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The Animal Welfare Board of India v. Union of India on Jallikattu and Kambala

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ABSTRACT

Indian jurisprudence on animal rights is a huge point of contention and debate. The use of animals in various sports for entertainment, accompanied by cruel and inhumane treatment, triggered this debate. Liberal interpretation by the Supreme Court in the A. Nagaraja judgment, banning Jallikattu, Kambala, and Bull Race for being cruel to animals, resulted in utter chaos with pressure forcing States to amend them. These Amendments were challenged for being a mere cosmetic change of law to override the earlier judgment. This Article is a detailed comment on the judgment that ensued.

Keywords: *Prevention of Cruelty to Animals Act, 1960, animal cruelty, Jallikattu, Kambala, Amendments.*

I. INTRODUCTION

Animal rights in India are still in the nascent stage of development and are a grossly neglected field of jurisprudence. Sections 3², 11(1)(a)³ and (m)⁴ of the Prevention of Cruelty to Animals Act, 1960⁵, (the 1960 Act) are the few provisions that provide mechanisms for the protection of the animals. Imposing duties on the persons in charge of the animals and defining animal cruelty, these provisions are also considered the statutory rights of animals in India.

Under the Constitution, Article 48⁶ imposes the duty on the State to organize animal husbandry on scientific lines, preserve and improve breeds and prohibit the slaughter of cattle. As per Article 51A(g)⁷, every citizen must have compassion for living creatures, and under Article 51A(h)⁸ they must develop humanism and the spirit of reform.

II. FACTS

Jallikattu, Kambala, Bull Race, or Bullock Cart Race (the sports), are sports employing bovine

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² The Prevention of Cruelty to Animals Act, 1960; §3.

³ The Prevention of Cruelty to Animals Act, 1960; §11(1)(a).

⁴ The Prevention of Cruelty to Animals Act, 1960; §11(1)(m).

⁵ The Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960 (India).

⁶ Constitution of India; art. 48.

⁷ Constitution of India; art. 51-A, cl. g.

⁸ Constitution of India; art. 51-A, cl. h.

or bulls of special breeds, for entertainment by the people in the States of Tamil Nadu, Karnataka, and Maharashtra. The bulls or bovines were “prepared” for the sport with cruel and inhumane methods including ear cutting, mutilation, and twisting of the tail resulting in fractures, dislocated tail bones, and injuries to muscles, bones, nerves, and blood vessels. The animals were kept in cramped conditions, without food and water, and mistreated by the spectators. Aggrieved by the cruel and abhorrent practices involved in the conduct of such sports, a Petition was filed combining the writ petitions pending in the matters thereof, which was finally decided in A. Nagaraja⁹ judgment by the Supreme Court. It held that the use of bulls in such sports in a manner contrary to their nature was to be violative of Sections 3, 11(1)(a) and (m) of the 1960 Act and hence banned these sports completely. In the aftermath of the judgment, due to public pressure, the State Governments of Tamil Nadu¹⁰, Karnataka¹¹, and Maharashtra¹² enacted State Amendment Acts (the Amendment Acts) to the 1960 Act, amending the provisions to allow the continued performance of these sports.

Post receipt of Presidential assent on the Amendment Acts, the State Governments of Tamil Nadu and Maharashtra notified Rules titled “The Tamil Nadu Prevention of Cruelty to Animals (Conduct of Jallikattu) Rules, 2017” and “The Maharashtra Prevention of Cruelty to Animals (Conduct of Bullock Cart Race) Rules, 2017” to govern the conduct of bovine sports. The State Government of Karnataka issued a Notification on 17th December 2015 to strictly regulate the conduct of such sports. These Rules and Notification

III. ISSUES RAISED

1. Whether the three State Amendment Acts violate the A. Nagaraja¹³ ratio to legitimize a cruel sport under Sections 3, 11(1)(a) and (m) of the 1960 Act.
2. Whether animals can possess Fundamental Rights under the Constitution and be considered a “person” under Article 21¹⁴.
3. Whether the State Amendments are violative of Articles 14¹⁵ and 21¹⁶ of the Constitution.

⁹ Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors. (2014) 7 SCC 547 (India).

¹⁰ The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, No. 1, Act of Tamil Nadu, 2017 (India).

¹¹ The Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017, No. 2, Act of Karnataka, 2017 (India).

¹² The Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017, No. 45, Act of Maharashtra, 2017 (India).

¹³ Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors. (2014) 7 SCC 547 (India).

¹⁴ Constitution of India; art. 21.

¹⁵ Constitution of India; art. 14.

¹⁶ Constitution of India; art. 21.

4. Whether the State Amendments are colorable legislations
5. Whether impugned sports are part of the cultural heritage of the State of Tamil Nadu.

IV. ARGUMENTS FOR THE PETITIONERS

1. Bypassing And Violating The A. Nagaraja¹⁷ Ratio: The Petitioners claimed that the Amendment Acts were merely a cosmetic change, enacted to legitimize the cruel sports and thereby override the A. Nagaraja¹⁸ judgment. It is the contention of the Petitioners that three State Amendment Acts seek to bypass the ratio of A. Nagaraja's case specifically banned such sports without curing the defects in their conduct, in violation of the 1960s Act, as pointed out in the judgment. This intentional overriding of the judicial verdict in the A. Nagaraj's case¹⁹ was argued to be contrary to the constitutional scheme and legitimizing cruel sports, deserving to be set aside as colorable legislation.

2. Animal Rights Under Constitution: The duties of the State under Article 48 and that of citizens under Articles 51-A (g)²⁰ and (h)²¹ were sought to be interpreted as rights accruing to the animals under the Constitution. Citing the ratio in A. Nagaraja²² case, the Petitioners sought the statutory rights under the Sections 3, 11(1)(a) and (m) of the 1960 Act to be elevated to fundamental rights status and be read with Articles 51A(g)²³ and (h)²⁴ of the Constitution. The Petitioners cited the Narayan Dutt Bhatt v. Union of India²⁵ judgment of the Uttarakhand High Court to accord animals the status, rights, and duties generally associated with legal persons. Borrowing from international jurisprudence, the Petitioners cited Argentinian, and Ecuadorian cases and an Act passed in the United Kingdom holding animals to be sentient beings and possessing rights as such.

The Petitioners sought the Amendment Acts be declared violative of the Constitutional duty owed to animals by the State and Citizens through the interpretation of Articles 48²⁶, 51A(g)²⁷, and (h)²⁸. They argued that animals cannot be compelled to suffer pain and cruelty for the

¹⁷ Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors. (2014) 7 SCC 547 (India).

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Constitution of India; art. 51-A, cl. g.

²¹ Constitution of India; art. 51-A, cl. h.

²² Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors. (2014) 7 SCC 547 (India).

²³ Constitution of India; art. 51-A, cl. g.

²⁴ Constitution of India; art. 51-A, cl. h.

²⁵ Narayan Dutt Bhatt v. Union of India, (2018) SCC Online Utt 645 (India)

²⁶ Constitution of India; art. 48.

²⁷ Constitution of India; art. 51-A, cl. g.

²⁸ Constitution of India; art. 51-A, cl. h.

pleasure of human beings.

3. Amendments Violative Of Articles 14 And 21: Drawing attention to the horrific conditions and mistreatment of the bulls in Jallikattu, the Petitioners claimed that sentient animals have natural rights to live a life with dignity and without suffering pain or cruelty under Article 21²⁹ of the Constitution. They claimed that the animals were being compelled into these sports despite being pack or draught animals, not bred to run like horses. The legitimization of these cruel practices by the Amendment Acts, abhorrent to the right to life, is contended to be violative of Article 21³⁰. Placing bulls under the exceptions of the protective mechanism under the 1960 Act, without intelligible basis was argued to be an arbitrary action and violative of Article 14³¹.

4. Colorable Legislation: It was argued that the Amendment Acts amount to colorable legislation since they violate constitutional provisions and the ratio in *A. Nagaraja*³². The Petitioners claimed that the subject dealt with by the Amendments did not fall within the ambit of Entry 17 of List III³³ and hence was not within the legislative competence of the State Legislature.

5. Not Part Of Cultural Heritage: The Petitioners argued that despite the states claiming through the impugned Amendments that Jallikattu, Kambala, Bulls Race, or Bullock Cart Race be part of the culture and tradition of the respective states, these sports cannot be held to be so. Reference was made to the *A. Nagaraja*³⁴ case where it was concluded that there was no support for such sports in Tamil tradition or culture and if the same did exist, the cultural traditions should bow down to the welfare legislation protecting such animals from cruelty. Further, it observed that the object of the 1960 Act was to safeguard the welfare of animals and reform old practices. The Court had also stood by the established precedent that customs or usages cannot be permitted to violate human rights, dignity, or social equality however longstanding their existence may be. *A. Nagaraja*³⁵ case also quoted the *Isha-Upanishad* which postulated that human beings do not have any superior right to the land and should not encroach on those of the other beings, holding this to be the culture of Tamil Nadu and Maharashtra running counter to their claim of cultural and traditional support for such sports.

²⁹ Constitution of India; art. 21.

³⁰ Constitution of India; art. 21.

³¹ Constitution of India; art. 14.

³² *Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors.* (2014) 7 SCC 547 (India).

³³ Constitution of India; Schedule VII.

³⁴ *Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors.* (2014) 7 SCC 547 (India).

³⁵ *Ibid*

V. ARGUMENTS OF RESPONDENTS

Countering the contention of the Petitioner's claim that the Amendment Acts had not addressed the defects mentioned in the A. Nagaraja³⁶ ratio, the Respondents sought the reading of the 1960 Act together with the Amendment and Rules. Citing the Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India³⁷ judgment of the Supreme Court, the Respondents highlighted that rules made under a statute are an integral part of the Act itself and must be interpreted or constructed in light of the intention of the legislature.

On the issue of animals being recognized as persons and accorded rights under the Constitution, the Respondents argued that the power to accord such rights to animals is vested only with the Legislatures and cannot be done by judicial interpretation. They averred that the species of bulls were specifically bred to run and hence, there was no grave cruelty or compulsion imposed on the animals violating Article 21³⁸.

VI. JUDGEMENT AND JUDICIAL REASONING

1. Not Violative Or Bypassing The Ratio In A. Nagaraja³⁹: The Court accepted the stand of the Respondents and the Amendments which imposed an obligation to implement the Rules for any exceptions, thereby curing the defects. Having become an integral part of the 1960 Act, the Amendment and Rules introduced strict conditions, banning unnecessary infliction of pain and suffering on the animals, substantially changing the manner of the practice. The Court, however, acknowledged that the Amendment Acts read independently from the Rules would have violated the A. Nagaraja⁴⁰ judgment. In pursuance of the substantially changed circumstances, this ratio is no longer tenable. Arguments on the ground reality or possible non-implementation of the changed law, cannot be considered valid grounds for striking down the Amendment Acts.

2. Status Of Legal Personality: The Court observed that the current legislative jurisprudence does not recognize animals as capable of possessing rights. However, if social and cultural factors dictate such a declaration, rights may be accorded by law by restricting human behavior concerning animals.

3. No Rights Under The Constitution: Concerning the demand for the elevation of statutory rights of animals under the 1960 Act to fundamental rights status, the Court did not think it

³⁶ Ibid

³⁷ Peerless General Finance and Investment Co. Ltd. & Anr. V. Reserve Bank of India, (1992) 2 SCC 343 (India).

³⁸ Constitution of India; art. 21.

³⁹ Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors. (2014) 7 SCC 547 (India).

⁴⁰ Ibid.

within their powers to accord the protection under Article 21⁴¹ and left the issue to be decided by the Legislature. It found that the Constitution does not recognize the Fundamental Rights of animals and that it was impossible for an animal to be accorded rights under Article 14⁴² of the Constitution. However, it observed that testing the provisions of animal welfare legislation for arbitrariness or unreasonableness under Article 14⁴³ and the legality under Articles 48⁴⁴, 51-A (g)⁴⁵, and (h)⁴⁶, is possible in the instance of those concerned about animal welfare.

4. Not Violative Of The Constitution: The Court held that there was no irrational classification by legislature under Article 14⁴⁷. However, contrary views were expressed regarding the ability of the bulls to run, creating confusion over the unreasonableness arising out of the pain and suffering. Moreover, while horse racing was allowed under the Performing Animals (Registration) Rules, 2001 despite being sentient animals, the Court observed that some degree of pain and suffering cannot be doubted. However, the issue of whether this degree of pain and suffering can be inflicted on an animal for an activity not being a necessity to human beings, cannot be taken up by the judiciary. Hence, the Amendments were not violative of Article 21⁴⁸ either. Furthermore, the Court appreciated that the 1960 Act aimed at protecting animals from unnecessary pain and suffering out of involuntary compulsions, which was balanced in the Amendments without impinging on animal ownership rights of individuals.

5. Not A Piece Of Colorable Legislation: Due to the substantial change in the circumstances and manner of performance and conduct of the sports in the wake of the Amendments, the Court held that the contention of being mere cosmetic change to evade the judgment in *A. Nagaraja*⁴⁹ cannot be accepted. Hence, these Amendments were neither colorable legislation nor encroaching upon the Central Legislation. Further, the Court found that given the ratio in *I.N. Saksena v. State of M.P.*⁵⁰ directing that the entries in the legislative lists of the Constitution be interpreted in the widest sense, the State Legislatures here had the necessary competence to enact the Amendment Act under Entry 17 of List III⁵¹. Moreover, the Rules read with the

⁴¹ Constitution of India; art. 21.

⁴² Constitution of India; art. 14.

⁴³ Constitution of India; art. 14.

⁴⁴ Constitution of India; art. 48.

⁴⁵ Constitution of India; art. 51-A, cl. g

⁴⁶ Constitution of India; art. 51-A, cl. h.

⁴⁷ Constitution of India; art. 14.

⁴⁸ Constitution of India; art. 21.

⁴⁹ *Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors.* (2014) 7 SCC 547 (India).

⁵⁰ *I.N. Saksena v. State of Madhya Pradesh*, (1976) 4 SCC 750 (India).

⁵¹ Constitution of India; Schedule VII.

Amendment Acts, cured the mischief contemplated during the A. Nagaraja's judgment⁵² and therefore, could not be seen to be offending the 1960 Act anymore.

6. Custom Or Not To Be Determined By Legislature: The Court held that to determine whether any practice was part of the custom or tradition of any community would require a trial on evidence and that it was not within the jurisdiction of the Court to determine the same. However, the law shall prevail over even a long-lasting tradition that violates the law. It was accepted here that the manner of conduct of the sports as on date of A. Nagaraj's judgment⁵³ violated the 1960 Act and was not permissible despite being a centuries-old practice. Being a legislative exercise, the Amendments passed by the Legislatures, holding these practices to be part of their cultural heritage, must be accepted as such. This overturned the conclusion in A. Nagaraja⁵⁴ refuses to hold such a practice as part of cultural heritage.

VII. ANALYSIS AND CONCLUSION

It is humbly opined that this judgment had aptly balanced the social pressure to allow the continuance of such practices on the one hand and a compassionate approach to ensure the protection of animals from cruelty on the other. Interpreting the Rules and notification providing for strict regulation as part of the Amended Law, the Court has permitted the sports to continue subject to adherence to the necessary directions to ensure humane treatment of the animals. Though the possibility of these directions not being adhered to on the ground level is known to the Court, it refused to strike off the law on grounds of apprehensions, imposing a greater liability and duty on the State to ensure the strict implementation thereof.

It is pertinent to note that, judicial interventions are generally ex-post facto when harm may be done and irreversible. The most crucial element in such cases is human intervention at the lowest levels, expecting better treatment of animals and teaching the next generation the values of compassion for other living creatures. Let us bring back the humane in the human, the ultimate social change which nature has long waited for.

⁵² Animal Welfare Board Of India & Ors. v. A. Nagaraja & Ors. (2014) 7 SCC 547 (India).

⁵³ Ibid.

⁵⁴ Ibid.