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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

# **"THE HORNS OF A DILEMMA: JALLIKATTU AND THE COLLISION OF CULTURAL HERITAGE WITH ANIMAL RIGHTS"**

AUTHORED BY - ABHIRASHI CHORDIA<sup>1</sup>

*"The greatness of a nation and its moral progress can be judged by the way its animals are treated."*

— Mahatma Gandhi (Father of the Nation)

*Abstract:* Jallikattu in recent years, become a cause célèbre in the cultural and legal amphitheatres of our great nation. A venerable bovine-centric spectacle of bravura and bravado, finds its origins in the mists of antiquity, harking back to the primitive pastoral society of Tamil Nadu state – Ayar tribal community. This testosterone-fuelled contest pits man against beast in a thrilling yet perilous embrace, as intrepid young men attempt to grapple with and subdue formidable bulls, specially reared for their ferocity and vigour. The methodology employed to address this contentious issue involves a multifaceted approach, encompassing legislative reforms, enhanced safety protocols, veterinary oversight, and community engagement to ensure the ethical conduct of the sport while preserving its cultural significance. As the dust settles in the arena, we ponder: Can tradition coexist harmoniously with compassion? Will Indian judiciary give animals the status of legal personhood? Its survival hinges on a delicate balance between cultural heritage and animal welfare, making it a subject of ongoing legal battles and public discourse. The outcome of this debate will serve as a litmus test for India's ability to reconcile its variegated past with its aspirational future.

The southern Indian state – Tamil Nadu – comes to life during second week of January when ancient rural sport Jallikattu<sup>2</sup>, aesthetically named as *Eru Thazhuvuthal* meaning ‘Embracing the bull’, is organised on the third day of Pongal<sup>3</sup> (harvest) festival i.e. Maatu Pongal in Madurai, Tiruchirappalli,

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<sup>1</sup> Author is Alumni of Miranda House, University of Delhi (NIRF ranking 1).

<sup>2</sup> The term Jallikattu as defined in the Tamil Nadu Amendment Act, 2017 is as follows: -

“(dd) “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>3</sup> The four-day event that is dedicated to the Sun God marks the Sun’s journey northward, Uttarayan. Pongal is usually celebrated between 13 and 16 January. The four days - Bhogi Pongal, Thai Pongal, Mattu Pongal and Kaanum Pongal -

Theni, Pudukkottai and Dindigul districts of Tamil Nadu famously known as the Jallikattu Belt. It is not only celebrated across Tamil Nadu but among diasporic Tamil society dotted across the globe as well. The term Jallikattu comes from fusion of two Tamil words “*Salli kassu*” – where “*Salli*” means coins and “*Kassu*” means tie.

It is an inevitable annual traditional event in which human participants, mostly male youth, try to seize a violent bull by its large hump on its back with unwavering determination and tame it as it resists while getting a hold on the prize (a package of silver or gold coins) tied to bull’s horns by defying the animals’ powerful attempts to escape. If the contestants fail in getting their hands on the bundle of coins, the bull owner wins the prize. The locals and the foreign tourists enjoy this recreational sport organised for farmers from the sidelines of the ‘*peru vazhi*’ (highway) or the streets. Often, these rampaging bulls would suddenly run into the flimsy fences, break them and enter into huge crowd gathered to watch the competitive sport, thereby, inadvertently causing severe injuries and death sometimes. The horns of the bulls are so sharp that even a slight touch can cause grievous hurt to people. ‘*Voluntary non fit injuria*’<sup>4</sup> principle would be applied as far as injuries to spectators are concerned. One of the reports published by *The Hindu* Newspaper mentioned that “*The rising death toll proves that these events are inherently cruel and hazardous and no amount of regulation can ever change that. It is time to start valuing lives more than so-called tradition.*” Around the time of Jallikattu event every year, many newspaper reports from different parts of the state flood the internet with headlines like “*Death by Design: On Jallikattu*”<sup>5</sup>, “*Two persons including minor boy gored to death at Siravayal manjuvirattu in Sivaganga*”<sup>6</sup>, etc.

The quintessential Tamil Festival – Pongal also known as *Tamizhar Thirunal* – has been celebrated as thanksgiving for the riches gained from bountiful harvest forming the economic basis of the agrarian communities (since agriculture is the primary occupation of our land), for also celebrating seasonal life cycles that helps farmers to grow grains throughout the year. The festival extends far

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have their separate significance. Thai Pongal on January 14 corresponds with the Makar Sankranti, the harvest festival that is celebrated across India under various regional names. (<https://www.tamilnadutourism.tn.gov.in/events/pongal-festival>)

<sup>4</sup> *Volenti non fit injuria* is Latin for “to a willing person, it is not a wrong.” [https://www.law.cornell.edu/wex/volenti\\_non\\_fit\\_injuria#:~:text=Volenti%20non%20fit%20injuria%20is,assumption%20of%20the%20risk%20doctrine](https://www.law.cornell.edu/wex/volenti_non_fit_injuria#:~:text=Volenti%20non%20fit%20injuria%20is,assumption%20of%20the%20risk%20doctrine).

<sup>5</sup> <https://www.thehindu.com/opinion/editorial/death-by-design/article59780243.ece>

<sup>6</sup> <https://www.thehindu.com/news/national/tamil-nadu/two-persons-including-minor-boy-gored-to-death-at-siravayal-manjuvirattu-in-sivaganga/article67748331.ece>



beyond mere crop yield. The peasant communities of Tamil Nadu have held this key event since time immemorial in order to preserve their indigenous species of bull called Zebu Bull (*Bos Indicus*) such as Pulikalam or Kangayam breeds. The last Livestock Census of India showed that the indigenous cattle breeds have decreased considerably over the years, while the exotic and crossbred cattle are on the rise.

This bovine sport is believed to be first held during Sangam period or Age (400-100 BCE). Jallikattu finds mention several times in influential Tamil epics like Silappadikaram and Tholkappiam as mentioned by Karthikeya; the founder and managing trustee of the Senaapathy Kangayam Cattle Research Foundation, Tiruppur; in his book titled "*Thunderous Run, Bountiful Harvest: Bull Scapes of Geography*" published by Senaapathy Foundation and released by Chief Minister of Tamil Nadu M K Stalin in Chennai last year. The symbiotic relationship between the bull, the farmer, and the land has been explored with depth in this book.

*"The killer bulls are let loose into the ring, whose sharpened horns shine like Siva's battle-axe  
Then come the beating drums, sounding like thunder  
Smoke goes up and dust is raised, maidens come and stand in a row."*

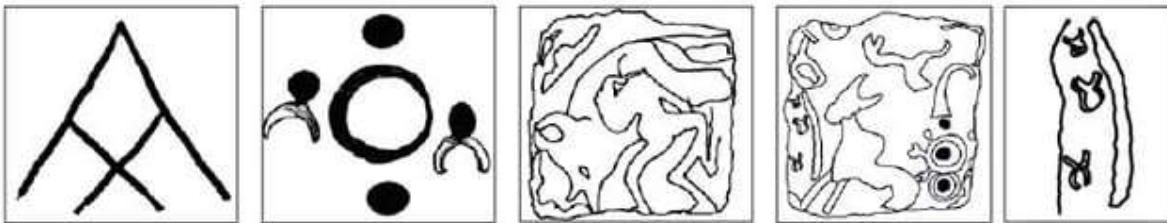
This is a translation of a verse originally found in Kalithogai, an anthology of ancient Sangam poems. A poet named M.L. Thangappa translated this verse which is published in the book titled *Tamil Characters: Personalities, Politics, Culture*, edited by a very famous historian named A.R. Venkatachalapathy. This evocative verse beautifully illustrates how Jallikattu is deeply ingrained into the cultural fabric of Tamil Nadu state. The opening line sets the stage for drama where poet used epithet to describe bulls as 'killer' indicating that the bulls are not mere docile farm animals but formidable beings. Their horns are compared with Shiva's battle-axe or parashu which is used to destroy evil according to Hindu mythology. The auditory aspect is demonstrated by thunderous beat of drums which charges the atmosphere with anticipation. This simile not only conveys the volume and intensity of the sound but also hints at the drums used in temple rituals, thus depicting the sacredness of the event. The final line adds visual and social elements to the picture wherein the rising smoke is assumed to be from ritual offerings and the dust kicked up by the bulls in the arena, creating a hazy view for the young women standing in the row, observing their bravery and virility. Taken together, the verse draws connections between the raw power of nature (the bulls), the divine

authority (the allusion to Shiva), human bravery (the implied presence of the bull-tamers), and social customs (the watching maidens).



*Figure 1: One side of the coin shows a man attempting to tame the bull.<sup>7</sup>*

R. Krishnamurthy, President of South Indian Numismatic Society presented another piece of evidence of the sport in the form of impression on one side of the ancient tin coin which suggests that a single man is making serious efforts to discipline the wild bull. The coin is estimated to be between third or fourth century B.C. Innumerable references in Ancient Dravidian Literature and coinage as well shows that this custom was in vogue during Tamil Classical Period.



*Figure 2: Other side of the coin, bull is engraved which is facing left and the name 'Maran' is imprinted in Tamil-Brahmi Script. It is believed to be made by Korkai Pandyas and not Madurai Pandyas as no fish symbol was found on it.<sup>8</sup>*

<sup>7</sup> <https://www.newindianexpress.com/cities/chennai/2015/Aug/06/ancient-tin-coin-suggests-existence-of-jallikattu-in-the-sangam-era-795381.html>

<sup>8</sup> Supra no. 4.



*Figure 34: The earliest evidence of jallikattu or bull taming can be found in ancient Indian cave paintings and seal iconography. (National Museum Delhi).<sup>9</sup>*

According to Iravatham Mahadevan, an expert in Indus and Brahmi scripts, concrete evidence in the form of seal made from stone with no script, only depicting bull-fighting practice emerged in 1930's was found at Mohenjodaro site (present Pakistan) of Indus Valley Civilization dateable between 2500 BC – 1800 BC. There are two interpretations of the engraving: one category of people believes that there were several men who were trying to control the raging bull and while doing so, they were hit by the bull and thereby shown flying in the air with their hands and legs spread out. The second men jumped to grab the fierce bull by its horns, second men were seen rolling and another one was on his buttocks. Mahadevan belonging to the second category holds the view that there was just one lone man who was tossed into air, flipped and rolled and finally sat on his haunch. This seal is currently well-preserved at National Museum, Delhi. The seal is, therefore, a proof that bull-vaulting or bull-baiting practice was in fashion 5000 years ago.

<sup>9</sup> [https://commons.wikimedia.org/wiki/File:Jallikattu\\_seal\\_-\\_Mohenjo-Daro.jpg](https://commons.wikimedia.org/wiki/File:Jallikattu_seal_-_Mohenjo-Daro.jpg)



*Figure 4: Krishna taming the bull- found in Ramanathapuram Palace (Era 18<sup>th</sup> Century).<sup>10</sup>*

There is evidence in the form of figures of this renowned warrior sport being played during Mahabharata Period as well wherein Lord Krishna was trying to control the furious bull in the forecourt of the Palace of Kamsa.

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<sup>10</sup> [http://indpaedia.com/ind/index.php/Jallikattu#2006:\\_Nagarajan\\_of\\_Madurai](http://indpaedia.com/ind/index.php/Jallikattu#2006:_Nagarajan_of_Madurai)



*Figure 5: An inscription depicting Eru Thazuvuthal, currently preserved at Government Museum in Tamil Nadu, attests to its enduring legacy.<sup>11</sup>*

It is a long-standing symbol of pride, valour and heritage of the farming communities of Tamil Nadu state as can be seen on a massive rock surface mural with an illustration of bull-chasing which was discovered by K.T. Gandhirajan, an art historian and Professor G. Chandrasekaran and others in the year 2004 at Karikkiyur village in the Nilgiri district which are dateable between 2000 B.C. and 1500 B.C. Gandhirajan mentioned that the ancient Tamil custom was “*Manju virattu*” (chasing bulls) and “*Kattuthal*” (lassoing bulls) and these practices, assumed different forms and shapes, then metamorphosed around 500 years ago into the current agricultural tradition known as Jallikattu.

Jallikattu is a celebrated practice, deeply rooted in Tamil Nadu’s cultural fabric for centuries, held to propitiate the Gods for providing agrarian based communities with abundant agricultural produce throughout the year. Considering the vast significance it holds and the evolution of this sport for a millennia now clearly establishes the fact that Jallikattu is protected as an important cultural and religious event. However, this anachronistic ritual has found itself embroiled in a maelstrom of controversy, with animal rights activists decrying it as a barbaric vestige of a less enlightened age.

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<sup>11</sup> Supra no. 6.

The dialectic between cultural preservation and animal welfare has reached a crescendo, reverberating through the hallowed halls of our judiciary and the corridors of power. It became a concern for animal rights organisations because these pure-breed bulls native to Tamil Nadu state have been subjected to immense pain- both mentally and physically - by constant fear of death and inhumane treatment - rubbing irritants (chilli / pepper powder) in their eyes, nose and anus; bulls were deliberately taunted, ears mutilated, chased, prodded, beaten, kicked, stabbed, poked with sharp weapons like stick, knives etc in order to excite them, fed them with alcohol to make them more ferocious, dragged them by a nose rope among other things as well. They were even denied their daily basic necessities including water and food, leading to dehydration and exhaustion, denied hygiene and sanitation facilities as well. Bulls are believed to be the peaceful species in the animal kingdom but they have been intentionally tormented and agitated over and over again for years just for human pleasure, entertainment and revenue purposes.

The first case that was filed regarding this matter was way back in 2006<sup>12</sup> when the petitioner, one K. Muniasamy Thevar, approached the court seeking a writ of mandamus to compel the local constabulary to grant permission for the conduct of this contentious bovine sport. Judge Banumathy of Madurai High Court turned down the request of organising rekla race in the rural parts of the state. The then DMK government reversed the judgement by passing Tamil Nadu Regulation of Jallikattu Act, 2009<sup>13</sup> (hereinafter referred as TNRJ Act); thereby allowing the state to resume their age-old tradition. Two years after that, Animal Welfare Board of India<sup>14</sup> (hereinafter to be referred as AWBI) again filed petitions (titled Animal Welfare Board of India v. A. Nagaraja and Ors) before Supreme Court challenging the guidelines mentioned in TNRJ Act as they were anthropocentric in nature. Soon after that, Ministry of Environment, Forests and Climate Change (hereinafter referred as

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<sup>12</sup> K. Muniasamy thevar vs Dy. Superintendent of Police And others, AIR 2006 Mad 255

<sup>13</sup> Act No.27 of 2009, 5th Aug 2009.

<sup>14</sup> At the national level, the Prevention of Cruelty to Animals Act 1960 establishes responsibility for animal welfare in the Ministry of Environment, Forest and Climate Change which comprises an animal welfare Division. The Division is itself divided into three branches: the Animal Welfare Board of India (AWBI), the National Institute of Animal Welfare (NIAW) and the Committee for the Control and Supervision of Experiments on Animals (CPCSEA). The AWBI a statutory advisory body established under Section 4 of Prevention of Cruelty Act, 1960 advising Ministries of Fisheries, Animal Husbandry and Dairying. It is made up of representatives from several areas of the Government of India including the Inspector General of Forests, the Animal Husbandry Commissioner, the Ministries of Home Affairs and Education, the Indian Board for Wildlife, well-known humanitarians, association of veterinary practitioners, practitioners of modern and indigenous systems of medicine, municipal corporations, organisations actively interested in animal welfare, societies dealing with prevention of cruelty to animals and six Members of Parliament (Section 5). At present, the AWBI is made of 28 members, each with a term of office of three years. (<https://api.worldanimalprotection.org/country/india>)

MoEFCC) issued a Notification dated 11.7.2011<sup>15</sup> banning the use of bulls as performing animals (defined under Performing Animals Act, 1973 which means animals are used for public entertainment by selling them tickets).

While navigating through the labyrinthine complexities of modernity, the Jallikattu conundrum serves as a microcosm of the larger debate on tradition versus progress, cultural identity versus universal ethics. It beckons us to ponder the delicate equilibrium between preserving our heritage and embracing evolving societal norms. The division bench comprising of Justice K.S. Radhakrishnan and Justice Pinaki Chandra Bose gave a milestone judgement in respect to animal's well-being. There were two set of issues before the court, one that whether the TNRJ Act (a State Act) and Prevention of Cruelty Act, 1960 (hereinafter referred as PCA, 1960) which came into action on 26<sup>th</sup> December 1960 (a Central Act) are in violation of *Sections 3*<sup>16</sup>, *11(1)(a)*<sup>17</sup> & *(m)*<sup>18</sup>, *21*<sup>19</sup> and *22*<sup>20</sup> of the *PCA Act* interpreted in conjunction with *Articles 51A(g)*<sup>21</sup> and *(h)*<sup>22</sup> and *Article 21*<sup>23</sup> of the Constitution; second that whether provisions of the *TNRJ Act*, is repugnant to the *PCA, 1960*, since both the Acts fall under Entry No. 17<sup>24</sup> in the Concurrent List.

Petitioners comprising of various Animal Welfare Organisations argued that Bulls are Draught and Pack animal recognized under *Prevention of Cruelty to Draught and Pack Animals Rules, 1965* and

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<sup>15</sup> Notification order no. GSR 528 (E) dated 11.07.2011

<sup>16</sup> Section 3. 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.

<sup>17</sup> Section 11. Treating animals cruelly — (1) If any person— (a) beats, kicks, over-rides, 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; or

<sup>18</sup> Section 11 (m) solely with a view to providing entertainment— (i) confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal; or (ii) incites any animal to fight or bait any other animal; or

<sup>19</sup> Section 21. “Exhibit” and “train” defined — In this Chapter, “exhibit” means exhibit at any entertainment to which the public are admitted through sale of tickets and “train” means train for the purpose of any such exhibition, and the expressions “exhibitor” and “trainer” have respectively the corresponding meanings.

<sup>20</sup> Section 22. 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.

<sup>21</sup> Article 51 – A (g) - It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.”

<sup>22</sup> Article 51 – A (h) - to develop the scientific temper, humanism and the spirit of inquiry and reform;

<sup>23</sup> Article 21 - “Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

<sup>24</sup> Entry 17: “Prevention of Cruelty of Animals”

they are used as live-stock for transportation and as muscle power to plough the agricultural fields and are not meant to be used in races and bull-fighting games as performing animals (as they are not anatomically designed like that by the nature) within Section 21 and 22 of PCA, 1960. *Rule 11*<sup>25</sup> of *Prevention of Cruelty to Animals (Transportation of Animals on Foot) Rules, 2001* also states that no person shall use a whip or a stick in order to accelerate the speed of the animal (bulls due to their body constitution lacks natural ability to run like a horse). In the same breadth, AWBI through its detailed reports, affidavits and several photographs of Jallikattu events conducted at multiple locations of Tamil Nadu state suggested that bulls are subjected to extreme anguish, constant suffering and humiliation during the sport and such are in total contravention of Sections 3, 11(1)(a) and (m) of PCA, 1960. Ground-level investigations by AWBI revealed revolting practices at one of the locations where bulls in the collection area got severely hit by a moving bus, thereby damaging their blood vessels, muscles and bones. This is one of the many innumerable accounts of cruelty to bulls observed by animal welfare groups. Cramped conditions were seen in vadi vasal (entry point of the arena) wherein the bulls have to stand all day long waiting for their turn, deprived of food, water and shade. Alex Miller once said, *“Tradition is no excuse for trophy hunting, bullfighting or any other form of animal cruelty.”* Ergo, the animal protection organisations repeatedly suggested that this merciless practice cannot be brushed under the carpet of customs. They asserted that protection of animals should be our only mandate.

Advocates of this sport suggested that it is another source of revenue generation for the poor farmers. Jallikattu is also considered as a bio-cultural sport and an important tool for conservation and protection of endangered native breed of livestock. Proponents also mentioned that the District Collector, Police Officials and other concerned authorities are always on the duty to oversee the preparation and conduct of the sport from the beginning to end, ergo, no breach of Section 11(1)(a) and (m) is committed. They frequently asserted that Jallikattu is not inherently cruel to animals when conducted properly. They also stated that since it is a cultural practice, it is protected under Article 29(1)<sup>26</sup> of the Constitution of India, 1950.

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<sup>25</sup> Rule 11 - Prohibition of the use of whip, etc during transportation of animals on foot - (1) No person shall use a whip or a stick in order to force the animal to walk or to hasten the pace of their walk nor such person shall apply chillies or any other substance to any part of the body of the animal for this purpose during their transportation on foot.

<sup>26</sup> Article 29 (1) - Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.



The Court after weighing the pros and cons of the sport held a firm view that if the standard guidelines and recommendations are defeating the principles of welfare legislations along with the constitutional philosophy, for example, right to life, honour, security, *ahimsa* [meaning “do no harm” explicitly stated in Article 51 A(g)] etc; then the Court have all the rights to use their power under *Doctrine of Parens Patriae*<sup>27</sup>, since animals are unable to voice their own misery and take care of themselves as opposed to human beings, and take stringent actions in their interest. By infusing Jallikattu with these lofty ideals, we may yet salvage this cultural patrimony from the dustbin of obsolescence. The Court also stated that five exceptions carved out in Section 11(3)(a) to (e)<sup>28</sup> are included based on the *Doctrine of Necessity*<sup>29</sup> and does not mention entertainment, exhibition and amusement as permitted acts and ergo, cannot be claimed as a matter of right.

The Court also mentioned Chapter 7.1.2 of the guidelines of World Health Organization of Animal Health (OIE), of which India is a signatory, which acknowledged five internationally recognized freedoms developed by Professor Roger Brambell in his 85-page long report titled “*Report of the technical committee to inquire into the welfare of animals kept under intensive livestock husbandry systems*”. These animal welfare standards also find a place in Section 3 and 11 of PCA, 1960 which are as follows:

- i. freedom from hunger, thirst and malnutrition – by providing ready access to fresh water and a balanced diet;
- ii. freedom from fear and distress – by providing suitable environment to prevent mental suffering;

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<sup>27</sup> *Parens patriae* is Latin for “parent of the country or homeland.” Under *parens patriae*, a state or court has a paternal and protective role over its citizens or others subject to its jurisdiction. (Last updated in May of 2022 by the Wex Definitions Team).

<sup>28</sup> Section 11(3) carves out exceptions in five categories of cases which are as follows:

“11. (3) Nothing in this section shall apply to—

(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.”

<sup>29</sup> Henry de Bracton – a medieval jurist – described Doctrine of Necessity “*that which is otherwise not lawful is made lawful by necessity*”. It was invoked for the first time in landmark case titled *Gullapalli Nageswara Rao v. APSRTC (1958)*.

- iii. freedom from physical and thermal discomfort - by providing shelter from blistering sun and heavy winds;
- iv. freedom from pain, injury and disease – by prevention or rapid diagnosis and providing speedy veterinary treatment; and
- v. freedom to express normal patterns of behaviour – by providing familiar habitat so that they can express their natural character.

In *N. Adithayan v. Travancore Devaswom Board*<sup>30</sup>, the court while determining the ambit of Articles 14, 17, 21 25(1), 26(a), and 26(b), held as follows:

*“18. ... Any custom or usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country.”*

In *Isha Upanishads*<sup>31</sup> (1500 – 1600 B.C.), it was asserted that all the creatures are equal and that humans should not consider themselves over and above the Law of Nature, that no one should interfere with the rights and privileges of other living creatures and everyone should always live in harmony and peace. Eco-centrism is also based on the same principle that humans do not have precedence over non-humans and that every living entity is interdependent on each other for their survival.

A significant shift in approach from anthropocentrism to eco-centrism was observed in the unprecedented judgement titled *N.R. Nair and others v. Union*<sup>32</sup> of India wherein the court held that the legal rights should not be exclusively available to human beings alone, it should be extended to animals as well. In the words of Professor Christopher Stone, *“that legal personality plays an important part in making a thing count in the eyes of the law. The conferral of legal personality upon*

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<sup>30</sup> (2002) 8 SCC 106.

<sup>31</sup> *Isha Upanishad* is considered as one of the shortest Upanishads which is included as 40<sup>th</sup> Chapter (last) of Yajurveda.

<sup>32</sup> (2001) 6 SCC 84.

*rightless objects or beings carries with it legal recognition that those objects or beings have “worth and dignity” in their own right. Until we attribute personality to a rightless entity, we are likely to be unable to conceive of it as “anything but a thing for the use of ‘us’ – those who are holding rights at the time.”*

Karnail Singh v. State of Haryana<sup>33</sup> also maintained the same stand wherein the Punjab and Haryana High court remarked that, *“The shelter of the legal umbrella would also provide more effective protection of animal interests than is available under current animal welfare law. As legal persons, animals could be recognized as parties to legal actions, because they would have the independent standing that they currently lack.”* Justice Rajiv Sharma further quoted that, *“The entire animal kingdom, including avian and aquatic, are declared legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person.”* The court's decision was based on the premise that animals, like humans, possess a soul, and therefore deserve protection under the law. The court through this landmark judgement included animal kingdom under the ambit of juristic person definition. Recognition of an entity as juristic person is for sub-serving the needs and faith of society.<sup>34</sup> The Court also bestowed the position of *“Loco Parentis”*<sup>35</sup>, enabling the citizens of the country to act as custodians of the non-human community.

Our Hon'ble Judiciary supported AWBI's stand that Jallikattu sport is in total contradiction and in direct collision with Sections 3, 11(1)(a), 11(m)(ii) and Section 22 of PCA read with Articles 51A(g) and (h) of the Constitution, which is the magna carta of animal rights. The Court also dealt with the issue of repugnancy<sup>36</sup> arising out of two competing legislations. The court in the present case concluded that TNRJ Act is repugnant to PCA (welfare legislation), ergo, violative of Article 254(1)<sup>37</sup> of the Constitution of India modelled on section 107 of Government of India Act, 1935. Ergo, it was held that PCA being a parliamentary legislation would supersede/ predominate the TNRJ ACT.

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<sup>33</sup> (2019) SCC OnLine P&H 704.

<sup>34</sup> Shiromani Gurudwara Prabandak Committee, Amritsar v. Shri Somnath Dass & Ors. A.I.R. 2000 SC 1421.

<sup>35</sup> In loco parentis is a Latin term meaning "in [the] place of a parent" or "instead of a parent." The term refers to a common law doctrine which denotes the legal responsibility of some person or organization to perform some of the functions or responsibilities of a parent. (Last updated in January of 2023 by the Wex Definitions Team).

<sup>36</sup> *Wharton's Law Lexicon* defines “repugnant” as “really means inconsistent with and when they cannot stand together at the same time and one law is inconsistent with another law when command or power or provision in the one law conflicted directly with the command or power or provision in the other”.

<sup>37</sup> **Article 254(1)** – “If any legislation enacted by the state legislature is repugnant to the legislation enacted by the Parliament, then the state legislation will be declared void, and the legislation enacted by the Parliament will prevail over the former.”

Article 254(1) lays down the general rule that in the event of a conflict between a Union law and a State law enacted under the Concurrent List, the former shall prevail and the State law shall be void to the extent of repugnancy as held in *M. Karunanidhi v. Union of India*<sup>38</sup>; irrespective of the fact that whether the Union law is enacted prior to or later than the State law.

A bare perusal of the Statement of Objects and Reasons of the TNRJ Act refers to long-standing tradition but does not in any manner state that it has any religious significance, therefore, the Supreme Court while taking into consideration of various case precedents, texts from ancient sacred historical literature and ideas of legal scholars; finally reached to a conclusion and outlawed this barbaric practice. The ban on Jallikattu, imposed by the Supreme Court in 2014, sparked a conflagration of protests across Tamil Nadu, with proponents vehemently asserting their right to cultural autonomy. Alanganallur, the village near Madurai, was the nuclei of these protests.

On 7<sup>th</sup> January 2016<sup>39</sup>, MoEFCC under the Union Government in supersession of the 2011 Notification issued another Notification in exercise of the powers conferred by Section 22 of PCA, 1960 whereby traditional customs such as Jallikattu, Kambala, Bullock-cart races etc were excluded from the restriction on training and exhibiting animals. Consequentially, several petitions<sup>40</sup> were filed by animal rights groups requesting Hon'ble Supreme Court to rescind the 2016 Notification. The court passed interim stay order on it and thus reaffirmed Nagaraja's judgment by upholding the banning order imposed by the Court way back in 2014. Thereafter, on 16<sup>th</sup> November 2016, a review petition filed by State of Tamil Nadu against judgement delivered in A. Nagaraja case was also dismissed.

In waning days of the year 2016, the Care and Welfare Foundation (CWF), an NGO based out of Chennai joined forces with a social media marketing agency renowned for its wildly popular Facebook page called 'Chennai Memes'. The CWF had initially worked in conjunction with the social media group during the devastating floods that had engulfed the city a year prior. These organisations then came together and organised a walkathon on 8<sup>th</sup> of January, a date destined to be etched in the annals of the Tamil cultural resurgence, to preserve Jallikattu by releasing a poster<sup>41</sup> online. It was

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<sup>38</sup> (1979) 3 SCC 431

<sup>39</sup> No. GSR13(E) dated 07.01.2016

<sup>40</sup> WP (C) 24/16 Compassion Unlimited Plus Action Vs U.O.I dated 12.01.2016

<sup>41</sup> See the link for the post. Available online: <https://www.facebook.com/events/1559079037440854/>

not just a mere invitation but a clarion call to 'Save Jallikattu' which resonated through the digital corridors of Tamil Nadu. Myriad Facebook pages also joined the fray. The hashtags '#WeDoJalikkattu' and '#JalikkattuProtest' were doing rounds on different social networking sites. In essence, this poster marked the crucial transition from virtual to physical activism, from memes to marches, from hashtags to human chains.

*"Occupy Marina"* by Swapna Sundar offers a panoramic view of the movement that began as a call to reinstate a traditional sport but burgeoned into a clarion call for cultural autonomy and regional identity. The Pro-Jalikkattu Movement of 2017 across the state with Marina Beach in Chennai as the heart of the protests showcased the bottled-up aggression of Tamilians as two Pongal Festivals went by without witnessing Jallikattu event. The protest that lasted for around a week transformed social media platforms; for example, Facebook, Twitter, WhatsApp, YouTube etc; into virtual war rooms, exciting people from all social classes to join the move. The lines between virtual and real-world activism blurred, as memes and hashtags became the new banners and slogans of a movement that soon spilled onto the streets of Chennai and beyond. Media platforms played a huge role as a catalyst causing massive turnout on the streets. Usually, protests are spearheaded by established figureheads or organisations, but this was a *'leaderless protest'* – a collective peaceful operation propelled by shared grievances.<sup>42</sup> The news of the protestors arrested by the police spread like a wildfire. Consequentially, the youth of the state organised impromptu protests demanding the release of arrested students. These protests were titled as *'Tamil Spring'* or *'Thai Revolution'*<sup>43</sup>. The critics due to their myopic view failed to perceive the profound undercurrents of cultural identity and historical continuity that stirred the movement. They misunderstood their sentiments for emotional exuberance and their ancestral pride for irrational fervour.<sup>44</sup> Yet again, shadow looms over Jallikattu. Animal rights advocates clamour for a ban, invoking compassion and safety. The supreme Court is again grappled with tension, oscillating between prohibition or compromise.

Manuel Castells (2015), a preeminent sociologist in regard to social movements said that *"A condition for individual experiences to link up and form a movement is the existence of a*

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<sup>42</sup> *"Power and Subjectification at the Edge of Social Media Interfaces in the Aftermath of the Jallikattu Protest"* Deepak Prince

<sup>43</sup> There is a common saying among Tamilians *"Thai Pirandhal Vazhi Pirakkum"* which means the birth of the Thai month which will pave way for new opportunities.

<sup>44</sup> Kalaiyaran A. 2017. Politics of Jallikattu. Economic and Political Weekly 52: p 10

*communication process that propagates the events and the emotions attached to it.*” By “*individual experiences*”, he meant the driving forces of the protest that people encounter in their daily lives, for example, trials and tribulations, moments of injustice (gender discrimination, racism, etc), flashes of inspiration drawn from the individuals around them etc. The “*communication process*” is done through different mediums – print and electronic media. The dissemination of “*events and emotion*” through complex web of communication leaves indelible impressions on the minds of the people. In essence, Castells is reminding everyone that social movements are not only about shared goals but also about portraying shared narratives / experiences and connecting with people who are on the same emotional and mental level.

These grassroots movement culminated in the promulgation of a state ordinance in 2017, effectively circumventing the judicial interdiction and resurrecting the practice, albeit with more stringent regulations. The principal act was amended i.e., Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017<sup>45</sup> viz. Section 3<sup>46</sup>, 11<sup>47</sup>, 22<sup>48</sup>, 27<sup>49</sup> and 28<sup>50</sup> and Prevention of Cruelty to Animals (Conduct of Jallikattu) Rules, 2017 were formed thereunder, allowing the conduct of the sport. The Rules categorically provides provisions for vetting of bulls, specifications for the arena, bull collection yard etc. Charles Darwin once said, “*There is no fundamental difference between man and animals in their ability to feel pleasure and pain, and happiness and misery.*” Ergo, this legislation was passed to prevent infliction of unnecessary pain or suffering by virtue of conduct of humans on the species which has totally dedicated its life for human benefit. But the new ordinance that emerged in 2017 was a fragile truce as AWBI, People for the Ethical Treatment of Animals (hereinafter referred as PETA), Compassion Unlimited Plus Action (CUPA), Federation of Indian Animal Protection Organisations and Animal Equality, etc; again, approached the Supreme Court, challenging 2017 Legislations passed by the Tamil Nadu Assembly questioning the legality of the said notification.

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<sup>45</sup> Act 1 of 2017 dated 31st January 2017

<sup>46</sup> “Section 3(2) - Notwithstanding anything contained in sub-section (1), conduct of ‘Jallikattu’, subject to such rules and regulations as may be framed by the State Government, shall be permitted.”

<sup>47</sup> “Section 11(f) - the conduct of ‘Jallikattu’ with a view to follow and promote tradition and culture and ensure preservation of native breeds of bulls as also their safety, security and wellbeing.”

<sup>48</sup> Section 22 - **Restriction on exhibition and training of performing animals.** Provided that nothing contained in this section shall apply to the conduct of Jallikattu.

<sup>49</sup> “Section 27 - (c) the conduct of ‘Jallikattu’ with a view to follow and promote tradition and culture and ensure survival and continuance of native breeds of bulls.”

<sup>50</sup> “Section 28A - Saving in respect of Jallikattu - nothing contained in this Act shall apply to Jallikattu conducted to follow and promote tradition and culture and such conduct of Jallikattu shall not be an offence under this Act.

Since the division bench of the court could not reach to any definite conclusion, on 2<sup>nd</sup> February 2018, it referred all the petitions to a Constitution Bench comprising of Justice K.M. Joseph, Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy and C.T. Ravikumar. The bench of esteemed judges gave a unanimous judgement in *AWBI and Ors v. Union of India and Anr*<sup>51</sup> while addressing the five important questions formulated by the then division Bench which are as follows:

- Is the Tamil Nadu Amendment Act, 2017 is contrary to Entry 17 of the Concurrent List in the Constitution of India, by perpetuating the cruelty to animals?
- Is the sport of Jallikattu protected as a cultural right under Article 29 of the Constitution of India?
- Is Jallikattu essential to ensure the survival and well-being of the native breed of bulls involved in the sport?
- Is the Tamil Nadu Amendment Act, 2017 violative of articles 51A(g) and 51A(h) of the Constitution of India which place the duty of protecting the environment and developing a ‘scientific temper’ upon all citizens as it promotes a bull taming sport and whether the Act is unreasonable and violative of Articles 14 and 21 of the Constitution of India?
- Is the impugned Tamil Nadu Amendment Act directly contrary to the judgment in *A. Nagaraja* (supra), 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 Court while resolving the issues based their reasoning on several key points: Cultural significance, State’s legislative competence, Safeguards and Regulations, Animal rights vs. Fundamental Rights, etc. Regarding the first query before the Court, it was held that the Tamil Nadu Amendment Act cannot be interpreted as a piece of colourable legislation. Applying the doctrine of pith and substance which was for the first time unfolded in *Cushing v. Dupuy*<sup>52</sup> (Canadian Case) and then it was invoked in India for the first time in *State of Bombay v. F.N. Balsara*<sup>53</sup>, the court concluded that the State Legislature had jurisdiction to enact the Amendment Act under Entry 17 of List III of

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<sup>51</sup> 2023 LiveLaw (SC) 447.

<sup>52</sup> (1880) UKPC 22

<sup>53</sup> (1951) 1 SCR 682

Seventh Schedule of the Constitution of India. The Bench also found no flaw in the process of obtaining the Presidential Assent (under article 254(2)<sup>54</sup> of Indian Constitution) that had been assailed by the Petitioners and thus upheld constitutional validity of the State Amendment Act and Rules formed thereunder. These modifications were done to legitimise the conduct of bovine sports. An analysis of the Amendment act will show that it minimises the cruelty on animals and that it does not violate Section 3 and 11(1)(a) and (m) of PCA, 1960.

The court expressed its opinion by rejecting the earlier view reflected in the judgement of A. Nagaraja (supra) wherein the cultural aspect of the sport was dismissed. In the present case, the court stated that the Tamil Nadu legislature by way of Preamble of the Amendment Act accepted the jallikattu as part of the cultural heritage of the state and that the judiciary has no reason to interfere with its powers.

The court resolved the third query by stating that Amendment Act is not in pith and substance, to ensure welfare and continuation of life of the native breeds of bulls and the same is also not relatable to Article 48<sup>55</sup> of the Constitution of India. The contingent effect of the said Act may fall upon the breed of a particular type of bulls and affect agricultural activities, but in pith and substance the Act is relatable to Entry 17 of List III of the Seventh Schedule to the Constitution of India.

The court construed the above-mentioned provisions of Tamil Nadu Amendment Act, 2017 in the constitutional backdrop of Article 14, 21, 51 A(g) and (h) and held that they are not in contradiction with each other. \_

The court at last also mentioned that the Tamil Nadu Amendment Act and the Rules formed thereunder are not directly contrary A. Nagaraja's (supra) judgement delivered on 16<sup>th</sup> November 2016 dismissing the plea for Review of the A. Nagaraja judgment. The Court opined that the shortcomings pointed out in the aforesaid two judgments have been duly overcome by the State Amendment Act read with the Rules made in that behalf.

Despite controversies and safety concerns, Jallikattu persists as a testament to bravery, cultural

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<sup>54</sup> Article 254(2) – “In case of repugnant legislation passed by the state against the Parliament, the state can enforce the legislation if they receive assent from the President.”

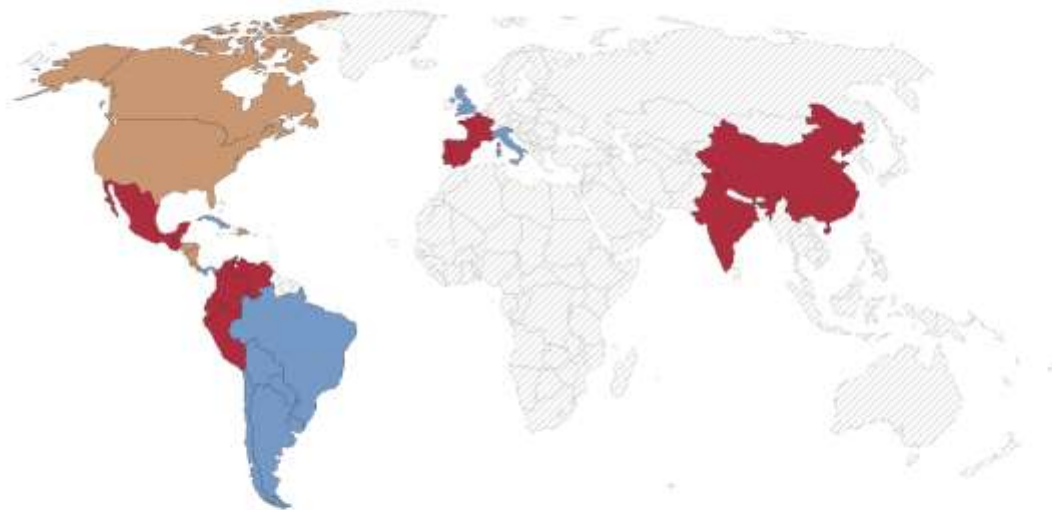
<sup>55</sup> Article 48 - Organisation of agriculture and animal husbandry



heritage and the indomitable spirit of Tamil Nadu. The sport, steeped in tradition and imbued with cultural significance, serves as a crucible for testing masculine mettle and agrarian prowess. It is not merely a display of physical fortitude but also a celebration of the symbiotic relationship between man and cattle, a cornerstone of rural Tamil society. The resolution of this issue is, thus, set as a precedent to redefine the parameters of cultural practices in the context of evolving societal norms and global ethical standards.

### Which countries have banned bullfighting? 2023

Bullfighting is a physical contest that involves a bullfighter attempting to subdue, immobilize, or kill a bull.



■ Banned ■ Not banned ■ Partially banned ■ No data

Data source: Various sources (2023)

OurWorldInData.org/animal-welfare | CC BY

Note: Countries where bullfighting is not banned may have sub-national bans. Partially banned means that the bull cannot be severely injured or killed during the event.

India has attained C ranking in Animal Protection Index (API) created by International Animal Welfare Charity – World Animal Protection. The index ranks countries from A (being the highest score) to G (being the weakest score) based on several indicators. The reason for such ranking is that while acts of barbarity towards animals are committed in the contemporary era, the primary legislation to deal with such atrocities seems to exist in pre-historic age. The act is full of anachronistic provisions ranging from meagre penalties which is inadequate to act as a deterrent for animal cruelty to lack of rehabilitation measures such as community service. This indicates that the act does not meet the needs of the present society. India’s legislation also does not fall in line with

the international legislative approaches, ergo, making PCA, 1960 more eco-centric in nature is the need of the hour.

Navigating through the complexities of the 21<sup>st</sup> Century, the provisions of animal welfare legislations in India should be urgently amended along the lines of what exists in the statutes of the other countries like United Kingdom, Taiwan, Norway, Germany, Switzerland, Austria, Slovenia etc. Article 10 (1) of Taiwan Animal Protection Law 1998 states that any fights between animals or between animals and people through direct or indirect gambling, entertainment, operation, advertisement and other illegitimate purposes should be prohibited. Article 66 of Swiss Animal Protection Ordinance 1981 includes list of prohibited practices on animals, *for e.g.*, striking animals in eyes and genitals, or to break or crush their tails, etc.

Over the annals of legal history, we have witnessed a cornucopia of precedents wherein diverse entities have been accorded the status of legal personhood. A particularly intriguing exemplar was the sui generis case of "computer raped by telephone" - a legal watershed that heralded the idea that machines could have the same rights as people in the eyes of the law. American legislative bodies in at least four states have equated self-driving automobiles with their flesh-and-blood counterparts behind the wheel. Nevada, the Silver State, was the first one to set the precedent for other nations to follow. These silicon-brained chariots are now accountable for any vehicular misadventures or liabilities stemming from their algorithmic actions.

Sophia, an AI construct of remarkable sophistication, is a brainchild of David Hanson. Saudi Arabia bestowed citizenship upon this mechanical marvel, thereby establishing an example in the realm of robotic rights and nationhood. Not to be outdone in this race towards techno-legal innovation, the Land of the Morning Calm - South Korea - has also introduced a fiscal measure "robot tax" which has uncanny resemblance to the income tax paid by human beings all over the world as their civic duty. Thus, we find ourselves at the cusp of a new era, where the lines between the animate and inanimate, the organic and the synthetic, are blurred in the eyes of the law, consequentially resulting in rise of ethical concerns which will keep the finest legal minds occupied for a long time.

Even after the world witnessed numerous instances of non – human compatriots being accorded the gravitas of legal personhood, Indian judiciary has not yet taken any step in that direction for its unique

animal kingdom. We are standing amidst an unprecedented ecological crisis. The human - induced devastation of habitats and the concomitant extinction of myriad species necessitates the need to accord fundamental rights to animals to preserve the delicate ecological balance upon which our very existence depends. The recognition of animal sentience is no longer a matter of philosophical conjecture but a scientifically established fact. The extension of fundamental rights to animals will not only protect them from wanton cruelty but also ennoble our own species. Thus, conferring fundamental rights to animals is a pragmatic necessity. The hour is indeed late, but not yet too late to safeguard our shared biosphere.

## **Conclusion**

Christine Stevens once said, *“The basis of all animal rights should be the Golden Rule – we should treat them as we would wish them to treat us were any other species in our dominant position.”* After citing a plethora of cases and texts from ancient literature, it is concluded that the cultural practice should be protected at all costs but at the same time, rules and regulations (for example, provisions for mandatory installing of impregnable barricades, explicitly mentioning sentience in the legislation, incorporation of new cognisable offences, etc) should also be reformed to avoid severe and irreversible injuries to living species. Jallikattu should be reimagined as a vibrant tradition that can thrive in harmony with our contemporary ethical landscape. One should honour the multifaceted tapestry of our heritage while charting a course towards a more enlightened tomorrow. In order to achieve this, the Draft of PCA (Amendment) Bill, 2022 was published by the Department of Animal Husbandry and Dairying for public comments but despite receiving widespread public support for the Draft Bill, it is not tabled in Parliament till date. There appears to be lack of political will to improve statutes related to animal welfare. Probably, new amendments will see the light of the day after establishment of new government in June.