



BAN ON JALLIKATTU; A RIVALRY WITH CULTURE

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“Conservation of Culture should not involve inflicting unnecessary pain or suffering to animals’

- Justice Misra

INTRODUCTION

Jallikattu is a sport played in Tamil Nadu mainly in Madhuraj, Tiruchipalli and Tanjore. It is a kind of ‘Bull fight’ in which the bull of Pulikulam and Kangayam breeds is freed in to a large crowd where the participants or the person from the crowd try to catch the hump of the bull. This game was a part of Pongal festival and was played on 4th day of Pongal celebration i.e. Mattu Pongal. The bulls were a part of festivities in Tamil Nadu, where torturing them physically and mentally was a part of human pleasure and enjoyment.

But in recent years, this game is banned by a verdict passed by the Supreme Court. Reason being animals also have Right to life under Article 21 of the Constitution of India and this game of releasing bull where people try to grab their hump and try to climb them, affects the bulls physically and mentally. Many people were against it and protested as the ban on the Jallikattu game infringes their fundamental Right to follow their

Religious & Cultural Right i.e. ‘people have a right to preserve their culture’.

BAN ON JALIKATTU

The Supreme Court has announced that Animals have a right to protect their life and dignity from human interference. The Judgment banning the bull taming sport in Tamil Nadu was pronounced on 7th day of May, 2014. In its judgment Supreme Court validated the Right of Animals and Birds to live a life with dignity and honour. The Supreme Court made the Right to life of Animals and Birds an inherent and permanent right.

There are many laws in India which were in violation with the sport Jallikattu. As India is a developing country and judiciary is playing a very active and great role in its development. In the judgment passed by Supreme Court, in the case of *Animal Welfare Board of India v. A. Nagaraja & Ors.*¹, the court extended the meaning of Article 21 to Animals and Birds also. So, with regard to this particular case of bull taming sport, it means that Bulls also have a right to live with dignity and in a healthy & clean environment. By banning the bull taming sport Jallikattu, the Supreme Court has stopped the practices of kicking, beating or torturing of animals which is against their Fundamental Rights and other laws in India which protects from cruelty against animals and strives to give them a life free from human inference and excesses.

¹ (2014) 7 SCC 547.



In spite of banning of the bull taming sport in Tamil Nadu, the event was held in various places in Tamil Nadu. 2 spectators and 80 people were injured in the event of Jallikattu, one died because of bull attack and another died by cardiac shock when the bull ran towards him at M Pudar area of Tamil Nadu in April, 2017² and another incident happened at Avanipuram, Tamil Nadu in which 36 people got injured and one of them was seriously injured in the Jallikattu event held during February, 2017.³ So, it is evident from these incidents that this particular game does not only infringe the Right to life of the Animals but the Right to life of the humans also. So there was a very urgent need to stop these practices in the name of sport or game. This point has been opposed by saying that the people did it by *Volenti non fit injuria* (a doctrine of common law) i.e. willingly putting yourself in the position which can cause harm. But this also has been a recognized principle of the law and well settled by the judiciary that 'No one can take his own life to an end, even if he wants it on his own free will'⁴.

This festival is generally held in the month of January and February. Several people started protesting in the beginning of 2017 as the festival of Pongal was ahead. In 2018 the festival is going to be held from 13th January to 16th January. For the upcoming years pongal, till now,

no protests have been seen against the ban on Jallikattu.

CASE: Animal Welfare Board of India vs. A. Nagaraja & Ors. (2014) 7 SCC 547

The Supreme Court pronounced its judgment on 7th May, 2014, banning the Jallikattu sport and game practiced in Tamil Nadu as a part of their festival 'Pongal'. The Supreme Court historically extended the fundamental right to life to animals. It held that bulls have the fundamental right under Article 21 of the Indian constitution to live in a healthy and clean atmosphere, not to be beaten, kicked, bitten, tortured, plied with alcohol by humans or made to stand in narrow enclosures amidst bellows and jeers from crowds. In short, the Supreme Court declared that animals have a right to protect their life and dignity from human excesses.⁵

The studies of bull's behavior have proved that they adopt fight reaction when they are frightened and threatened. It held that bulls cannot be used either in Jallikattu or Bullock-cart races, in Tamil Nadu, Maharashtra or any other place in the country.⁶

The court pronounced its judgments relying upon Section 3, 11 (1) (a) & (m), 21 and 22 of PCA Act, Article 51(A) (g) and Article 21 of the Indian Constitution.

² Article in Hindustan Times, (www.hindustantimes.com).

³ Article in Hindustan Times, (www.hindustantimes.com).

⁴ This is the reason why attempt to suicide is punishable under section 309 of IPC, and later on

validated by the judiciary in the case of Smt. Gian Kaur vs. The State of Punjab; 1996 SCC (2) 648.

⁵ Animal Welfare Board of India vs. A. Nagaraja & Ors.; (2014) 7 SCC 547.

⁶ Animal Welfare Board of India vs. A. Nagaraja & Ors.; (2014) 7 SCC 547.



While dealing with the issue of the Validity of Jallikattu, the Supreme Court also said something regarding these things also in its judgment –

Compassion, it is also fundamental duty of every citizen to have a sense of compassion towards other living beings under Article 51A(g). By enacting this Article the Parliament has made it a duty and responsibility to every citizen that they have to be kind towards the other creatures and environment. Though under Article 48A it is also a state's policy to Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. And similar duty has also been imposed upon every citizen in the form of Article 51A(g).

Humanism, it is specified under Article 51A(h) which reads as under, 'it is the duty of every citizen to develop the scientific temper, humanism and spirit of enquiry and reform'. The focus has been made to the term Humanism in the Supreme Court. The people must try to prevent the infliction of unnecessary pain and harm to the animals and develop a sense of humanism and concern towards them and the same is also mentioned in the preamble of Prevention of Cruelty to Animals Act, 1960.

Speciesism, the term was first coined by the Richard Dudley Ryder⁷, the concept of speciesism is about the dominating behavior of human over the other species

and describes about the prejudicial behavior of the humans towards other species. The term 'speciesism' has been defined as 'the assumption of human superiority over the other creatures, leading to the exploitation of animals'⁸.

EXTENSION OF ARTICLE 21 TO ANIMALS

Now, the Right to Life under Article 21 is extended to Animals and birds also. That means animals also have a Right to live with dignity and in a clean and healthy environment. Every species is blessed with right to life and security and this have been indirectly covered under Article 21 of the Indian Constitution.

Article 21 protects life, and the word "life" has been expanded by the highest constitutional Court, so as to include all forms of life in the environment, which contains animal life also, which are necessary for human life. Hon'ble court held that "life" in context of animals does not mean, mere survival or existence or instrumental value for human beings, but also life with some intrinsic worth, honour and dignity. It in addition enlisted these five internationally recognized freedoms for animals, such as:

- i. Freedom from hunger, thirst and malnutrition;
- ii. Freedom from fear and distress;
- iii. Freedom from physical and thermal discomfort;

⁷ Richard D. Ryder is a British writer, psychologist, and animal rights advocate has done many works on the attitude of animals.

⁸ Oxford English Dictionary.



- iv. Freedom from pain, injury and relief;
- v. Freedom to express normal patterns of behavior.⁹

But the scope of application of the judgment is limited, when such animal's life is necessary to be taken for the survival of human life.

By this judgment we can say that our society is shifting from anthropocentric approach to eco-centric Approach. Anthropocentric approach is concerned with the human interests only and giving them preference whereas the eco-centric approach focus on the needs of nature. The Supreme Court following the eco-centric approach has extended the Article 21 of the Indian Constitution to the animals also. Now, treating animals cruelly is against the public morale and public order.¹⁰

So, the Right to life of the animals has been confirmed but subject to the human necessity. Therefore the animals have a right against inflicting unnecessary pain and suffering. But this game called Jallikattu cannot be exercised without inflicting pain, harassment and unnecessary humiliation to the bulls that does not do anything important but only adds to the human enjoyment, hence, the Supreme Court took the decision in favour of the animals and banned the game or sport.

OTHER LAWS

The judgment banning the sport Jallikattu has been relied upon many laws. Article 21 is the milestone among them. Anything coming in the way of Article 21 would be straight away abolished. Because Article 21 i.e. Right to life is an absolute right and it cannot be abrogated at any cost. Reliance has also been made to the Article 51A(g) of the constitution of India, Section 3, 11(1) (a) & (m) and 22 of the Prevention of Cruelty to Animals Act, 1960.



Article 51A (g) was introduced by 42nd amendment act, 1976 to the Constitution of India in which duty was imposed to every citizen in the form of Fundamental Duties. It reads as under, 'to protect & improve the natural environment including forest, lakes, rivers & wildlife and to have compassion for living creatures.' Court has spent its many time on thinking 'how to induce people to have compassion towards animals?' and the answer was found in the Article 51A (g) of the Indian constitution. The word 'wildlife' in the Article is related to every animal and this Article puts a duty on every person to have and generate a sense of compassion to animals. This Article is basically for the protection of the natural environment which includes forests, lakes, rivers, wildlife etc.

⁹ Thelawblog.in; right-to-life-for-animals-changing-from-anthropocentric-to-eco-centric-jurisprudence.

¹⁰ Jumbo Circus v. Union of India, June 6, 2000,O.P Nos. 155, 1066, 2187, 1141, 5086,

6378, 6148, 6032, 2029, 5616, 486, 2636, 6229, 8173, 9483, 3845, 430, 6352, 2460 & 11729 of 1999.



*The Animal Welfare Board of India vs. A. Nagaraja & Ors.*¹¹ initially was the case of infringement of Prevention of cruelty to Animals Act, 1960 mainly of the Section 3, 11(1) (a) & (m) and 22.

Section 3 of Prevention of cruelty to Animals Act, 1960 reads as under, ‘Duties of persons having charge of animals: It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.’ The Organisers of these sports like Bullock-cart race and Jallikattu have the charge of such animal. They take an active role in organization of these sports which causes pain, fear and suffering to the bulls and which is clearly against the Section 3 of the Prevention of cruelty to Animals Act, 1960.

Section 11 (1) (a) & (m) of Prevention of cruelty to Animals Act, 1960 reads as under, ‘If any person, beats, kicks, overrides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes, or being the owner permits, any animal to be so treated, solely with a view to provide entertainment; shall be punishable, under this Act.’ Therefore, any act which comes under this Section is prohibited unless specifically permitted under this Act. Jallikattu is a game where bulls are being climbed up, kicked, grabbed etc. and these activities are evidently in contradiction with the

Prevention of cruelty to Animals Act, 1960.

Section 22 of the Prevention of cruelty to Animals Act, 1960 places restriction on exhibition and training of performing animals, which reads as under, ‘Restriction on exhibition and training of performing animals: No person shall exhibit or train (i) any performing animal unless he is registered in accordance with the provisions of this Chapter; (ii) as a performing animal, any animal which the Central Government may, by notification in the official gazette, specify as an animal which shall not be exhibited or trained as a performing animal.’

Performing Animals Rules, 1973 define ‘performing animal’ to mean any animal which is used at or for the purpose of any entertainment to which public are admitted through sale of tickets. Jallikattu, Bullock-cart races, it was contended by the state, are conducted without sale of tickets and hence Section 22 of the PCA Act would not apply. It may be noted that when Bull is specifically prohibited to be exhibited or trained for performance, the question whether such performance, exhibition or entertainment is conducted with sale of tickets or not, is irrelevant from the point of application of Sections 3 and 11(1) of the PCA Act.¹²

Therefore, it not only violate Section 3, 11 (1) (a) & (m) and 22 of the Act but also the notification issued by the Central government in the official gazette dated 11.07.2011 in which bulls were involved

¹¹ (2014) 7 SCC 547.

¹² (2014) 7 SCC 547.



in the list of animals which are banned to act as a performing animal from training and exhibition.

RIGHT TO LIFE VERSUS CULTURAL RIGHTS

Firstly, it has to be decided that 'whether Jallikattu comes within the ambit of culture'. Under Article 29(1) of the Constitution of India, people have a right to preserve their culture. Through this right, people can take any measures to protect their culture. The question is 'Whether the sport Jallikattu is a part of the culture of the Tamil Nadu or not?' As said in the judgment of the Supreme Court itself, Jallikattu culture sport has an historical and religious importance in the celebration of the festival Pongal in Tamil Nadu and hence it is part of the culture of people of Tamil Nadu.

It is a well settled principle of law that whenever there is a conflict between right to life and cultural rights, the cultural rights must yield. The judiciary has also validated this principle several times. The Supreme Court again relied on this principle in the present case, i.e. *Animal Welfare Board of India vs. A. Nagraja & Ors.*, and banned the Jallikattu event which was a part of the culture of the people in the celebration of the Pongal festival, because it is evidently against the Right to life of the Animals.

The sustainment of the Jallikattu infringes Right to life of Animals whereas the banning of it infringes the Cultural Rights of the people; therefore, two Fundamental Rights were in

question. There was a rivalry between Right to life under Article 21 and Cultural Rights under Article 29(1) of the Indian Constitution. But because the Right to life is an absolute right and it cannot be taken away or abrogated at any cost and in any circumstances, therefore, following this approach the Supreme Court banned and prohibited the exercise of Jallikattu.

Right to religion, though a Fundamental right but still it is not an absolute right. The Supreme Court has observed in the case of *Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj vs. State of Gujarat*¹³, 'Enjoyment of one's rights must be consistent with the enjoyment of right also by others. One Fundamental Right of a person may have to co-exist in the harmony with the exercise of another Fundamental Right by others'. The judiciary is well versed with the importance of Right to life which was extended to animals also in this case and also with the importance of Culture in the life of the people. But there is an approach which says that the Cultural Rights also important and their own sense. The court considered the approach from both ends and after applying its judicial mind, the Supreme Court rightly came to the conclusion of banning the Jallikattu.

¹³ AIR 1974 SC 2098; (1975) 1 SCC 11.