

CASE COMMENT: ANIMAL WELFARE BOARD OF INDIA AND ANR. V. UNION OF INDIA AND ANR

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WRIT PETITION (CIVIL) NO. 23 OF 2016, 18TH MAY 2023

HON'BLE SUPREME COURT OF INDIA

BENCH: K.M. JOSEPH; J., AJAY RASTOGI; J. ANIRUDDHA BOSE; J., HRISHIKESH ROY; J., C.T. RAVIKUMAR; J.,

INTRODUCTION

Jallikattu is considered one of the oldest sports still practised in the modern era and is held during the Tamil harvest festival of Pongal. Over the years, scores of people have been gored or trampled to death in the contests¹. The practice was first banned by a single bench of the Madras High Court in 2006 after a young spectator was killed by a bull. There was widespread protest against the ban and there were popular sentiments of public opinion in favour of restoration and revival of Jallikattu. The protest was mainly because of its cultural significance in the minds of people. The legislature had to strike a balance between cultural practices, people's spirit, and animal welfare and thus they legislated in favour of this practice. The Supreme Court of India provided a judgment that not only protects Jallikattu which is conducted in Tamil Nadu but also the State of Karnataka and Maharashtra.

FACTS OF THE CASE

On the 7th of May, 2014, the Hon'ble Supreme Court of India outlawed two common sports practices in the states of Tamil Nadu and Maharashtra popularly referred to as 'Jallikattu' and 'Bullock Cart Race', respectively. Subsequently, on 7th of January, 2016, a notification was issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) which prohibited the exhibition or training of bulls as performing animals. However, an exception was carved and it was specified in this notification that bulls might continue to be trained as performing animals at events such as Jallikattu, etc. A batch of writ petitions were instituted

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¹ <https://www.bbc.com/news/world-asia-india-42714543.amp>

before the Division Bench of the Supreme Court of India questioning the legality of the said notification. However, while the petitions were pending, the Tamil Nadu Government passed the Prevention of Cruelty to Animals (Tamil Nadu Amendment Act) in January 2017, which permitted the Jallikattu and issued certain rules to govern the practice. Many organizations filed writ petitions seeking directions from the Supreme Court to quash the said Amendment Act. On February 2nd, 2018, the Division Bench of the Supreme Court referred this batch of writ petitions to a five-judge Constitution Bench.

ISSUES

1. Is the Tamil Nadu Amendment Act, 2017 contrary to the legislative intention behind the Prevention of Cruelty to Animals Act, 1960?
2. Whether the Tamil Nadu Amendment Act conflicts with Entry 17 of the Concurrent List of the Constitution of India, by perpetuating cruelty to animals.
3. Whether the sport of Jallikattu is entitled to be protected under Article 29 of the Constitution of India.

CRITICAL ANALYSIS

The Prevention of Cruelty Act has been enacted to prevent the infliction of unnecessary pain or suffering on animals. The Amendment Act cannot be said to conflict with the Central Act as it is possible to have a state law suitable to local circumstances against a contrary central law on a matter if it is involved in a concurrent list and the state obtains the president's assent under Article 254(2). Then the state law would continue to operate in that particular state, and overrule the application of the central act in that particular state only. It happened with this Amendment Act. The State Government amended the law to cater to the needs of the state and it got the assent of the president. Thus it is not contrary to the legislative intention behind the 1960 Act.

In reality, there is not any legislation that fully protects or confers rights to animals including the Prevention of Cruelty to Animals Act, of 1960. Prevention of Cruelty Act can be said to be vague in many aspects. There is no definition mentioned in it for "cruelty" and "unnecessary pain and suffering". So, we determine it according to the needs of humans as the Act itself contains various provisions in support of killing and treating animals cruelly. They are not

conferred with fundamental rights or statutory rights under the Constitution. If they are conferred with such rights, we have to provide remedy and that would cause serious problems. If so, we may no longer be able to keep them as pet animals because they have their natural ecosystem. So conferring them with rights is not practical. It was not even given by the constitutional bench of the Supreme Court in the case of Nagaraja².

Any law will have the support of people and be followed by people only if it is related to the morality of people. We have seen that from the 2014 ban on jallikattu, the Tamil Nadu legislative assembly, with consensus, unanimously passed a resolution against the ban and requested the Centre to help overcome the 2014 decision on the ban. The decision of the Supreme Court to ban jallikattu in Nagaraja cities various cruelties inflicted on bulls, which caused them to decide that Jallikattu Regulation Act, 2009 is void and contrary to the 1960 Act. How jallikattu was conducted was the problem noted by the court in Nagaraja and not the practice of jallikattu. But if it is done as per the Amendment Act and rules of 2017, by avoiding such cruelties, it cannot be held contrary to the parent Act and there is no conflict.

Rules on Jallikattu are in line with entry 17 of the concurrent list. Bulls are trained for this tradition. They are very strong and well-maintained. Nobody is using any kind of weapon, unlike in Spanish bullfighting, where bulls are killed. Entry 17 provides for the prevention of cruelty to animals. Prevention of Cruelty to Animals (Conduct of Jallikattu) Rules, 2017 contains various procedures for the conduct of Jallikattu, which ensure that no unnecessary pain or suffering is done to animals. The act itself recognized ownership of animals by individuals and his or her rights to employ animals for sports under Chapter 5 Sections 21 to 27.

Section 11 uses the word unnecessary pain or suffering, which should be interpreted to mean not any kind of cruelty but extreme cruelty. After all, some cruelty is always done to animals. Jallikattu is done not just for entertainment. It fosters the spirit of sports, competition, and following tradition. At no point in time bulls are seen apart from cultural significance. If they are banned, then this specific breed of bull itself will become extinct in the future. If not allowed to participate in jallikattu, people would be reluctant to look after bulls. The bulls that could be tamed are considered weaker and are used for domestic purposes by the farmers and the untameable ones, considered the strongest and virile, are used for breeding cows. That is

² (2014) 7 SCC 547]

another reason why we still see bulls.

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Section 11(3) of the 1960 Act³ under exceptions legalize killing animals for food. There are so many alternatives for meat but we still kill animals for food. Everything is for the convenience of people. The government determines what is cruelty and what constitutes cruelty. For example: under The Performing Animals (Registration Rules) 2001, Horse racing is allowed, even though some amount of pain and suffering is caused to horses, like using a whip consented for a certain number of lashes. Governments through laws determine the standard for this and this setting of standard changes with society. Animals are not human beings, what may be cruelty to a human cannot always be regarded as cruelty to animals. The new Regime seeks to prevent cruelty and not perpetuate cruelty. Entry 17 provides prevention of cruelty to animals and the same entry 17 allows exceptions to treating them cruelly. 1960 Act was enacted under entry 17 and it is valid. Thus the State Amendment Act is also entitled to enact exemptions and is not in conflict with entry 17.

Art 29(1) provides that anyone with a distinct language, script, and culture to his own has the right to preserve it. India is a very diverse country that should give rise to the use of Article 29 of the constitution. The Preamble of the Amendment Act provides that the amendment is to preserve the cultural heritage of the state of Tamilnadu and to ensure the survival and well-being of native breeds of Bulls.

Jallikattu is an ancient bull-taming sport that dates back to more than 400 years. It has long been a symbol of pride and heritage for the people of Tamil Nadu. It is a bull-taming sport which has got many significances. Bulls help in ploughing, insemination, and making new

³ Prevention of Cruelty to Animals Act, 1960

breeds. Some districts of Tamil Nadu like Madurai, Theni, Puducherry, and Dindigul are famously called Jallikattu belt. The Tamil Nadu government always holds the opinion that jallikattu is a religious and cultural festival that bears religious significance. We have a federal constitution, which means catering to regional aspirations and respecting the culture of different people in India. The customs and usage of a particular community can be made as enacted by the appropriate legislature. Jallikattu as a custom is recognized by its people and state legislature, thus it is protected under Article 29. If it is a cultural practice, it is deemed to be protected. In the case of **TMA V State of Karnataka**⁴ The court held that there is a need for provisions that help minority groups preserve the uniqueness of their distinct culture and script to preserve what distinguishes them from other groups.

In this case, jallikattu is a cultural practice and it is protected under 29. Whether it is custom or not requires going through the culture, practice, and spirit of people. The court should emphasize the importance of preventing cruelty to animals and have to strike a balance between cultural practice and animal welfare legislation.

CONCLUSION

Madras High Court through many cases has ruled in favour of jallikattu. In the case of **E.Sheshan V The secretary (2021)**⁵ The Madras High Court held that only native breeds of bulls can participate in jallikattu as the preservation of the breed is the objective of the Amendment Act. Animals are always used for the pleasure and convenience of human beings. If we take environmental law, it is not entirely for protecting the environment but to legalize the destruction of the environment by human beings. To protect our Right to Live in a pollution-free Environment. It is the same with the Prevention of Cruelty Act. It is incorporated for human beings to conveniently do cruelty towards animals. If Jallikattu is a part of Tamil culture, it has to be conducted by protecting both animals and human beings. It should be properly regulated by Amendment Act and Rules. Age-old traditions and cultures need to be protected and so do the Animals.

⁴ Writ Petition 317 of 1993

⁵ W.P.No.2999 of 2020

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