
A STUDY ON THE CONSTITUTIONAL DIALECTIC OF JALLIKATTU JURISPRUDENCE

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ABSTRACT

This paper critically analyses the Hon'ble Supreme Court's landmark judgement in the case of '*Animal Welfare Board v. A. Nagaraj & Ors.*' which marked a defining moment in India's animal jurisprudence and constitutional mandates on animal rights. By declaring the Tamil Nadu Regulation of Jallikattu Act, 2009, as unconstitutional and repugnant to the Prevention of Cruelty to Animals Act, 1960, it upheld Articles 21, 51A(g) and 51A(h) of the Constitution. The Court analysed the averments of both parties, pertinent precedents and the discrepancies between the Acts. Through an eco-centric approach and relying on the *doctrines of parens patriae and ejusdem generis*, the Hon'ble Court affirmed that traditional and cultural practices do not supersede constitutional mandates of cruelty against animals although this progressive stance was revisited and later overturned in the case of '*Animal Welfare Board of India v. Union of India (2023)*.' This paper analysis the shift from an animal welfare-centric legislation to a balanced judicial philosophy seeking equilibrium between animal rights and cultural identity. The paper concludes that without true reform, strict enforcement, institutional accountability and public awareness and reform, laws risk to remain as symbolic promises on paper.

Keywords: Animal Welfare, Jallikattu, Cultural Rights, Fundamental Duties, Eco-centric Approach

I. INTRODUCTION

The present case deals with an issue of fundamental significance in the realm of Animal Rights under the Indian Constitution, laws, culture, tradition, religion and ethology. The case at hand deals with a Central Act and a State Act, namely the Prevention of Cruelty to Animals Act, 1960 (the 'PCA Act') and the Tamil Nadu Regulation of Jallikattu Act, 2009 (the 'TNRJ Act') respectively and the notification issued by the Central Government dated 11.7.2011 under Section 22(ii) of the PCA Act (hereinafter referred to as the 'Notification').

Bulls (*Bos Indicus*) are herbivores and herd animals by nature. Conhis class of bovines is incredibly intelligent and has indelible memories. When faced with stimulus which threatens their innate behaviour, they are prone to adopt a 'fight or flight' response in order to protect themselves. This instinctual "fight or flight" response of the bull is being intentionally exploited by the organisers of these events for human pleasure. Before, during and after the event, bulls are beaten, poked, prodded, harassed and jumped on, tails twisted and eyes and noses filled with irritants. An ample number of peer-reviewed papers establish a link between the actions of humans and the pain and fear experienced by animals.

Jallikattu, a Tamil word, which is derived from the term "Callikattu", wherein "Calli" refers to coins and "Kattu" refers to a package, alludes to a game of bravery where people fight for the money tied on the bull's horns. In Maharashtra's Bailgada Sharyat, blind-folded bullocks when unfolded, get instantaneously terrified due to sudden exposure to light and noise made by spectators and run straight on the slope, tortured and whipped all the way. The approximate distance of the racing arena is 300 meters, with other races encompassing a distance of more than 10 kilometres. The price is estimated on the basis of time taken to this distance.

II. FACTS, BACKGROUND AND SIGNIFICANCE OF THE CASE

The Prevention of Cruelty to Animals Act, 1960 is a remedial welfare legislation enacted by the Parliament of India to prevent infliction of unnecessary pain and suffering on animals and to amend laws relevant to prevention of cruelty to animals. The Act punishes wrongdoers who violate the provisions of the Act, thereby protecting the sentient beings from being wronged. Established in 1962, under Section 4 of the PCA Act, 1960, the Animal Welfare Board of India (AWBI) is a statutory body on animal welfare laws which promotes animal welfare. The three

reports submitted by AWBI presented the horrors which the bulls participating in the events endure.

The Tamil Nadu Regulation of Jallikattu Act (TNRJ), 2009 (now repealed), was a state law passed by Tamil Nadu to regulate and legalise Jallikattu and similar bull-based events in the state. The Act provided a regulatory framework to ensure safety and defined procedures and permissions for conducting the events. Therefore, this Act was repugnant to the PCA Act as it directly allowed what the Central Act prohibited – performance, exhibitions and training of animals for performing/entertainment purposes.

The Ministry of Environment, Forest and Climate Change (MoEF) issued a notification in 1991 under Section 22 of the PCA Act banning training and exhibition of certain classes of animals. This was challenged by the Indian Circus Organization before the Hon'ble High Court of Delhi. Later, dogs were excluded from the notification, the legality of which was challenged in **N. R. Nair and Others v. Union of India and Others**,¹ wherein the notification was upheld.

The Ministry issued a fresh notification dated 11.7.2011 which included “bulls,” thereby banning their exhibition or training as performing animals. The Ministry had taken the stand that though “bulls” had been included in the notification, after considering the interests of all stakeholders, including animals and the historical, cultural and religious significance of the competitions, bulls participating in the events are exempted from the notification, subject to certain guidelines.

The present case deals with two sets of cases wherein one (Writ Petition No. 145/2011) challenges the judgement dated 9.3.2007 of the Division Bench of the Hon'ble High Court of Madras filed by People for the Ethical Treatment of Animals (PETA) challenging the validity of TNRJ Act and other petitions challenging the validity of the MoEF notification under Section 22 of the PCA, while another set of cases that uphold the validity of the same. The issue of ‘sports involving bulls’ begun in the year 2006 with the case of **K. Muniasamy Thevar v. Deputy Superintendent of Police**² with a petition being filed before the Madras High Court seeking permission to conduct the competition of Jallikattu. Initially, the Single Bench banned the event. Upon appeal, the Division Bench overturned the previous judgement and granted

¹ N. R. Nair and Others v. Union of India and Others, AIR 2000 KER 340.

² Appeal under Cl.15 of the Letters Patent against the order dated 29-3-2006 passed in W.P. (MD) No.2966 of 2006.

permission to conduct the event under certain conditions. In the case of **S. Chokanathan v. The District Collector**,³ a cluster of writ petitions were filed to grant permission for conducting Jallikattu/Manjuvirattu during village temple events for 2008 due to its traditional, religious and cultural significance. The Madras High Court allowed the petitioners to conduct the events, with a caveat that it would be allowed only up to 31st May, 2008, and subject to strict conditions/guidelines imposed by the Supreme Court and the Tamil Nadu Government's guidelines.

Since the aforementioned competitions were held without adhering to the stipulated conditions, ABWI published a notification barring bulls from being exhibited or trained as "performing animals." In the present case, the appellants appealed to the Hon'ble Supreme Court of India against order of the Division Bench, aiming to enforce the notification, while the respondents took a stand that Jallikattu ought not to be banned as it would not be in public interest.

III. ISSUES DEALT WITH

1. Whether the events that are being conducted in Tamil Nadu and Maharashtra are repugnant to Sections 3, 11(1)(a) & (m), 21 and 22 of the PCA Act read with Articles 51A(g) and (h) of the Constitution and the notification dated 11.7.2011?
2. Whether provisions of the TNRJ Act, which is a State Act, is repugnant to the PCA Act, a Central Act since both fell under Entry No. 17 of the Concurrent List?

IV. CONTENTIONS OF THE PARTIES

a. Averments of the Appellant

1. Jallikattu and Bull/Bullock-cart races conducted in Tamil Nadu and Maharashtra respectively, violated Section 3, Section 11(1)(a) and Section 11(1)(m) of PCA Act read with Article 51A(g) and Article 21 of the Constitution.
2. The reports, affidavits and the photographs submitted by ABWI highlighted the physical torture and mental cruelty meted out on the bulls.
3. The competitions have neither historical and cultural significance nor religious

³ W.P.(MD) Nos.3166, 2066, 2131, 2302, 3773, 3683 of 2008 and associated M.P.s.

affiliation and would be superseded by the PCA Act.

4. Bulls involved in the competitions do not fall under the ambit of “performing animals” stipulated under Sections 21 and 22 of PCA Act and the MoEF was justified in issuing the notification.
5. The TNRJ Act is repugnant to PCA Act and the rules made thereunder and State cannot give effect to it the absence of the President’s assent as stipulated under Article 254 of the Constitution.
6. The words “or otherwise” as stipulated in Section 11(1)(a) were emphasised to bring attention to the fact that any act which inflicts unnecessary pain or suffering on an animal is prohibited unless permitted by the provisions of the PCA Act.
7. Finally, the Board submitted that exhibition or training the bulls as performing animals be completely banned.

b. Averments of the Respondent

1. The organisers of Jallikattu contended that these competitions take place at the end of harvest season, in the months of January and February and during temple festivals and has close association with village life of southern parts of Tamil Nadu.
2. They further averred that the events are arranged with outmost care and protection to not cause injury to bulls, with the District Collector and police officials present at the venue, thereby not violating Sections 3 or Section 11(1)(a) of the PCA Act.
3. Since the competitions generate revenue for the State and act as a source of enjoyment to the participants, a ban would not be in public interest.
4. The events can be regulated in accordance with regulations framed under TNRJ Act, additional safeguards taken by the State Government and the proposed guidelines framed by MoEF to ensure that bulls are not subjected to cruelty and torture.
5. Bulls taking part in the events are specifically identified, trained and nourished, for which owners spend considerable amount of money.

6. The State of Tamil Nadu contended that the bulls are “performing animals”, and since there is no sale of tickets in the events, Section 22 and the notification would not apply.
7. Referring to Section 11(3) of PCA Act, it was submitted that as it does not prohibit infliction of all forms of pain or suffering, Section 11(1)(a) has to be understood in that context.
8. Sections 11(1)(a), (g), (h), (j), (m) and (n) were referred to and submitted that the expression “unnecessary pain or suffering” is not used in the same context and hence the events could be regulated.

V. OBSERVATIONS AND DISCUSSIONS

The Court established that the it owed a duty of care to the animals and must ensure that the rights of animals are safeguarded under “*Doctrine of Parens patriae*” since they are incapable of protecting themselves from their human counterparts.

From forcing bulls and making them stand in the waiting area for hours on end to pulling them by their nose ropes and subjecting them to cruelty and torture by the tyrant tamers, the bulls suffered insurmountable pain. Caretakers of animals have a duty to prevent infliction of unnecessary pain or suffering. Therefore, Section 3 was violated.

While interpreting, the terms “or otherwise” and “unnecessary pain or suffering” of Section 11 of the PCA Act, “*Doctrine of Ejusdem Generis*” was not interpreted as words of limitation, but to cover all circumstances where animals are subjected to unnecessary pain or suffering. The same was analysed in **Lilavati Bai v. The State of Bombay**⁴ wherein the Court held that it intended to cover situations not falling under the ambit of the preceding clause and the same interpretation of Section 11(1)(a) was applied. Therefore, Section 11(1) was violated.

Section 11(3) and Section 28 are the only exceptions, yet they do not allow any form of entertainment, exhibition or amusement which cannot be claimed under the “*Doctrine of Necessity*”.

Bulls have been recognised as draught and pack animals in Prevention of Cruelty to Draught

⁴ Lilavati Bai v. The State of Bombay, 1957 AIR 521.

and Pack Animals Rules, 1965 and have limited running abilities and flexion of joints, and the same has been incorporated in Rule 11 of Prevention of Cruelty to Animals (Transportation of Animals on Foot) Rules, 2001. Therefore, bulls were not held to be a performing animal.

Section 22 of the PCA Act addresses restrictions on exhibition and training of performing animals and although it was contended that these events took place without the sale of events thereby not entailing Section 22 and the notification, since bulls were specifically prohibited to be exhibited or trained as performing animals, the question of sale of tickets did not arise. The bull tamers inciting bulls to fight to provide entertainment and is punishable under Section 11(1)(m)(ii).

The TNRJ Act must give way to the PCA Act, which is Parliamentary welfare legislation and overshadows the former. In **N. Adithayan v. Thravancore Dewaswom Board and Others**,⁵ it was held that if any custom or usage violates human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament, it cannot be accepted as a source of law to claim rights. Eco-centric principles were applied in **T. N. Godavarman Thirumulpad v. Union of India and Others**,⁶ **T. N. Godavarman Thirumulpad v. Union of India and Others**⁷ and in **Centre for Environmental Law World Wide Fund - India v. Union of India and Others**.⁸ Universal Declaration of Animal Welfare (UDAW) and Chapter 7.1.2 of the guidelines of World Health Organization of Animal Health (OIE) which distinguishes the internationally recognized freedoms for animals were discussed as references to be incorporated into the Indian legal framework.

The potentiality of elevating animals' rights guaranteed under Section 3 and Section 11 of the PCA Act read with Article 51A(g) and Article 51A(h) to that of fundamental rights was explored. It was established that compassion as enshrined in Article 51A(g) and humanism under Article 51A(h) have to be read into the PCA Act and be applied and enforced. *Speciesism is the assumption of human superiority leading to the exploitation of animals*. Except for unavoidable essential activities undertaken for the advancement of humankind, non-essential human activities like Jallikattu and Bullock-cart races can be avoided. A clean atmosphere, protection from human beings against unnecessary pain or suffering, food and shelter, dignity

⁵ N. Adithayan v. The Travancore Devaswom Board and Others, 2002 AIR SCW 4146.

⁶ T. N. Godavarman Thirumulpad v. Union of India and Others, 2012 (3) SCC 277.

⁷ T. N. Godavarman Thirumulpad v. Union of India and Others, 2012 (4) SCC 362.

⁸ Centre for Environmental Law World Wide Fund - India v. Union of India and Others, (2013) 8 SCC 234.

and fair treatment, not to be beat, kicked, over-ridden, over-loaded are the rights enshrined in Section 3 and Section 11 of the PCA Act read with Article 51A(g) of the Constitution.

In **M Karunanidhi v. Union of India**,⁹ it was held that it must be proved that both legislations consist of inconsistent and irreconcilable provisions which cannot operate without conflict and cannot be repealed unless inconsistency exists on the face of the legislation in question. In **Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another**,¹⁰ it was held that no repugnancy arises if obedience of each is possible without disobedience or one of the legislations expressly or impliedly conveys a clear intention to cover the whole field.

By perusing the Statement of Objects, Reasons of the Act, Preamble and other relevant statutory provisions and the Statement of Objects and Reasons of the TNRJ Act, it was held that the Parliament has evinced its intention to cover the whole field of enacting animal welfare laws and the following inconsistencies were found.

1. On violation, Section 7 of the TNRJ Act specifies a punishment of one year whereas Section 11 of the PCA Act provides for imprisonment for a maximum of three months.
2. While Section 2(c) of the TNRJ Act mentions “taming of bulls,” the PCA Act does not. Taming of bulls by the tyrant bull tamers inflicts unnecessary pain and suffering on the helpless animals and does not contribute to the well-being of animals and is contrary to the innate behaviour exhibited by bulls.
3. Section 5 of TNRJ Act allows a bull tamer to fight and tame a bull while Section 3 read with Section 11(1)(m)(ii) of the PCA Act penalises such an act.
4. Lastly, the PCA Act not only confers rights on animals but also corresponding duties and obligations on persons in charge of the animals and the AWBI which is inconsistent with the provisions of TNRJ Act as it confers rights on the organisers and bull tamers and is in conflict with the aforementioned sections of the PCA Act and the Constitution.

⁹ M Karunanidhi v. Union of India, AIR 1979 SC 898.

¹⁰ Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another, (2000) 5 SCC 231.

VI. RATIO DECIDENDI AND OUTCOME OF THE JUDGEMENT

Hon'ble Justices K. S. Radhakrishnan and Pinaki Chandra Ghose adjudged and declared the Animal Welfare Board of India right in its stand of submitting that events of Jallikattu and Bullock-cart race in Tamil Nadu and Maharashtra respectively, violated Section 3, Section 11(1)(a) and Section 11(1)(m)(ii) of PCA Act. The Justices upheld the Notification and resultantly, bulls were prohibited from being used as performing animals.

The Hon'ble Bench declared that the rights guaranteed to bulls under the aforementioned provisions cannot be taken away or curtailed, except for Section 11(3) and Section 28 of the PCA Act. It was further stated that the five freedoms read into Sections 3 and 11 of PCA Act, are protected and safeguarded by the State Government, Central Government, Union Territories, MoEF and AWBI. The TNRJ Act was found to be ultra vires of Article 254(1) of the Constitution and repugnant to the PCA Act and was thus held to be constitutionally void.

AWBI and Governments were directed to take the following appropriate steps:

1. To monitor if the caretakers of animals take reasonable measures to ensure animals' well-being.
2. To take necessary steps to prevent infliction of unnecessary pain or suffering on animals.
3. To ensure that the provisions of Section 11(1)(m)(ii) are scrupulously followed.
4. In cases where Section 11(3) is involved, to ensure that the animals are not put through unnecessary pain and suffering, and adequate scientific methods are adopted in order to achieve the same.
5. Steps to impart education related to treatment of animals by humans in accordance with Section 9(k) be initiated to inculcate the spirit of Article 51A(g) and Article 51A(h) of the Constitution.
6. To ensure that stringent disciplinary action is taken against the erring officials who do not comply with the provisions of PCA Act and the Hon'ble Court's declarations and directions.

7. To take effective and speedy steps to implement the provisions of the PCA Act in consultation with SPCA and prepare periodical reports and remedial and that follow-up actions be taken when violated.

In order to serve as an effective deterrent and to accomplish the object and purpose of the PCA Act, the Parliament was envisaged to make commensurate amendments to incorporate appropriate penalties and punishments and to protect the rights of animals in line with the constitutional guarantees.

The Supreme Court's decision effectively banned Jallikattu, bullock cart races and other bull-based performing events. The TNRJ Act, 2009 was struck down to the repugnancy caused to the implementation of the PCA Act. The state governments were mandated to frame rules/regulations and enforce the PCA strictly to prohibit animal cruelty. Resultantly, the judgement became a controlling precedent until it was overturned in the '**The Animal Welfare Board of India V. Union of India.**'

VII. OVERTURNING OF THE JUDGEMENT IN '*THE ANIMAL WELFARE BOARD OF INDIA v. UNION OF INDIA*'

The government of Tamil Nadu and other states passed various amendment acts to permit Jallikattu and other traditional bovine sports under regulated conditions. Tamil Nadu passed the *Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017*. This Act, also known as the *Jallikattu-Tamil Nadu Amendment Act*, came into force on 21st January, 2017 which aimed to preserve the cultural heritage of the state and to ensure the survival and wellbeing of the native breeds of bulls. It amended the following sections:¹¹

1. **Clause (dd)** was inserted in **Section 2** which defined Jallikattu as an event involving bulls, conducted to follow tradition and culture, conducted in the months of January to May in places notified by the state government. It also includes 'manjuviratu,' 'vadamadu' and 'erudhuvidumvizha.'
2. A new **sub-section (2)** was inserted to **Section 3** which permitted Jallikattu, subject to certain regulations.

¹¹ Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, Act No. 1 of 2017 (Tamil Nadu) (Ind.), assented to Jan. 31, 2017 (gazetted Jan. 31, 2017) (commencement deemed Jan. 21, 2017).

3. **Section 11(3)(f)** was inserted which stated that Jallikattu is conducted with a ‘view to follow and promote tradition and culture and ensure preservation of native breeds of bulls and also their safety, security and wellbeing.’
4. A **proviso** was inserted to **Section 22** that nothing in that section shall apply to the conduct of Jallikattu.
5. In **Section 27**, a **new clause (c)** was inserted which stated that conduct of Jallikattu with a view to follow and promote traditional and culture and ensure survival and continuance of native breeds of bulls.
6. A new saving clause - **Section 28-A** - was inserted which stated that nothing contained in this Act shall apply to ‘Jallikattu’ and such conduct shall not be an offence under this Act.

Several writ petitions challenged the constitutional validity of these amendments by contending that by acting as colourable legislations, they violated the PCA Act and Articles 14, 21, 51A(g) and 51A(h) and were repugnant to the 2014 judgement. Furthermore, issues pertaining to the whether Jallikattu is a part of cultural heritage and thus protected by Article 29(1) of the Indian Constitution and whether animals can be right-holders under Article 21 or whether their rights remain statutory and whether the Tamil Nadu Amendment Act is relatable to Entry 17 of List of III of the Constitution were also dealt with inter alia.

These issues were resolved in the case of **The Animal Welfare Board of India & Ors. v. Union of India & Anr.**,¹² delivered on 18th May, 2023 by a 5-judge constitutional bench comprising of JJ. K.M. Joseph, Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy and C.T. Ravikumar. The Apex Court upheld the constitutional validity of the 2017 Amendment Act and similar amendment acts, thereby allowing the sports to take place under regulated conditions. Furthermore, it was held that the division-bench judgement in the 2014 case lacked binding power in the face of the constitutional bench. It was also held that the lacunae highlighted in the previous case was resolved by the Amendment Acts. Additionally, the Court held that the since animals lacked legal personhood, they did not possess fundamental rights, but rather their rights were statutory in nature. It was held that the amendments did not oust the jurisdiction of

¹² The Animal Welfare Board of India & Ors. v. Union of India & Anr., 2023 INSC 548.

the PCA Act and that they operate subject to overall welfare conditions. Therefore, the 2023 judgement effectively overturned the ban on Jallikattu.

VIII. CONCLUSION

In conclusion, the summation of the legal battle between animal rights and traditional values, the trajectory shifted slightly towards traditional values, but aimed at striking a balance between the two. Legal safeguards without due implementation and enforcement risk remaining as symbolic. True reform depends on consistent monitoring, transparent oversight, and accountability of all stakeholders. Unless those in charge follow through, laws remain paper promises.

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