



## ANIMAL CRUELTY, BOVINE SPORTS CULTURE AND ANIMAL RIGHTS: THE PRISM OF INDIAN CONSTITUTIONALISM

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### ABSTRACT

Recently, the Supreme Court of India in its searchlight case has ordered an exhaustive judgment relating to culture and tradition vis-à-vis prevention of cruelty to animals within the constitutional framework where a five-judge constitutional bench was formed to find out the constitutional validity of three state legislations legalizing bovine animals cart races passed by those three State legislative assemblies. Here, three States defended for their Statutes relating to bovine sports were part of their culture and tradition. In 2014, the Court's landmark judgment recognized that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. But in present case, the Court opined that Jallikattu, Kambala and Bull Cart Race as introduced by the Amendment Acts of the three States had undergone substantial change in the manner they were used to be practiced or performed. So, the factual conditions of the 2014's judgment cannot be equated with the present situation and in the changed circumstances, absolutely no pain or suffering would be inflicted upon the bulls while holding these sports. This new move by the judiciary has generated lots of hue & cry among animal rights activists and legal experts as the court categorically declared that animals have no rights under the Constitution and the law makers have recognized the rights of animals as part of the social and cultural policy. This article is to find out the origin of culture and tradition about animal sports and the prevention of cruelty to animal from international law and constitutional law perspective.

**Keywords:** *prevention of cruelty to animal, performing animals, bovine sports, Constitution of India, culture & tradition*

### I. Introduction

First time a constitutional bench<sup>1</sup> was set up by the Supreme Court of India to examine about the cruelty against animals within the purview of the constitutional framework. This five-judge constitutional bench delivered an exhaustive judgment relating to constitutional validity of three state legislations legalizing bovine animal's cart races passed by three State legislative assemblies and subsequently got the assent of the President of India. The said judgment has very minutely analyzed the equation relating to prevention of cruelty towards animals' vis-à-vis culture and tradition within the constitutional framework. This case is a landmark in global sense also where the apex judiciary has ransacked all the earlier precedents developed by the same

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<sup>1</sup> *Animal Welfare Board of India v. Union of India*, Writ Petition (Civil) No. 23 of 2016.

court and established an Indian standard in international level. Again, this latest 2023's judgment is a reverse of the 2014's landmark decision on animal rights precisely on the perspective of cattle race traditions and performing animals.

## II. A Study on Performing Animals Since 2011

On 11th July, 2011, the Ministry of Environment and Forest issued a notification<sup>2</sup> in exercise of the powers conferred by Section 22 of the Prevention of Cruelty to Animal Act, 1960 that animals like (1) Bears, (2) Monkeys, (3) Tigers, (4) Panthers, (5) Lions, (6) Bulls should not be exhibited or trained as performing animals. The issue came to the apex court as Jallikattu or bullock cart races were very much in culture and tradition in many states particularly Tamil Nadu and Maharashtra. A two-Judge Bench was required to examine the rights of animals under the Constitution of India and existing laws, culture, tradition, religion and ethology. Finally, the Supreme Court in *Animal Welfare Board of India v. Union of India*, a landmark judgment<sup>3</sup> found that the Tamil Nadu Regulation of Jallikattu Act, 2009 was repugnant to Prevention of Cruelty to Animal Act, 1960, a welfare legislation, was held constitutionally void, being violative of Article 254(1) of the Constitution of India. Again, on 7th January 2016, the Ministry of Environment, Forest and Climate Change issued a notification prohibited exhibition or training of bulls as performing animals. However, it was specified in this notification that bulls might be continued to be trained as performing animals at events such as Jallikattu in Tamil Nadu, Kambala in Karnataka and Bullock Cart Races in Maharashtra, Punjab, Haryana, Kerala and Gujarat in the manner by the customs of common community or practice traditionally in any part of the country. Though certain exceptions were made in the 2016's Notification to reduce the pain and suffering of bulls while being used in such sports but a batch of writ petitions<sup>4</sup> were instituted before a Division Bench the Supreme Court of India questioning the legality of the said notification in compliance with the directions of the case of *A. Nagaraja Case*.<sup>5</sup> In *Compassion Unlimited Plus Action vs. Union of India*<sup>6</sup> case, several writ petitions under Article 32 for quashing Notification published by the Union of India on 7<sup>th</sup> January, 2016 and to ensure the

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<sup>2</sup> G.S.R. 528(E) [F.No.27-1/2011-AWD].

<sup>3</sup> *Animal Welfare Board of India v. A. Nagaraja* (2014) 7 SCC 547 Para 77 (11).

<sup>4</sup> W.P. (C) Nos. 23 of 2016, 24 of 2016, 25 of 2016, 26 of 2016, 27 of 2016, 88 of 2016, 1059 of 2017, 1011 of 2017, 1188 of 2017, 1193 of 2017, SLP(C) No.3528 of 2018 and SLP(C) Nos. 3526-3527 of 2018.

<sup>5</sup> *Animal Welfare Board of India v. A. Nagaraja* (2014) 7 SCC 547.

<sup>6</sup> Writ Petition (Civil) No.24 of 2016, SC.

compliance with the law laid down in *Animal Welfare Board of India v. A. Nagaraja*<sup>7</sup> case. But Attorney General submitted that the writ petitions were not maintainable under Article 32 of the Constitution of India as the fundamental rights of the Animal Welfare Board and other petitioners were in no way affected and the Court did not totally prohibit the participation of bulls in the Jallikattu but desired that care should be taken so that the bulls were not meted with cruelty. On 12th January 2016, a two-Judge Bench stayed the Notification issued by the Ministry of Environment Forest and Climate Change dated 7th January, 2016, until further orders passed as an interim measure.<sup>8</sup> In the meantime few states already amended the Prevention of Cruelty to Animals Act, 1960 at state level and received Presidential assent like the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, the Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017 and the Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017.

### III. The Matrix of the Amendments by Three States

A Division Bench passed an order for constituting five judges Constitution Bench to decide the matter on 2 February, 2018 and formulated five questions to be answered by the Constitution Bench like: (1) Is the Tamil Nadu Amendment Act referable, in pith and substance, to Entry 17, List III of the Seventh Schedule to the Constitution of India, or does it further and perpetuate cruelty to animals; and can it, therefore, be said to be a measure of prevention of cruelty to animals? Is it colourable legislation which does not relate to any Entry in the State List or Entry 17 of the Concurrent List? (2) The Tamil Nadu Amendment Act states that it is to preserve the cultural heritage of the State of Tamil Nadu. Can the impugned Tamil Nadu Amendment Act be stated to be part of the cultural heritage of the people of the State of Tamil Nadu so as to receive the protection of Article 29 of the Constitution of India? (3) Is the Tamil Nadu Amendment Act, in pith and substance, to ensure the survival and well-being of the native breed of bulls? Is the Act, in pith and substance, relatable to Article 48 of the Constitution of India? (4) Does the Tamil Nadu Amendment Act go contrary to Articles 51A(g) and 51A(h), and could it be said, therefore, to be unreasonable and violative of Articles 14 and 21 of the Constitution of India? (5)

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<sup>7</sup> (2014) 7 SCC 547.

<sup>8</sup> *Compassion Unlimited Plus Action v. Union of India*, Writ Petition (Civil) No.24 of 2016.

Is the impugned Tamil Nadu Amendment Act directly contrary to the judgment in *A. Nagaraja* (2014), and the review judgment dated 16th November, 2016 in the aforesaid case, and whether the defects pointed out in the aforesaid two judgments could be said to have been overcome by the Tamil Nadu Legislature by enacting the impugned Tamil Nadu Amendment Act? The present case was mainly to answer these five constitutional questions. Here the apex court categorically differentiated between the Prevention of Cruelty to Animals Act, 1960 with three amendment Acts made by Tamil Nadu<sup>9</sup>, Karnataka<sup>10</sup> and Maharashtra<sup>11</sup> in columnar form on the ground of scope and Sections 2, 3, 11, 22, 27 and more specifically Section 28A as inserted all the three amended statutes. All the three bovine sports, after Amendment, assumed different character in their performance and practice and for those reasons the court did not accept the petitioners' argument that the Amendment Acts were merely a piece of colourable legislation with cosmetic change to override judicial pronouncement. But in opinion of the Supreme Court, no irrational classification as regards this bull sports had been made by the legislature so as to attract the mischief which Article 14 of the Constitution of India seeks to prevent. The validity of a legislative Act can also be negated on the ground of it being unreasonable. Here the Supreme Court questioned why should bulls be permitted to undertake such activities – which are apparently involuntary and subject these sentient bovine species to pain and suffering? The Horse racing was allowed under Performing Animals (Registration) Rules, 2001. Horse was also a sentient animal. Here, the focus shifted from causing pain and suffering to the degree of pain and suffering to which a sentient animal was subjected to while being compelled to undertake certain activities for the benefit of human beings. Finally, the Supreme Court answered all the five questions very categorically as framed earlier, like: (1) The Tamil Nadu Amendment Act is not a piece of colourable legislation. It relates, in pith and substance, to Entry 17 of List III of Seventh Schedule to the Constitution of India and would not come within the mischief sought to be remedied by Sections 3, 11(1) (a) and (m) of the 1960 Act. (2) Jallikattu is a type of bovine sports though in *A. Nagaraja* (2014) case, the Division Bench found the cultural approach unsubstantiated and concluded that such activities offended Sections 3 and 11(1)(a) and (m) of the 1960 Act. But the Amendment Act read with the Rules seek to substantially minimize the

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<sup>9</sup> The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017.

<sup>10</sup> The Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017.

<sup>11</sup> The Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017.

pain and suffering and continue with the traditional sports. The Amendment having received Presidential assent, the court do not think there is any flaw in the State action. Jallikattu as bovine sports have to be isolated from the way they were earlier practiced and organizing the sports itself would be permissible, in terms of the Tamil Nadu Rules. (iii) The Tamil Nadu Amendment Act is not elatable to Article 48 of the Constitution of India but in pith and substance the Act is relatable to Entry 17 of List III of the Seventh Schedule to the Constitution of India. (4) The Tamil Nadu Amendment Act does not go contrary to the Articles 51-A (g) and 51-A(h) and it does not violate the provisions of Articles 14 and 21 of the Constitution of India. (5) The Tamil Nadu Amendment Act read along with the Rules framed in that behalf is not directly contrary to the ratio of the judgment in the case of *A. Nagaraja (2014)* case and the defects pointed out in the judgment have been overcome by the State Amendment Act read with the Rules made in that behalf.

#### **IV. Laws for Prevention of Cruelty to Animals**

The Supreme Court in 2014's Jallikattu Case extended the rights guaranteed under Article 21 of the Constitution to all living beings. The extended protection of right to life was to allow all species a set of rights according to international standards. It was observed in the case that animals also have honor and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks. Every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. The Supreme Court of India explained life of the non-human species specifically animal beings. The subject 'Prevention of cruelty to animals' got a very important place in Indian Constitution as Centre, State and Municipality all have the power to make law. It is under Entry 17 of the Concurrent List in the Schedule VII of the Constitution of India and has been allotted to both State as well as Centre to legislate law on the said matter. This same item was in Entry 22 also at the Concurrent List of the Government of India Act, 1935. After the 74th Constitutional Amendment in 1992, the subject of 'Prevention of cruelty to animals has been vested to Municipal Authority of the local government as per Schedule XII under Article 243W of the Constitution.

## V. Rights of Animals Within Constitutional Framework

During 2023, of course, the animals cannot demand their right in the same way human beings can assert for bringing a legislation, but according to the recent judgment of the Supreme Court of India<sup>12</sup>, as part of the social and cultural policy the law makers have recognized the rights of animals by essentially imposing restriction on human beings on the manner in which they deal with animals. But earlier the same Supreme Court extended the rights guaranteed under Article 21 of the Constitution to all living beings. The extended protection of right to life was to allow all species a set of rights according to international standards. It was observed in the case that an animal also has honour and dignity which it cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks. Every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity.<sup>13</sup> In *Ramlila Maidan*<sup>14</sup> case it was held that the Constitution does not merely speaks for human right protection. The catena of judgments also speaks of preservation and protection of man as well as animals, all creatures, plants, rivers, hills and environment. Our Constitution professes for collective life and collective responsibility on one hand and individual rights and responsibilities on the other hand.<sup>15</sup> Even all the birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages for the purposes of their business or otherwise.<sup>16</sup> The High Court of Gujarat realized that cattle, like human beings, possess life in them. According to the court, even an animal has a right to say that its liberty cannot be deprived except in accordance with law. There are many enactments which have recognized rights of the animals.<sup>17</sup>

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<sup>12</sup> *Animal Welfare Board of India v. Union of India*, Writ Petition (Civil) No. 23 of 2016, Civil Original Jurisdiction, Supreme Court of India, Para 23.

<sup>13</sup> *Animal Welfare Board of India v. A. Nagaraja* (2014) 7 SCC 547.

<sup>14</sup> In *Ramlila Maidan Incident*, Suo Motu W.P. (CRL.) No. 122 of 2011, Criminal Original Jurisdiction, the Supreme Court of India.

<sup>15</sup> *Ibid.*, para 18.

<sup>16</sup> *People for Animals v. Mohazzim*, CrI. 2015(3)RCR (Criminal) 94.

<sup>17</sup> *Mahisagar Mataji Samaj Seva Trust v. State of Gujarat*, Writ Petition (PIL) No. 173 of 2011, In the High Court of Gujarat at Ahmedabad.

## V. Indian Judiciary on Performing Animals

Indian judiciary has been active in protecting performing animals from human entertainment. In *Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai*<sup>18</sup>, a Public Interest Litigation brought the plight of the horses and ponies used for victorias and horse carriages in the city of Mumbai. The horses were forced to overwork regularly. They suffered from various injuries and did not have proper stables or shelters to live. The instances of accidents suffered by the horse carriages/victorias used for joyrides were also pointed out in the Petition. It was also submitted, that the provisions of the Prevention of Cruelty to Animals (Licensing of Farriers) Rules, 1965 were violated and no horse or pony was registered under the Performing Animals (Registration) Rules, 2001. The Court held that the use of horse driven carriages was completely illegal and it was not public conveyance within the meaning of the Bombay Public Conveyance Act, 1920 and should be completely stopped on expiry of a period of one year. The Court directed the State Government for rehabilitation scheme of the families associated with the business of running carriages driven by the horses in the city of Mumbai and to formulate a scheme for rehabilitation of the horses used for plying victorias in the city of Mumbai. In, *The Society for Prevention of Cruelty to Animals v. State of Kerala*<sup>19</sup>, the petitioner approached before the High Court of Kerala at Ernakulam seeking direction to respondent to ensure that the provisions of the Performing Animals (Registration) Rules 2001 had been enforced with regard to captive elephants used for rides and also directions that respondent permitting elephant rides using captive elephants without taking registration under the Performing Animals (Registration) Rules 2001 was arbitrary and illegal. Respondent submitted that the Captive Elephants were managed under the Kerala Captive Elephants (Management and Maintenance) Rules 2012 and respondent also directed the concerned officers by letter to stop using of elephants under their jurisdiction as performing animals till the elephants were registered under the Performing Animals (Registration) Rules, 2001. The Court found that the authorities were vigilant in the matter. However, they should ensure about proper implementation of the Performing Animals (Registration) Rules, 2001 and should take

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<sup>18</sup> Public Interest Litigation No.36 of 2011, Ordinary Original Civil Jurisdiction, In the High Court of Judicature at Bombay.

<sup>19</sup> W.P.(C) No.10424 of 2014

appropriate actions in the said matter. In *N.R. Nair v. Union of India*<sup>20</sup>, the main challenge in several appeals by special leave from the judgment of the Kerala High Court was about the validity of Section 22 of the Prevention of Cruelty to Animals Act, 1960 and the Notification<sup>21</sup> under Section 22 to the effect that no person should train or exhibit any animals specified therein, namely, bears, monkeys, tigers, panthers and lions. This Notification was challenged by the Indian Circus Federation before the High Court of Delhi. After the issuance of the Notification, a corrigendum was issued whereby 'dogs' were excluded from the said Notification. Again, the said Notification was challenged in the Kerala High Court by present Petitioner, but the High Court upheld the validity of the said Notification. Against this High Court judgment, the Appellant argued that no direction could be issued depriving the appellants of the ownership of the animals. The Court did not go into this question, but the circus owners were prohibited from either training or exhibiting any of the five animals referred to in the impugned Notification. The Supreme Court agreed with the decision of the High Court that in exercise of judicial review neither the High Court nor this Court could go into the correctness of the decision of the Government in issuing the impugned Notification which was within the parameters of the Prevention of Cruelty to Animals Act, 1960. In *Indian Circus Federation vs. Union of India*<sup>22</sup>, the main petition challenged the notification of the Ministry of Environment and Forests dated 2<sup>nd</sup> March, 1991 issued under Section 22 of the Prevention of Cruelty to Animals Act, 1960, though in the said notification five animals, namely, . bears, monkeys, tigers, panthers and dogs, were banned from being trained or exhibited and by a subsequent notification ban on training and exhibiting of dogs was withdrawn. The challenge was made mainly on grounds that the ban had been imposed without being adequate material available with the Government justifying the necessity of imposing the ban and Government had failed to apply mind to decide regulation or framing of the rules. The impugned notification was intended to ban circus only without bringing zoos within its ken, which was discriminatory. The notification was stayed by Delhi High Court by means of an interim order. Subsequently the Government of India constituted a committee which strongly felt that the circuses failed to achieve the standards of housing and upkeep of animals to provide even better standards in future. The Committee was

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<sup>20</sup> Appeal (Civil) 3609 - 3620 of 2001, the Supreme Court of India.

<sup>21</sup> Earlier on 2nd March, 1991 a Notification under Section 22 was issued banning training and exhibition of bears, monkeys, tigers, panthers and dogs.

<sup>22</sup> 1999 (48) DRJ 171 Delhi High Court.

also not convinced that the circuses contributed to the conservation of endangered species. According to the Committee, zoos played an important role in ex-situ preservation of species particularly conservation of rare and endangered species whereas circuses had captured, transported and trained animals for rehearsal and performance. Based on the report of the Committee, the Central Government issued a Notification dated 14.10.98 banning the abovementioned five animals from being exhibited or trained as ‘performing animals’. It was held that the Government, upon consideration of the report which was based on relevant material, issued the Notification dated 14.10.98 which banned the exhibition and training of the animals and there was no justification to stay the operation of such Notification.

## VI. Legality of Bovine Sports and Performing Animals

In *Animal Welfare Board of India v. Union of India*, the Supreme Court opined, Jallikattu, Kambala and Bull Cart Race as introduced by the Amendment Acts of the three States had undergone substantial change in the manner they were used to be practiced or performed and the factual conditions that prevailed at the time the *A. Nagaraja* judgment<sup>23</sup> was delivered cannot be equated with the present situation and in the changed circumstances, absolutely no pain or suffering would be inflicted upon the bulls while holding these sports. Three States mentioned in their petitions that bovine sports were part of the culture and tradition and according to the Supreme Court of India, whether a particular practice or event is part of culture or tradition is to be decided by the custom and usage of a particular community or a geographical region which can be translated into an enactment by the appropriate legislature. The states like, Tamil Nadu enacted the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, Maharashtra legislated the Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017 and Karnataka passed the Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017 to legitimize various types of bovine sports including Jallikattu<sup>24</sup> in Tamil Nadu, Bullock Cart Race<sup>25</sup> in Maharashtra and Kambala<sup>26</sup> in Karnataka. All these Amendment Acts had

<sup>23</sup> [(2014) 7 SCC 547].

<sup>24</sup> Jallikattu means an event involving bulls conducted with a view to follow tradition and culture on such days from the months of January to May of a calendar year and in such places, as may be notified by the State Government, and includes “manjuviratu”, “vadamadu” and “erudhuvidumvizha”.

<sup>25</sup> “Bullock cart race” means an event involving bulls or bullocks to conduct a race, whether tied to cart with the help of wooden yoke or not (by whatever name called), with or without a cartman with a view to follow tradition

received Presidential assent. But the petitioners' argument was that the continuance of the subject sports had been found to be in breach of a Central Statute by a Division Bench of the Supreme Court and those three Amendment Acts sought to revive the earlier position. Here Professor emeritus Upendra Baxi<sup>27</sup> questioned, is the Court justified in saying that Jallikattu has become "an integral part of Tamil culture and does not require religious, cultural and social analysis in greater detail, which...is an exercise that cannot be undertaken by the Judiciary"? It may be noted that in landmark cases like *Vishaka*<sup>28</sup> which issued directions regarding sexual harassment at workplace proclaiming the law and policy till Parliament enacted a law on the subject and the indefinite stay order issued by the Supreme Court putting in abeyance the three farm laws enacted by Parliament, the Court did not allow a "debateable" issue to generate a judicial hands-off stance. However, in the present case, is it not an example of judicial abdication to say that "cultural heritage" of a particular state is best "concluded in the House of the People?"<sup>29</sup>

## VII. Performing Animals in Culture and Traditions

In *Animal Welfare Board of India v. A. Nagaraja*<sup>30</sup>, the Supreme Court vibrated the rights of animals under our Constitution, laws, culture, tradition, religion and ethology among Indian citizen and generated a nationwide awareness about animal law. Here, the Tamil Nadu Regulation of Jallikattu Act, 2009 was found repugnant to the Prevention of Cruelty to Animals Act, 1960, and held constitutionally void, being violative of Article 254(1) of the Constitution of India. In the line of the Court, Jallikattu and Bullock cart races, the manner in which they were conducted, have no support of Tamil tradition or culture. This judgment became a milestone for

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and culture on such days and in any District where it is being traditionally held at such places, as may be previously approved by the District Collector, and also known as "Bailgada Sharyat", "Chhakadi" and "Shankarpat" in the State of Maharashtra.

<sup>26</sup> "Kambala" means the traditional sports event involving Buffalo's (male) race normally held as a part of tradition and culture in the state on such days and places, as may be notified by the State Government.

<sup>27</sup> Cruelty v. culture: Re-writing the magna carta of the rights of nature? Prof Upendra Baxi, *India Legal*, June 12, 2023, page 12

<sup>28</sup> *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.

<sup>29</sup> *Animal Welfare Board of India v. Union of India*, Writ Petition (Civil) No. 23 of 2016, Civil Original Jurisdiction, Supreme Court of India, para 40.

<sup>30</sup> *Animal Welfare Board of India v. A. Nagaraja*, Civil Appeal No. 5387 of 2014, Civil Appellate Jurisdiction, In the Supreme Court of India.

all cases relating to performing animals and the ratio was used by several cases afterwards. In *P.L.Ramaiah vs. The District Collector, Sivagangai*<sup>31</sup> case a writ petition was filed seeking to quash the impugned order passed by District Collector, Sivagangai (1st respondent) by which the District Collector refused to grant permission and necessary protection for conducting the Jallikattu at Poolankurichi Village, Thiruppathur Taluk, Sivagangai District. The respondent refused to grant permission on the ground that the petitioner did not make arrangements as per the conditions stipulated in said Government Order.<sup>32</sup> Finally though the High Court quashed the impugned order of the respondent but the petitioner was directed to comply with all the conditions stipulated in the Government Order. In *Narahari Jagadish Kumar vs. State of Andhra Pradesh*<sup>33</sup>, the High Court issued directions to State Government as well as District authorities to take stringent steps to prevent organizing cock fights with betting during *Sankranthi* festival in Krishna, West Godavari and East Godavari Districts of Andhra Pradesh. According to the court, the manner in which an animal was killed which was required to be sanctioned by religion to be saved under Section 28 of the Prevention of Cruelty to Animals Act, 1960, and not the killing of the animal itself. Cockfight events were in violation of Sections 3 and 11 of 1960's Act and were not saved by Section 28 thereof. Cock fighting, a spectator sport associated with the Sankranthi festival, did not appear to have any religious sanction. No religious text required cocks to fight each other unto death as a part of a ritual or as a method of slaughter prescribed by religion, saved by Section 28 of the Act. In *Mahaveer Bishnoi v. State of Rajasthan*<sup>34</sup> case, the writ petition of public interest was filed by the President, Legal Cell of *Vishnoi Mahasabha Van Evam Vanya Jeev Raksha Samiti* with the prayer to restrain the respondent(s) from organizing 'Tonga Race' which used to take place on 9<sup>th</sup> Shukla day of Bhadrpad covers a distance of 17 kms. from village Mundiad to Kharnal and the race on the next day passes through a distance of 19 kms. between village Kharnal and the town of Nagaur. It was an avoidable non-essential human activity organized by ignoring the welfare of horses and solely for human pleasure. The race inherently involves pain and suffering both physical and mental which was nothing but

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<sup>31</sup> W.P. (MD) No.11768 of 2018.

<sup>32</sup> The Government of Tamil Nadu framed Tamil Nadu Prevention of Cruelty to Animals (Conduct of Jallikattu) Rules, 2017 through Government Order in GO.MS.No: 7 by Animal Husbandry Dairying and Fishery (AH3) dated 21.01.2017.

<sup>33</sup> W.P.(PIL) No.320 of 2014 in the Andhra Pradesh High Court Judgment, Dated 26-11-2016.

<sup>34</sup> D.B. CIVIL Writ Petition (PIL) No. 6176/2014, in the High Court of Rajasthan at Jodhpur, Date of Order 06.01.2016.

cruelty as defined under Section 11 of the Prevention of Cruelty to Animals Act, 1960. The Court agreed that “tradition” was never a sufficient justification for cruelty, and a cruel tradition should never be allowed to define a culture. Therefore, High Court of Rajasthan at Jodhpur directed that the Collector, Nagaur and other functionaries of the State of Rajasthan take appropriate steps to see that the persons-in-charge or care of animals and the State must ensure the implementation of the Prevention of Cruelty to Animals Act, 1960 in its letter and spirit. In *Cattle Race Club of India, Palakkad v. State of Kerala*<sup>35</sup>, the High Court of Kerala at Ernakulam relying upon the ratio of the Supreme Court’s judgment in *Animal Welfare Board of India vs. Nagaraja*, upheld the Notification issued by the Central Government under Section 22 of the Prevention of Cruelty to Animals Act, 1960 declaring that bulls (along with five other animals) shall not be exhibited or trained as performing animals. Though petitioners contended here before the High Court that Kaalapoottu/ Kannupoottu/ Maramadi are different from Jallikattu or bullock cart race where no beating or whipping or any other instance cruelty was meted out to the Bulls and also contended to energize and to revitalize the idle cattle after the Monsoon/Onam but the High Court held that chances for extending cruelty to animals even in the case of the mentioned sports very much existed, even going by the admitted version of the petitioners, and squarely applied the apex court’s decision and dismissed the writ petitions.

In earlier cases also, the Indian judiciary has upheld the cause of protection of animal against over culture or tradition. In *Anandappally Karshakasamithy v. District Collector, Pathanamthitta Collectorate*<sup>36</sup>, the Petitioner argued that Maramadi was traditional rituals involving bullock driving on the paddy field being followed for decades and no race was involved. It was also stated that cattle race could not be permitted under the Performing Animals (Registration) Rules, 2001. But the Court held that competition and race were very much reflected from the petition itself. The very nature of overriding and beating of animals were inevitable from such event. That cruelty should be prevented in strongest term by the District Collector, Superintendent of Police and no Maramadi should be permitted to be conducted. In *K. Muniasamythevar v. Dy. Superintendent of Police*<sup>37</sup>, the petitioner asked for a Writ of Mandamus forbearing the respondents from conducting of bullock cart race also known as Rekla race in 'Maha Kumbhabishegam Festival in Ramanathapuram District. The Madras High Court held that the

<sup>35</sup> 2015(5) FLT 739 (Ker HC).

<sup>36</sup> WP (C) 22271/2009, in the High court of Kerala at Ernakulam, Dated 12<sup>th</sup> August 2009.

<sup>37</sup> AIR 2006 Mad 255.

right to life and the habitat was universal but limited, within the domain of the human species. Hence, in the absence of such rights were left only with duties of the human species towards the other species. But considering the scheme of the Prevention of Cruelty to Animals Act, 1960 and the provisions contained in Article 51A of the Constitution of India, it is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures, the State Police were directed to ensure prevention of cruelty to animals inflicted under the guise of Rekla Race or Oxen Race and Jallikattu or any other, entertainment causing cruelty to animals, and strictly implementing the provisions. In *People for Animals v. State of Goa*<sup>38</sup>, the petitioners contented that the illegalities of bull fights, locally known as 'dhirio' were being conducted in the State of Goa in spite of requests to authorities to take appropriate steps in the matter to prevent the same in Goa. Those bull fights were in direct contravention of the provisions contained in section 11(1)(m) and section 11(1)(n) of the Prevention of Cruelty to Animals Act, 1960 and that the authorities were duty-bound to take action against the said offenders. The High Court of Bombay (Panaji Bench) held that the enactment of the law to prevent cruelty to the animals was not an end in itself and what was important was the implementation of that Act and also to see that the activities which were prohibited under the said Act. Therefore, respondents were directed to take immediate steps to ban all types of animal fights including bull fights and 'dhirios' in the State of Goa and to see that the direction was fully complied with in letter and spirit which the Act seeks to achieve.

### **VIII. Constitutionality of Animal Rights: Judgments of 2014 *vis-a-vis* 2023**

It is clear that the latest judgment of the apex court is not an adverse of 2013's Jallikattu judgment. Both judgments have established animal rights very clearly within the purview of Indian constitution. But in 2014, The Supreme Court of India's landmark judgment recognized that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. In the Jallikattu case, the court has extended the rights guaranteed under Article 21 of the Constitution to all living beings and the protection of right to life was allowed to all species as a set of rights according to international standards. It was observed in the case that animal also had honor and dignity which cannot be arbitrarily deprived

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<sup>38</sup> 1997(4) BomCR 271 : 1998(100(1))BOMLR226.

of and its rights and privacy had to be respected and protected from unlawful attacks. In present case<sup>39</sup>, three States defended their Statutes and submitted that bovine sports were part of their culture and tradition and at the same time, according to the apex court of India, whether a particular practice or event is part of culture or tradition is to be decided by the custom and usage of a particular community or a geographical region which can be translated into an enactment by the appropriate legislature. In the final opinion of the Court, Jallikattu, Kambala and Bull Cart Race as introduced by the Amendment Acts of the three States had undergone substantial change in the manner they were used to be practiced or performed. But in regard to this latest judgment, Professor Upendra Baxi<sup>40</sup> opined that the Supreme Court did not shrug its constitutional shoulders in *Nagaraja* case<sup>41</sup>, and outlawed two common sports practiced in Tamil Nadu and Maharashtra, popularly referred to as “Jallikattu” and “Bullock Cart Race”, saying they were contrary to the provisions of the Act. At that point of time, a Tamil Nadu Regulation of Jallikattu Act, 2009, which regulated the sport, was held void on the ground of doctrine of repugnancy, in view of Article 254 (1) of the Constitution.

## IX. Conclusion

The factual conditions that prevailed when the 2014 judgment was delivered cannot be equated with the present situation and in the changed circumstances, absolutely no pain or suffering can be inflicted upon the bulls while holding these sports. This new move by the judiciary has generated lots of hue and cry among animal rights activists and legal experts as the court categorically declared that animals have no rights under the Constitution and the law makers have recognized the rights of animals by essentially imposing restriction on human beings on the manner in which they deal with animals as part of the social and cultural policy. It may be said that both judgments of the Supreme Court of India within a decade are supplementary and complementary of each and other. If any gaps were left by the earlier decisions, those were

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<sup>39</sup> *Animal Welfare Board of India v. Union of India*, Writ Petition (Civil) No. 23 of 2016, Civil Original Jurisdiction Supreme Court of India, Decided on May 18, 2023

<sup>40</sup> Prof Upendra Baxi, “Cruelty v. culture: Re-writing the magna carta of the rights of nature?” June 12 *India Legal* 12 (2023).

<sup>41</sup> (2014) 7 SCC.

clarified by this latest order of the court. Perhaps, this case may prove to be a milestone in upholding and establishing animal rights in India.