhi stating that in most cases where there is observed that animals are given back or whatever these are the steps that are needed to be taken in case the animal has to be returned. Now among these there is a very important point of identification that animals must be radio-tagged before they are given to anyone. Whether, you know it is send to a shelter or aaa whatever they must be radio-tagged. we will come back to this later because this has a few more points that we can discuss. we aa the copy of this will be made available to you it will be sent to all states. Started with Delhi because a huge number of aaa such cases and case property are there. This is one of the types I was talking about yesterday. This tag costs around Rs.15 or insurance companies use it. Every state has animal husbandry departments, all veterinaries are doing this. So in case any order has to be passed by you, you can trust that the animal husbandry veterinaries. The jurisdictional veterinary officer will know how to procure this and put this. This is the other thing which the radio-frequency tagging which costs about Rs 100 or so. Also, all veterinary officers of the animal husbandry department knows how to put this, know how to procure it because they routinely do this. they read this with a device that is freely available with the forest department of the state. The Animal Husbandry department and the insurance companies also might have a reader. Now once you have the animal and the police has seized the animal and aaa the aaa matter comes before you sir aaaa you need to ask a few questions. The first question is will it be cruel to keep the animal alive. That is the first question if it has been abused so badly, if it almost in a dyeing condition, if it's spine is broken, 4 legs are broken. You know that there is a veterinary report before you, you have to keep in mind that the IO is expected to come before you with a seizure memo and health report because the minute the animal is seized the veterinary jurisdiction, the veterinary officer should be called ideally and the health report should be made. Basic observation report. So then when that animals can't be brought to court so some indication of how they are must be brought to the court when the case is presented before

you in the court. In that condition to assess from that report whether it would be best to keep the animal alive or put it down depends on the report of the veterinary officer, you do have the power to allow euthanasia of an animal if it is in a really miserable condition and keeping it alive will only prolong the agony.

Participant- Excuse me Mam, in that case that case the animal has to be handled to the veterinary?

Ms. Gauri Maulekhi - In that case the veterinary officer has to be instructed to euthanize the animal using humane methods. That is an overdose of an anesthetic, have to specify the method also. There are okay I will tell you the difference now that we have come to it when you overdose the animal with an overdose you know it subsides the nervous and muscular activities so much that the heart stops beating and then eventually the animal slips away. But however if other methods are used like magnesium sulfate or in some cases even savlon is used that causes a cardiac arrest, now that is cruelty and unnecessary cruelty. This is one now the second question is if that is a wild animal, is that where you are going to send it what kind of a custodian would you require for your case property. If it is a wild animal, say any bird or any animal scheduled in the schedule of the WPA or any animal which is a wild animal, then it has to be given to the forest department. Forest department obviously as per the WPA are supposed to have rescue shelters where they would be putting these creatures. However, in case of monkeys and all the forest department always has a problem, they are very reluctant to take them. I have some instances where the forest department is being entrusted to keep elephants and with instructions by the magistrate that they have to take care of it permanently. But however, instructions can further be given to forest department not just for taking custody but for maintaining custody. You can even put various other agencies such as the Animal welfare Board or the SPCA in charge of coordinating and assisting the forest department in ensuring that no harm has come to the case property. The third question is where is the animal now? Then there is again in most cases at least in Delhi I have noticed that when the trucks are caught the trucks are not even off loaded till the magistrate gives its permission. So they sir with the truck so if 15 animals are caught at 2 O'clock in the night they will wait till 12 O'clock in the morning and the police just don't bother. So, it is always beneficial if we start giving orders like that they should first be seen checked, health report made, identification done everything, they you will realize that the animals are being kept nicely when actually the case comes before you. They should be kept in the backyard of the police station, or there should be off loaded at a gaushala or any shelter where they can be safe housed for the further orders of the court. That also comes into play, if it already in a gaushala, then half your work is done. You allow it to be kept there or to shift to a better place as and when required. The third is that is there a notified infirmary or a district SPCA. Now again in the act we have already seen that there is provision for notification of the infirmary there are other state police acts. Like the Delhi Police Act also says that any shelter authorized by the state govt. Likewise whatever the legal provision might be in the case of PCA we go by infirmary, if there is a notified infirmary in the district or there is a district SPCA which has a shelter, which again is a mandatory provision under law and by the order of the Supreme Court. If there are none then we

come to the second option that is send it to the animal welfare organization which is recognized by the AWBI. Generally that is the definition of the animal welfare organization. There are about more than 250 shelters throughout the country. There may not be within the jurisdiction of your court. But certainly the IO must be tasked to find out which is the best next suitable shelter for animal. There could be a cow shelter where you can have the shelter for the case property or there might be case for instance like we have been fighting aaa camels have been caught aaa 12 of them and aaa the police were tasked that the animals cannot be given to the accused so where will they go because they were at the police station. So, the Io has find out that the nearest possible place where camels can be kept was Serohi that had a camel shelter and aa that was suitable place also because that was outside of a desert area and camels do not survive well elsewhere as they get lungs problems because they absorb moisture from the air. So aaa however the judge sent the camels to Serohi through an order. So we will go more to the structure of the animal welfare system in the country a little further. If there are any questions so far that I can take it. Okay now aaa keeping the wild animals is a little tricky that's why we aaa and you require specialized people because farm animals do not mind handling. So even with an animal welfare organization or shelter they might be able to live probably can be taken care of. However, if it is a wild animal and given to an animal welfare shelter, you don't know what kind of training they have to deal with an animal that does not require aaa that does not except handling very well. So it is more advisable to give it to the forest department because they are supposed to have that training and that infrastructure because even to give an injection to a monkey you need a crush cage, to give an injection to the dog you just have to hold it tight. So treatment of wild animal is very different to treatment of a farm animal. So dog or a cow can be easily kept with gaushala or an animal welfare organization. However if it is a bird aaa like we have come across with these examples many a times and especially like aa when a birds come the animal welfare organization generally aaaa will pet it and open its mouth and put the food in it. That can cause a cardiac arrest in a bird or any wild animal That is why they are called wild because they have huge energy and they cannot except human touch it freaks them out. So that aa understanding has to be there. Clear demarcation has to be there. An animal that is wild must not be handled in a way a dog or a cow or a cat is handled, that is why we make that distinction. That forest department should be keeping it, keeping it safe, not touching much aaa they know how to handle then they are the experts. Yes sir.

Participant- When there are stray animal always on the roads no one ready to take them, there is no welfare organization available in that area. What to do with those stray animal

Ms. Gauri Maulekhi - Yeah the stray animals sir aaa there is a supreme court order sir of 2015, the case is still pending in court aa a there is no mode of taking care of stray animals that can be done. There is only one 1 solution for stray animals which is sterilization, vaccination and then putting them back in the same place. As it was explained yesterday also there is animal birth control rules under the rules, the urban local bodies are tasked with the function of creating infirmaries and creating infrastructure and man power and budget to run animal birth control units in every local body. At least if we can you must start with the municipalities and the corporation. These

facilities should then start doing birth control programs and there is no power that is allowed under the law sir. There is no place that serves as a concentration camp can be allowed under the law. In fact it was tried many times. Not only legally but it has scientifically failed. In Jabalpur aa even in Durg aaa a huge pound was made in which some 5000 dogs were kept they fought with each other and aaa almost eat each other up. There was no scope or provided any treatment or anything and it did not really did not reduced the dog population in Durg anyway because the rest of them had more babies. Because the nature actually fills in the vacuum and these dogs which were inside the confinement slowly started to dye till we got them released. I hope the pound is empty now

Participant- Now what steps have you taken to tackle this problem because this is a serious traffic issue and what we can do?

Ms. Gauri Maulekhi - Sir, there aaa conflicts that arise because of tray dogs. After the 18th Nov, order aaa of the Supreme Court as AWBI since I am also a part of it, we have in fact aaa Jayasimha and I have been planning and strategizing animal birth control workshops in every individual state. The first and the biggest happened yesterday, in aaa not the biggest but the first of these workshops happened yesterday in Pondicherry. AAA on the 5th we have the National Workshop on animal birth control in Hisar. These are inter-departmental workshops sir, where we are inviting people from the animal husbandry department, the urban development department because there is the primary role not the animal husbandry. Even from the finance department because there the understating is very limited and do not pass the budget. Creating post for veterinarian to do this is also very important. So with all these departments in the workshop we plan to go to every state with aaa flowchart of how to conduct these although the rules were made in 2001 and it has been 16 years and there has been very little implementation that is basically because aaa the urban development department for 16 years did not owned this up, not a single. And there was also, there was lack of knowledge that was prevalent in most panchayats or municipalities. They don't even know that it their function to do it aaaa and they do not have the technical Know-how. So we are providing that from state to state, every state would be covered before 15th of March. In aaa one and a half marathon month we have to conduct all these workshops. Some states have given us a good example for instance, aaa Haryana where we have facilitated in the past 2 years a programme with the health ministry. Since this is a rabies control programme, so health ministry has put in 50 Crores in to Haryana and a large scale. In fact this is the largest thing in the world, no there isn't another place in the world where 5000 stray dogs are being sterilized every single month. It is a huge no. There are other states like Sikkim is a shining example of animal birth control aaa there are absolutely no unsterilized dogs in Sikkim, they are the first ones to be rabies free in the country. Shimla has not a single dog that multiply. So there cooperation is stable. That is the objective that we want to achieve. Not taking the dogs away and putting them elsewhere but taking the dogs away fixing and putting them back so that they do not multiply and become a nuisance. There is no hormone left in them to fight for matting or to fight for securing their babies so aaa that makes in the conflict situation much easier. This was also taken cognizance by the courts when they gave the order that local bodies you know must create infrastructure to conduct this programme

throughout. Now the next hearing is on the 9th of March, where all the local bodies are asked for compliance and we are hoping that by then we would have trained some of them and imparted whatever technical skill that they require. Sir

Participant- So far as I have understood, that you have also gathered lots of experiences. Now my question to you is what are the main challenges for a prosecution in crime related to cruelty to animals and what are the areas where the prosecution basically lacks and have you done any assessment on the rate of conviction in crimes related to this particular act, PCA. If there is less conviction have you done any research why the the rate of conviction is very less. That is my question.

Ms. Gauri Maulekhi - Yes sir, there are 2 parts of your question. One is what is the role of the and aa a what are challenges of the prosecution department. Well so far and well that is sadly true for all the states that the prosecution department has rarely show up in these cases at all. In fact if we move to further aaa slides this has been ordered by the prosecution department of Haryana just last month on the 22nd of Dec when we had a meeting with tem and we complained that it is all a matter of approaching and it gets solved aaaa. All these case of camel custody in Mewat, in Firozpur Chirga, in Hisar, in Palwal especially because that is the camel slaughter belt and since I am also one of the petitioner in one of the Chandigarh cases where we are fighting for camel. We are saying that camel should not come to Chandigarh because they are always slaughtered . So, aaa it is logistically not possible for an organization to be present with a lawyer in every single court, which is not possible, it is highly expensive and animal welfare does not have a budget in India. Whatever it is with the AWBI is so meager, it is almost laughable. It is 1 or 1.5 crores for the entire country, it is almost ridiculous. So the animal welfare organizations cannot be given burdened to assist in every single court. SO we keep losing custody, especially in courts where we can't reach, which are not state capitals for instance. So we went to the director Haryana, and he issues this order stating that there is a supreme court's clear direction that case property animals should not be given to the accused during the pendency of the trail and this must be brought to the notice of the Magistrate and the case property must be defended. Otherwise, it defeats the purpose of the state action, it defeats the purpose of the police going out, catching them and bringing them back and you know if it is let off again then the law stops being an active deterrent. Then the law as it is very weak, but weak in terms of conviction. But the law can be used and made strong to save the animals at least by responsible agencies. Then at least that bit of damage can be done, that much of a deterrent the act can bring about.

Participant- Mam copy of this judgement may kindly be provided state of UP v. Mustakeen.

Ms. Gauri Maulekhi - Yes Sir. This order however is aaa just a first one and we got the Delhi directorate also to PPs and the APs to be present to assist the court every time there is an any animal custody related case. Now coming to second point of your question sir. Ji

Participant- Sab hi jagha ye nahi hopata hai to aap legal aid services authority ki help le saktay hain sab hi jagha SALSALSA sab hi jagha hai n so in case yadi agar aap chahtey hain ki courts main appear ho sakein to aap legal service authority aa saktey hain wahan se phir aapko help ho jayega

Ms. Gauri Maulekhi - Absolutely Sir thank you for that. I will tell you the logistical problem of that sir one more angel of it. jab ek truck Bhains pakdi jaati hai to ek truck main aaa forget the cruelty, wo sab ek taraf hai. Humar agara economics ki baat karen to aaaa even if a bungalow is going to the slaughter house and it is not mulching or whatever but still it is worth 30-40 thousand minimum value of that buffalo. ab ek truck main gar usnay 30 bhiansen paalii hui hain, ek ke uppar ek do leveles main bhairi hui hain to usmain itna zayada paise hai ke agar hum bilkul aaaa police for example pehele to wo bolyey hain haaan haan chalo likhtey hain mukadma and aaa then some conference happens with the truckwalas and then they turn around and say waisey thoda kaam to samhaal to raha hai woh aagey se nahi karega ab aap chod dijiye. Now police wala becoming a judge is something which is not acceptable you know he is like passing his own justice ke achcha useney maffi mang li hai or sometimes if there some people who are holigans viewed as hooligans ulthey unke uppar mukadma ho jata hai ke tumne inko roka hai tum nuisance ho tumharey khilaf mukadma kar detey hain. It is very common, it is very common. Half the time we are trying to you know to do damage control because and aaa also you will be happy to know training the animal welfare organizations, we conduct these you know aa I would not call them raids to do whatever animal welfare work they have to do enough just in a legal way but, Haan ye baat sach hai key hume logistical support bahut mushkil se milta hai. I'll do keep that in mind sir. haan ji.

Participant- The executing system, aaa time and again you are saying that the police is not cooperating, sometimes administration is not cooperating, to why are you not coming out with a plan. I mean not with this administration to do certain kind of action, instead of branding as whole system as a corrupt.

Ms. Gauri Maulekhi - I am sorry if it came across that why. But we have been focusing on solutions from the beginning of it right sir. The objective is only to find solutions but we cannot find solution without stating the problem. Now after stating the problem let me also tell you that we have also obtained aaa court order which is there in the booklet that is being provided to you from the Supreme court structure. Now before 2001 there was no structure defined of animal welfare. Just having 1 board run by the apex court and ministry did not really provide the basis of animal welfare and some random organizations here and there which are completely non-governmental , untrained. So we are providing the system. In 2001 SPCA Rules were made. Every District has to have an SPCA aa however nahi baney wo aaa phir 2003 main Supreme Court ne order diya phir bhi nahi baney. Now we are working with each of the state government and seeing that the SPCA are made. We went again to the supreme court in the gaddimai case and obtained another order where the court has specifically said that although us main 4 hi states thi initially

respondent they UP, West Bengal Bihar and Uttarajhand. 14 more states have been included now and now all of them had to instantly make the SPCA in fact compliance ka time over bhi ho chuka hai. It is the entire cow belt of north India aa which is impleaded aa another case which is clubbed in this one. So we are providing a structure, we are constantly training them, we are even training the police. You will be happy to know that aaa the Police Research and Development is also passing order that every PTC must have animal welfare training so that the police know what to do in a case because they also just as confused. The IO doesn't know ke ye bhians humarey sarr pe kyunb aarahi hai , ab hum iska ky akaren aur ye camels kahan se aagyaet aur ye haathi ka hum ky akarein. ye humey bol rahein hain haath lelo hum to isskey pass bhi nahyi jaa saktey, They have no idea what so ever. So we are training them, we are providing them booklets, there is a module which we have made. that is present in every thana or should be present in every thana. We are constantly proving then reinforcement as when you aaa as in when new notifications are made along with pushing the chief secretaries. Now coming back to one order which is my absolute favorite which is State of UP v. Mustakeem, if you read aa basically this was regarding aaa truck of cows which was aa and the court held that which would be given back to the accused the matter was taken by the state to the supreme court and the language of the order is very very aaa it's not in the booklet but aaaaa the language of the order is that we are shocked as how such an order could be passed by the learned judge from the high court in view of the allegations and in view of the charges which the accused may face in a criminal trial. That was set aside and directed that these animals be kept in a Gaushala and the state government will undertake the entire responsibility of the animals as long as the matter is under trial So, it is basically that this order states that it is the responsibility of the state government specifically perhaps the home department to take care of the case property animals for whatever time they are under-trial. If the trial goes on for 2 years they have to remain there for 2 years. Now coming to an interesting case, in this case there was a circus called the Sonali Circus comepletly unregistered with the AWBI, their registration was required under the performing animals rules 2001 and aa this circus was making a whole lot of animals perform, various tricks at the circus without any registration what so ever. So we were aaa we send a team of inspectors who confirmed that it was happening, evidence was recorded, FIR was lodged and the matter was taken to the magistrate who later on said that the elephants should be given to the chief wildlife officer or whatever of the state. In the circus it was in apathetic condition. Now when we say that animals have been confiscated the first thing that comes to our mind is aaa animal husbandry but that is not always the case aaa there are times when other departments have also approached. So I have listed some for you. the AWBI with MOEF is under the PCA under sec.4 and it is largely an advisory body although it has a regulatory role in two cases where animal is a performing animal and where there is a SPCA involved. In those 2 cases they have regulatory role in other cases they have largely advisory role. The state animal husbandry department certainly comes into play when there is a district SPCA or the state animal welfare board which is involved in a case or if you wish to instruct them to do something then it is actually the state animal husbandry department. The district SPCA is headed by the district collector or the district magistrate but the secretary of the district SPCA is always the chief

veterinary officer or the district veterinary office. The state animal welfare board mostly is headed by the animal husbandry minister or the animal husbandry secretary of the state and it has some ex-officio members from the police department or the forest department and so forth and some non-government members by the choice of the minister and the secretary. Varies from state to state we will find that the state animal welfare boards are not uniformly made in the country that is because they are not the statutory bodies. There is no statute that makes them. They are only made because of an order of the Supreme Court. aaa where aa AWBI was found sufficient to be implementing and assisting and everything. So, a state animal welfare board is to be made mandatory however, the structure and functions are not defined. So the structure has been somewhat taken from the structure of the AWBI because that is defined in the act and the functions we have also taken from aaa sec 5, 6 of the act which are the functions of the AWBI. Sir, I have been recently put on to the Delhi state sir slaughter houses monetary committee and it is a sad allegation that most of these committees that have been formed are completely deformed aa they are just trying to make excuse to the supreme court saying that ohh we have done this and we are doing that. In fact 74th constitutional amendment ratified by all the states and got animal welfare as a subject included in the twelfth schedule which was their mandate specifically. Now under animal welfare the urban development can only do 2 things one is to make Kanji houses for stray cows and the other is to make animal birth control of stray dogs. That is basically the 2 things that the urban development can do and they have taken on this responsibility voluntarily with the 74th constitutional amendment by amending the 12th schedule. However, no budget sanction at the center had been made for it which is why there no project running in any state big enough to actually tackle the situation at the scale at which it exist. Like sir said that there is a huge dog problem and everything. This is entirely the subject of the local body, the aa I mean it trickles down to the local body yeah. Health department to the extent of food safety inspectors when they come to the picture. this I have one of the notification of 2015, for one of the transport cases that will come to you all the time aaa under this new rule made under the MACT it is mandatory that every truck that carries animals must have a special permit apart from its registration from the RTO to carry the animal and that permit will only be given to it if it modified in a certain way, it had aaa the portion made inside for each individual animals the measurement of which is actually given in the notification with each different species. For instance for a cow or buffalo is 2sq mts for goat and something, you know it's the standard measurement for making partition in every truck there has to be a ramp on which they can climb up and climb down and has to be proper padding on the sides there has to be proper flooring either covered with sand or something which does not let the animal slip and also the PIS code for transport. PIS we know aaaa is actually a voluntary code. For transport of life stock also they have developed beautiful standard. Jayasimha is part of the whole thing that developed those standards. So with this new rule coming under the motor vehicle act that standard has been made mandatory. Apart from imposing more conditions that every vehicle should have a permit from the RTO , apart from the registration, every vehicle must be marked clearly as an animal carrier and the animal carrier shall do nothing else, but animals. That means that we are actually moving towards an era where specialized animal transport will become a

reality which means that the handler can then be trained. Abhi kya hai ke ek leke jaa raha hai wahi lekey chaley aaye ya ek saath sab kuch bhar liya it is so seen that sometimes half the truck is full of other construction material and half the truck has goats in it. Now this new notification will bring about a new era because we have developing AAA we are giving an opportunity for transporters to be specialists in transport. India as you would see has a very typical kind of animal transport nowhere in the world animal's travel such huge distances because there is cold meat culture in the world and in India we have hot meat culture. And especially since most states have cow protection acts all the north India cows have to go to West Bengal, all the south India cattle will go to Kerala, whichever state where they not illegally slaughtered. So the transport is huge and absolutely stunning there they a slaughter houses they select states not in each. So for export purposes buffaloes are to travel huge distances. Forest department of course when it comes for any wild animal or bird and if they claim they do not have place to keep them and that does happen and they keep in bad conditions and then under section 3 we can get hold of the ranger or so ke tumhaari duty thi case property ki dekh bhal karna aur tumhaari duty thi tumharay charge pe jo janwar hai uski dekh bhal karna agar wo nahi karty hain to woh bhi liable ho saktay hain. But aapko facilitate karne ke liye chuki forest department har state main agar aap dekhen to wildlife ka kaam itna nahi karty hain an woh to zayada pedh kata hai is ye aur woh more of tress protection. Ho sakta hai aapke jurisdiction main koi aaisa aaye jisko nahi idea ho, you can always have the option of attaching aa aan animal welfare organization for facilitating housekeeping of the animal though the custody remains with the forest department that why you are just making sure that welfare is not compromised because of the lack of knowledge of one. So, the SPCA rules I believe have been already covered. Okay I will concluded quickly. Jayasimha will touch upon the SPCA RULES aa per these rules it is mandatory for every SPCA agency to have a shelter an animal shelter that is rule 4, if they haven't made it then they have to create it, it is very easy for a district commissioner if it is brought to his notice. Sometimes the district commissioner does not know that he is the chairman of the SPCA. So if relevant orders are given to the animal husbandry officer to keep the animal under the SPCA wing may be that will be the way SPCA shelter. So aa jab court ka order hota hai to sab kuch ho jaata hai. Abhi supreme court ne orders diye hain SPCA bananey ke liye harr district main twice the supreme court has said so. But the funding has to be done by the state. That is the first and the most insurmountable aaa the speed breaker in the whole project that ke budget nahi aata hai kya karen. To gar ye animal husbandry ke directors states ke project inke pass aaney lageyag, requirement aaney lagegi jab demand hone lageygi tab wo koi proposal lagayengey, tab kahin kissi mukaam pe pahunchengey hum . In Uttrakhand which is my home state ofcourse there is a limited budget to every SPCA to look after case property animals because that's one thing we have stressed upon. SO with evert chief veterinary officer of the district to transport and medically treat case property animals that come under them. SO that is something that needs to be replicated in every state. This order is aaa this is the first order of the Supreme Court where they said that the State Animal Welfare Board needs to be created. So this remains a bit unimplemented for a while but now we have got a fresh order which was last year on 7th of July 2015, where again the same need has been stressed. Yes. in

some cases that will come to you where there is no owner at all. for instance where the animal are being moved on foot and when they are caught the owners run away, big consignments are left there forever.

Participant- But there you can auction the animals.

Ms. Gauri Maulekhi - sir auctioning compromises. When you are auctioning an animal for a purpose that it has lost its utility now, ab kya karengey to ye provision hai sec 35 ki agar hum dekhien to actually under sub-sec 7 there is an option but it is not really in the same spirit of the the act because the act is a welfare legislation we have to look at the welfare of the animal in the first place. Now if you auction a group of buffaloes who is going to buy them? there is no animal welfare organization that will buy them. Like I said India has no budget, Indian government has either the state does not have any animal welfare budget. So, all these animal welfare organizations are funded by small donors. They cannot buy trucks of buffaloes and keep them forever and in such an auction no welfare person will ever buy them, no person who has agricultural needs will buy them because they are sent for slaughter because they are passed their agricultural life, they might be either one milking or they are male animals so they do not have left with some inherited economy. However, with effort we can make any animal economical to make unproductive animals protective so that the need to send them for slaughter is rescued and to keep them for longer time to keep working is a different thing but nahi ho pata hai ki owner jar baaruplabdh ho aur kayii baar owner aata hi nahi hai lene ke liye isiliye case property retain karne ke liye organizations kehti hain ye itna lamba baillhogaya hai jab tum paise dogy tab humwapas karengey. So in fact it has also happened that the procedure of doing this has not been correct sometimes and the courts have taken contempt that the order was to release the animal how dare you kick in sec35 part 4 now. But the statute however exists the owner must be absolutely right it does not happen all the time unless the court can order it because the court can even order it to be extracted as land revenue, that is the power of the court but in my entire experience this has not happened yet see that would be affected deterrent, if that happens.

Participant- in this section although the DM has not passed any kind of order or fixing of maintenance charges but by virtue of this section taking recourse of this section the orders were passed. You yourself has taken that.

Ms. Gauri Maulekhi - Sir, sec 35(4) makes it mandatory for owners to pay certain amount per day per animal to the infirmary or animal shelter keeping the animal, this amount is decided by the district magistrate, he has the the prerogative of deciding and stating an amount maybe for a large animal and small animal separate amount. But every single DM in Uttrakhand at least I know has declared this amount and also you can see in fact I could not find any order in English so this is the only Hindi order I have but issmain ye bhi likha hai ke tagging aur health inspection ka jo kharcha hoga wo bhi owner dega, to tagging aur health inspection to 1`50 rupaye ka kharcha hai jo owner se ek baar wasull karna hoga aur phir 200 rupaye har din prati pashu bhio

obtain karna hoga that is a separate this thing and now coming to order jo kal nikla hai this is the recommendation from AWBI, I would request you to please go through this. This is full of solutions. This says that in case however the court deems fit to give the case property to whoever it has to then the following conditions must be imposed in the order itself and these conditions are:- that the animal should be identified properly, now the only internationally acceptable method of identification is radio-tagging warna ek bhains dusri bhains ki tarha hi dikhti hai hum nahi keh sakte ki ye bade muh ki bahis hai ya chotey pair ki bhains hai, it is the same thing. You cannot identify, how many times you might photograph the animal you cannot identify it through photographs and has to be specific identification which is very important that is the only way to safeguard the case property. It is the property of the court it must not get slaughtered the minute it is given back to anyone, even if it is given to an animal shelter, it must be identified so that at any time, full proof method of identification can be kept back into force and you can check whether it's the same animal and kept nicely or not. Then if it dies then post mortem must be conducted by a government veterinary officer of that jurisdiction along with the investigation officer so that nobody is able to do anything you know

Participant- but how to get this radio tagging

Ms. Gauri Maulekhi - - Sir you can order the local jurisdictional veterinary officer to source it and to put it in the animal. It is just an injection given behind the ear, it is that simple. The veterinary officers do it every day, they do it for insurance companies, they do it for kennel clubs they can do it for the courts. Then there are other suggestions given by AWBI which you may include in your instruction when you are letting out your case property because it is the saved animal, let it remain saved, so allow it to be safe these conditions would be very helpful. Actually it is to say that the animal should not go out of the jurisdiction of your court, that will ensure that this person has space and is an agriculturist or whatever because most people as for instance in Delhi, there are trucks full of animals and they take the animals to bhagpath or sonipat whatever or they take it directly to gazipur slaughter house and the case property is destroyed instantly right there but nothing really happens, it doesn't get recalled, it has no identification at all. Agra wo boltey hain ki ji 200 bhedd thin wo kahan gayin haan ji wo phir se le aayega 200 bhedd kahin aur se how will you know that it is not the same one. So, to actually retain it we can ask them to specify a place where you are going to keep it in the jurisdiction of this court and let it remain there till the pendency of the trial. So if that is imposed then everybody has a role to play and there is a duty imposed on the accused after all he was caught being cruel let's make it a bit difficult for him to get away with it, if we can impose these conditions we will be able to make this weak little act into an effective deterrent. So, your support is absolutely crucial to this because these are actually it is up to you to make very very good use of it. Anything else that I can answer sir.

Participant- we have a Q & A session

Ms. Gauri Maulekhi - Yeah of course. Thank You so much.

Ms. Paiker Nasir- Thank you so much Ms. Maulekhi. We will be taking a tea break now and we will come at 12:25. Yeah okay

Ms. Gauri Maulekhi - I just wanted to answer quickly one of the question left unanswered. One is I stand corrected I gave a wrong information there cannot be any destruction order that has to be passed, you have handle it over to the government. I just did a quick case law study aaa the other issues that have come up with the WPA was in relation to aaa before we aaaaaa this is in relation to 428 and 429, there was a lot of thing but there is a lot more but we are unable to access SCC here for some reason but I found this I thought it was important to bring this out it says that aaa it is state v. salman khan, it says that the opinion of the court, that the damage caused to the wildlife even if the same cannot be evaluated or calculated in terms of money is definitely loss to the ecology as a result thereof, it can be construed that the lost to public and society at large. It is the firm opinion of this court that by the act of using firearms for killing wildlife the accused committed the offence of mischief as defined under se4 425 and 429 IPC,. The provisions of section 144, 141 IPC can very well be applied to an offence, mischief when committed in relation to wild animals also. Accordingly the term other offence is mentioned in sec 141, covers the ambit of the offence under the WPA. Therefore every member of the unlawfully participates in the act of hunting is definitely liable for persecution. So here I guess that kind of settles there because we are constantly thinking that what is the loss whether it has to be before the owner and I think here they very categorically the Rajasthan High Court, and there are many others have said that it is the firm opinion of this court that the cat of using firearms for killing wildlife the accused has committed the offence of mischief as defined under 425 and 429 so aaa I think that is one thing. The second question that has come up was with relation to aaaa seizure of property and what happens, pending litigation as in what can be done and I think here one of the thing is the State of MP v. Madhukar Rao, 208, 14 SCC 624, it says, we have therefore no doubt in the provisions of sec50 of the act and the amendments thereafter and do not in any way affect the magistrate to make order of interim relief of vehicle. Any attempt of operations of Article 39 (1) (d) of the act aaa merely on the basis of seizure and accusation levied by the department authority to bring it conflict with the constitution provisions and would vender it unconstitutional and invalid. In our opinion the high court has taken perfectly correct view and the provisions of the sec cannot be used against the aaaa it further says that aa casual and liberal approach in the matter of releasing the seized property or vehicle by the court which is subject to forfeiture at the conclusion of trial is uncalled for as the release of the vehicle according to us is likely to frustrate the provisions of the act. Before the court allows the application of the accused for releasing the vehicle on suparnaama the courts have to give sound reasons to justify such release of the vehicle on the prima facie AAA on prima facie exclude the possibility that such vehicle being liable for forfeiture at under sec 51 of the WPA at the conclusion of the trial. If the material prima facie does not include involvement of the vehicle in the commission of the act under WPA the magistrate would not be justifying in altering the release of the vehicle as the said vehicle would be liable for further aaa so this kind of aaa settle set I mean it not the one way or the other but if it is seen that there is a chance that this would possibly be confiscated under sec 51 in the end of the trial then you can continue to keep the

vehicle. This is kind of settled by the supreme court. So I just kind of thought to settle these 2 issues were there. Thank you.

Ms. Paiker Nasir- Thank you so much. So we'll break for tea and we will come back at 12:30.

Session 7

Case Studies and Overview of Animal Welfare Related Case flow in District Courts

Paiker Nasir- Shall we start now? aaa we have with us Mr. Ajit Sharma, he'll be taking up the session on case studies and overview of Animal Welfare related cases, case laws in district courts.

Mr. Ajit Sharma- Thank you mam, aa good afternoon ladies and gentleman. I am Ajit Sharma, I am advocate on record I primarily practice in aaa the Supreme Court and other Delhi courts. Aaaa I have been listening to some of the presentations earlier this morning and it has been a privilege to hear all of them and aa I hope that I can have a discussion with all of you aaa on what is the process one receiving a complaint, how do we sensitize the investigating officers and other officers of the court aaa on investigating the offences properly, I identifying the offences and aaa in effect in pith and substance to take the complaint to its logical end whether it culminates into an FIR or a charge sheet. Now aaa I think before I aaa I proceed further I just aaa would come up the way I have designed this presentation is, I would like to go ahead with a brief reading of all the penal provisions in different enactments- the PCA, Wildlife protection act, IPC and some of the other enactments and rules so that we all know what are the specific penal provisions not just other offences which mandate a particular prohibition to do X YZ but what are the punishments prescribed for those offences. Just to have a brief and quick reading of those penal provisions. Thereafter, I would also like to look at a couple of judgments Nagaraja and some of the others. I have been told that we have already looked at those judgments but I will still read out one or two relevant paras which I believe refer to those issues which may crop up before the court now and then, every now and then. Aaaa which may be the pleas taken by the accused or aaa defense councils and aa lastly to deal with a couple of cases which I have been involved in various forum not necessarily just district courts but also in other forums, writs jurisdictions of the High courts, supreme court aaa before National Green Tribunal so that we know aaa the proper scope of all the cases which may emanate from a same incident and offence can go to X court, a civil case may go in another forum and the same incident may give rise to a Writ aaa proceeding before a Writ court as well aaa but before I go with this presentation I would like to tackle a question that was asked aa by I think someone in the back rows in the presentation on whether any statistical analysis has been done as to how many prosecutions have come aaaa of offences under PCA aaa convictions aa how many have led to convictions , how many have led to acquittals, what were the reasons? No proper study has been done to my mind aaa from the preliminary research that I have done on

this issues. But I believe as Gauri said we are all aware of the problems we are all brainstorm and find suggestion on to it. And I think this is a privileged gathering that we have and I am sure aa by the end of the day we will come out with some suggestions which we can all go back to our respective court rooms and seek implementation of. One issue that I think I have encountered in my aaa short experience as a litigator is aaa I think that there is some need for sensitivity I think it is absolutely imperative that some of us sensitize ourselves to the needs of why these special enactments were created in the first place aaa I have seen judges now and then in superior courts as well to say what are dealing with cases of cows we have other pressing matters before us. SO it is very common and aaa it's fair as an officer of the court I think that it is our duty as that stage to then inform the court and assist the court properly and tell that well there thee special enactments. One is in 1963, 53 years since this act has been in place and till date no study has been done on the convictions and acquittal under this act. SO it speaks for itself, it speaks how much awareness is there and even if there is awareness how little sensitivity there is in aaa all of us to connect with those who cannot speak for themselves and aa so therefore in that background aaa it is important for all of us to understand that these are some cases aa which are there are pressing matters, people are there lying in jails, there is demolition, injunction, other matters to be dealt with, yes. But these are some matters very few of them will come on and off where aaa life of those animals who cannot seek for themselves are concerned and therefore we must find some time, sensitize ourselves to the need in which investigation has to be done in a proper manner and aaa accordingly proceed. Now, briefly in aaa just types of cases and how do cases emanate in aaa such matters and what is the course of action that courts normally take is something which I will brief discuss with today. Typically we will see a lot of times people come before the court in 156(3) jurisdiction and say well I have informed, given complaint to a police officer to say that so and so lorry is carrying animals or so and so owner is beating his pets cruelly or I have some information that some protected Schedule one Wildlife Protection Animal is being taken out of the century and aaa sold to someone in a mela or a fair, like there are very popular in Bihar Assam and some other states. So a lot of these actions will come up we all know in many of our states police is reluctant to register an FIR in spite of the recent pronouncement of the supreme court in reporting a cognizable offence and other pronouncements . Still the first issues is let's try and not register an FIR if it is possible somehow. When such complaint I think when they come before us we must not only sensitize ourselves to the need as to what this matter is - whether it is a cognizable or a non-cognizable offence, whether it is a meritorious case for ordering registration of FIR under 156(3). Having said that we must also go a step further and direct the prosecution to say that well now I directing registration under 156(3) please also investigate it in ABC manner there can be some pointers given by the court because aa in as much as we are privileged to attend these trainings session I believe most of our SHOs and IOs are not. Many of them are not even aware of existence of such law as Gauri pointed out in the previous session. SO therefore, it becomes our duty as lawyers, as aa officers of the court to aid the investigating agencies and point them out that yes there these relevant acts which exists and these are the penal provisions of those act and if there are any questions then you can come to us, these are the supreme court's judgments and high court

judgments and therefore we believe if you are investigating in a particular manner pursuant not from the order from the court then the investigation must necessarily not proceed on those lines that is your prerogative but these things should also be investigated inter alia with other things. So that assistance must also be given it is not mandatory, it is not necessary but for someone who is investigating the other generic offences and very less special act offences I think this will assist the investigating officer and will ultimately will assist the court because of the quality of the FIR that will be filed ultimately in the court will reflect on how well you know the investigation has happened. SO a lot of times we will see that 156(3) complaints coming before us. How the investigation has to proceed. Police officers generally proceed with recording of under 161 statements AAA writing notes in the diary but in these cases we must also realize that the complainant is a person but the victim can't speak or can't give a statement there. So AA there is some inherent restriction that way and AA the police AAA the investigating officers hands are tied to that extent because he can't get a statement from the victim. SO therefore, we must try and keep that in mind and to see as to what is it that we as officers of the court can do to ensure that where the victims can't speak for themselves what other evidence can come to the court in support of or against the fact that an offence is made out, medical evidence becomes critical. Therefore, at 156 stage only court has the power to direct that a post mortem or MNC be done as the case may be of the animal who is alleged to be treated with cruelty aaa or aaa killed or maimed or any other way, that MNC done by a proper veterinary surgeon or doctor would go a long way in establishing that when the first information was received with respect to the commission of an offence what was the status of the animal then and therefore, it's like when we are dealing with other complaints of aa human suffering or bodily injury these should not be treated as so different from those complaints. Obviously we are dealing with humans here so there is difference but we must also sensitize ourselves that somebody has been hurt. So therefore at 156(3) stage because the victim cannot speak the medical becomes imperative and we must try and ensure that medical evidence is obtained in time, well in time so that ultimately it can assist the court in the stage of the trial . AAA conduct of investigation is something I have already spoken about I think it is very important we must all try and speak to the respective IOs and inform that these are the acts and how investigation has to proceed. Many of the officers do not know what are the special acts we have to deal with for instance PCA and wildlife protection act and some of the rules framed there under but all of our act for instance Jharkhand has slaughter protection act. UP slaughter of bovines protection act. SO there are all these states have separate enactments which have been on the statute books of decades now but there is little awareness SO therefore, the complaint may not refer to those enactments the FIR may not refer to those enactments and it becomes important therefore, that when we are taking cognizance of framing charges we must have the list of all the enactments that such an act may possibly aaa and frame charges accordingly so that the accused is informed as to what are the specific charge and offence against him and the IO also informed while you are investigating the case please keep in mind that there are these separate enactments each one of them deal with aaa the offence offence can result in framing of charges in several acts. In IPC you have read with mischief and couple of other enactments, under PCA we have dealt with

torturing of animals or a killing or maiming the, But there are also several enactments dealing with animals being transported for slaughter for instance. I was in fact on that note I was just going through the provisions of PCA and I noted that this special enactment like several other enactments has lot of similarities for instance, as there is a provision in PCA which limits access to bail for instance for the accused this is very similar to section 37 under the NDPS Act which says that you can't grant bail unless there is a likely hood that prima facie stage that the accused is not committed the offence and is not likely to repeat the offence, this is extremely high burdened that is placed on the accused and what does that show? It shows the legislative intent, it shows that parliament and people of India wanted that this should be tried under special enactment as a special offence. In such cases bail is not a matter of right the onus is on the accused to establish that he has not committed the offence at the prima facie stage and therefore it shows the seriousness and the mindset with which this act was made in 1960. Back then the legislature said that this is an issue which has been left unattended for too long now, I am now going to draft a legislation on this issue and we will cover all the related issues and ensure that they are implemented fully well and those who are accused of having committed prima facie offences are not let out on bail. A message is to be sent. So that appears to me to be the intent. Now after filing of FIR and framing of charges it is very important that we frame charges under all the respective acts, alteration is yes it is possible, court can do that at any time before pronouncement of judgement but that is something that will always will delay trial as we will go to the appellate forum and against the order of altering of framing charges so therefore at the threshold stage itself it becomes important for lawyers to properly know all the special enactments so that they can assist the court and can tell them that well if you are framing charges and the offence also needs to be charged under these these enactments- WPA, PCA forest act maybe it is relating to the trade of wild animal several state enactments. Now after framing of charges one of the issue that normally comes up before the court is how the case property has to be dealt with. I think Gauri has dealt with it in some details, I'll just briefly touch upon this, it is an issue which I have dealt with on numerous occasions. We file several SLPs in Supreme Court because people are very passionate about I was transporting animals or I was transporting so and so and property has been seized. One court allows release of the case property, the other courts upsets the order of the lower court and against that you come all the way to the Supreme Court. 451 is a discretionary power on the court. It's a discretionary power, the court as it thinks fit and there are any number of case laws on 451. But I think to some extent in 451 while deciding whether or not it is fit to release the case property back to the accused, it is fit to keep the case property seized in the custody of the police or is it fit to drag the case property to be given to an animal welfare organization or a gaushala. Similar principle, akin to say for instance, grant of a temporary injunction could be considered. Where is the balance of convenience lay? Where is the victims best interest lie? Those are factors that needs to be considered. There are often cases where superior courts will upset the order of the lower court, rejecting release on the ground that release of case property is very common, we will ask him to deposit a surety, we will take the pictures of the animals and that is it. We can release what is the harm because it is very difficult for the

complainant to establish that the animals were taken away for slaughter or for other reasons, the other persons are normally big groups if 10 cows have been seized, he'll on the next date of hearing will bring another 10 cows it is very difficult in pictures to distinguish the animals and they can't obviously speak for themselves. So therefore, well aa merely because they can't speak lenient view cannot be taken on that ground alone but aaa strictly in accordance with 451 given that the wide discretions is conferred upon the court. The court must be guided by where the best interest of the animal lie. If prima facie receiving first information , the animals were found with some injury marks or some other marks it would appear yes the best interest of the animal is perhaps not with the accused even though the presumption of innocence is in his favor. In spite of that it may not be in the best interest of the victim to be put back in the best custody of the persons who has been alleged to have committed the offence and therefore aa mere surety and taking pictures will not ensure complete protection or will not prevent from any harm being caused to the animal. So therefore, it is important, these custody issues come up time and again and I think as more and more matters will come up after sessions like these and several other states that parallel will go on, police will start registering more complaints, there will be more seizures and these matters will come up before the court more often. And law on 451 specifically in respect of custody of seized animals will perhaps will be clarified in times to come. But at this stage the norm we apply in other cases for release of motor vehicle, cycle seized in aaa as aa case property such norms should not apply where case property is a living animal and aaa there should be a good reason to release them on supardaari as opposed to not releasing them. In fact just a recently two week s back we filed a case aaa we filed an SLP in aaa against the order of Tamil Nadu high Court, where the trial court said that no we will not release these buffaloes back to the accused person because we can't believe. It was a detailed order of 15-16 pages of the trial court saying why I am refusing your application under 451 seeking custody of the animals because I believe that animals are not in best interest with you and the best interest test was applied by the lower court that order was upset by the high court by a one page summary order if I can say simply saying that well we'll simply take a surety of Rs 20,000/- you take pictures of the animals nothing doing release them. This was challenged the supreme court issued notice and stayed the order thankfully on aaa notice. But it appears that aaa a detailed order giving good reasons exercising discretionary power and giving reason as to why I am excusing my discretions in one particular manner and not the other, if that reason is given then ordinarily there should be no reason for a superior court to interfere with that finding. The discretions is vested in the lower court, superior court's obligation is primarily to see whether the discretion has been properly exercised. And if it comes to the finding that yes, it has been properly exercised, merely because the high court has a different opinion cannot upset the finding of the lower court. So we may arrive at a different opinion that's another thing but the power is vested on the lower court. Now there may also come up issues during the pendency of bail for instance, we have already discussed. PCA is extremely strict on grant of bail. The burden of proof, the threshold is extremely high. Now what is important is at the stage of framing of charges we must be conscious that provisions of PCA if applicable, the chargeable provisions of wildlife protection act are also incorporated. Chargeable provisions of all other enactments are

incorporated. The strict bail provision I spot in WPA, it is only in PCA 1960, which also happens to be the oldest of all these enactments and aa therefore, that knowledge is imperative. Now thereafter evidence is laid in the matters and aaa when it follows the logical conclusion but I think one other thing that has not been so aaa utilized in India as of date is civil suits aaa in respect of protecting animals. Now, obviously all of these penal offences we have been reading since yesterday, half of today aaa I'll also probably just aaa glance through them ones again, PCA we all know what are the punishments prescribed, what is the penal offence. But aaa I also believe and I'll welcome suggestions on that as well that suited for injunction, say for instance, temporary injunction, suits for declaration can be often filed by complainant that you declare so and so animal is my property. You may recall that Jaya in the morning mentioned that a lot of people do not have ownership certificates of animals. Now WPA section 40 requires that yes if you are holding an animal in captivity and it is a schedule one animal then you must have an ownership certificate, if you don't have a ownership certificate the very factum that you don't have an ownership certificate in itself gives rise to commission of an offence culpability of which is assumed. Now in such a case in such a case where one thing that they can do is defend prosecution and say that well we never had the *mens rea* and aaa whatever defenses that they can take . The other is to file a civil suit, say sir my civil suit is pending for decree so you please stay the trial, till that suit is decided because outcome of that suit will decide whether or not I am the owner of the animal and in such cases it is important that in several similar situations courts have upheld that when same incident gives rise to both civil as well as criminal liability the two are distinct from each other, they can proceed parallel. The requirements, the burden of proof the threshold to be established are independent for the two. Same incident can give rise to both the liabilities. It happens routinely for instance in income tax matters- the assessing officer says that you are liable to pay Rs X as income tax, now that failure to pay income tax gives rise to criminal prosecution and that failure to pay income tax also gives rise to a civil proceeding before the income tax officer which goes to CIT and then High Court and then onwards. Merely because he has been exonerated by let's say commissioner of income tax in appeals does not mean that this will this exoneration will lead to his automatic discharge in the criminal trial. There are judgements of the Supreme Court, several judgments in fact. Just last year there was a judgment where the supreme court dealt with this point the facts of that case were under income tax law but the principle says that where somebody has filed a civil proceeding arising out of a same suit, criminal suit can very well continue, there is no bar from aaaa. And there are cases where civil cases have resulted in exoneration but criminal prosecution has resulted in a conviction as well because the status the threshold is completely different. SO, therefore, I think that this is the area which is completely I think which is yet to be aa very few civil suits are filed for declaration, very few civil suits are filed for taking temporary injection from the court that please inject the following circus from exhibiting this animal, please inject this person from transporting these animals, I have a reason to believe. Aaaa the threshold is little high for the plaintiff because he has to show that there is some right on my property or my right which is being breached or violated and therefore, I am approaching the court for a civil suit. So that my property threshold is high for the plaintiff to establish but I believe that is an area which

can be explored and aa there are few civil suits which are I know on temporary injunction which have been filed in India. Aaaa in addition to lower courts similar offence, similar incidences can give rise to AAA cases in other forums. For instance, National Green Tribunal, I have been fortunate to assist the tribunal in some cases relating to slaughter houses for instance. Now if the slaughter house does not work as per the rules, we have all seen that under PCA there are slaughter house rules framed. That a slaughterhouse should have a room of so and so size sq. feet, it has to have windows, animal swill be slaughtered in one corner, and the AAA there will not be any mixing and selling and slaughtering of animals. All these issues have been documented in those 20 pages slaughter house rules, 2001. Non-compliance of those rules gives rise to 2 things. One, it gives rise to criminal prosecution under PCA, anyone can say that sir this is a slaughterhouse. Almost all of our cities have slaughter houses, some are particularly in bad shape. Slaughter house from western UP from where I come from are in absolutely pathetic conditions. The court have time and again come down heavily on those who operate these slaughter houses. municipal corporations usually outsource the functions of operating the function of slaughter house to some private contractors who is governed by profit motive more than anything else and the courts come down heavily that it is a state function, if you are outsourcing it you must be diligent, you must supervise, you must keep monitoring them how they perform and any violation you will be equally if not less as private operator is. So violation of slaughter house rules gives rise to one for criminal prosecution. It can also give rise to environmental and health issues. Which can be agitated before other forums. Environmental issues for instance the residence of the colony will say that this slaughter house is operating aaa contrary to the law. There is aaaa there is blood coming down in our aaaa *nalies* and severs and aaa there are aaaa poisonous gases coming out. There are birds who come and aggregate in these areas, several other animals come and aa collect in these areas , there is a law and order issue. There is people get this nuisance which is created because these animals comes. There is also health issue because these products may mix with the soil aaa on which aaa crops are grown or these products will mix in the water pipelines, there is an environmental issue, now all of these separate issues that are agitated before different courts. So national green tribunal for instance has been extremely active over the last few years to address these issues. And aaa issues strict orders aaaa in the principle bench aaa I know the Justice Sunder Kumar is heading the principal bench , he is a retired Supreme Court Judges and aaaa the court is extremely activist I am sure all us keep reading about it now and then in the newspapers but aaa they don't hesitate in summoning the who so ever it is before the court. In several of my cases aa senior officers and bureaucrats and as much as not wanted have been summoned to the court and aaa on short notices and made to answer why in spite of our issuance of notices and direction the slaughter house continues to operate. So, aa I think aa that aaa that aa that fear is trickled down and to aa some extent it is imperative that it tickles down. The other forum where the similar things can be adjudicated is the writ jurisdiction of a High court and Supreme court , high court being much wider and supreme court being comparatively narrower aaa in spite of being comparatively narrower I think it is more to do with the approach of the court that aaa even if supreme court can entertain writs why should we when aaaa you can go the high court and raise the same issue. And

we will also have the benefit of the judgment from the high court to consider. So normally the approach is to send it back to the high court unless it is issues which is Pan India relevance or concerns more than 2 states or as national interest. We file several such writ petitions in the high court. Gauri just mentioned that the aaaa for instance the state of funds that are available to several infirmaries in India is negligible to what the requirement actually is aaa this a classic example to approach a writ we have approached writ courts and they have interfered in such matter giving appropriate directions that aa non-grant of funds to these infirmaries is leading to violation of fundamental rights og pof humans and animals aaa we recently approach the supreme court in a writ jurisdiction again for aa challenging the notification that government of India issued allowing Jalikattu for instance now that is a clear case where 2 years back court over a 2 year hearing several interim hearings considered all arguments for and against. Gave a detailed 103 page judgment and after hearing all the parties for and against why this court should go on, said that we are of the view that this is not proper and this practice in this port should be stopped. It is never part of the culture, it gave detailed reasons just to bypass it aaa one page notification comes around few days before aaaaa the sport is actually to be held. Therefore, we approached the supreme court both in contempt jurisdiction and writ jurisdiction and aaa which was immediately stayed as well for good reasons and we were fairly confident that would be the outcome of tis because this exercise right or wrong has been been done with in the past already over 3 or 4 years while the matter was pending. There is no need to re-open those issues now we only need to see whether this notification is covered by the earlier judgment or not. If not then we do not have a case and if it is then it has to be stayed and aa prima facie it was it did appear that the hundred page judgment and the findings therein do cover this aaa one and one quarter of the page notification which basically identical to the notification that was challenged and set aside by the court in the earlier judgment. SO the point here being is that aaa as aa officer of the court we must be cognizant that same incidence has various remedies available in different forum all which are being exercised by aaa litigants and the courts are taking activist approach in most of the other forums and therefore there is no reason why aa criminal and civil courts aa not saying must take an activist approach must not be cognizant aaa to inform the litigant that well have you considered remedies in other forums as well. There may perhaps lie a remedy in the green tribunal or before a writ court. Now aaaa I think having considered that aaa there are several forums to deal with these issues I would just wanted to go through the penal provisions aa which are there in primarily in PCA the WPA and the Indian penal court. I know that we have already gone over these provisions in the past and we have gone through not just the penal provisions but I believe all the other provisions but suffice to say that most of the complaints that we receive and in my short career I see pertain largely to somebody informing the police and police is failure to register an FIR subsequently or to take a preventive step at the right time and therefore the person approaches the court in 156(3) requesting that aaa this is the information it must lead to registration of an FIR, it must lead to investigation, how the investigation is to be conducted is something again that we need to guide the officer, somewhat more in normal cases. aaa I think one of the things again that are raised again and again particularly in such cases is aaaa yes please please.

Participant - Actually all know the investigation is the pure domain of the police. The judiciary and the courts cannot interfere in the investigation done by the police so this is the consistence policy of Indian judiciary. So and investigating agencies is very weak especially in investigation in in aaaa investigating the crimes of these kind. SO you have already just now you have said that the court should have an activist approach. SO my question is aaa during the stage of investigation can we go a little beyond and instruct the investigating officer how to deal with the investigation a little bit aaa can we show a little pro- active approach? That is my question

Mr. Ajit Sharma- See its aaaa

Participant - given the policy we have so far investigation is the our domain of the police.

Mr. Ajit Sharma- That's right that is the policy that's the law for aa very good reason aaaa just to answer your question sir. See there are the doctrine is there for a very good reason and I believe it must be followed to the court but aaaa its not caste and stone , its is not doctrine of separation of power for instance that I will not interfere in your domain completely. There are areas where the two over lap now and again. For instance, where the courts says by detailed order instructs the IO that you go to the house of so and so person , you go to the doctor, you conduct investigation this way. That will not be proper but aaa while passing an order under 156(3) allowing that in the facts of the case I believe that aa case is made out for registration of the FIR, the court orally instructs the aaa officer that aa who so ever is the in charge of the SHO who so ever you put IO in this matter I am aaa if you are not aware of it then I would like to tell you that to my knowledge there are these 3-4 enactments please go to the station and have a look at these enactments and see if aaaa they are of some help to you. I think if that instruction is orally given by the court to the officer because ones the court give the officer he will look at those enactments perhaps he may not know the existence of these acts aa the the experience of some of our member son the ground aaa suggest that many of the investigating officers are aware of the existence of these welfare statutes. So, therefore, not by written order interfere an investigation or aaa direct investigation to proceed in a particular direction or in aaa particular manner but aaa in a lot of other ways aaaa we are all part of aa we are all working as a team and to that extent aa the effort is to ensure that the justice is done. With that in mind I think we can orally instruct aa the the IOs that is one way obviously.

Participant - we can have an academic approach , we can just hold meeting with the IO academically in our chambers and we can just aaa show the ways this is how we have to investigate. It may be pure academic

Mr. Ajit Sharma- Absolutely and I think that's the way to be followed. I don't think that giving a written order or something like that would be the right approach it would also set a wrong precedent. Aaaa you know in a lot of cases aaa in lot of other cases also people may start asking for similar relief. Sir, because the IO don't know sir you please aaa. You can monitor investigation

but we can't tell the officer that you must investigate and come to this conclusion that is not proper.
Yes please

Participant - And we can monitor the investigation. If the police are not investigating properly then we can monitor but we cannot direct the police that you go into this direction. We cannot give or issue a direction of that kind.

Mr. Ajit Sharma- Yes, so normally what happens is for instance is that

Ms. Shruti Jane - I think there is too much of talking can we hear whoever is speaking right now.
Please yeah

Mr. Ajit Sharma- I believe sir you are absolutely correct aaa off the cup what comes to my mind is the Arushi case now in Delhi which happened a few years back. In spite of submitting of FIR the court disbelieved the FIR. We always have the power to disbelieve the FIR. Now when you aaa when the court re-directs investigation under 173(8) aa the court does tell the officer that this is the mode in which I aaa want you to investigate this case further. I believe that the evidence that has come before me aaaa FIR is not made out or a closure report case is not made out or you may have failed to investigate some people or there were four persons on site and you investigated 2, the case diary records 161 statements have only 2 people so you have not investigated the other 2 persons. I think court can give suggestions like that but court can't determine the manner in which investigation has to happen. The result of investigation that will set a wrong precedent. SO I agree with you.

Participant - Sir Court cannot lead the mode of investigation rather it gives the points of investigation that such are the points which are aaa which need investigation but cannot tell that how these are to be investigated.

Mr. Ajit Sharma-Yes right absolutely

Participant - Sir if a complaint is filed by the police under PCA and subsequently finds that there is offence also made out under the Wildlife protection Act then at the time of taking cognizance aaa section 55 barred taking cognizance if aaa the person which are fall in that sections have not filed the complaint. Then what resources are available to the court

Mr. Ajit Sharma- See court has the power to add or alter or modify charges at any stage

Participant - But court cannot take cognizance when the complainant is not aaaa as specific in section 55

Mr. Ajit Sharma- Under 190, court can take cognizance

Participant - Section 55 bars of the WPA

Mr. Ajit Sharma- ohh you are talking about the wildlife protection act

Mr. NG Jayasimha - As a matter of fact there are many case laws which says that when the magistrates have taken cognizance of the matters that has been struck down aaa so maybe maybe you could tell the IO saying that because there is a wild animal involved please involve the forest department in it. Aaaa but other aaa because when the custody will come up with you you have to involve the forest department in it. And then the forest department will come and do the charge aaaa they'll do the further thing but aaaa the aaaa as in much after the charges have been filed and much latter in the investigation you will find that the charge of the wildlife protection Act not been done sadly because the special act does not allow under 191 to add charges sir as in aaa sir it has to be from the people who are competent to give the complaint. Its aaaa but maybe at the initial stage you could say that because there is a wild animal involved and ask the local forest officers to be involved in the matter. That's definitely within your power to say but not at the stage when aaa charging is done and process has been issued.

Mr. Ajit Sharma- Also I think just to answer the question aaa I just read and I think there are those parties only that can bring about the complaint but aaaa the same offence can also give rise to aaa offences under several enactments may be not WPA where the court is barred from the proceedings if the complainant is not from the categories. But that incidence may also give rise to offences under IPC or pCA which there is no bar and aaa I would say consider this to be 153 offence somebody insisting religious feeling, communal feelings. 153 which needs prior sanction but the offence is often along with `153 court terms it with several other offences. you are aa intimidating people aaa you are creating several other nuisance in several other.

Participant- whether we can suggest the IO that aa as per aaa sub section aaaa C he may inform the center govt or the state government that aa as the content of the FIR also aaa brings the provisions of the wildlife protection act so they may take steps. Otherwise he may move aa ahead with the consent of the court or court may then take cognizance of 60 days notice

Mr. Ajit Shamra- yes, I believe that the court can orally suggest to the IO that you must take steps to ensure that the forest officer or wildlife order is done. aaa aaa again for instance in Subramaniam Swami Case what the Supreme court didi was somebody aaa 153 offence was made out and no sanction was given ultimately. Supreme court said that well it is the duty of the Io to approach the appropriate authority for sanction and he must ensure that the sanction is decided within 3 months period. so prima facie when the sanction is made out and it requires that here are some eligibility criteria either sanctioned or complaint has to follow in that category. Those issues have to be decided you can't keep them pending and it is the duty of the IO concerned who commenced this process. The IO can't say that sir the stay has to give sanction so I am sitting here, the secretary will do it. It is your duty the court will ask him have you written to the secretary what

has he done. therefore definitely we can ask them because forest officer can be a complainant in section 55 that will not bargain. Have you informed the forest officer, you have not even informed so please inform him. Let him decide, let him say that I don't want to be a complainant in this case. Then we will not take cognizance. but because there for a good reason the forest officer will apply his independent mind, it will give confidence to the court also that prima facie yes some govt officer has applied and an offence has to be made out and therefore I can proceed to the extent of the act. That is the reason to have an eligibility criteria for complainants. I believe that one of the arguments that keeps coming up every now and then especially in the time of seeking bail or at the time of seeking property also it's a historical relevance and a cultural relevance. The fact that the practice has been going on for several years and these factors do influence the mind of the court on a lot of occasions. That how you are putting a stop on something that is going on for a long time now. The animals go from X village to so and so mela for every year since the last 60 years something like this has been going on despite the existence of these legislations and for us to remit those actions now will interfere with not with the right to practice religion or the right to practice occupation in the manner as guaranteed by the constitution but a lot of other rights. And I think these arguments are meant to be made in almost all such cases where accused is trying to impress upon the mind of the court. That the action rejecting bail or rejecting release of animals on superdari will have grave consequences. it will be the first of its kind. It has never been done before and those are all arguments that are often heard. I believe that arguments have been dealt with very recently by Justice Radhakrishnan in A Nagarajan. Not sure if it was discussed yesterday but there are couple of paras in that judgment which deal with even if there is an evidence of historical practice. Now if the first time the informant bring it to the notice of the court. The court must take the cognizance under the provisions of the prevention of cruelty act. And those provisions of PCA override any such practices that takes place. so therefore, the court said that this is a welfare legislation. Any culture or traditional practice a prima facie assumption would be to apply the provisions. Let the court after final hearing and after all the other stages let it decide whether or not this practice is in conformity with my right to practice religion and a violating of statutory provisions or not. But for me to say that sir I have 19 (1) (g), right to practice my occupation therefore I am to sell these cows, it's a prohibited activity. So in that judgement the division bench very categorically dealt with this submission that there are several such practices which are going on in different parts of the country but on the face of it when the first time such information comes we will apply the provisions of this act. And if such practice should be allowed or should not be allowed as a matter of your constitutional right that is the matter which the court after issuance of the notice and hearing of all the parties but not at the prima facie stage. I believe we have all also dealt with the penal provisions of the PCA, wildlife protection act. I am not going to go into those provisions. I have sitting here all morning and then dealing with it. But I think the emphasis of this presentation is only been on 2 things. One, is once a complaint is received in court how should courts in A sensitizing the officers in charge by various things not by may be detailed orders which have possibility of being upsetted by the superior courts but by interacting with the officers in charge and informing and educating

them. That we have also learned about something new and we want to share that wisdom with you and two several other remedies are also available to litigants. Ultimately, the objective is if something wrong is happening it must be addressed and if something nothing wrong has happened then we must deal with it firmly. People will bring in frivolous litigation. But if something wrong has happened we must also educate the litigant. Often the litigant is unaware that you are aware that there is litigation initiated here but there are other forums where you can also agitate the similar issue. then the other issue that we have been dealing with. So these are the 2 issues basically. How should the courts approach be where information has come to the court about commission of an offence and in bail, release of case property, criminal prosecution and the other is existence of other forums. Thank you. I'll take any questions from you all. yes please

Participant- Since you said that while granting bail, the court should take a stringent view because this being a special act. For the classification of Schedule 2 of Cr.P.C. would be applicable here or not. In that case all the offences will be bailable.

Mr. Ajit Sharma- it is so in PCA, I think except for 3 or 4 offences all other offences are not cognizable, there are 3 or 4 offences cognizable but there is a provision in PCA, not sure what provision it is but which says that bail is not a norm it is an exception to the norm for offences under prevention of cruelty to animals Act.

Participant- But sir what are the Schedule 2 of the Cr.P.C. would be applicable here or not because there is no classification whether the offence is bailable or not PCA does not provide that. When the act does not provide that automatically Schedule 2 will be applicable in that case all the offences will be bailable.

Mr. Ajit Sharma- see being an special enactment obviously the provisions of the special act will prevail over generic provisions of Cr.P. C. as far as I believe there is a provision in PCA which says that that the provisions of Cr.P.C. shall apply. There is a specific provision in PCA I'll give you the number of that provision. But it says that except for these 4 provisions all other penal offences in the act.

Ms. Shruti Jane - Can we hear him please, I can't hear him at all please, please can we hear him. Yeah

Mr. Ajit Sharma- which I believe there is a provision in PCA, I'll just give you the exact section no.

Participant- But schedule 1 part 2 will come into operation. Jiske hisaab se iss act koi aaisa offence nahi hai jo 3 saal tak jaata hai , 2 saal tak jaata hai. It means that all are bailable. Bail becomes a matter of fact.

Mr. Ajit Sharma- no but what is the provision dealing with bail

Participant- no provision dealing on bail

Mr. NG Jayasimha - The wildlife protection has specific provisions. So aa under the wildlife protection Act the specific provision is there and infact they go ahead and say that bail should not be given as a norm because the the punishment can go upto 7 years as well. Whereas under the PCA because there is no specific provision with bail the provisions of Cr.P.C. is applicable and all the offences under the PCA other than the one I think which is in I think Sec.12 all other offences are bailable.

Mr.Ajit Sharma- I stand corrected that sec51(a) of Wildlife Protection Act, which is a special provision saying bail is not the norm but is an exception. But in PCA there is no such similar provision.

Mr. NG Jayasimha -because sir in the wildlife protection Act sir the burden of proof is on the accused because aaa whereas under the PCA the burden of proof still lies with the IO. So, the difference is there sir. The presumption clause is only with relation to 30 for goat and cow who are killed in contravention to sec. 11 (1) (2)

Mr.Ajit Sharma- if you read 51(a) of wildlife protection act that is akin to NDPA, MACOCA and other acts. So aa bail is only in exceptional circumstances where the accused can satisfy the burden of proof that he has not committed the offence and not likely to commit the offence in future. In PCA yes, in WPA the exception of rights. Thank You.

Ms. Shruti Jane- You have a question Yeah. Yes sir

Participant- if a complaint has been filed under WPA and it is certified that the animal is under aaa so and so schedule as he is protected but the accused take defense that the a animal does not fall within that category or can ascertain that aa whether the defense is aa can be granted or the case which is of the prosecution is to be believed.

Mr.Ajit Sharma- I believe that is is the matter of fact aa the court will look at the schedule 1 and see whether the animal falls in one of the animal listed or belong to the species of the animals listed. I understand that schedule 1 may not tabulate all the 13-14 thousand animals which are found in our country. But several animals belong to the same genes of spices. Cats for instance includes lions, to domesticated cats.

Participant- Sir humahar sawal ye hai ke kayi baar anek prakar ki prajaati bhi hoti hai. Complannt ne bola ke ye chokas prajaati ka saamp hai lekin accused ne bola ke nahi ye chokas prajaati ka saamp nahi hai dusri prajaati ka hai aur ye ye schdule main nahi ye schdeule main aayega. To

court ke saamne to ye saamp ko laengey nahi, to hum unko identify kaise karenge ki accused bola wahi sahi hai ya complanant bola

Mr.Ajit Sharma- See it is a question of interpretation of statutes

Participant-Kya photograph ke aa ke aaisa kuch huwa ho wo provide kar saktey hain?

Mr.Ajit Sharma - yes yes absolutely. I think whenever the question is of determining the identity of the animal seized is concerned. The court can always seek the help of an expert a veterinary or someone to identify whether or not this snake which is being seized. ye snake wahi hai jo schedule 1 main hai, ye snake koi aur hai jo schedule ke bahar hai. Agar wo schedule 1 main hai then matter is over. we know what needs to be done so it is protected animal. Lekin agar veterinary doctor ye keh de key nahi saab ye snake schedule 1 main bhi nahi hai schedule2 main bhi nahi hai, it is some other category snake then it is for the court to decide which the legislative is what under which category is the snake to fall. Being a welfare legislation principles of interpretation of the statutes might be aa there provisions have to be liberally interpreted. So if suppose venomous snake is a protected category or cobra is a protected category then all sub-species of the snake should be deemed to be protected categories. Excluding somebody from the protected category should not be done liberally. The welfare legislation, the intent is to protect and conserve the wildlife. So, therefore, if I am excluding somebody from a protected animal's list I must have a reason to do it otherwise interpretation yes.

Mr. NG Jayasimha - Sir typically what happens on the ground sir, is that there is a wildlife species identification guide and that guide is available with all the conservators of forest. Because there are many things that happens. One is that when there is there it is very easy to identify what specie is it. Maybe take a photo and WhatsApp the wildlife institute they'll tell you. The problem comes when there is a trophy or a product. For example lets say, a Rhino Horne is it a real Rhino Horne or is it an artificial Rhino Horne, is it a real tiger nail or an artificial tiger nail. So what the wildlife institute of India has done is that they have compiled a species identification guide. It is also available online sir. Because the act requires the accused to actually because the burden of proof is on the accused if they say that what it is that typically happens is that the chief conservator of forest gives you the abstract from the species identification guide because what has happened in this particular thing is that the scientific name as well as the common name that is there. In fact we have been fighting a case at Bangalore where sir the raid was done on an aquarium who were selling a particular specie of turtle. The forest department took a stand that it is rare specie of turtle while the aquarium took the stand that they are turtles which are imported from Singapore. aaa both of them look alike but the forest department went ahead and said that it is a schedule 4 animal. Finally the matter that happened was that the species identification was done and the officer from the wildlife institute was sent these things and he sent a detailed identification as per the wildlife forensics as to whether this particular animal was an Indian rare turtle or not and he submitted that this particular animal they were Indian rare type of turtles and based on that the charges were done

under the wildlife protection act. So prima facie what happens is that , I think one of the many reasons why 55 limits the cognizance is because it kind of expects the magistrate or the PP does not have the ability to identify the species. So the deal is that because the cognizance is only taken when the expert in that issue is taken so the prima facie is that if the expert has specially come to you with a case then he has done his homework whereas if I have to come and file a complaint that would basically mean that I would probably take a guy and say that nahi nahi ye to jangli suarr hai, as in that would probably be my understanding. So the presumption is because the complaint is coming under section 55, where the number of people who have given their complaint is limited to a particular no. of people, the idea is that the kind of person who is making the complaint has an idea because he is a conservator of forest, he is the director of the national tiger part, he is the central authority person so he has the kind of idea and he has the resources to identify the species. There is no doubt that the biggest problem that is faced now is normally the magistrates, especially when the custom officers is with relation to species identification. When for example we used to import shark fins. Now whether they come from a blue whale shark or from aa hammer head shark or whatever, how do we identify to the extent that the ministry of the environmental forest has now developed an act. Where people can download the act and identify whether a fin is actually from protected species or not protected species and aaa there is a huge thing. SO there is aa National Wildlife national Forensic Resource Center in Hyderabad. Sometimes we find that the tiger skin that is sold is dog's skin that is painted and sold as tiger skin.

Ms. Gauri Maulekhi- and the wildlife department will take it to you know whichever laboratory whether it has to be forensic laboratory or just an expert can identify the animal.

Participant- Sir, I have been posted at Ranthanbore and I have find out 1 problem in the WPA cases. these case are initiated on complaint and they are aa also police investigation is not there. The relevant provision is sec 50(8)(9). Under section 50 the DFO are empowered to record statement and it is found in some cases relating to hunting of animals and other Wildlife protection cases they record confessing statements under sec. 50(8). Likewise, 164. Section 50(9) provides that any evidence recorded under clause (d) of sub section 8 shall be admissible in any subsequent trial before a magistrate provided that it has been taken in the presence of the accused person. Sir, it was my experience that forest officers does not know the ABC of that law. It was my experience. I aaa ordered 3 acquittal in which I wrote down that these forest officers does not know the essence of the law, please conduct specific investigation sessions for them so that they know that what Cr.P.C. says what WPA says and they have conducted that the DFO of aaa their conducted some seminars. Afterwards I pronounced 18 conviction cases also but I found that they do not know the provisions. If you have any specific judgments please provide.

Mr.Ajit Sharma- I do not have any specific judgment but there are several other enactments where confession is recorded not by the police officer are admissible in courts.

Participant -as an extra judicial confession they may be relied over but what shall be the consequence of that what will the value under sec 50(9)? usmain likha hai ki admissible hai, shall be admissible. to aaisa karengy to hir wo phir kuch bhi kissi ko bana ke lageny kyunki aaisa maine dekha hai, maine jiss main acquittal kiy usmain aaisa hai ki aa 29 logon ko unhony tiger habitat mian dekha unmain se to ek aadmi pakda gaya 28 log bhag gaye to usky khilaf to unhony FIR lodge kar di phir wo kuch din baithy rahey uske baad wo 28 log unke paass aaty hain aur sab hi aapny iqbalia bayan detey hain aur wo usko recorde karty hain aur karkey wo chargesheet paish kar dety hain. unmainsey ek ko main conviction kiya usko maine saza bhi di aur 28 ko bari kiya. leking phir usko dekha jaye to kuch bachta hi nahi hai

Mr.Ajit Sharma- No but the intent is very clear. It is admissible in evidence. Now if the person wants to retract it he has the freedom to retract it and in that case the court will look at corroborated evidence. jab unhone statement record kiya hoga there must be some witnesses.

Participant- *Nahi aais akuch bhi nahi tha unhony usko kaha ke dekho tere bayan hum le rahey hain hum tere khilaf jaa saky hain. Unhony itna dhayan rakha but iske alawa unhony koi aur safeguards nahi kiye. Kya koi aaisa matter Supreme Court main pahuncha aur aap ki gyan main hai aaisa?*

Another participant-it was held that the forest range officer does not come under the preview of the police officer.

Mr. Ajit Sharma-correct exactly my point. In several situations for instance in NDPS cases now, when custom officials seize a consignment of aaa narcotics from somebody, they take him to their office and they record a confession under sec 67. Now he is not a police officer. There is a judgment, constitutional bench reference pending in Supreme Court now whether these extra judicial officers are akin to a police officer and therefore 24 bar will apply. But that is not been decided yet, the constitutional bench will sit. So far the bar will apply only to police officers and if a forest officer or a customs officer or aaa NIA officer or somebody has recorded a confession with those punch witnesses in place then it will be admissible in evidence. The person has the option to retract it yes, if he aa when he is put that evidence yes, then the court will look at corroboration. But in the absence of a retraction, the evidence aa the confession cannot merely be discarded because it has been recorded by a forest officer who is also the prosecutor. The court will approach differently in every situation, when there is detraction or disproving of a confession being made. The court will look at whether there are punch witnesses, those punch witnesses have been called for evidence.

Participant- Detraction does not need onus of proof disproving needs onus of proof [Ajit Sharma-that is right] shifting of burden. In one case there is no need as per my brother's version in one case the prosecution need not to prove the case but in another scenario the burden got shifted to accused to disprove something? It has been presumed to be done or proved by the prosecution. That is why

he has posed the question that they have recorded a statement like aa as per procedure under 164. He has recorded the statement, he is not the police person, he has recorded statement as per 164. What is the matter of retraction.

Mr. Ajit Sharma -That statement amounts to a confession. So aa a the reason I am saying, we must refer to other similar acts is because there is a whole lot of jurisprudence available in narcotics cases when dealing with these kind of statements. Now under section 67 of NDPS act also similar provision is there that a custom officer can record an statement aaa and that statement can later be used as confession.

Participant-it is okay that statement has some probable value but what is the amount of probable value it has. *Kya aaisa koi supreme court judgment hain 50(9) ke uppar kyunki sawayii madhavpur main wahan jahan posting thi wahan pe aaisy various cases they jiss ke andar wo aais arecord karty they aur jo hai unhoney complaints kar rakhey they aur aaisey bahut saary cases they aur ye bindu mere saamney aaney waala tha faisla nahi ho pay aunsey par ye hai ki aaisy bindu hain wahan pe. To aais akoi supreme court ka verdict ho jismain isko discuss kiya huwa sho ke nahi iska kya value hai kyun ki ye aapny aap main jo humara popular jurisprudence hain ussey bahut hi alag lagta hai ke wo khud hi bayan deney aaraha hai aur woh khud hi keh raha hai ke sahab kiya hai aur ye issney bayan mere samney diye they aur aaa*

Mr. Ajit Sharma - it is the popular jurisprudence as far as IPC case are concerned and there are a lot of Supreme Court judgments. I don't know that there is Supreme Court judgment on 50 (a) WPA specifically but a similar provision is also there in other special acts and in those special acts there are any number of cases. There are so many such NDPS cases.

Ms. Paiker Nasir- Okay aaa Thank you Mr. Sharma we'll break for lunch and we will get back at 2:45, after 1 hour.

Session 8

Q&A and case studies

Ms. Paiker Nasir- So we are back from the lunch. I have an important announcement to make. This will be our last session because the last session that was supposed to be on Wild Life

protection act was already covered by Mr. Jayasimha in the morning so this will be our last session. Okay, okay. So this is question and answers session and Mr. Jayasimha, Ms. Gauri and Mr. Sharma are there to answer all your questions.

Participants - we all have asked all the questions. Nothing Left to ask.

Ms. Paiker Nasir- Anything left, if at all because I saw many of you wanted to ask some questions in the last session.

Participant- Sir sir, my question in regards to cockfight. In our state Chhattisgarh there is a Bastar division mostly tribal people living there and aa cock fighting is aa there aaa traditional aaa traditional games aaa so how can we stop the cockfighting and which type of role play by judiciary and other stakeholders.

Mr. Jayasimha- So aaa as we discussed as in this led up to many discussions that we have had in the past 2 days. aaa starting up with what the supreme court held in the Nagaraja case, because one of the biggest defense given in the Nagaraja case with relation to animals fights was that culture was an exemption , because people have culture so it should be there. Now if you read the judgments of the Nagaraja what Justice Radhakrishnan wrote aa it is very clear that culture is no exemption for cruelty at all and aa one of the direction issued by the court is that the animal fights have to be stopped. So, I feel that aa whenever a matter comes up before you even for prevention or with regard to prosecution if you can take that seriously. So aa one thing that is very clear also with relation to cock fights is that other than cruelty there is a huge amount of betting that happens and it's basically a social evil because aaa our aaa friends from Andhra Pradesh will agree, during Sankranti time the money lender go up to 36 to 38 percent to give out loan during cock fighting time . As a matter of fact we, I myself, Sherya have seen wherein these people money lenders set stalls where they take their land document and give out money to betting purposes. So, it's not only a cruelty, it's a betting, it's a social evil, it only makes poor people more poor aaa so and culture is no excuse and that is something that the supreme court has held as well. So aa if you can aaaa issue orders for the IOs to ensure that they take care. If you make example of few people, I guess this is an evil that should stops.

Participant- We can charge a with PCA along with the aaa local act, Juva act?

Mr. NG Jayasimha - you can you can and also with many provisions of IPC.

Ms. Gauri Maulekhi- I think institutionally to deal with the issue of animal fighting. One, issue is of course when the complaint comes before the court that sir so and so, animal fighting is taking place, violate of the provision of PCA and local state acts that is one way, to initiate criminal prosecution, the other way is for the state forest department or concerned litigant to approach the writ court in public interest and say that supreme court has already that such animal fights are

contrary to law and therefore we want a direction from the court to ask all appropriate authorities to ensure that in our state such as such cultures that result in cruelty to animals we stop traditions.

Participant- Okay Okay, Thank you

Participant- Sir the preamble of the PCA Act says that an act to prevent the infliction of unnecessary pain or suffering on animals. So the intention earlier you said that it is a welfare legislation but the preamble itself said that you may inflict the pain and suffering so the purpose is it seems that the human beings and inflict reasonable the reasonable pain and suffering to the animal, in the interest of the human being. So that is one point and another is the yesterday the honorable Justice Radhakrishnan in its judgment in his judgement said that principle of welfare of the animal has to be seen. But here the preamble itself says that the intention is for the wellbeing of the human beings. So the human beings can inflict unnecessary pain and suffering?

Mr. NG Jayasimha - they can inflict necessary pain and suffering

Ms. Gauri Maulekhi- and that necessity is mentioned in section 11(3)

Mr. NG Jayasimha - right, so it is impossible to the facts still remains that animals are used for various purpose and the act itself recognizes that. Be it as draught animal, be it food animals, be it animals used for experimentation. So, obviously having an act which says that there shall be no pain and suffering is not possible because then it finally comes out to the fact that what is necessary and what is not necessary.

Participant- But one animal we can eat and another animal not.

Mr. NG Jayasimha - right right

Participant- So can we define that this animal is allowed and that animal is not allowed to kill

Mr. NG Jayasimha - that it we leave it to the collective judgment of the parliament to decide as to what animal can be eaten and what not

Ms. Gauri Maulekhi- No I have one thing to say that the food safety and standards act 2006, has come up with in fact earlier also there was a meat foods products order which were all combined into the big food safety standards act that has a specific notification on which are the species that can be killed for food in India. So there are certain species such as Bovines, Capelins, Suvelines I'll tell you in simple words, It's goat , sheep buffalo and cow and pig and poultry, and fish those are the only animals that can be eaten. Now cow has been ruled out in certain states by their state acts, but the others can be considered food items. There are no other animals apart from these that can be killed for meat sir. And that prohibits killing of dogs, and cats

and camels and so forth rabbits. It's completely illegal to you know under the food safety and standards act to have meat of those animals for sale or for aa sorry (chicken) only poultry birds sir. Poultry birds might include may aa actually include turkey also. SO it's hens and turkeys. That's right but certainly the that notification rules out aa rabbits, camels, dogs, cats and all kind of other things that certain regions might consider foods. But it's aa illegal completely.

Participant- So it is aaaa how it can be termed as welfare legislation?

Mr. NG Jayasimha - see there is aaaa we can talk about the jurisprudence of this and I think Justice Radhakrishanan's judgement really talks about it as to how things have evolved. AAA this act was originally replaced in 1905 Act, there was a British act which is just prevention to cruelty to animals act. And the next step that is there is the animal welfare Bill. That there is a change that you are seeing. So there is growing paradigm shift in how we are looking at this. And similarly it is not only unique with this only. Even if you look at access to disabilities, rights of women, right of child rights, transgender. Over a period of time what you see is that as the society evolves the jurisprudence evolves with it as well. So, in 1960, the jurisprudence primarily just read with the fact that you need to prevent cruelty, prevent unnecessary pain and suffering. They went ahead to define what is necessary and what is unnecessary and they made creative exceptions. Where there was unnecessary pertness' to what is considered as unnecessary pain and suffering. The larger issue is that does the evolution of this top right here and obviously not because aa as in there is more growing body of science that talks about how animal welfare can no more be seen in isolation. It is related to sexual violence, it is related to various other sorts. So, to me it seems that the Nagaraja judgment in that way is watershed, because it changes the way animals are looked at. Till now what section 3, was seen was as to what is the duty of the person towards the owner, what Nagaraja went ahead and said was created section 3, read section 11 as rights of animals. Obviously when the point of rights of animals comes in we know that when there is a right that is right that is created there has to be a remedy. But as if now does the legislation has remedy other than the penal provision? Probably not. But the fact is that more and more courts are accepting animal cases under 21, more and more case aaaa reading article 21 and actually issuing writs under 32 aa when it comes to animal cases and that in itself is a huge step because I do remember there was a time when you can only go to aa 226, you can only go to High courts. Because they said 32 is very narrow but now the supreme court has started to take in animal cruelty matters under 32, aa so things are changing. As in people are now starting to see that what is 21, is the right to life just limited to humans and is it beyond that. It will obviously will take the time, but the fact also remains that in your court all of this does not matter to that large extent, what really matters is what is the penal provision and is it an offence and not an offence. And sadly what we have now, as of now, defines what is necessary suffering what is unnecessary suffering, whether a particular animal can be killed, cannot be killed. The larger ethical debate is something that I feel the judiciary has driven and it should continue to drive and we hope that the legislature catches up. The legislature as in 377 is a classical example the, Delhi high court laid a landmark thing when they truck down 377. But the matter is did the legislature catch up? Did the legislature go ahead

and strike down 377, they did not do that. SO there is always a time when sometimes the legislature goes a step further, sometimes the judiciary goes a step further. And aa in our country starting from the early M.C. Mehta cases with environment and all animal cases it is been the judiciary who is been leading the path on the aaa Ajit would you add anything?

Mr. Ajit Sharma- Ya I just aa I mean I don't understand the question fully. I don't think that even without the supreme court saying that it is a welfare legislation in Nagaraja. Suppose Nagaraja case would not have existed, there is still no doubt in my mind that aa this would be deemed to be a welfare legislation. According to me the principle of interpretation of statute which implied the welfare legislations would apply. It's a welfare legislation in spite of the fact that aa there preamble of the act permits necessary pain to be inflicted, it restricts unnecessary pain to be not inflicted. So if I am aaa trying to kill an animal for meat or for instance for something like that, that is not a prohibited activity covered under this act. But the fact that unnecessary pain is curbed, is in itself aaa for animals which are until now considered shuttles, properties, without right to life and all of that justice Radhakrishnan given now after in Nagaraj. That is why this act became so important because for a property if I am giving certain rights up until now none of them existed, therefore, I am giving them some welfare measures.

Participant- But how can you quantify the aaaa necessary pain and suffering?

Mr. NG Jayasimha - Because he is saying that pain has not been defined in the act

Participant- What is necessary and what not

Mr. NG Jayasimha - no no what you what the act has done as in the act primarily is a penal act. I mean that what it is, right. What the act has done is that it says that these are the necessary. If you do these you'll be punished, so that is basically saying that these are the things that are unnecessary penal. For example, let say Pukadumdev or oxytocin. *Doodh Chahiye*, they are not saying don't milk the cow at all because we all know that even in the best of the conditions milking possibly causes some sort of pain, milking possibly causes mesthydis, there is no issue in relation to pain, there is no doubt on that. The fact is that when you plough an animal, you put a nose rope, it will hurt, when you put a bojha on an animal will definitely hurt.

Ms. Gauri Maulekhi- The horning

Mr. NG Jayasimha - hmmm, horning *karne ke samay*,

Ms. Gauri Maulekhi- shoeing the horse

Mr. NG Jayasimha - *jab aap ghode ko keel martey hain* to it definitely hurts, there is no denial that this thing will not hurt. But then what they have done is, what is necessary and what is unnecessary and they want and say that wherever it is necessary and what is then it can be done,

where it is not necessary and they have gone ahead and gave an exemption. Now the question really comes up is that does the question of necessary evolved over a period of time? Definitely, it evolves as in what is necessary. Nagaraja went ahead and said that culture is not necessary, you can't use religion. The Himachal High Court when it prohibited animal sacrifice it said that our religion is no necessary to do cruelty. When the aaa the Bombay high court for the first time aaa killed you know prohibited killing of street dogs. Even before the legislature came in, they said that street dogs can be done through ABC, killing was not necessary. In fact if you read to these, they talk about lethal chamber, gas chambers, these are things that did exist but as in when science evolved, human beings evolved you start seeing that what is necessary and what is not necessary. May be we will, in couple of decades reach to a point where people will say that killing any animal for food is not necessary. Maybe we will may be we will not. But as the law stands as of now, it defines what is necessary and what is not and that reflects the will of the parliament and we need to implement that. Yeah, yeah

Participant - I want to ask whether cognizance can be taken only when there are some other offence along with the wildlife?

Mr. NG Jayasimha - do for example if a child comes before you and if the police does not take it before the juvenile justice board, you would direct and say please take it to juvenile justice board. You will not say that because you have not taken it to juvenile justice board, I will trial it here. If a woman comes and says that there is a problem, you will automatically refer it to let say, the departments to take care of it, so the thing is that if you come across a matter where there is a wild animal involved, the police are there who don't have the necessary aaa whose complaint you can't take cognizance under this act. So the simplest thing would be to refer this matter to the forest department and the forest department will file their charges.

Mr. Ajit Sharma- Also if I may just quickly add. In any case that will not prevent the court for taking cognizance under not aaa under WPA, for offences aaaa under WPA, if suppose it's a offence under WPA and terms it as offences under IPA, IPC and PCA, the court can obviously take cognizance and proceed under IPC and PCA. As far as offences under WPA is concerned, this whole exercise has to be followed. You can suggest the forest officer and get the sanction and permission required under 55 and take cognizance under WPA as well. But the whole process will not be stopped merely because this formality is to be dealt with.

Mr. NG Jayasimha - Yeah as in the most common thing under the WPA is arms act. I mean that is the absolute common thing that goes along with it. There is arms act, there is very rarely PCA because majority as I said yesterday, less than one percent trade actually happens in live animal. A huge animals is just for wild life trophies, would aaa and all of those things. So, aaa yeah involving the forest aaa there is always transport officers involved. Sir aaaa

Ms. Paiker Nasir- No more, no more question

Participant -Sir regarding a filing of private complaint, in case of wildlife protection act, what will be the procedure? 156 (3) would be applicable or not in that case?

Mr. NG Jayasimha - no, with regard to filing of private complaint, the private complaint person who ever wants to file a complaint, has to issue a notice to the authorities. So what happens is that, post notice the procedure is same as the Cr.P.C., when it comes before you, but the only prerequisite that is there is that he has to issue the notice and he will give you a copy of the notice, along with the private complaint saying that, I am so and so I filed the complaint, I issue a notice as per section 55 and in fact there is format for issuing a notice under 55 in the rules of the act as well. So as per the particular this I have done, I have reasons to believe that no action has been taken and hence, we request you to issue and what happens the IO when he is doing the private complaint, he will verse the forest department. So the complaint would be so and so verses the forest department. State represented through the forest department and then you can issue the orders for the forest department for investigation.

Mr. Ajit Sharma- I think the, sorry if I can add to that. The bar under 55 is for taking cognizance. There are several cases where courts have said that in several other situations where there is a bar on the court in taking cognizance because the sanction is required or anything else. There is no bar on pre-cognizance activities. So, which is completion of entire investigation, there is no bar. The case will come to an automatic deeming stay because there is a bar on taking cognizance. So therefore, 156(3) is absolutely okay, investigation is absolutely okay. There is a case in fact, Pester vs Karnataka, there is a case where it has even said that police can even take someone in custody for a case which may subsequently require sanction because right now the court is not taking cognizance. So all the pre-cognizance activities can be done absolutely, you don't need to show that you have complied with 60 days' notice, you are eligible, not eligible, it makes no difference that is not a bar.

Ms. Gauri Maulekhi- We can add this judgment to the stuff that we will be mailing along with the list of the food items, the list as well.

Mr. Jayasimha- In fact, I think the same thing applies to taking actions against public servants under cruelty because that's a big problem that we face. A living example is, these 5 elephants in Srirangapatna, 5 elephants in Srirangapatna, we filed a PCR under section 30, under the PCA, Act, a private complaint, saying that the cruelty charge has to be done against the forest officers, who have been negligent towards the animal and did not take action because they had charge of it. The magistrate said that he will only take the cognizance and he'll only actually start the things once he gets the permission from the concerned department but finally he did consider that and he said he will take the cognizance when the permission comes but he did issue orders to the IO to investigate this particular matter. Yeah yeah

Participant - Sir, ek cheez main puchna chah raha tha ye hum logon ka jo workshop tha ye hai training of trainers workshop to build master trainers on prevention to cruelty to animal act. Main aa chuki humlog ab windup karne ki istithi main hain aur mere khayal se ye last session hai humara, to main ye janna chah rah aha ke humlogon ko bataur mater trainer tayaar kiya ja rah ahai but pichley do din main hum log ye samjahne main aaasamarth hain ki akhir hume ab jaa ke kisko train karn ahai? ek baat , dusri baat aaahum baar baar is baat pe vichar kar rahey hain ki hum cognigance kaise lengey, trial kaise karengey? par sabse major issue ye hai ki jinko actual main ground pe kaam karna hai. Suppose hum court ke liye nikal rahey hain, humne dekha ek poultry farm ki gaadi jaa rahi hai jo bahut saarey murgey murgiyon ko lekar rag banakar rakh ke le jaa rahi hai , hume dekh kle samajh aarah ahai ke wo cruelty hai, lekin bilkul sidhi si baat hai ke hum unpe suo moto cognigance nahi le saktey , hume ek complaint chahiye jo jis par hum karawahi kar sakeyn. To ye jaake aagey iske baad humara agla step kya honey waal ahai? hume kissko train karna hai aur hum kisske liye ye saari cheezen kar rahein hain? aur further programme kya hoga iske baad?

Mr. NG Jayasimha - I will answer that. We always see as animal welfare board do is do a lot of training programme for police, we do a lot of training programme for animal activists as well. And aaaa if there is interest within your jurisdiction for a training programme of such sort, we are happy to conduct any programme for your IOs within your jurisdiction or maybe we can come to your district , we can do it as well. So we are always, if you can give, a let us know where the training is needed, we'll definitely come and built capacity in that district. Obviously, you can't take suo moto what we need is that aaaa

Ms. Gauri Maulekhi- now a if you do see such a thing you can just , summon the chief vetinary officer of your district and ask him as a secretary of district SPCA , what has he done about it and he should bring the case to the court. He is the right person because every district has to have an SPCA and the district chief vetnary officer, whoever the animal husbandry head of the district is, is going to be the secretary. The ball is in his court, he must bring the case to you.

Participant - aaaa mam, mam aaa aaa my question is also aa relating to these questions. aapne aapne speech ke dauran jo kahan ke simla aur jo iss tarha se jo sellers rehtey hain, jo wahin pe jo hai meat ko wahin pe slauther ke roop main bhi uses kartey hain aur wahin pe seller ke roop main bhi use kartey hain, mopstly ye jo hai humarey statse main bhi hota hai , rural area main bhi hota hai cities main bhi hota hai. to hum ye kiss prakar se rok saktey hain? kiski mainly responsibility hai, hum kaise iss main direction issue kar saktey hain? aur kiss prakar se hum isse implimentation main laa saktey hain? ki jo ab ye practice chal arah ahai, ke ye jo seller hai wahin pe uss tarha se cut wagera kar ke ya usko aaa kissi bhi ptrakar ke jo general public hai uske saamney iss tarha se activity na ho kar ke slaughetr house main ho ya surrounded area main ho. to ye kaun responsible person hai? hum kiss prakar se order issue kar saktey hain? aur kiss prakar se issko jo hai hum aaa follow up le saktey hain? jo simla main huwa hai uss tarha aap baki jaghaon ke liye bhi batayen to

Ms. Gauri Maulekhi- Sir, aaa ismain aaaa humarey pair zyada mazboot hain kyunki hum itney weak act main nahi hain, PCA jaise kamzor act ke saath nahin hain. Hum food safety standards act ke saath hain jab hum meat shops aur slaughter houses ki baat kartey hain aur issmain Supreme Court ki bhi bahut clear guidelines hain, jo unhoney monitoring committee banayii hai. To aaa apkey liye appropriate ye hoga ke aaa act ke anusaar. Food safety standards act ke anusaar, jo unka statutory person hai unke district ka jisko designated officer boltey hain designated food safety officer usko summon kar ke bola jaye uski responsibility hai ke har shop jo ho khaday padarth ki bhaley hi wo meat ki ho chahey wo mithai ki ho chahey wo chaat ki ho wo aaa license prapt ho aur uske paas pehley se hi municipal corporation ka NOC ho unhoney license aapne liye uplabd kara liya ho. whether it's a small one and he is given the license and if it is the medium size one and the food safety commissioner of the state has given the license, which is generally the health secretary or if he is the large scale one and he has taken the license from government of India but license hona chahiye agar baghair license ke meat shop hai ya aaisi koi shops hain jahan pe murgi katt bhi rahi hai bik bhi rahi hai to ye sidhi sidhi designated officer ki aur uski team of inspectors ki zimmedaari hai. Designated officer under the act is the responsible person in every district of food safety. ye generally health department ka vyakti hota hai sir nahi uska naam hi designated officer hai sir wo ussi naam se jaana jaat ahai kyunki act main hi usko designated officer bola hai to district main bhi usko yahi boltey hain. Ye generally chief medical officer jo hota hai uskay a under aa ya usikey saath main bhathta hai ye health department ka vyakti hota hai aur aaa he is generally one person with two or three inspectors meant for the entire district. So, yes they are short staff but they are the ones who have the ultimate responsibility under the act to ensure compliance. SO if there is a certain market which is non-compliant and if you see ke aaa and it is actually rampant aa a hume compliance market galti se dhundhne padhety hain non-compliance to hume har jagha mil jaata hai. So aa that's true it's the designated officer he has a liability to do it.

Participant- haan thank you

Mr. Ajit Sharma- If I can just make one point to answer your question. I think the cognizance bar as in the WPA, but under 190 there is no restriction on taking cognizance on your own. So long the offence is only under WPA , yes you can't do anything you need a complainant but if the offence is outside WPA as well aa on your own knowledge you can take cognizance

Participant- Sir aap saarey log senior advocate hain. Ek baat aur main zarrur kehna chahunga yahan pe hum jitne judicial officers aaye huye hain saare log civil judge class two , civil judge junior division aur civil judge senior division ke log hain. Aaaa judicial activism ki jab hum baat kartey hain to judicial activism high court aur honorable supreme court ke level pe bahut achch alagta hai lekin jab hum aap log bahut achchey se wakiff hongay humare system se aur jab hum log nichley isstar pe judicial activism ki baat kartey hain aur supo motto action letey hain to humko usko leke kamaskam das baar explanation dena hoga aur das baar explanation dena hoga aur uskey baad hume humare explanatiopn se humare jo immediate boss hain woh kitne satisfy

hongey ye to wahi jaantey hain hume to uss baat ki bhi jaan kaari nahi hai. To ye saari baatein sir kehne main bahut sahej lagti hain ke haan hum 190 ke antargat suo moto action le saktey hain aur hum usspe karya wahi kar saktey hain par actual ground main ye possible nahi hai. dusri baat sir main ek baat aur kehna chahunga ye to abhi puri jitni baat aayi usmain ye ho raha hai ke iss act ko impose karne ke liye humare system to empower hona chahiye par mujhe aaisa lag raha hai ke hum shayad judiciary se expect kar rahey hain ke wo saarey logon ko sahi dhang se kaam karaye aur uske baad main phir iss act ko enforce kiya jaa sakeyga lekin sir ye possible nahi hai jab tak system properly kaam nahi karega aur system ke lehaaz se sarkaron ko jab tak kaha nahi jayega aaa SPCA ki baat ki aaa chatissgarh aur aaisay bahut saarey states hain jahan ek bhi district main SPCA naam ki kissi sanstha ka koi wajud nahi hai wahan pe aais akoi nahi hai [Another participant I never heard before I have come here] Aur doemstic animal ske cruetly ke manley naa ke barabar panjuvrath hotey hain humare desh main. Aur iss main jo response form mila hai hum logon ko iss main bahut saari cheezain aaisi hain jiske baar e main mamley panjiwad hi nahi hotey. Yahan pe humare jitne saathi baithey hain Wild life protection Act ke antargat to mamley hotey hain lekin iss Act ke antargat koi kabhi shikayat nahi karta. Uske baad sir kal 480 aaa 428 aur 429 ki baat ho rahi thi ussmain bhi jo maamley aatey hain sir aap agar uska second pehlo dekhengay sir section 320 Cr.P.C. ye dono offence compoundable hain aur compoundable uskay malik ke dwara hain. kal hum baat kar rahey the ki uska malik agar shikayat nahi bhi karta hai to bhi offence ban sakta hai lekin agar wo section compoundbale hai aur uska malik aake kehta hai ke nahi thik hai hum compound karna chahtey hain aur compound ho jayega offence. to phior bachega ky ahumare pass main? to saara kuch judiciary se apeksha karna aaaa

Ms. Gauri Maulekhi- no not at all sir. Sir if I may answer that, kissi bhi system ke bahut saarey hissey hotey hain aur ye jo pura bada sa system hai, like we have been saying aaa judiciary is a very important part of it and we have to aa since keeping everybody abreast of whatever is happening whatever is the latest, it is just an attempt to do that but aaisa nahi hai ke baaki ke hisson ko update nahi kiya jaa raha hai. we are trying our level best to the police, unki bhi trainings aaaa you know updatation workshops, interactions, conversation it's happing with the RTOs with teh forest departments and I am sure abhi recently especially after landmark judgments given by the Supreme Court in the various cases jo pichley kuch saalon main there is a big change that is happening in the country and aa it's a you know a pleasure that aaa the judiciary is taking a bit of led in that and aa we hope that it continues. However, we are not saying that the entire responsibility is yours.

Mr. NG Jayasimha - And also sir, as in just a fact that over 30 trainings we do on an year on an average this is the first and only judicial training that has happened. [Ms. Gauri Maulekhi- yeah that's true] so A lot of the trainings that we do are with the forest department. In fact right after this I am going for one training with the forest department in Coimbatore on aaa species identification, that is the topic we have to spoke. Pichele haftey humne Cochin main kiya tha shark fin identification. So the large work that maybe we should have shared is when we do capacity building of police officers, customs, forest department officers, SPCA inspectors humare khud ke

log as in just the animal welfare activists, we conduct training programmes for lawyers, we go to law colleges and od these programmes. So, we understand that there are many many elements it is a jigsaw puzzle sir and we need to fir in everything and aaaa we also understand the big part of it is with members of parliament and legislators and that is something on which we are working on as well and aaa matter all just comes up to aaa what we are hoping is that we cover all these things in the near future , we put all of them together and the puzzle is complete. So, definitely no expectation that this is going to change everything but we do feel that this is the really peace of the puzzle that we need to deal with and this is probably the first time that it has happened and I don't think aaa

Participant- no sir ye training *hum logon ke liye bahut fruitful rahi hai aur humlogon ko aaisa lagta hai ke shaayda ab hum logon ke saamne jab bhi aaise iussues aayengey to shayaad hum unko zyada samvedanshilta ke saath handle karengey. Bahut saari nayii nayii aur achchi achchi cheezain yahahn se sikh ke jaa raheyin hain par sir ek zarurr thoda sa lagta hai ki aaaa kayii baar hum wait kartey hain ke humare saamney ye mamla aaye to hum iss main kuch achcha kar sakengay jab dekhtey hain ki kissi animal pe cruelty ho rahi hai to bas ek baar intezaar hota hai ki koi uskey sambandh main mamla paish kary taki hum usspe kuch kar sakein kyun*

Mr. Jayasimha- Correct sir and I am hoping *ki jis din aapke humare executive magistrates hain if they become a little bit more serious on these issues aur woh agar SPCA set up karein, inspector set up karen so mamlay zyada aayen humne karii baar hi aaaa as in for a bahut saalon tak main roz Bombay main there is a special court for cruelty cases only. Sirf subha ka morning court baithta hai aur phir judicial magistrate nahi hai wahan pe koi banda hai jisko unhoney bana diya hai roz subha 8 baje se 9:30 wo baithta hai aur sirf cruelty cases dekhta hain sir and I used to go there on a daily basis koi ek accuse nahi aata tha jo plead guilty na kare, ek bhi accused nahi aata tha. saarey aatey they accused plead guilty kartey hain Rs 50 a fine bhar detey hain aur wo chaley jaatey hain karii baar to hum sirf time mangtey the kyunki uska aaney jaaney ka train ka kharcha aapna wo fee se zyada ho jata tha yani fine se zyada ho jata tha to we agreed that there is a huge flaw in the system and the only thing is that we are trying to put all of this together.*

Participant- *sir ek baat kehna chahunga , kal jab hume minister ji kaha ke rule amend kar diojiye to unhoney kaha ke sab kuch kahiye humse lekin rule amend karne ke liye mat kahiye. sab kuch hum aapke liye karengey lekin law hum nahi bana payengey wo humare bas main nahi hai so that's the same part that aaa this side, sab kuch hum karengey as a individual we are alll maney we are always devoted to ypur programme lekin judicial activisim ke liye na kahiye*

Ms. Gauri Maulekhi- *thik hai sir hahahaha*

Mr. NG Jayasimha - no no sir the point is what we hope sir that in your career you reach up to the high court and the supreme court aur aap activism karen, that is the hope that we are hoping sir

Ms. Gauri Maulekhi- but right now the 90% of the cases regarding animals actually comes to your courts. so aa 90% cases it is on 10 maybe that go to the high courts and supreme courts and aaa

Participant- just the tip of the ice berg

Ms. Gauri Maulekhi- that's right, that's true

Mr. NG Jayasimha - and aa what would really be helpful when one day when we come under 226 before you you will remember us

Ms. Gauri Maulekhi- hahahahaha

Participant- Sir, aaa I want to share one incident aaa prior to 20 years when I was studying, I was not a judicial officer aaa I was having shares in TISCO and I attended an annual general meeting of TISCO in that year TISCO has started marine export of almost 100 crores in a year so, I was against that because I am Jain so, I met Mr. Rusi Modi who was chairman at that time and I requested him aaa that I want your appointment and I want to talk with you about that . So, he aaa asked me about what so I said that which TISCO doing marine export I am against of that, I am your share holder. So, he aa said that you write a letter to me, he avoided me on the year in the annual general meeting they passed the resolution that they will concentrate only on steel production. And they stopped that they were going to increase within in one or two years up to 500 Crores. So it is the society which has to consider that

Mr. NG Jayasimha - Agreed sir

Participant- So only judiciary cannot do but aaa I am exception to Ms. aaaa my collogue brother. I will aaa do judicial activism whenever I get the opportunity

Mr. NG Jayasimha - sure sir Thank You. Thank you sir personally it's aaa

Ms. Paiker Nasir- So no more questions. Okay I would like to take this opportunity to thank Ms. Maulekhi, Mr. Jayasimha and Mr. Sharma and Shreya for coming over.

Mr. NG Jayasimha - Sir if you need us in your state academies we are always happy to come sir, we are just a phone call away. We'll come.

Ms. Paiker Nasir- And one last thing, we are distributing the feedback forms that is the programme evaluation form which I would request all you to just fill it up and in the meantime our director would be coming to give a vote of thanks to everybody present here. And I have a small request when you are filling up this feedback form kindly put your email IDs on it so that we can

share all the PPTs which were presented by the resource persons for this workshop okay. Mam is coming so.

Dr. Geeta Oberoi- Okay people I will take one minute of your attention. First of all I have to thank all of you for being patient and aa giving that atmosphere of learning to each other, learning from each other, sharing with each other and aaa being such good learners for these 2 days. So thank you very much and good bye till we meet again. And before we say good bye to each other we must thank our programme coordinators Shruti, Paiker and we must thank animal welfare board of India with whom we tied up for this programme. So Gauri Maulekhi and company you need to be paid gratitude also. So, thank you everyone and lets meet again hopefully this year again and aa we'll try to see if we can aaa again bring back our induction programmes. But I think state judicial Academies are also over here and they are very happy with their that we are not doing anything for CJ JDs they always said to us that this is our area so we have given it to you but I think there are some conferences where there is scope like Juvenile Justice Board is one, I think we should start this also as a regular programme. Don't you think so? No? You think so that we should institutionalize it and make it a regular programme on this subject. Yes, no? Not required? Okay but animal rights will include wildlife act no [Participant- no not for just this particular act] no no not just for one act we can say animal rights jurisprudence something like that. A more wider net we can have for ourselves [that can be good topic] yes that can be good topic because all you should feel like as justice Radhakrishnanan felt and the principles and doctrines those are very important. What you are going to write your judgement on it has to be principle based right? We learnt so much from Justice Radhakrishnan so these are the things that we have to move from 1972 approach to the new approach where we care for the species. With this I will end up and will say thank you to all and goodbye till we meet again.