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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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**ANIMAL WELFARE BOARD OF INDIA V**  
**A.NAGARAJA & ORS (2014) 7 SCC 547**

AUTHORED BY: PAYAL PRAKASH DEVNANI

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**Case No:- Special Leave Petition (Civil) No. 11686 of 2007**

**Date of Judgement"- 7th May 2014**

**Bench:- K. S. Radhakrishnan, Pinaki Chandra Ghose**

**INTRODUCTION:**

The present case is widely celebrated under the ambit of the right to life and liberty, the case encompasses an important dispute about Jallikattu which is practiced in Tamil Nadu and Maharashtra, the Tamil term '**Jalli**' translates as gold or silver coins, and '**Kattu**' means time. In this contestants tame bulls as a part of the activity in question which was brought under the horizon of the right of animals which was considered to violate Section 3, 11(1)(a) and (m) and 21 and 22 of the Prevention of Cruelty to Animals Act of 1960 (PCA).

The case was petitioned by the Animal Welfare Board of India (AWBI), which the government constituted to offer guidance on animal welfare laws and improve animal welfare all over India. The ruling as mentioned earlier highlights the rights of animals and the duty we have to safeguard them. The clash between custom religion and rights also comes into play in this situation at hand.

The appeal in the present case calls for two separate issues: Firstly it challenges the reliability governing the Tamil Nadu regulations of the Jallikattu Act and was upheld by the Madras High Court Division Bench. The Division Bench dismissed the Single Bench to decree that restricted Jallikattu and later the appeal was made to the Supreme Court of India by the Respondents.

### **FACTS OF THE CASE:**

1. The subject matter addressed concerns concerning the utilization of bulls as well as bullocks in entertainment-related activities addressing cruelty towards animals, the Animal Welfare Board of India submitted a petition seeking to ban Jallikattu.
2. Jallikattu was initially banned by the High Court of Madras however the Division Bench subsequently overruled the original decision.
3. Considering the Jallikattu practice remained under the limitations imposed, the Animal Welfare Board a governmental entity constituted by Section 4 of the PCA Act-posted an advisory forbidding bulls from being used as 'performing animals'.
4. An additional set criticized the Divisional Bench of the Bombay High Court on 12.03.2012 supporting the MoEF (Notification issued 11.07.2011) and the erratum sent out by the State Government of Maharashtra hindering all Bullock cart races, activities, training, and furthermore.
5. In the present instance, the respondents claim that Jallikattu ought to remain legal due to cultural and traditional factors, whilst the petitioners filed an appeal with the Supreme Court to dismiss the Divisional benches presiding and to carry out the notification.

### **ISSUES:**

1. The Degree to which the 1960 version of the Prevention of Cruelty to Animals Act was compromised through the utilization of Bulls and Bullocks in sports
2. The coexistence concerning cultural traditions and rights of animals
3. Whether or not the activities that are occurring place amid both individual states of Maharashtra as well as Tamil Nadu infringe Article 51A(g) and (h) of the Constitution of India alongside Section 3, 11(1)(a), & (m), 21 and 22 respectively of the PCA Act



4. To what extent the TNRJ Act clauses have conflicted with the provisions of the PCA Act because both Acts have been placed beneath Entry No. 17 of the Concurrent List?

### **LAW IN QUESTION:**

**Prevention of Cruelty to Animals Act 1960** - It prohibits unnecessary anguish to put an end to the mistreatment of Animals. This compromise gauges concerning curbs towards wrongdoers supervises how they are handled and guarantees their well-being.

**Section 3 of PCA Act<sup>1</sup>** - Forbids subjecting Animals to endure undue suffering or discomfort. forbids putting animals through needless pain or suffering. This outlines offenses consisting of excessive feeding, cruelty, or abandoning animals unattended and also prescribes repercussions against offenders.

**Section 11(1)(a), & (m) of PCA Act<sup>2</sup>** - It ban overloading, harassing, kicking, or beating animals extremely. To defend animals from abuse and to maintain their well-being. Section 11(1)(m) prohibits the use of animals in any activity that might bring them unjust suffering or distress.

**Section 21 of the PCA Act<sup>3</sup>** - promotes the liberty that comes with life and the freedom to make choices. It proclaims that no individual gets pulled from their liberty or personal freedom unless it is carried out and in pursuance of the legal procedures. The provision ensures the safeguarding of fundamental rights by emphasizing fairness and impartiality in the judiciary's operations.

**Section 22 of PCA Act<sup>4</sup>** - Authorized individuals, which include law enforcement personnel or animal welfare officers, have the power to take possession of animals who have been the targeted victims of cruelty under Section 22 of the Prevention of Cruelty to Animals (PCA) Act. They can rescue animals who need assistance as well as provide them the care they need so they can be sure they are alright.

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<sup>1</sup> Prevention of Cruelty to Animals Act, 1960, § 3

<sup>2</sup> Prevention of Cruelty to Animals Act, 1960, § 11(1)(a), (m)

<sup>3</sup> Prevention of Cruelty to Animals Act, 1960, § 21

<sup>4</sup> Prevention of Cruelty to Animals Act, 1960, § 22.

**Article 51A (g) and (h) of the Indian Constitution**<sup>5</sup> - Mandates every citizen to safeguard and protect the nation's ecosystem, river, lake, and wildlife to foster a responsible and well-informed society. Article 51A (h) calls for citizens to uphold an intellectual rage and the willingness to discover and transform.

## **ARGUMENTS:**

### **PETITIONER:**

#### **Prevention of Cruelty to Animals Act, 1960:**

Highlighting that the Animal Welfare Act's enactment was carried out primarily to prevent animals unnecessary pain and suffering.

Contended that actions like Jallikattu, which subjects animals to undergo treatment, constituted illegal under the provisions of the Act.

#### **Constitutional Duty under Article 51A(g):**

The Indian Constitution, Article 51A(g), imposes an essential responsibility on citizens to look after, preserve, and improve the environment as a whole, particularly wildlife.

Pointed out that it was considered inappropriate to employ traditions like Jallikattu in tandem with the responsibility of looking after animals and their well-being.

#### **Constitutional Obligation of the State:**

Alleged that it constituted the State's statutory obligation to safeguard animals against mistreatment and to promote their health and well-being.

Underlined the necessity for government intervention to regulate and outlaw activities that breached the underlying principles of animal welfare.

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<sup>5</sup> Constitution of India, art. 51A (g), (h)

**Fundamental Duty to Promote Scientific Temper (Article 51A(h)):**

The fundamental responsibility to encourage a scientific mindset stressed Article 51A(h) of the Constitution, requiring individuals to foster humanism, a scientific temper, and a belief in examination and improvement stated that evidence from research supported the hypothesis that inhumane tactics like bull-taming harming animals mentally as well as physically.

**Promotion of Compassion and Ethical Treatment:**

Pleaded in support of treating animals with empathy and highlighted the significance of synchronizing gestures with ethical requirements for care.

Contended that torturing animals unjustly was against the humanitarian principle and constitutional duty of protecting and improving the environment.

**RESPONDENTS:**

**Cultural and Historical Significance:**

Established the argument because customs such as Jallikattu were important to their heritage and had a long tradition.

Emphasized the vitality of these traditions in their lineage and their historical context.

**Livelihood and Economic Impact:**

Bring awareness to the monetary impact of occurrences such as Jallikattu on the means of subsistence of the individuals who plan and participate in activities.

They claimed outlawing such operations would be destructive to the local economy.

**Animal Welfare Protections:**

Maintained that laws and mechanisms presently implemented were created to safeguard animals' welfare on occasion for example Jallikattu said that these steps sufficiently resolved their concerns about cruelty towards animals.

### **Customary Rights and Beliefs:**

Positioned a special focus on embracing one's freedom of religion as well as customs, particularly those dealing with animals in culture.

Contended that restricting such acts would go against their constitutionally assured freedom of religion.

### **Consent and Voluntary Participation:**

Claimed that animals involved in Jallikattu events were not tortured unnaturally and that participants were willing and by choice.

Argued that those conducts were distinct from acts of violence because engagement was voluntary.

## **ANALYSIS AND ESSENCE OF THE CASE:**

To recognize non-human animals as having the possession of rights is the primary concern presented when it is awarding animals constitutional or legal privileges.

### **DUTY-BASED APPROACH:**

Interestingly, considering animals as lacking a comparable level of mental development as individuals, it might be inappropriate to refuse animals any kind of safety. Yet, there is a pressing need for a transition from an approach centered around rights to a duty-based perspective to prevent harm to animals.

Austin's positivist interpretation of rights and obligations developed the theory of absolute obligation. A significant number of regulations associated with animal welfare in several nations specify the responsibilities we have to non-human animals, a combination of direct and indirect. At present, even though what needs to be done is the formulation of unambiguous, proactive legal commitments and their execution.<sup>6</sup>

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<sup>6</sup> JOHN AUSTIN, JURISPRUDENCE, OR THE PHILOSOPHY OF POSITIVE LAW 113 (R. Campbell ed., 2002); Roscoe Pound, Legal Rights, 26 (1) INTERNATIONAL JOURNAL OF ETHICS 92, 94 (1915).

The PCA Act illustrates the responsibilities we have to animals to safeguard them from potential harm, but it produces an absence of whatever we might do to make sure that animals inhabit the natural environment with grace. As an illustration, the Swiss Constitution's Article 80 stipulates that the State shall oversee the following: the use and keeping of animals; experiments with animals and solutions; animal importation; animal transactions and transportation; and animal execution.<sup>7</sup>

A more achievable and beneficial tactic would be to move towards a duty-based approach, which would entail imposing an unambiguous and definite duty upon the State as well as individuals to protect non-human animals.

### **THE LEGAL CAPACITY TO POSSESS RIGHTS:**

To undertake an in-depth investigation it is vital to review deeper proof that seems to demonstrate an animal's absence of competence or inability to acquire rights. Rather than relying on the "intrinsic value" of animals, these metrics ought to dwell on certain criteria for acquiring rights and, in turn, on what is required of non-human animals to meet those prerequisites. The well-known expression of the animal "rights" movement is a remark from Jeremy Bentham, in which he passionately contends that the key issue is not whether non-human animals can reason or speak, but rather whether they have rights. Can they, nevertheless, suffer?" A significant number of animal welfare movements and organizations have selected this strong statement's fundamental point that is, having the capacity for suffering as the rationale for providing animals protection through rights

Yet since it ignores the core features of a right, the notion that one's capacity for the sensation of pain and suffering automatically outweigh inclusion within the ambit of the rights discourse is erroneous. Whereas it is undeniably true that humans and certain non-human creatures are inclined to suffer, rights are rarely contingent on this one idea of suffering and its treatment. When trying to allocate rights to animals, it is important to consider if the traits that people and animals display are likewise consistent with the rights that humans are accorded in a given culture.

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<sup>7</sup> BUNDESVERFASSUNG DER SCHWEIZERISCHEN EIDGENOSSENSCHAFT, The Federal Constitution Of the Swiss Confederation, 1874, Art. 80.

## **AN ANIMAL'S MAGNA CARTA:**

The Supreme Court's inclusion of Article 51A(g) of the Indian Constitution as the "Magna Carta of Animal Rights" demonstrates how critical and necessary these privileges are to this nation. This understanding stresses the commitment of every citizen to radiate compassion for anything that lives and elevates the prominence of animal welfare within the framework of justice.

### **JUDGMENT:**

The use of bulls and bullocks in cultural events was at the center of the Supreme Court of India's verdict on May 7, 2014, in the dispute of the Animal Welfare Board of India vs. A. Nagaraja & Ors. It was ruled that the AWBI was accurate in claiming that Jallikattu, Bullock-cart Races, and other comparable events in general violate Sections 3, 11(1)(a) and 11(1)(m)(ii) of the PCA Act. Consequently, the Central Government's notification dated 11.7.2011 was upheld, and bulls are no longer eligible to be used as performance animals for Jallikattu activities or Bullock-cart Races in the states of Tamil Nadu, Maharashtra, or any other region of the nation.

The Court ruled that the Bulls' rights, guaranteed by PCA Act Sections 3 and 11 read with Articles 51A(g) & (h), cannot be curtailed or taken away, except PCA Act Sections 11(3) and 28.

**Violation of the Prevention of Cruelty to Animals Act:** The court identified that the 1960 Prevention of Cruelty to Animals Act had been flouted through the utilization of bulls and bullocks in entertainment venues like bullock cart racing and Jallikattu.

**Balance Between Cultural Practices and Animal Rights:** The court underlined the delicate balance that should be struck between the protection of animal rights and cultural practices, specifically when it pertains to deeply ingrained customs and heritage.

**Protection of the "Five Freedoms":** The Animal Welfare Board, parliament, and governments have been compelled by the court to uphold the rights of animals and to guarantee the "five freedoms" of animals, which include freedom from hunger, thirst, pain, injury, disease, fear, distress, and the ability to behave normally.

**Amendment to PCA Act** - To effectively achieve the Act's intended purposes and desired outcomes, Parliament was anticipated to amend the PCA Act accordingly. Furthermore, fines and penalties were to be assessed for violating Section 11.

**Violation of Article 254(1)** - The TNRJ Act infringed Article 254(1) of the Indian Constitution and was deemed to conflict with the welfare legislation PCA Act, as was earlier determined in the case of *Vijay Kumar Sharma v. State of Karnataka*.

### **CONCLUSION:**

Renowned Philosophers **Peter Singer** and **Tom Regan** have each written extensively regarding the rights of animals. Regan claims in "**The Case for Animal Rights**"<sup>8</sup> that, unlike human beings, animals have intrinsic worth & rights. The cornerstone of Singer's book "**Animal Liberation**"<sup>9</sup> is utilitarianism, a philosophy that holds that an act is ethically justifiable if it leads to the "greatest happiness of the greatest number." Singer argues that understanding animals' discomfort and incorporating them into the calculation of happiness is essential. Regan and Singer have both made substantial contributions to the constantly evolving debate concerning the moral qualities and constitutional legitimacy of animals, and they've also contributed to the animal rights movement.

The Court misunderstood when it determined that animals should be safeguarded by Article 21 and that the concept of "life" needed to be broadened. The rights of animals must be maintained since they are a vital component of the biosphere. The PCA Act's provisions, it continued, stressed animals' rights to "live in a healthy and clean atmosphere" and "not to be beaten or kicked." A parallel ruling was handed down by the Kerala High Court in *N.R. Nair v. Union of India*.

Considering Indian courts have upheld that Article 21 of the Constitution is a source of protection for human rights and dignity, a rights-based interpretation of the Court is erroneous. The Supreme Court brought into doubt the rights-based approach to animal protection and contested the premise of who the bearers of rights by guarding non-human animal life under Article 21.

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<sup>8</sup> Regan, Tom. *The Case for Animal Rights*. 1983.

<sup>9</sup> Singer, Peter. *Animal Liberation: A New Ethics for Our Treatment of Animals*. 1975.

On delivering rights to entities under the State, it is clear that these rights are confined to those who fulfill particular conditions, which constitutes a framework for "capacity for rights" as opposed to being provided globally to everything that exists.

**Recent Development in Case** - The Jallikattu practice has been retained by the Supreme Court, as authorized by the 2017 Tamil Nadu Amendment to the 1960 Prevention of Cruelty to Animals Act.

### **PRECEDENT CASE LAWS REFERRED:**

**N.R. Nair v. Union of India**<sup>10</sup> - In this case, the Delhi High Court's warning whether the use of dogs in circuses had been forbidden was being contested. The main contention in N.R. Nair v. Union of India addressed a notice under Section 22 of the Prevention of Cruelty to Animals Act, 1960 which had been put out by the Ministry of Environment and Forests on October 14, 1998. In accordance with the notification, no one is authorized to train or display any of the listed creatures, including lions, bears, tigers, panthers, and monkeys. After the notification was litigated in the Indian Supreme Court, the Apex Court confirmed its constitutionality. Owing to the court, the claimed notification falls inside the ambit of the 1960 Prevention of Cruelty to Animals Act. The petitioner declared that the court's declaration breached his fundamental rights, but the court denied this claim, citing Section 11(3) of the same Act and additionally citing precedent from the case of Bhuri Nath and Others vs. The State of Jammu and Kashmir & Others, of which both state that Jallikattu was obligated in the current instance due to activities that caused pain. In the present matter, the court determined that excitement, presentation, or entertainment were insufficient and weren't eligible under Section 11(3)'s exempted classifications.

**Vijay Kumar Sharma v. State of Karnataka**<sup>11</sup> - According to the judgment in Vijay Kumar Sharma v. State of Karnataka, the court based its judgment that the TNRJ Act violated Article 254(1) of the Indian Constitution and consequently became constitutionally illegal. The PCA Act is a welfare legislation. Vijay Kumar Sharma & Ors. Etc v. State of Karnataka & Ors. (1990) discussed the matter of which law supplanted the Motor Vehicles Act of 1988 and the Karnataka Contract Carriages (Acquisition) Act of 1976. Upon analyzing the Karnataka Act's provisions, the Supreme Court found

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<sup>10</sup> N.R. Nair v. Union of India, (2000) Ker 340 (India)

<sup>11</sup> Vijay Kumar Sharma & Ors. Etc v. State of Karnataka & Ors, (1990) SCR (1) 614 (India)



in its ruling that the State Act was suited as an Act for acquisition under Entry 42 of the Concurrent List.

### **RECENT DEVELOPMENT ON LEGAL STATUS OF ANIMALS:**

**The People's Charioteer Organization (PCO) v Union of India<sup>12</sup>** - Intending to give India's animal kingdom official personality status, the People's Charioteer Organization (PCO) filed a Public Interest Litigation (PIL) with the highest court of India. Considering every animal, in particular aquatic and avian species, considered "legal persons" and establishing and implementing regulations for their protection were the primary objectives of the PIL. The Supreme Court dismissed the lawsuit, holding that the animal kingdom as an entire did not qualify as a legal entity with identical rights as humans. The court recognized that the petition's breadth was excessively broad and that the laws that existed were appropriate to protect animals.



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<sup>12</sup> People's Charioteer Organization (PCO) v. Union of India, W.P.(C) No. 885/2020 (Ind.)