

## The jallikattu challenge

What must the Supreme Court do when a community's right to cultural freedom comes into conflict with values of animal welfare? At first blush, on a purely intuitive level, this is likely to strike us as a question unworthy of close judicial scrutiny, for judges, we might think, would have to lose their moral capital before they condone cruelty to animals by placing a people's right to culture on a pedestal. But a group of cases which the Supreme Court referred on February 2 to a Constitution Bench for final determination shows us that resolving this perceived clash is far from straightforward. To provide a morally justifiable answer, the court would have to not only make a hugely imaginative leap in its interpretation but also overcome a series of vexing doctrinal problems that limit the reach of constitutional theory.

The issue before the Supreme Court arises out of Tamil Nadu's amendment to the Prevention of Cruelty to Animals Act, 1960 (PCA Act) made early last year amidst vociferous protests in the State. The amendment discharges the practice of jallikattu, which it defines with a sloppy lack of precision as "an event involving bulls conducted with a view to follow tradition and culture", from the various rigours of the PCA Act. The petitioners, including the People for the Ethical Treatment of Animals, argue that the amending law violates a slew of fundamental rights. What's more, in their belief, the Tamil Nadu government, in any event, lacked the legislative competence to dilute the requirements of the PCA Act.

On an examination of these petitions, Justice R.F. Nariman wrote in his order of reference, at least five questions warrant deeper deliberation: Is the amendment an instance of colourable legislation? Can the law be considered as a measure introduced in furtherance of a community's cultural right under Article 29? Was Tamil Nadu's intention in making the amendment aimed at ensuring the survival of a native breed of bulls? Does the exemption granted to jallikattu run counter to some of the fundamental duties imposed by the Constitution, thereby impinging on rights guaranteed by Articles 14 and 21? And, finally, has the amending law validly overcome the Supreme Court's 2014 judgment in *Animal Welfare Board of India v. A. Nagaraja*, where the practice of jallikattu was found to offend the PCA Act?

Part III of the Constitution, which lists the various fundamental rights, provides to persons different manners of guarantees, including in Article 14 a right to equality, and in Article 21 a right to life. These enumerated rights, however, do not explicitly recognise animals as persons. Indeed, until now, the liberties contained in Part III have largely been understood as promises made to human beings, and, in appropriate cases, to associations of human beings, such as corporations, partnerships and other similar entities. As a result, when a movement for animal welfare in India was initially launched, it stemmed not through an argument predicated on rights, but through an effort founded on qualities of decency, on a belief that to inflict unnecessary pain on animals was morally unconscionable.

Since the Constitution imposed no binding obligation on the state to protect animal welfare, it was left to campaigners to beseech Parliament into enacting a proper law for the purpose. It was to this end that in 1960 the Union government brought into force the PCA Act, which criminalised several different types of actions resulting in cruelty to animals. But, far-reaching as the statute was for its time, it also defined a set of unpalatable exceptions. Notably, these included the performance of experiments on animals aimed purportedly at advancing discovery of drugs and a wide and general concession for "killing any animal in a manner required by the religion of any community".

It was clear, however, that plainly read, the bull-taming spectacle jallikattu, which is traditionally held during the Pongal period in southern States, violated many of the provisions of the PCA Act. Indeed, in 2014, in *A. Nagaraja*, the Supreme Court found that the practice treated bulls in a way

that caused the animal unnecessary pain and suffering, and, therefore, that any attempt by Tamil Nadu to regulate these events could not be afforded any sanctity. But the effort made by the State last year in amending the PCA Act offers a different challenge.

Given that the subject of preventing animal cruelty falls in the concurrent list of the Seventh Schedule to the Constitution, State governments possess an equal authority to determine what actions constitute cruelty to animals within their respective territories. It was on the basis of this power that the Tamil Nadu government legitimised jallikattu, by amending the PCA Act, and by exempting the practice entirely from the statute's demands. Therefore, this law, which also secured the President's assent, ethically reprehensible as it might seem to us, cannot be described as a colourable legislation.

In defending the statute, the State is likely to make two further arguments: one, that the amendment serves to preserve native varieties of bulls; and, two, that the exemption in favour of jallikattu furthers the Tamil people's right to conserve their culture. The former assertion, at the least, seems palpably incongruous, and there is no doubt the Supreme Court will test the correctness of these contentions. But, even assuming the court rejects the State's arguments on these grounds, the underlying conflict presents a fascinating constitutional difficulty: what precise fundamental right of the petitioners does the law violate?

To unravel this conundrum, the court can do one of two things: it can simply follow its decision in *A. Nagaraja*, and hold that animals too possess a right to live with dignity, and, therefore, enjoy a right to life under Article 21. Or, it could hold that this right under Article 21 includes within its ambit a larger freedom to live in a society free of animal cruelty.

In the case of the first approach, it would necessitate a finding from the court that animals are legal persons; appealing as such a conclusion might sound, though, it simply doesn't fit with the Constitution's text and structure. The second approach also brings with it its own complexities. But it does present us with a rationally justifiable answer. After all, the Supreme Court has previously held that the right to life under Article 21 partakes a right to a healthy environment. Perhaps, therefore, it might not be implausible for it to also hold that this right includes a freedom to live in a society that respects and shows empathy towards other living beings, that Tamil Nadu's law, much as it strives to protect a community's cultural rights, offends this larger, more general guarantee.

Paradoxically, therefore, for the present, any effort at securing animal welfare will have to be grounded in our own rights as human beings. If such a reading of Article 21 allows for a kinder, more compassionate society, where animals are treated with dignity, it is perhaps the interpretation that the Supreme Court must prefer. But the court will have to be exceedingly cautious here. It mustn't, in endeavouring to read Article 21 widely, borrow generously from the list of fundamental duties contained in Article 51A. These duties are non-justiciable by definition, and they should remain so. The court's venture must be to independently construe Article 21, to see whether a finding that the right partakes a freedom to live in a society free of animal cruelty fits with India's larger constitutional design. Ultimately, the court has two choices: to uphold the law and give in to the occasionally depressing limits of constitutionalism, or to take a plunge into the unknown, in the interests of articulating a morally consistent constitutional theory.

*Suhrith Parthasarathy is an advocate practising at the Madras High Court*

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