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TURN OF TABLES : AN OVERVIEW OF THE LEGALITY OF THE JALLIKATTU PRACTICE

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I. ABSTRACT

Recently, the Jallikattu Practice performed in the State of Tamil Nadu had a rollercoaster ride. Jallikattu in Tamil Nadu, Bullock-cart racing in Maharashtra, and Kambala in Karnataka are culturally infused bull-taming sports performed in these states. Their legality has been a subject of challenge for years now. The apparent conflict between the infliction of harm on animals and humans involved, and the cultural significance of the sport/s has left the judiciary in hot water. Despite this, the judiciary has finally derived some crucial conclusions in this regard.

But to grasp the spirit of the issue, understanding the legal background stands as a requisite. This Article aims at analyzing the timeline of events and providing an overview of the legality of the Jallikattu practice. From the basic understanding of what the practice is to the analysis of the historical decision recently held in the *Animals Welfare Board of India v. Union of India*², this Article aims at providing an understanding of all.

All this started with a Writ Petition filed against this conventional practice in 2014, which eventually got the Practice struck down. However, protests by the performers reignited the issue. The final verdict has been at the long haul ever since. But the wait is finally over, with the hoped-for recent judgment of a Constitutional bench of the Apex court substantiating their conclusions and turning the tables.

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² *The Animal Welfare Board of India and Ors. V. Union of India and Anr.*, WP (Civil) No.23 of 2016.

II. KEYWORDS

Jalikkattu, Apex Court, Legality, Harm on Animals, Article 21.

III. TURN OF TABLES : AN OVERVIEW OF THE LEGALITY OF THE JALLIKATTU PRACTICE

A. INTRODUCTION

In a set of decisions, the Supreme Court did away with its precedence held in the known A. Nagaraja case³. A constitutional bench of the Apex Court recently held that the amendments made by the states of Tamil Nadu, Karnataka, and Maharashtra are in alignment with the Prevention of Cruelty to Animals Act, 1960⁴ (referred to as PCA Act) and are not unconstitutional. This decision was given in the case of The Animal Welfare Board of India and Ors. v. Union of India and Anr.⁵ And has seen a mixed response from the public due to its controversial nature. Some believe the court couldn't justify the opposite claims against the precedence, while others praise this decision for its new outlook. This judgment prompted a turn of tables by authorizing these states for the subsequent performance of their culture-based animal sports. Jallikattu or Bullock Cart race, or Kambala, are the culturally enriched bull-taming sports performed in the states of Tamil Nadu, Maharashtra, and Karnataka, respectively. Jallikattu is a bull-taming sport associated with the Pongal Harvest festival wherein a person tries to take control over an incited bull with silver and gold coins attached on the horn as the prize money.⁶ Kambala is a bull-racing sport performed to thank God for a good harvest. Herein, two bulls are attached to a plough for the racing purpose.⁷ Although these sports were held

³ Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.

⁴ Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament 1960 (India).

⁵ *Id.* at 1.

⁶ HINDUSTAN TIMES, https://www.google.com/amp/s/www.hindustantimes.com/india-news/jallikattu-ban-protests-all-you-need-to-know-about-the-festival-sc-ruling/story-Qf3nZRE24637qlapp4hwhK_amp.html (last visited June 18, 2023).

⁷ KARNATAKA.COM, <https://www.google.com/amp/s/www.karnataka.com/festivals/kambala/amp/> (last visited June 18, 2023).

contrary to the parent act and the Constitution previously, recently, the Supreme Court's change of mind in this regard is evident.

B. BACKGROUND

In 2014, a Division bench of this court held bull-taming sport of the states of Tamil Nadu and Maharashtra contrary to the prime provisions of the PCA, Act. It was outlawed by Section 3⁸ which obligates the cattle owner to take reasonable measures to ensure that any unnecessary pain or suffering is in absentia. The other provisions are Section 11(1)(a)⁹ and (m)¹⁰, which debar infliction of torture on the animal and incitement of the animal to fight, respectively. In dissonance with the Constitution, Articles 51(a)(g)¹¹ and (h)¹² read with Articles 14¹³ and 21¹⁴ were considered breached. At that time, Jallikattu in Tamil Nadu was regulated by a state act which, due to its repugnancy with the Central act, was considered violative of Article 254(1)¹⁵ of the Constitution of India.

Soon after, in 2016, a notification (later withdrawn), was released by the authorized Ministry of Environment, Forest and Climate Change in relation to section 22¹⁶ of the parent act, wherein although bulls were not permitted to be trained as performing animals, but culturally infused sports were left out of its preview. A condition provided thereto was to make and take measures to minimise the sufferings of the bulls used in the gameplay. The legality of this notification was challenged in a series of writ petitions with the outcry that the notification is violative of the precedence set.

⁸ Prevention of Cruelty to Animals Act, 1960, § 3, No. 59, Acts of Parliament, 1960 (India).

⁹ Prevention of Cruelty to Animals Act, 1960, § 11 cl. 1(a) No. 59, Acts of Parliament, 1960 (India).

¹⁰ Prevention of Cruelty to Animals Act, 1960, § 11 cl. 1(m), No. 59, Acts of Parliament, 1960 (India).

¹¹ INDIA CONST. art. 51, § A, cl. G.

¹² INDIA CONST. art. 51, § A, cl. H.

¹³ INDIA CONST. art. 14.

¹⁴ INDIA CONST. art. 21.

¹⁵ INDIA CONST. art. 254, § 1.

¹⁶ Prevention of Cruelty to Animals Act, 1960, § 22, No. 59, Acts of Parliament, 1960 (India).

Nevertheless, the state of Tamil Nadu¹⁷, Maharashtra¹⁸ and Karnataka¹⁹ made their subsequent state amendment acts intending to legalize the performance of their bull-taming sports in accordance with their personal rules and to cut down on the pain and suffering of the animals involved. These amendments were also given the presidential assent after that.

However, the state amendment of Maharashtra received a stay by the High Court of Bombay in a PIL case which was then brought to the Apex Court under Appellate jurisdiction. A division bench of the Apex Court referred this case to the present constitutional bench with Five crucial questions demanding substantiated answers from this bench. These questions were predominantly about the constitutional validity of these state amendment acts in reference to Articles 14, 21, 29, 48, 51(A)(G), 51(A)(H), Repugnancy under Article 254(1), power of the state under Entry 17 of List 3 under 7th schedule²⁰ and the standpoint in reference to the A. Nagaraja case.

C. WHAT WERE THE CENTRAL PLEADINGS?

The counsel for petitioner(s) challenged the Presidential assent provided to these state amendment acts as they believed them to be half-truths. They expressed their concern regarding the absence of the main rules and regulations regulating this sport during the time the Presidential assent was sought. Non-disclosure of complete information would lead to failure to grasp the true intention and spirit of the amendments hence, nullifying the basis of the assent.

The other proposition was around the unfit nature of bulls involved in racing sports because they are not naturally inclined towards performing sports like racing. They believe that although the state amendments aim at curtailing the pain and suffering of

¹⁷ The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, No. 1, Acts of Tamil Nadu State Legislature, 2017 (India).

¹⁸ The Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017, No. 45, Acts of Maharashtra State Legislature, 2017 (India).

¹⁹ The Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017, No. 2, Acts of Karnataka State Legislature, 2018 (India).

²⁰ INDIA CONST. sched. 7.

the animal, the inherent nature of the sport has not been changed, and the harm is inevitable. This also raises questions regarding the attempt of the states to override the effect of the parent act and A. Nagaraja case because the base defect/s has not been removed in the present amendment acts.

Moreover, the counsel/s also contested these state amendments as 'colourable legislations.' The doctrine of Colourable legislation is derived from the Latin phrase "Quando aliquid prohibetur ex directo, prohibetur et per obliquum" which says: 'What cannot be done directly, should also not be done indirectly.' Herein, the counsel contended that the state is in direct contravention of the precedence set and the Constitution, and these amendment acts are aimed at overriding their effect without curing the primary defects.

The basis of decision of A. Nagaraja was also highlighted which was, "The preparation of the bulls for these sports entail, but not limited to, ear cutting/mutilation, twisting of tail, resulting in fracture and dislocation of tail bones. It was also stated that 95% of the bulls that were used in the process of participation in these sports were soiled with faeces from below the base of their tails and across the large part of their hindquarters." Thereafter, breach of Constitutional rights was brought into question. Regards to cardinal Articles as mentioned above was given wherein animal rights were contested to be a part of 'person' in Article 21. These state amendments were considered arbitrary due to absence of much proof of their cultural significance and intelligible differentia on choosing bulls only as performing animals for this sport, hence, it breaches Article 14 as well.

Lastly, state's power under Entry 17 of List 3 was challenged. Herein, it was submitted that state has no power to make such amendment acts since they conflict harm on the animal rather than abiding by the wording of the entry i.e., 'Prevention of Cruelty to Animals' hence, debarring the state from regulating the same.

D. WHAT DID THE COURT HOLD?

After due submissions, the bench went ahead in a systematic manner by providing substantial reasoning for every standpoint and moving ahead only after conclusive decisions could be made. Considering the inclusion of Animal rights within the ambit of fundamental rights, the court couldn't ensure it under Article 21 due to two-fold reasons. Firstly, there is absence of any precedence in this regard and secondly, brining bulls within the protected mechanism wouldn't be judicially sound. Expounding on the same, an apt illustration was provided.

*"We have our doubt as to whether detaining a stray bull from the street against its wish could give rise to the constitutional Nagaraja writ of habeas corpus or not."*²¹ Hence, fundamental rights cannot be invoked by animals at the judiciary level as 'humans'.

The court upheld the decision in A. Nagaraja as righteous and considered their decision to be parallel over contrary. They adjudicated that, in the aftermath of the Amendment, a prominent change is apparent which aims at lopping the side-effects of this bovine sports hence, this is permissible in law now.

*"We, however, cannot proceed in exercise of our judicial power on the assumption that a law ought to be struck down on apprehension of its abuse or disobedience."*²²

Answering with regards to Doctrine of Unreasonableness and Arbitrariness under Article 14, the PCA, Act itself allows for minimal hurt to sentient animals for entertainment purposes like horse racing and human help like carrying goods. Hence, the main intention behind the act can rightly be assumed to be 'regulation of the intensity of pain' over 'allowance of infliction of pain'. Which, in this regard has been minimized. Pointing to another contention of the petitioner/s, the Doctrine of Pith and Substance has not been invalidated here. Doctrine of pith and substance is an important test to determine

²¹ *Id.* at 1.

²² *Id.* at 1.

whether the pith and substance or the main subject matter of the legislation is within their bounds of power or not.

“The question whether the Legislature has kept itself within the jurisdiction assigned to it or has encroached upon a forbidden field is determined by finding out the true nature and character or pith and substance of the legislation which may be different from its consequential effects.”²³

According to the bench, the states are licitly deriving authority to regulate bovine sports from Entry 17 of List 3 because the main contention of these amendments is to accentuate the application of the PCA, Act after giving thoughtfulness to cultural significance. Furthermore, concerning the legality of these amendments in pursuance to the A.Nagaraja case, it was held that since apt alterations have been made by the states’ amendment acts, the prominent defect of inflicting unnecessary pain and suffering has been cured. A balance has been struck between the human need and intensity of harm done to bovine animals. Lastly, addressing the issues of incidents and their subsequent harm caused to the humans involved in playing and viewing such sports, the Doctrine of *Volenti Non-Fit Injuria* was brought into play.

IV. CONCLUSION

Summarizing the ratio decidendi of the judgment, the bench held that the State is rightly empowered to regulate these culturally infused bovine sports under Entry 17 of List 3 since these acts aim at minimising pain and suffering of the animals involved.

Secondly, the presidential assent sought was considered legal because the absence of rules contended by petitioner/s doesn’t impact the depiction of the true intention of the assented amendment acts.

Thirdly, the question of law involved in reference to the PCA, Act is not ‘whether harm can be caused to bovine animals during performance of bull-taming sports?’ but ‘at what intensity pain and suffering can be caused?’ which has been minimized by the states.

²³ *Id.* at 1.

Fourthly, due regards have been given to the bull-taming sport by Tamilians for years now but to consider it as an integral part of the culture or not is debatable. It requires extensive research work, which cannot be performed by the judiciary.

Fifthly, these acts do not go in contravention to Article 51(a)(g) and (h), 21 and 14 of the constitution of India.

Lastly, the direct contravention with A. Nagaraja case doesn't stay erected due to substantial changes brought in by the state amendment acts now.

All the decisions taken herewith, would guide Tamil Nadu, Maharashtra and Karnataka.

The conclusions derived by the Court are based on good faith and logic. Giving a controversial issue a different standpoint is commendable. The bench has rightly substantiated their conclusions with enough proof and evidence. Nevertheless, every rose has a thorn. A few important facts were left out of the purview of the judgement. Firstly, the bench did not take into account the practicality of these bull-taming sports at ground level. People perform these sports in a very unorganised and personalised manner, which might make it fairly problematic for the State authorities to bring them under the framed rules and regulations. Secondly, the moral conscience of any individual would not consider the performance of these sports as virtuous. The pain, as explained by the petitioner(s), inflicted on these bovine animals doesn't seem sound. A balance between the cultural significance of the sport and its subsequent infliction of cruelty and pain seems to be absent. Especially in light of the absence of concrete evidence for such cultural significance. Allowing such a controversial practice is going to be a target of many, particularly in the present times with such a wide-awake youth. Since Tamil Nadu's government legalised Jallikattu in 2017, at least 22 bulls and 57 humans have died, and more than 32 bulls and 3,632 humans have been injured in events organised throughout the state.²⁴ Turning a blind eye to these excruciating statistics might not be a

²⁴ PETA, <https://www.petaindia.com/features/2020-investigation-confirms-that-jallikattu-is-deadly/> (last visited June 18, 2023).

rational way forward. Lastly, to truly understand the Status quo in terms of harm infliction on humans and animals involved, an extensive research work by apt authority is an urgent necessity. Central government in this regard, should take measures to conduct research with transparency.