REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 23 OF 2016

THE ANIMAL WELFARE BOARD OF INDIA & ORS. ..PETITIONER(S)

VERSUS

UNION OF INDIA & ANR. ..RESPONDENT(S)

WITH

WRIT PETITION (CIVIL) NO.6 OF 2018

WRIT PETITION (CIVIL) NO.10 OF 2018

CIVIL APPEAL NO..... OF 2023

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 3528 OF 2018)

WRIT PETITION (CIVIL) NO. 1193 OF 2017

WRIT PETITION (CIVIL) NO. 1152 OF 2018

WRIT PETITION (CIVIL) NO. 24 OF 2016

WRIT PETITION (CIVIL) NO. 25 OF 2016

WRIT PETITION (CIVIL) NO. 26 OF 2016

WRIT PETITION (CIVIL) NO. 27 OF 2016

WRIT PETITION (CIVIL) NO. 88 OF 2016

WRIT PETITION (CIVIL) NO. 1011 OF 2017

WRIT PETITION (CIVIL) NO. 1059 OF 2017

WRIT PETITION (CIVIL) NO. 1188 OF 2017

TRANSFERRED CASE 60 OF 2021

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Reason:

J U D G M E N T

ANIRUDDHA BOSE, J.

Leave granted in Special Leave Petition (C) No.3528 of 2018.

2. In the case of **Animal Welfare Board of India -vs- A. Nagaraja and Others** [(2014) 7 SCC 547], a Division Bench of this Court had essentially outlawed two common sports practised in the States of Tamil Nadu and Maharashtra popularly referred to as 'Jallikattu' and 'Bullock Cart Race' respectively. These bovine sports were held to be contrary to the provisions of Sections 3, 11(1)(a) and (m) of the Prevention of Cruelty to Animals Act, 1960 ("1960 Act") which is a Statute enacted by the Parliament. The two Judge Bench had construed the said provisions in the Constitutional backdrop of Article 51-A (g) and (h) as also Articles 14 and 21 of the Constitution of India. This judgment was delivered on 7th May 2014. At that point of time, Jallikattu was regulated by a State Act in Tamil Nadu, being Tamil Nadu Regulation of Jallikattu Act, 2009. The Bench held that this State Act was repugnant to the provisions of the 1960 Act and was held to be void, having regard to the provisions of Article 254 (1) of the Constitution of India. On 7th January 2016, a notification was issued by the Ministry of Environment, Forest and Climate Change ("MoEF&CC") [bearing number GSR 13 (E)]. This notification was

issued in exercise of the powers conferred by Section 22 of the 1960 Act and prohibited exhibition or training of bulls as performing animals. However, an exception was carved and it was specified in this notification that bulls might be continued to be trained as performing animals at events such as Jallikattu in Tamil Nadu and Bullock Cart Races in Maharashtra, Karnataka, Punjab, Haryana, Kerala and Gujarat in the manner by the customs of common community or practice traditionally under the customs or as part of culture in any part of the country. In the State of Karnataka, the race involved male buffaloes, known in that State as "Kambala". This exception, however, was made subject to certain conditions seeking to reduce the pain and suffering of bulls while being used in such sports. A batch of writ petitions i.e. W.P. (C) Nos. 23 of 2016, 24 of 2016, 25 of 2016, 26 of 2016, 27 of 2016, 88 of 2016, 1059 of 2017, 1011 of 2017, 1188 of 2017, 1193 of 2017, SLP(C) No.3528 of 2018 and SLP(C) Nos. 3526-3527 of 2018 were instituted before a Division Bench of this Court questioning legality of the said notification. The petitioners in those proceedings also sought compliance with the directions of this Court contained in the case of **A. Nagaraja** (supra).

3. The first of these writ petitions have been brought by Animal Welfare Board of India and others including one Anjali Sharma,

but in course of hearing, the Animal Welfare Board changed its stance and sought to support the stand of the State and Union of India mainly on the ground that the 1960 Act and certain State Amendments which were enacted in the year 2017 were not repugnant and the Board had framed guidelines to prevent suffering of the bovine species during holding of the aforesaid events. We shall refer to the three State Amendment Acts later in this judgment. However, the second writ petitioner- Anjali Sharma, a practicing advocate of this Court and also a member of the Board prosecuted the aforesaid writ petition as a single writ petitioner.

4. In connection with W.P.(C) No.1188 of 2017, an Interlocutory Application (170346 of 2022) has been filed by one Vikramsinh Nivrutti Bhosale on the strength of his being an agriculturalist in Maharashtra. He has argued that the challenge to the Maharashtra Amendment Act, if sustained, could hamper lives of farmers still associated with Bullock Cart Race. It is also his argument that the Amendment Act of Maharashtra is also relatable to entry 15 of List II of the Seventh Schedule of the Constitution of India which stipulates:-

> "Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice".

5. The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017,("Tamil Nadu Amendment Act"), The Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017 ("Maharashtra Amendment Act") and The Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017 ("Karnataka Amendment Act") were enacted by the respective State Legislatures and had received Presidential assent. We shall refer to these Acts in greater details in this judgment. These Amendment Acts in substance seek to legitimise various types of bovine sports including Jallikattu in Tamil Nadu, Bullock Cart Race in Maharashtra and Kambala in Karnataka. The term Jallikattu as defined in the Tamil Nadu Amendment Act 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"."*

In the Karnataka Amendment Act, the term Kambala has been defined, upon Amendment of the parent Statute as:-

> *"(aa) "**Bulls race or Bullock cart race**" means any form of bulls race including race of Bullock cart as a traditional sports involving Bulls whether tied to cart with the help of wooden yoke or not (in whatever name called) normally held as a part of tradition and culture in the state on such days and places, as may be notified by the State Government."; and*
>
> *(ii) after clause (d), the following shall be inserted, namely:-*

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

Bullock Cart Race as held in Maharashtra has been defined under Section 2 of the Amendment Act as:-

> *"(bb) "bullock cart race" means an event involving bulls or bullocks to conduct a race, whether tied to cart with the help of wooden yoke or not (by whatever name called), with or without a cartman with a view to follow tradition and culture on such days and in any District where it is being traditionally held at such places, as may be previously approved by the District Collector, and also known as "Bailgada Sharyat", "Chhakadi" and "Shankarpat" in the State of Maharashtra."*

6. A Public Interest Litigation ("PIL") was brought before the High Court of Judicature at Bombay, registered as PIL (stamp) number 23132 of 2017 (**Ajay Marathe vs. The State of Maharashtra and Others**) challenging certain proposed Rules brought by the State of Maharashtra under the heading "The Maharashtra Prevention of Cruelty to Animals (Conduct of Bullock Cart Race) Rules, 2017" permitting Bullock Cart Race and on 11th October 2017, the High Court restrained conducting of Bullock Cart Races within the State of Maharashtra. The aforesaid Rules sought to regulate organisation of Bullock Cart Races.

7. A farmer from that State, Vikramsinh Nivrutti Bhosale from the District of Sanghli, has instituted Special Leave Petition (Civil)

3528 of 2018 assailing that order passed by the Bombay High Court and in this reference, we shall deal with certain points raised in the said special leave petition as well.

8. A Division Bench of this Court by an order passed on 2nd February 2018 formulated five questions to be answered by a Constitution Bench and the papers were directed to be placed before the Hon'ble Chief Justice of India. The Division Bench had formulated the following 5 questions which we have to answer in this judgment:-

i. *"Is the Tamil Nadu Amendment Act referable, in pith and substance, to Entry 17, List III of the Seventh Schedule to the Constitution of India, or does it further and perpetuate cruelty to animals; and can it, therefore, be said to be a measure of prevention of cruelty to animals? Is it colourable legislation which does not relate to any Entry in the State List or Entry 17 of the Concurrent List?*

ii. *The Tamil Nadu Amendment Act states that it is to preserve the cultural heritage of the State of Tamil Nadu. Can the impugned Tamil Nadu Amendment Act be stated to be part of the cultural heritage of the people of the State of Tamil Nadu so as to receive the protection of Article 29 of the Constitution of India?*

iii. *Is the Tamil Nadu Amendment Act, in pith and substance, to ensure the survival and well-being of the native breed of bulls? Is the Act, in pith and substance, relatable to Article 48 of the Constitution of India?*

iv. *Does the Tamil Nadu Amendment Act go contrary to Articles 51A(g) and 51A(h), and could it be said, therefore, to be unreasonable and violative of Articles 14 and 21 of the Constitution of India?*

v. *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?"

9. The Presidential assent was sought for by the three States in terms of Article 254(2) of the Constitution of India. On behalf of the petitioners, the very act of assent of the President has been questioned and citing the judgment of this Court in the case of **Gram Panchayat of Village Jamalpur -vs- Malwinder Singh and Others** [(1985) 3 SCC 661] it has been argued that for obtaining such assent, complete details were not disclosed before the President. The judgment of this Court in **Hoechst Pharmaceuticals Ltd. and Others -vs- State of Bihar and Others** [(1983) 4 SCC 45] was also cited by the petitioners to contend that such assent of the President is relevant only if the legislation is relatable to an Entry in List III of Seventh Schedule of the Constitution. But in our view, the Amendment Statutes are relatable to Entry 17 of List III of Seventh Schedule and hence we do not consider it necessary to deal with the ratio laid down in the case of **Hoechst Pharmaceuticals** (supra). Certain other judgments were also cited in support of this proposition. We shall express our opinion on this point in subsequent part of this judgment.

10. In W.P. (C) No.1152 of 2018, the legality of the Karnataka Amendment Act has been challenged. This petition was tagged with W.P.(C) No.1059 of 2017 by an order dated 7.12.2018. W.P.(C) No.1059 of 2017 was heard along with T.C. (C) No.60 of 2021, a three-Judge Bench of this Court took cognizance of the Karnataka and Maharashtra Amendment Acts and in an order passed by the said Bench on 16.12.2021, it was observed:-

> *"The entire matter in relation to similar amendments made by the State of Tamil Nadu and State of Karnataka is now referred to the Constitution Bench, including to consider the question whether these amendment Acts (of State of Tamil Nadu) overcome the defects pointed out in the two judgments of this Court. Similar question would arise in these writ petitions and transferred case from Maharashtra concerning the provisions of State of Maharashtra. Hence, these writ petitions be heard along with writ petitions pertaining to the State of Tamil Nadu and State of Karnataka."*

11. In the judgment of **A. Nagaraja** (supra), dealing with Jallikattu and Bullock Cart Race in Maharashtra, the Division Bench of this Court found bulls to be non-suitable for being involved in any sports. The Bench found that the bulls were not performing animals having no natural inclination for running like a horse. The reasoning of the Bench in the case of **A. Nagaraja** (supra) would appear, inter-alia, from paragraphs 33, 37, 41, 44, 53 and 73. It has been held by the Court in these paragraphs:-

> ***"33.*** *The PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the directive principles of State policy. It is trite law that,*

in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. The court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. The court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smokescreen and discover the true state of affairs. The court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guidelines or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, the court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. The court has also a duty under the doctrine of parens patriae to take care of the rights of animals, since they are unable to take care of themselves as against human beings."
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***"37.** Section 11 generally deals with the cruelty to animals. Section 11 confers no right on the organisers to conduct Jallikattu/bullock cart race. Section 11 is a beneficial provision enacted for the welfare and protection of the animals and it is penal in nature. Being penal in nature, it confers rights on the animals and obligations on all persons, including those who are in charge or care of the animals, AWBI, etc. to look after their well-being and welfare."*

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***"41.** Section 11(3) carves out exceptions in five categories of cases mentioned in Sections 11(3)(a) to (e), 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."

Exceptions are incorporated based on the "doctrine of necessity". Clause (b) to Section 11(3) deals with the destruction of stray dogs, out of necessity, otherwise, it would be harmful to human beings. Clause (d) to Section 11(3) deals with matters dealt with in Chapter IV, incorporated out of necessity, which deals with the experimentation on animals, which is for the purpose of advancement by new discovery of physiological knowledge or of knowledge which would be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants, which is not prohibited and is lawful. Clause (e) to Section 11(3) permits killing of animals as food for mankind, of course, without inflicting unnecessary pain or suffering, which clause is also incorporated "out of necessity". Experimenting on animals and eating their flesh are stated to be two major forms of speciesism in our society. Over and above, the legislature, by virtue of Section 28, has favoured killing of animals in a manner required by the religion of any community. Entertainment, exhibition or amusement do not fall under these exempted categories and cannot be claimed as a matter of right under the doctrine of necessity."

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***"44.** Bulls, therefore, in our view, cannot be performing animals, anatomically not designed for that, but are forced to perform, inflicting pain and suffering, in total violation of Section 3 and Section 11(1) of the PCA Act. Chapter V of the PCA Act deals with the performing animals. Section 22 of the PCA Act places restriction on exhibition and training of performing animals, which reads as under:*

*"**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."*

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***"53.** The Statement of Objects and Reasons of the TNRJ Act refers to ancient culture and tradition and does not state that it has any religious significance. Even the ancient culture and tradition do not support the conduct of Jallikattu or bullock cart race, in the form in which they are being conducted at present. Welfare and the well-being of the bull is Tamil culture and tradition, they do not approve of infliction of any pain or suffering on the bulls, on the other hand, Tamil tradition and culture are to worship the bull and the bull is always considered as the vehicle of Lord Shiva. Yeru Thazhuvu, in Tamil tradition, is to embrace bulls and not overpowering the bull, to show human bravery. Jallikattu means, silver or gold coins tied to the bull's horns and in olden days those who got at the money to the bull's horns would marry the daughter of the owner. Jallikattu or the bullock cart race, as practised now, has never been the tradition or culture of Tamil Nadu."*

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***"73.** Jallikattu and other forms of bulls race, as the various reports indicate, cause considerable pain, stress and strain on the bulls. Bulls, in such events, not only do move their head showing that they do not want to go to the arena but, as pain inflicted in the vadi vasal is so much, they have no other go but to flee to a situation which is adverse to them. Bulls, in that situation, are stressed, exhausted, injured and humiliated. Frustration of the bulls is noticeable in their vocalisation and, looking at the facial expression of the bulls, ethologist or an ordinary man can easily sense their suffering. Bulls, otherwise are very peaceful animals dedicating their life for human use and requirement, but they are subjected to such an ordeal that not only inflicts serious suffering on them but also forces them to behave in ways, namely, they do not behave, force them into the event which does not like and, in that process, they are being tortured to the hilt. Bulls cannot carry the so-called performance without being exhausted, injured, tortured or humiliated. Bulls are also intentionally subjected to fear,*

injury—both mentally and physically—and put to unnecessary stress and strain for human pleasure and enjoyment, that too, a species which has totally dedicated its life for human benefit, out of necessity."

12. The 1960 Act has been enacted in pursuance of legislative power contained in Entry 17 of List III of the Seventh Schedule to the Constitution of India. The impact of the Amendment Acts on the main Statute would be revealed from the comparative table given below:-

Provisions	**The Prevention of Cruelty to Animals Act, 1960 ("Principal Act")**	**The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017**	**The Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017**	**The Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017**
Scope	An Act to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals.	An Act to amend the Prevention of Cruelty to Animals Act, 1960 so as to preserve the cultural heritage of the State of Tamil Nadu and to ensure the survival and wellbeing of the native breeds of bulls.	An Act further to amend the Prevention of Cruelty to Animals Act, 1960 in its application to the State of Karnataka.	An Act to amend the Prevention of Cruelty to Animals Act, 1960, in its application to the State of Maharashtra.
Section 2	Defintions.-In this Act, unless the context otherwise requires,— (a) "animal" means any living creature other than a human being; [(b) "Board" means the Board established under section 4, and as reconstituted from time to time under section 5A;] (c) "captive animal" means any animal (not being a	In section 2 of the Prevention of Cruelty to Animals Act, 1960 (Central Act 59 of 1960) (hereinafter referred to as the Principal Act after clause (d), the following clause shall be inserted, namely:— "(dd) "Jallikattu" means an event involving bulls conducted with a view to follow tradition and culture on such days from	- In section 2 of the Prevention of Cruelty to Animals Act, 1960 (Central Act 59 of 1960) (hereinafter referred to as the Principal Act),- (i) after clause (a), the following shall be inserted, namely:- "(aa) "Bulls race or Bullock cart race" means any form of bulls race including race of Bullock cart as a traditional sports involving	In section 2 of the Prevention of Cruelty to Animals Act, 1960, in its application to the State of Maharashtra (hereinafter referred to as "the principal Act"), after clause (b), the following clause shall be inserted, namely:— "(bb) "bullock cart race" means an event involving bulls

	domestic animal) which is in captivity or confinement, whether permanent or temporary, or which is subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from captivity or confinement or which is pinioned or which is or appears to be maimed; (d) "domestic animal" means any animal which is tamed or which has been or is being sufficiently tamed to serve some purpose for the use of man or which, although it neither has been nor is being nor is intended to be so tamed, is or has become in fact wholly or partly tamed; (e) "local authority" means a municipal committee, district board or other authority for the time being invested by law with the control and administration of any matters within a specified local area; (f) "owner", used with reference to an animal, includes not only the owner but also any other person for the time being in possession or custody of the animal, whether with or without the consent of the owner; (g) "phooka" or "doom dev" includes any process of introducing air or any substance into the female organ of a milch animal with the object of drawing	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" ."	Bulls whether tied to cart with the help of wooden yoke or not (in whatever name called) normally held as a part of tradition and culture in the state on such days and places, as may be notified by the State Government."; and (ii) after clause (d), the following shall be inserted, namely:- "(dd) "Kambala" means the traditional sports event involving Buffalo's (male) race normally held as a part of tradition and culture in the state on such days and places, as may be notified by the State Government."	or bullocks to conduct a race, whether tied to cart with the help of wooden yoke or not (by whatever name called), with or without a cartman with a view to follow tradition and culture on such days and in any District where it is being traditionally held at such places, as may be previously approved by the District Collector, and also known as "Bailgada Sharyat', "Chhakadi" and "Shankarpat" in the State of Maharashtra".

	off from the animal any secretion of milk; (h) "prescribed" means prescribed by rules made under this Act; (i) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, to which the public have access.			
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.**	Section 3 of the principal Act shall be re-numbered as sub-section (1) of that section and after sub-section (1) as so re-numbered, the following subsection shall be added, namely:— "(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.".	Section 3 of the principal Act, shall be renumbered as subsection (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:- "(2) Notwithstanding anything contained in subsection (1) conduct of "Kambala" or "Bulls race or Bullock cart race" shall be permitted, subject to condition that no unnecessary pain or suffering is caused to the animals, by the person in charge of that animal used to conduct "Kambala" or "Bulls race or Bullock cart race" as the case may be and subject to such other conditions as may be specified, by the State Government, by notification."	Section 3 of the principal Act shall be re-numbered as sub-section (1) thereof; and after sub-section (1) as so renumbered, the following sub-sections shall be added, namely :— "(2)Notwithstanding anything contained in sub-section (1), the bullock cart race may be conducted with the prior permission of the Collector, subject to the condition that no pain or suffering as envisaged by or under the Act is caused to the animal by any person or person in charge of the animal used to conduct bullock cart race and subject to such other conditions as may be prescribed by rules under section 38B by the State Government. (3) If any person or person in charge of the animals conducts bullock cart race in contravention of the conditions laid down in sub-section (2) or rules made thereunder relating

				to the bullock cart race or causes pain or suffering to the animal, he shall be punished with fine which may extend upto rupees five lakhs or imprisonment for a term which may extend upto three years."
Section 11	**Treating animals cruelly.—(1) If any person— (a) beats, kicks, over-rides, overdrives, 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 (b) [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed; or (c) wilfully and unreasonably administers any injurious drug or injurious substance to 2 [any animal] or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by 2 [any animal]; or (d) conveys or carries, whether in or upon any vehicle or not,**	In section 11 of the principal Act, in sub-section (3), after clause (e), the following clause shall be added, namely:— "(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."	In section 11 of the principal Act, in sub-section (3), after clause (e), the following shall be inserted, namely:- "(f) the conduct of "Kambala" with a view to follow and promote tradition and culture and ensure preservation of native breed of buffalos as also their safety, security and wellbeing. (g) the conduct of "Bulls race or Bullock cart race" with a view to follow and promote tradition and culture and ensure preservation of native breed of cattle as also their safety, security and wellbeing."	In section 11 of the principal Act, in sub-section (3), after clause (c),the following clause shall be inserted, namely :— "(c-1) the conduct of bullock cart race in accordance with the provisions of sub-section (2) of section 3 or participation therein with a view to follow and promote tradition and culture and ensure preservation of native breeds of bulls as also their purity, safety, security and well being; or".

	any animal in such a manner or position as to subject it to unnecessary pain or suffering; or (e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or (f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or (g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or (h) being the owner of [any animal] fails to provide such animal with sufficient food, drink or shelter; or (i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or (j) wilfully permits any animal, of which he is the owner, to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse			

	permits any diseased or disabled animal, of which he is the owner, to die in any street; or (k) offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or 1 [(l) multilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or] 2 [(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] (n) 3 * organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such**			

	purposes; or (o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting; he shall be punishable, 4 [in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both]. (2) For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence: Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine. (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 5 [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.			
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	The following proviso shall be added to section 22 of the principal Act, namely:— "Provided that nothing contained in this section shall apply to conduct of 'Jallikattu'.".	In section 22 of the principal Act, at the end, the following proviso shall be inserted, namely:"Provided that nothing contained in this section shall apply to conduct of "Kambala" or "Bulls race or Bullock cart race" as the case may be."	In section 22 of the principal Act, the following proviso shall be added, namely :— " Provided that, nothing contained in this section shall apply to the conduct of bullock cart race in accordance with the provisions of sub-section (2) of section 3.".

	which shall not be exhibited or trained as a performing animal.			
Section 27	Exemptions.—Nothing contained in this Chapter shall apply to— (a) the training of animals for bona fide military or police purposes or the exhibition of any animals so trained; or (b) any animals kept in any zoological garden or by any society or association which has for its principal object the exhibition of animals for educational or scientific purposes.	In section 27 of the principal Act, after clause (b), the following clause shall be added, namely:— "(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.".	In section 27 of the principal Act, after clause (b), the following shall be inserted, namely:- "(c) the conduct of "Kambala" with a view to follow and promote tradition and culture and ensure survival and continuance of native breeds of buffaloes. (d) the conduct of "Bulls race or Bullock cart race" with a view to follow and promote tradition and culture and ensure survival and continuance of native breeds of cattle."	In section 27 of the principal Act, after clause (a), the following clause shall be inserted, namely :— "(a-1) the conduct of bullock cart race in accordance with the provisions of sub-section (2) of section 3, with a view to follow and promote tradition and culture and ensure survival and continuance of native breeds of bulls; or "
Insertion of 28A	—	After Section 28 of the principal Act, the following section shall be inserted, namely:- "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."	After Section 28 of the principal Act, the following section shall be inserted, namely:- Nothing contained in this Act, shall apply to "Kambala" or "Bulls race or Bullock cart race" conducted to follow and promote tradition and culture and such conduct of "Kambala" or "Bulls race or Bullock cart race" shall not be an offence under this Act."	After Section 28 of the principal Act, the following section shall be inserted, namely:- "28A Nothing contained in this Act shall apply to the bullock cart race conducted in accordance with the provisions of sub-section (2) of Section 3 to follow and promote tradition and culture and such conduct shall not be an offence under this Act."
Insertion of 38B	—	—	—	After Section 38A of the principal Act, the following section shall be inserted, namely:- "(1) The State

				Government may, subject to the condition of previous publication, by notification in the *Official Gazette,* make the rules, not inconsistent with the rules made by the Central Government, if any, for carrying into effect the provisions of sub-section (2) of section 3 of the Act (2) Every rule made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify such decision in the *Official Gazette*, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule"

13. After the aforesaid three Amendment Acts received Presidential assent, the States of Tamil Nadu and Maharashtra formulated Rules for conducting the aforesaid bovine sports. The Tamil Nadu Rules were titled "The Tamil Nadu Prevention of Cruelty to Animals (Conduct of Jallikattu) Rules, 2017" and for the State of Maharashtra, "The Maharashtra Prevention of Cruelty to Animals (Conduct of Bullock Cart Race) Rules, 2017" was formulated. So far as the State of Karnataka is concerned, a Notification was issued on similar lines by a Memorandum No. PSM 257 SLV-2014 dated 17th December 2015. These Rules/Notification seek to rigidly regulate conducting the aforesaid bovine sports. They postulate provisions for application for permission of holding the sports, for participating in the race. For organising of Bullock Cart Race, Rules stipulate for the manner in which such races could be conducted with specifications for length of the track, rest period and isolation of the track from general public. The Tamil Nadu Rules specifically provides for examination of bulls, with specifications for the arena, bull collection yard as also setting up of spectators' gallery. These instruments in substance prohibit causing any physical disturbance to the bulls like beating and poking them with sharp objects, sticks, pouring

chilli powder in their eyes, twisting their tails amongst other such pain inflicting acts.

14. The main theme of the submissions of the petitioners/parties who are assailing the Amendment Acts are founded on two planks. Mr. Shyam Divan, Mr. Anand Grover, Mr. Sidharth Luthra, Mr. Krishnan Venugopal and Mr. V. Giri, learned Senior Advocates have appeared for the parties assailing continued performance of these sports which are considered to be cruel. The Respondents' cases supporting the continuation of these sports have been mainly argued by Mr. Tushar Mehta, ld. Solicitor General, Mr. Kapil Sibal, Mr. Mukul Rohatgi and Mr. Rakesh Dwivedi, learned Senior Advocates. For the petitioners, their main case is that even after the State Amendments, the activities sought to be legitimised still remain destructive and contrary to the provisions of Sections 3, 11(1) (a) and (m) of the 1960 Act. It is their contention that the Amendment Acts do not cure the defects or deficiencies brought about by the judgment of **A. Nagaraja** (supra). The ratio of the said judgment is sought to be bypassed through these Amendment Acts, which is impermissible in law. It has also been argued that the expression "person" as used in Article 21 of the Constitution of India includes sentient animals and their liberty is sought to be curtailed by legitimising the aforesaid bovine sports and the

instrument of such legitimisation being the three Amendment Acts is unreasonable and arbitrary, thereby not meeting the standard of Article 14 of the Constitution of India. In fact, that is the fourth point of question of reference which we shall be addressing in this judgment. The petitioners seek to inter-weave Articles 14, 21, 48, 51-A (h) and (g) to set up a rights-regime for the animals. Their contention is that the Fundamental Duty of Indian citizens to have compassion for living creatures and to develop humanism result in corresponding rights for sentient animals to be protected for distress and pain inflicting activities only having entertainment value for human beings.

15. The other argument advanced is that these sports cannot be held to be part of cultural heritage of the State of Tamil Nadu which is so provided in the Preamble of the Amendment Act of that State. Preamble of the Tamil Nadu Amendment Act provides that the object of the said Statute is to preserve the cultural heritage of the State of Tamil Nadu and to ensure the survival and wellbeing of native breeds of bulls. The said Act inserted [clause 2(d)] in the definition clause of the 1960 Act and amended Section 11(3) of the same Statute, adding sub-clause (f) thereto. There are two more Amendments which would appear from the table we have given above, but those are primarily to exempt Jallikattu from the

restrictive provisions of the 1960 Act. In the judgment of **A. Nagaraja** (supra) it was inter-alia held on the point of tradition and culture of Jallikattu:-

> ***"54.*** *The PCA Act, a welfare legislation, in our view, overshadows or overrides the so-called tradition and culture. Jallikattu and bullock cart races, the manner in which they are conducted, have no support of Tamil tradition or culture. Assuming, it has been in vogue for quite some time, in our view, the same should give way to the welfare legislation, like the PCA Act which has been enacted to prevent infliction of unnecessary pain or suffering on animals and confer duties and obligations on persons in charge of animals. Of late, there are some attempts at certain quarters, to reap maximum gains and the animals are being exploited by the human beings by using coercive methods and inflicting unnecessary pain for pleasure, amusement and enjoyment. We have a history of doing away with such evil practices in society, assuming such practices have the support of culture and tradition, as tried to be projected in the TNRJ Act. Professor Salmond states that custom is the embodiment of those principles which have commended themselves to the national conscience as the principles of justice and public utility. This Court, in N. Adithayan v. Travancore Devaswom Board [(2002) 8 SCC 106] (2002) 8 SCC 106, while examining the scope of Articles 25(1), 26(a), 26(b), 17, 14 and 21, held as follows: (SCC p. 125, para 18)*
>
> > *"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."*
>
> ***55.*** *As early as 1500-600 BC in Isha-Upanishads, it is professed as follows:*
>
> > *"The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."*

In our view, this is the culture and tradition of the country, particularly the States of Tamil Nadu and Maharashtra.

56. *The PCA Act has been enacted with an object to safeguard the welfare of the animals and evidently to cure some mischief and age old practices, so as to bring into effect some type of reform, based on eco-centric principles, recognising the intrinsic value and worth of animals. All the same, the Act has taken care of the religious practices of the community, while killing an animal vide Section 28 of the Act."*

16. On this basis, arguments have been advanced on behalf of the petitioners that the Amendment Act of Tamil Nadu having regard to its Preamble seeks to invalidate conclusive judicial opinion without curing the defects specified in that decision in the conduct of Jallikattu. So far as the Karnataka Amendment Act is concerned, in the definition clauses of "Bulls Race or Bullock Cart Race" and "Kambala", they have been described as part of tradition and culture of the State. In the Maharashtra Act also the source of Bullock Cart Race has been identified to be the tradition and culture of specified parts of that State in the definition clause of Bullock Cart Race.

17. The argument of the petitioners and the interveners supporting in substance the ban on performance of these sports have been that the Statutes seek to validate the provisions that were held to be illegal by this Court without curing the defects outlined in the judgment of **A. Nagaraja** (supra). In such

circumstances, the Amendment Acts could not be held to be in exercise of legitimate legislative power in the light of the constitutional provisions and these enactments are colourable legislations. The authorities in support of this proposition cited by the petitioners are **Shri Prithvi Cotton Mills Ltd. and Another -vs- Broach Borough Municipality and Others** [(1969) 2 SCC 283], **Bhubaneshwar Singh and Another -vs- Union of India and Others** [(1994) 6 SCC 77], **Indra Sawhney -vs- Union of India and Others** [(2000) 1 SCC 168], **Amarendra Kumar Mohapatra and Others -vs- State of Orissa and others** [(2014) 4 SCC 583], **State of M.P. -vs- Mahalaxmi Fabric Mills Ltd. and Others** [1995 Supp (1) SCC 642], **D.C. Wadhwa DR and Others -vs- State of Bihar and Others** [(1987) 1 SCC 378], **Sri Sri Sri K. C. Gajapati Narayan Deo -vs- State of Orissa** [1954 SCR 1], **S.S. Bola and Others -vs- B.D. Sardana and Others** [(1997) 8 SCC 522], **State of Tamil Nadu -vs- State of Kerala and Another** [(2014) 12 SCC 696], **Madan Mohan Pathak and Another -vs- Union Of India and Others** [(1978) 2 SCC 50], **National Agricultural Cooperative Marketing Federation of India Ltd. and Another -vs- Union of India and Others** [(2003) 5 SCC 23], **In Re Punjab Termination of Agreement Act, 2004** [(2017) 1 SCC 121], **Mafatlal Industries Ltd. and Others -vs- Union of India and Others** [(1997) 5 SCC

536], **S. T. Sadiq -vs- State of Kerala and Others** [(2015) 4 SCC 400], **A.R. Antulay -vs- R.S. Nayak and Another** [(1988) 2 SCC 602] and **Maneka Gandhi -vs- Union of India and Another** [(1978) 1 SCC 248]. The judgment of the **Maneka Gandhi** (supra) was also relied upon to contend that in order to protect Fundamental Rights, the effect of the law has to be looked at and not just theories and provisions of law.

18. Corollary submissions of the petitioners are that after Presidential assent was given to the three Statutes, they legitimised the three aforesaid events but the manner in which they are conducted is contrary to the provisions of Sections 3, 11(1)(a) and (m) as was held in the **A. Nagaraja** (supra) case. Hence, the attempt of the Amendment Acts is to override a judicial verdict without addressing the grounds on which this Court had found Jallikattu and Bullock Cart Race in the States of Tamil Nadu and Maharashtra respectively to be in violation of the 1960 Act. This legislative exercise, as argued by the petitioners, go contrary to Constitutional scheme. The authorities cited on this point are **State of Tamil Nadu -vs- State of Kerala** (supra), **Chief Secretary to the Government, Chennai, Tamil Nadu and Others -vs- Animal Welfare Board and Another** [(2017) 2 SCC

144] and **Rupa Ashok Hurra -vs- Ashok Hurra and Another** [(2002) 4 SCC 388].

19. In the case of **A. Nagaraja** (supra), the two Judge Bench, on the basis of affidavit of the Animal Welfare Board of India and MoEF&CC described the manner in which Jallikattu was being performed. The preparation of the bulls for these sports entail, but not limited to, ear cutting/mutilation, twisting of tail, resulting in fracture and dislocation of tail bones. It was also stated that 95% of the bulls that were used in the process of participation in these sports were soiled with faeces from below the base of their tails and across the large part of their hindquarters. Additionally, bovine species were forced to stand together in accumulated waste for hours. At one of the locations of the events, the Animal Welfare Board found that in the "collection area", a bull died due to injuries caused as a result of head-on collision with a moving passenger bus. Injuries were caused to muscle bones, nerves and blood vessels also as the bulls were subjected to tail-biting, poking them with sharp objects to excite them, use of irritants in the eyes and nose. Vadi vassal (the cattle bull entry place in Jallikattu) were narrow entry corridors which had cramping conditions and bulls were made to move sideways which is an unnatural movement for them. There was also lack of food and water at the respective

locations and instances of spectators beating, biting and agitating the bulls. Such abhorrent practises surfaced from investigation reports relied on by the petitioners. In paragraph 67 of **A. Nagaraja** (supra), as reported in the aforesaid journal, substantial emphasis has been laid on Article 48 of the Constitution of India read with Fundamental Duties enshrined in Article 51-A (g) and (h). On that basis, argument was advanced that sentient species should be accorded the protective umbrella of Article 21 of the Constitution. We shall deal with that aspect later in this judgment. In fact, argument in this line has been advanced on the basis that sentient animals have natural rights to live a life with dignity without any infliction of cruelty. The other line of submission on behalf of the petitioners is that the subject dealt with by the three Amendment Acts does not relate to List III. On this count the authorities cited were **State of Bihar and Others -vs- Indian Aluminium Company and Others** [(1997) 8 SCC 360], **Hoechst Pharmaceuticals Ltd.** (supra), **M. Karunanidhi -vs- Union of India and Another** [(1979) 3 SCC 431] and **K.T. Plantation Private Ltd. and Another -vs- State of Karnataka** [(2011) 9 SCC 1].

20. It has also been the argument of the petitioners that making exception for bulls to carve them out of the protective mechanism

of the 1960 Act was not based on any intelligible criteria but on an arbitrary selection. Learned Counsel for the petitioners relied on **Director of Education (Secondary) and Another -vs- Pushpendra Kumar and Others** [(1998) 5 SCC 192], **Harbilas Rai Bansal -vs- State of Punjab and Another** [(1996) 1 SCC 1], **State of Gujarat and Another -vs- Raman Lal Keshav Lal Soni and Others** [(1983) 2 SCC 33] and **Shayara Bano -vs- Union of India and Others** [(2017) 9 SCC 1] to substantiate this argument.

21. We shall first deal with the argument advanced on behalf of the petitioners that animals have rights. In fact, what has been urged before us is that animals have Fundamental Rights as also legal rights. It has been held in **A. Nagaraja** (supra) case at paragraph 66 (in the Report):-

> *"66. Rights guaranteed to the animals under Sections 3, 11, etc. are only statutory rights. The same have to be elevated to the status of fundamental rights, as has been done by few countries around the world, so as to secure their honour and dignity. Rights and freedoms guaranteed to the animals under Sections 3 and 11 have to be read along with Article 51-A(g) and (h) of the Constitution, which is the magna carta of animal rights."*

22. The concept of animal rights has been anchored by the petitioners on dual foundation. It has been submitted that our jurisprudence does not recognise rights only for human beings and **Narayan Dutt Bhatt -vs- Union of India** [(2018) SCC OnLine Utt 645] has been cited to demonstrate that animals are legal entities

having a distinct persona with corresponding rights, duties and liabilities as that of a legal person. In order to put emphasis on this concept of evolving rights, petitioners have submitted that our legal system is both organic and dynamic in nature and with passage of time law must change. (**Saurabh Chaudri and Others -vs- Union of India and Others** [(2003) 11 SCC 146], **Chief Justice of Andhra Pradesh and Others -vs- L.V.A. Dixitulu and Others** [(1979) 2 SCC 34], **Video Electronics Pvt. Ltd. and Another -vs- State of Punjab and Another** [(1990) 3 SCC 87] and **Ashok Kumar Gupta and Another v. State of U.P. and Others**, [(1997) 5 SCC 201]). In this regard, certain international authorities being Argentina, Case No.P-72.254/2015 has been cited. Further, our attention has been drawn to the Animal Wellbeing (Sentience) Act, 2022 recognising animals as sentient beings in the United Kingdom. It has also been asserted that rights of sentient animals have been recognised by the Constitutional Court of Ecuador. On behalf of the respondents, the factum of existence of animal rights has not been directly contested but the stand of the respondents on this point is that the rights which the sentient animal would have enjoyed ought to be subject to the legislative provisions and in a case of this nature, which is likely to have seminal impact not only on our jurisprudence but our

society as well, legislature would be a better judge to determine what would be the nature, contours and limitations of such rights. The effect of this argument is that the rights of sentient animals can be recognised by law but such rights would be in a nature as determined by the appropriate law-making body and not by judicial interpretation.

23. On the point of recognizing rights of animals, the legislative approach appears to us to be two-fold. Of course, the animals cannot demand their right in the same way human beings can assert for bringing a legislation, but as part of the social and cultural policy the law makers have recognised the rights of animals by essentially imposing restriction on human beings on the manner in which they deal with animals. By virtue of Article 48 of the Constitution of India which essentially operates as a national guideline for law makers, a two-way path has been devised. The first is imposing duty on the State to organise agriculture and animal husbandry on modern and scientific lines. The second is emphasising the duty of the State to take steps for preserving and improving the breeds and prohibiting slaughter of cows and calves and other milch and draught cattle. Under the chapter on Fundamental Duties, a citizen is required to protect and improve the natural environment including forests, lakes,

rivers and wildlife ought to have compassion for living creatures. The petitioners want us to interpret the Amendment Acts in light of these two constitutional provisions and want us to scrutinise the three Statutes taking into cognizance pain and suffering that would be caused to them, so that the bovine species are not compelled to participate in the aforesaid sports organised by human beings for the latter's own pleasure. It is the petitioners' stand that wherever the 1960 Act enjoins human beings from performing certain acts vis-à-vis animals, the obligations ought to be translated jurisprudentially into rights of the animals not to be subjected to such prohibited acts. The line of reasoning in this regard on behalf the petitioners is that the very manner in which these sports activities are undertaken directly offend the aforesaid two provisions of the 1960 Act. Merely by introducing these three Amendment Acts, the organisers of these events cannot be saved from the offences specified in the 1960 Act, which aspect has been dealt with in detail in the judgment of this Court in the case of **A. Nagaraja** (supra).

24. On the question of conferring fundamental right on animals we do not have any precedent. The Division Bench in the case of **A. Nagaraja** (supra) also does not lay down that animals have Fundamental Rights. The only tool available for testing this

proposition is interpreting the three Amendment Acts on the anvil of reasonableness in Article 14 of the Constitution of India. While the protection under Article 21 has been conferred on person as opposed to a citizen, which is the case in Article 19 of the Constitution, we do not think it will be prudent for us to venture into a judicial adventurism to bring bulls within the said protected mechanism. We have our doubt as to whether detaining a stray bull from the street against its wish could give rise to the constitutional writ of habeas corpus or not. In the judgment of **A. Nagaraja** (supra), the question of elevation of the statutory rights of animals to the realm of fundamental rights has been left at the advisory level or has been framed as a judicial suggestion. We do not want to venture beyond that and leave this exercise to be considered by the appropriate legislative body. We do not think Article 14 of the Constitution can also be invoked by any animal as a person. While we can test the provisions of an animal welfare legislation, that would be at the instance of a human being or a juridical person who may espouse the cause of animal welfare.

25. We shall next test the argument of the authorities, i.e., the Union, the three States as also the Animal Welfare Board (in their changed stance) that bovine sports are part of the culture and tradition of the respective States. We have already referred to the

relevant provisions of the three Amendment Acts which carries expression to this effect.

26. Ordinarily, whether a particular practice or event is part of culture or tradition is to be decided by the custom and usage of a particular community or a geographical region which can be translated into an enactment by the appropriate legislature. But here the continuance of the subject sports have been found to be in breach of a Central Statute by a Division Bench of this Court and these three Amendment Acts seek to revive the earlier position. That is the petitioners' argument.

27. In order to come to a definitive conclusion on this question, some kind of trial on evidence would have been necessary. It is also not Court's jurisdiction to decide if a particular event or activity or ritual forms culture or tradition of a community or region. But if a long lasting tradition goes against the law, the law Courts obviously would have to enforce the law. Learned counsel appearing for the parties, however, have cited different ancient texts and modern literature to justify their respective stands. In Public Interest Litigations, this Court has developed the practice of arriving at a conclusion on subjects of this nature without insisting on proper trial to appreciate certain social or economic conditions going by available reliable literature. In paragraphs 53 and 73 in the case of

A. Nagaraja (supra), there is judicial determination about the practice being offensive to the provisions of the Central Statute. It would be trite to repeat that provisions of a Statute cannot be overridden by a traditional or cultural event. Thus, we accept the argument of the petitioners that at the relevant point of time when the decision in the case of **A. Nagaraja** (supra) was delivered, the manner in which Jallikattu was performed did breach the aforesaid provisions of the 1960 Act and hence conducting such sports was impermissible.

28. But that position of law has changed now and the Amendment Acts have introduced a new regime for conducting these events. It is a fact that the Amendment Acts per se seeks to legitimize the aforesaid three bovine sports by including them by their respective names and the body of the Statute themselves do not refer to any procedure by which these sports shall be held. If that was the position these Amendment Acts would have fallen foul of the ratio of the decisions of this Court in the cases of **S.S. Bola and Others** (supra), **State of Tamil Nadu -vs- State of Kerala** (supra), **Madan Mohan Pathak** (supra), **National Agricultural Cooperative Marketing Federation of India Ltd.** (supra), **In Re Punjab Agreement Act** (supra), **Mafatlal** (supra), **S.T. Sadiq** (supra) and **A.R. Antulay** (supra). The stand of the respondents

however is that many of the offending elements of Jallikattu, Kambala or Bullock Cart Race have been eliminated by the Rules made under the Tamil Nadu and Maharashtra Amendment Acts and the State of Karnataka has issued statutory notification laying down rigid regulatory measures for conducting these sports. These Rules specify isolated arena for the sports or events to be conducted including setting up of both bull run and bull collection area, galleries separating spectators from directly coming into contact with bulls. The learned counsel for the respondents want us to read the Statutes and the Rules together to counter the argument of the petitioners that the Amendment Acts merely reintroduce the offending sports into the main Statute for their respective States without correcting or removing the defects pointed out by this Court in the case of **A. Nagaraja** (supra). In the case of **State of U.P. and Others -vs- Babu Ram Upadhya** [(1961) 2 SCR 679], it was inter alia observed that the fundamental principle of construction was that the Rules made under the Statute must be treated as a part and parcel thereof as if they were contained in the parent Act. In the case of **Peerless General Finance and Investment Co. Ltd. and Another -vs- Reserve Bank of India** [(1992) 2 SCC 343], it was held:-

> *"52. In State of U.P. v. Babu Ram Upadhya [(1961) 2 SCR 679 : AIR 1961 SC 751 : (1961) 1 Cri LJ 773] this Court held*

that rules made under a statute must be treated, for all purposes of construction or obligations, exactly as if they were in that Act and are to the same effect as if they were contained in the Act and are to be judicially noticed for all purposes of construction or obligations. The statutory rules cannot be described or equated with administrative directions. In D.K.V. Prasada Rao v. Government of A.P. [AIR 1984 AP 75 : (1983) 2 Andh WR 344] the same view was laid down. Therefore, the directions are incorporated and become part of the Act itself. They must be governed by the same principles as the statute itself. The statutory presumption that the legislature inserted every part thereof for a purpose and the legislative intention should be given effect to, would be applicable to the impugned directions."

29. The Tamil Nadu Amendment Act contains stipulation to the effect that conduct of Jallikattu subject to such Rules and regulations as may be framed by the State Government shall be permitted. Section 38-B of the Maharashtra Act provides Rule making power of the State consistent with the Rules made by the Central Government. Both these Statutes have become part of the 1960 Act in their respective States and specifically confer Rule making power to the States and Rules have been framed. In such circumstances, as held by this Court in the case of **Peerless General Finance and Investment Co. Ltd.** (supra), our opinion is that these Rules have to be read along with the Amendment Acts for their proper interpretation. So far as the Karnataka Amendment Act is concerned, two fresh restrictions have been imposed in conducting Kambala by virtue of introduction of Section 3(2) in the main Act after Amendment. These conditions ban unnecessary

pain or suffering that would be caused to the animals by the person in charge of the animals conducting Kambala and make such practice subject to the conditions as may be specified by the State Government by notification. Following the same analogy which we have expressed earlier while reading the Amendment Acts of Tamil Nadu and Maharashtra, in our opinion the Notification issued by the State of Karnataka ought to be accorded same status as Rule and has also to be read as integral part of the Statute, as amended. These Rules and the Notification ought not to be segregated from the Amendment Acts for appreciating their true scope while examining the petitioners' claim that the Amendment Acts, analysed in isolation from the said Rules and the Notification would be contrary to the findings of this Court in the case of **A. Nagaraja** (supra).

30. In our opinion, the expressions Jallikattu, Kambala and Bull Cart Race as introduced by the Amendment Acts of the three States have undergone substantial change in the manner they were used to be practiced or performed and the factual conditions that prevailed at the time the **A. Nagaraja** (supra) judgment was delivered cannot be equated with the present situation. We cannot come to the conclusion that in the changed circumstances, absolutely no pain or suffering would be inflicted upon the bulls

while holding these sports. But we are satisfied that the large part of pain inflicting practices, as they prevailed in the manner these three sports were performed in the pre-amendment period have been substantially diluted by the introduction of these statutory instruments. Argument was advanced that in reality these welfare measures may not be practiced and the system as it prevailed could continue. We, however, cannot proceed in exercise of our judicial power on the assumption that a law ought to be struck down on apprehension of its abuse or disobedience. All the three bovine sports, after Amendment, assume different character in their performance and practice and for these reasons we do not accept the petitioners' argument that the Amendment Acts were merely a piece of colourable legislation with cosmetic change to override judicial pronouncement. Once we read the amended Statutes with the respective Rules or Notification, we do not find them to encroach upon the Central legislation. Respondents have cited a large body of authorities to defend their stand that these are not cases of colourable legislation but we do not consider it necessary to refer to all these judgments individually as we have come to this conclusion after analysing various statutory instruments covering the field.

31. Can the Amendment Acts be struck down for being arbitrary? There is a body of cases in which legislations have been invalidated on this ground. So far as the subject of the present controversy is concerned, the bulls form a distinct species referred to as draught or pack animals as opposed to horses, which are adapted to run. But we decline to hold that just because bulls lack the natural ability to run like a horse, the subject-sports which are seasonally held shall be held to be contrary to the provisions of the 1960 Act. In fact, on behalf of the respondents it was argued that these genre of bulls are specially bred and have natural ability to run. There are contrary views on this point. But in our opinion, no irrational classification as regards these bull sports have been made by the legislature so as to attract the mischief which Article 14 of the Constitution of India seeks to prevent. The validity of a legislative Act can also be negated on the ground of it being unreasonable. The element of unreasonableness here is that the bovine species involved herein are being subjected to unnecessary pain and suffering mainly for entertainment purpose. But the 1960 Act itself categorizes several activities which cause pain and suffering, even to a sentient animal. The judgment in the case of **A. Nagaraja** (supra) was largely founded on factual basis that bulls were sentient animals, and the sports involved were unnecessary, as

opposed to being necessary for human survival. But the 1960 Act, on which the petitioners' case largely rests, proceeds on the basis of perceived human necessity to employ animals in certain load carrying and entertainment activities. For instance, while other means of carriage of goods are available, why should bulls be permitted to undertake such activities - which are apparently involuntary and subject these sentient bovine species to pain and suffering? Horse racing is allowed under Performing Animals (Registration) Rules, 2001. Horse is also a sentient animal. But the fact remains that by making them perform in races, some element of pain and suffering must be caused to horses. Here, the focus shifts from causing pain and suffering to the degree of pain and suffering to which a sentient animal is subjected to while being compelled to undertake certain activities for the benefit of human beings. Similarly, proponents of vegetarianism may argue that slaughtering animals is not necessary as human beings can survive without animal protein. In our opinion, we should not take up this balancing exercise which has societal impact in discharge of our judicial duties. This kind of exercise ought to be left for the legislature to decide upon.

32. We shall now turn to the petitioners' case assailing the legality of the State Amendments by invoking the "Doctrine of Pith and

Substance". On that count, their submission is based on two principles. First, it has been urged that even after the Amendment, the performance of these sports continue to inflict pain and injury on the participating bulls and secondly, it was found by this Court in **A. Nagaraja** (supra), that these sports are in violation of the aforesaid provisions of the 1960 Act at the time when the three State Amendments were not enacted. On the face of it, learned counsel appearing for the petitioners argued, that the Amendment Acts does not in any way provide remedial measures which could have rendered the three sports cured of the legal failing as is postulated in the said provisions. According to the petitioners, these Acts seek to only introduce the Jallikattu, Kambala and Bullock Cart Race as permissible activities within the provisions of the 1960 Act. Even if certain sports by their names are included within the ambit of permissible activity, the provisions of Sections 3, 11(1) (a) and (m) of the 1960 Act are not rendered otiose. The other point raised by the petitioners is that the subject of Jallikattu does not come within the ambit of Entry 17 of List III of the Seventh Schedule to the Constitution of India and hence the State Assemblies lacked the legislative competence to enact the Amendment Acts. Presidential assent would not cure the said incompetency, it is urged by the petitioners. We have found no flaw

in the process of obtaining Presidential assent having regard to the provisions of Article 254(2) of the Constitution of India.

33. The "Doctrine of Pith and Substance" has been explained in the well-known text, "Principles of Statutory Interpretation" by G.P. Singh. We quote below the extract from 14th Edition of that text:-

> "*The question whether the Legislature has kept itself within the jurisdiction assigned to it or has encroached upon a forbidden filed is determined by finding out the true nature and character or pith and substance of the legislation which may be different from its consequential effects. If the pith and substance of the legislation is covered by an entry within the permitted jurisdiction of the Legislature any incidental encroachment in the rival field is to disregarded. There is a presumption of constitutionality of statutes and hence, prior to determining whether there is any repugnancy between a Central Act and a State Act, it has to determined whether both Acts relate to the same entry in List III, and whether there is a 'direct' and 'irreconcilable' conflict between the two, applying the doctrine of 'pith and substance'.*

The petitioners have relied on a several authorities explaining this doctrine. These are **State of Rajasthan -vs- Shri G. Chawla and Dr Pohumal** [(1959) Supp (1) SCR 904], **Ishwari Khetan Sugar Mills (P) Ltd. and Others -vs- State of U.P. and Others** [(1980) 4 SCC 136], **Federation of Hotel & Restaurant Association of India, etc. -vs- Union of India and Others** [(1989) 3 SCC 634], **State of A.P. and Others -vs- McDowell & Co. and Others** [(1996) 3 SCC 709], **State of W.B. -vs- Kesoram Industries Ltd. and Others** [(2004) 10 SCC 201] and **Hoechst Pharmaceuticals Ltd.** (supra).

34. First we shall examine as to whether conducting these bovine sports is relatable to Item 17 of the concurrent list. It stipulates:-

"Prevention of Cruelty to Animals."

In the case of **I.N Saksena -vs- State of Madhya Pradesh** [(1976) 4 SCC 750], this Court had laid down that legislative lists in the Constitution ought to be interpreted in a wide amplitude. The 1960 Act in whole and the subjects of the three Amendments directly deal with the question of prevention of cruelty to animals. There is no other entry in any of the lists to which this subject could be connected with. In such circumstances, we reject the contention of the petitioners that the State Legislatures inherently lacked jurisdiction to bring these Amendments, which subsequently received Presidential assent. On behalf of the respondents, several decisions have been relied upon in support of this argument. Having regard to the view that we have already taken, we do not consider it necessary to reproduce all these decisions.

35. Next comes the question as to whether even after the said Amendments, Jallikattu and the other two activities could be held to be beyond legislative competence of the three legislative bodies. We have already held that the three Amendment Acts have to be read together with the consequential Rules or Notifications. In our view, these Rules, once treated as part of the Acts, alter the manner

of conducting these sports and once these provisions are implemented, the mischief sought to be remedied by the aforesaid two provisions of 1960 Act (i.e. Sections 3 and 11(1)(a) and (m)) would not be attracted anymore. Thus, the argument that the Amendment Acts are void because they seek to override the judgment of **A. Nagaraja** (supra) cannot be sustained as the basis of that judgment having regard to the nature and manner in which the offending activities were carried on has been altered.

36. Petitioners contend that even after changed procedure contemplated by the three statutory instruments, the very participation of the bulls in these sports involve a strong element of involuntariness as well as some element of pain and suffering. In the cases of **T.N. Godavarman Thirumulpad -vs- Union of India and Others** [(2012) 4 SCC 362], **Centre for Environmental Law, World Wide Fund-India -vs- Union of India and Others** [(2013) 8 SCC 234] and **N.R. Nair and Others -vs- Union of India and Others** [(2001) 6 SCC 84], it has been broadly held that animals have inherent right in natural law to live a dignified life without infliction of cruelty and this principle is sought to extended to proscribe Jallikattu, Kambala and Bullock Cart Race. In the case of **N.R. Nair (supra),** it was held that animals have capability to bear pain and suffering and that they have a fear from restrictions

on their spaces and bodies and other forms of physical discomfort. But we need not refer to these authorities as we accept the obligation of human beings to ensure that animals do not suffer from pain and injury. Our jurisdiction, however, does not extend to provide an absolute protection to the animals from any manner of infliction of pain and suffering. What the broad theme of 1960 Act is that the animals must be protected from unnecessary pain and suffering. This aspect has been dealt with in the case of **A. Nagaraja** (supra). This approach would be apparent from a plain reading of Section 11 of the 1960 Act itself even before the three Amendments where the legislature appears to have undertaken a balancing exercise without disturbing the concept of ownership of animal by an individual and such individual's right to employ these animals in the aforesaid sports. We have already expressed our views on the point earlier in this judgment.

37. As we proceed on the basis that the Constitution does not recognise any Fundamental Right for animals, we shall have to test the legality of the three Statutes against the provisions of 1960 Act along with the constitutional provisions of Articles 48, 51-A (g) and (h). The three Statutes will also have to meet the test of arbitrariness, which has become the foundation of our constitutional jurisprudence after this Court delivered the

judgment in the cases of **E.P. Royappa -vs- State of Tamil Nadu and Another** [(1974) 4 SCC 3], **Ajay Hasia and Others -vs- Khalid Mujib Sehravardi and Others** [(1981) 1 SCC 722] and **Joseph Shine -vs- Union of India** [(2018) 2 SCC 189].

38. Factual arguments have been advanced that prohibition on the practice of particularly Bullock Cart Race could result in ultimate collapse of a particular genre of cattle which are useful for agricultural purpose and hence the aforesaid Amendment Acts to be treated to be relatable to Entry 15 of List II of the Seventh Schedule to the Constitution of India. But having regard to the nature of challenge, we are of the view that in pith and substance, the Amendment Acts seek to address the question of prevention of cruelty to animals. The tenor of the Maharashtra Amendment Act and its Preamble point to that interpretation and the object of the Amendments primarily is relatable to Item 17 of the Concurrent List. Hence, we reject the argument that the Maharashtra Amendment Act has been legislated for the preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice. So far as the argument that livelihood of farmers and people associated with Bullock Cart Race could be adversely affected if the prohibition which the writ petitioners want us to impose by striking down the aforesaid

Amendment Statute is concerned, we do not need to address this argument. We have, in this judgment dealt with the question as to whether provisions of 1960 Act are being violated or not, as was held in the case of **A. Nagaraja** (supra), decided prior to the three Amendment Statutes. The effect of the said prohibition upon the livelihood of the people of that State is said to be espoused in I.A. No.170346 of 2022. If we were to hold that these bovine sports offended the provisions of the 1960 Act, the deprivation apprehended would have come within the reasonable restriction clause enshrined in Article 19(6) of the Constitution of India. In such a situation, a law made in that regard would also be protected in relation to the challenge on the basis of Article 21 of the Constitution of India being procedure established by law.

39. In the judgment of **A. Nagaraja** (supra), the Division Bench of this Court, while examining the claim of the petitioners therein held that Jallikattu is dangerous not only to bulls but also to human and many participants and spectators sustained injury in course of such events. So far as human beings are concerned, their injuries would attract the principle of Tort known in common law as "*volenti non fit injuria*".

40. In the light of what we have already discussed, we answer the five questions referred to us in the following terms:-

(i) The Tamil Nadu Amendment Act is not a piece of colourable legislation. It relates, in pith and substance, to Entry 17 of List III of Seventh Schedule to the Constitution of India. It minimises cruelty to animals in the concerned sports and once the Amendment Act, along with their Rules and Notification are implemented, the aforesaid sports would not come within the mischief sought to be remedied by Sections 3, 11(1) (a) and (m) of the 1960 Act.

(ii) Jallikattu is a type of bovine sports and we are satisfied on the basis of materials disclosed before us, that it is going on in the State of Tamil Nadu for at least last few centuries. This event essentially involves a bull which is set free in an arena and human participants are meant to grab the hump to score in the "game". But whether this has become integral part of Tamil culture or not requires religious, cultural and social analysis in greater detail, which in our opinion, is an exercise that cannot be undertaken by the Judiciary. The question as to whether the Tamil Nadu Amendment Act is to preserve the cultural heritage of a particular State is a debateable issue which has to be concluded in the House of the People. This

ought not be a part of judicial inquiry and particularly having regard to the activity in question and the materials in the form of texts cited before us by both the petitioners and the respondents, this question cannot be conclusively determined in the writ proceedings. Since legislative exercise has already been undertaken and Jallikattu has been found to be part of cultural heritage of Tamil Nadu, we would not disrupt this view of the legislature. We do not accept the view reflected in the case of **A. Nagaraja** that performance of Jallikattu is not a part of the cultural heritage of the people of the State of Tamil Nadu. We do not think there was sufficient material before the Court for coming to this conclusion. In the Preamble to the Amendment Act, Jallikattu has been described to be part of culture and tradition of Tamil Nadu. In the case of **A. Nagaraja** (supra), the Division Bench found the cultural approach unsubstantiated and referring to the manner in which the bulls are inflicted pain and suffering, the Division Bench concluded that such activities offended Sections 3 and 11(1)(a) and (m) of the 1960 Act. Even if we proceed on the basis that legislature is best suited branch of the State to determine if particular animal-sports are part of cultural tradition of a region or community, or not, if such cultural event or tradition

offends the law, the penal consequence would follow. Such activities cannot be justified on the ground of being part of cultural tradition of a State. In **A. Nagaraja** (supra), the sports were held to attract the restriction of Sections 3 and 11(1)(a) and (m) of the 1960 Act because of the manner it was practiced. The Amendment Act read with the Rules seek to substantially minimise the pain and suffering and continue with the traditional sports. The Amendment having received Presidential assent, we do not think there is any flaw in the State action. "Jallikattu" as bovine sports have to be isolated from the manner in which they were earlier practiced and organising the sports itself would be permissible, in terms of the Tamil Nadu Rules.

(iii)The Tamil Nadu Amendment Act is not in pith and substance, to ensure survival and well-being of the native breeds of bulls. The said Act is also not relatable to Article 48 of the Constitution of India. Incidental impact of the said Amendment 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.

(iv) Our answer to this question is in the negative. In our opinion, the Tamil Nadu Amendment Act does not go contrary to the Articles 51-A (g) and 51-A(h) and it does not violate the provisions of Articles 14 and 21 of the Constitution of India.

(v) The Tamil Nadu Amendment Act read along with the Rules framed in that behalf is not directly contrary to the ratio of the judgment in the case of **A. Nagaraja** (supra) and judgment of this Court delivered on 16th November 2016 dismissing the plea for Review of the **A. Nagaraja** (supra) judgment as we are of the opinion that the defects pointed out in the aforesaid two judgments have been overcome by the State Amendment Act read with the Rules made in that behalf.

41. Our decision on the Tamil Nadu Amendment Act would also guide the Maharashtra and the Karnataka Amendment Acts and we find all the three Amendment Acts to be valid legislations.

42. However, we direct that the law contained in the Act/Rules/Notification shall be strictly enforced by the authorities. In particular, we direct that the District Magistrates/competent authorities shall be responsible for ensuring strict compliance of the law, as amended along with its Rules/Notifications.

43. All the I.As. for Intervention are allowed in the above terms. As we have answered the referred questions, we do not think any purpose would be served in keeping the writ petitions pending. All the writ petitions shall stand dismissed. The appeal and the Transferred Case shall also stand disposed of in the above terms.

44. Other pending applications, if any, are also disposed of.

45. There shall be no order as to costs.

. . . . . J.
(K.M. JOSEPH)

. . . . . J.
(AJAY RASTOGI)

. . . . . J.
(ANIRUDDHA BOSE)

. . . . . J.
(HRISHIKESH ROY)

. . . . . J.
(C.T. RAVIKUMAR)

New Delhi;
May 18, 2023