

## REGULATING CULTURAL RIGHTS IN INDIA – THE JALLIKATTU WAY

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*The case of jallikattu offers crucial lessons for India where increasing attempts are being made to purge out malcontents in various cultural practices under the guise of culture levelling which may in the long run jeopardise our unique cultural gene pool. There are both good and bad outcomes in any slugfest, perhaps, the case of jallikattu may help us to cautiously stride through the cultural minefields in India.*

In recent times, the contestation on the ban imposed by the Supreme Court of India on ancient Tamil sport of *jallikattu* has been the subject of several polemic debates by various groups which range from demands for exercise of cultural freedoms to ban on such abhorrent cultural practices. This article explores the reasons which make cultural rights at times sustainable or unsustainable in India through the prism of *jallikattu*. For some in India, *jallikattu* serves an impulse to re-align the cultural compass against increasing stresses of homogenisation of culture. With increasing demands to validate cultural practices made from various States in India and particularly of outlawed sports, it is important to find a fine balance between preservation of cultural identities whilst maintaining the humane treatment of animals. So whether the practice of *jallikattu* ought to be banned or is it such a cultural symbol of veneration of Tamil ethos that it cannot be quelled against increasing demands made for outlawing such traditional sports needs to be examined to understand the justifications proposed for regulating or retaining a ban on *jallikattu*.

### History of Jallikattu

*Jallikattu* or *Sallikattu* (*Eruthazhuvuthal* 'embracing a bull') is a traditional sport played in many districts of Tamil Nadu during the celebration of the harvest festival of Pongal, usually on the third day of the festival known as *Mattu Pongal*. It is said to symbolise and celebrate the native indigenous life of the villages in the state of Tamil Nadu. The history of this sport is said to be traced as far back as the Tamil Classic Period (400-100 BC). A seal discovered at *Mohenjodaro* shows bull-taming and is said to be a reference to *Jallikattu*. In *Silappatikaaram* which is one of the five great epics of Tamil literature, there are references to people participating in this sport. Other ancient literary works like *Kalithogai* and *Malaipadukadaam* also have similar references.

The name signifies two components, *Jalli* also known as '*salli*' or '*kasu*', which means coins, and *Kattu* meaning bundle or pouch. This is an indication to a yellow pouch of coins, which is tied to the bull's horn. The men who used to try to hold on to the hump used to also untie this pouch of coins. In more recent times to continue this symbolism a flag is tied to the horn which the participants try to untie.

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In preparation of this sport, various measures are taken in order to make the bulls stronger, for example, they are taken to swim in order to strengthen their legs, and are fed healthier food. On the day of the sport the bulls are all brought to one common arena. They are let out one by one as the participants try to tame them. The ones that are tamed are thereafter used for domestic purposes and the ones that are untameable are used for breeding purposes.

For the farmers participating this is not some sport of mere leisure. It is their chance to display not only their personal strength but also the strength of the bulls and their skills and taking great care of them in order to breed such powerful cattle. Moreover, it was also considered a ceremony to select a groom i.e. whoever managed to tame the bull would marry the daughter of its owner.

### Background of the Issue

The controversy surrounding the sport of *Jallikattu* began the enactment of the Tamil Nadu Regulation of *Jallikattu* Act of 2009 which was followed by a notification issued by the Ministry of Environment and Forest (MOEF) on 11 July, 2011 banning use of various animals including bulls as performing animals. A series of cases were filed challenging both the Act and the Notification which were then comprehensively decided by the Supreme Court of India in **Animal Welfare Board of India vs A. Nagaraja & Ors.** (2014) 7 SCC 547 where the Court struck down the Tamil Nadu Regulation of *Jallikattu* Act of 2009, as repugnant to the Prevention of Cruelty to Animals Act, 1960 and unconstitutional and violative of the 2011 MOEF notification. Hence, a ban was imposed on this sport. The judgment largely relied on tenets of the Prevention of Cruelty to Animals Act (PCA) terming it a welfare legislation.

The matter had acquired quietus with the Supreme Court of India pronouncing a detailed judgment. The Court made observations pertaining to culture and tradition in that “... Even the ancient culture and tradition do not support the conduct of *Jallikattu* [...], 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 over-powering the bull, to show human bravery. Jallikattu [...] as practised now, has never been the tradition or culture of Tamil Nadu.*” This is because while *Jallikattu* has been traditionally described as a one-to-one sport: a bull and one man, however, recent practices of the sport entail a bull being released into a crowd of people where multiple participants try to grab the hump of the bull and hold on for as long as possible trying to bring the bull to a halt. The judgment also noted that there have been reports of ill-treating of animals which include getting it drunk, poking it with sharp objects or smearing *chilli* powder in its eyes. Further the number of human participants that get hurt as well as the spectators is large.

The Court further relied on **N. Adithayan v. Thravancore Dewaswom Board and Others** where it was stated that “... 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.” Thus, the PCA was declared to over-shadow or override *Jallikattu* since it was held that the manner in which they are conducted in recent times, have no support of Tamil tradition or culture.

But given the public furore in the State of Tamil Nadu, the Central Government through MOEF issued a subsequent notification on 6 January 2016 that permitted the use of bulls as performing animals. It also set certain safety measures that had to be maintained but in effect permitted the sport of *Jallikattu*. The notification stated that “*bulls may continue to be exhibited or trained as a performing animal, 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 any community or practiced traditionally under the customs or as part of culture.*”

This Notification was challenged by the Animal Welfare Board of India, People for Ethical Treatment of Animals (PETA) and other organizations.

Contempt petitions were also filed arguing that the notification violates the ban imposed by the Supreme Court in 2014. Since the Supreme Court imposed a stay on the 2016 Notification and refused to lift the ban on the sport, mass protests erupted in the state of Tamil Nadu in January 2017 around the time of the *Pongal* festival.

Amidst this, while the case was *sub judice*, the Governor of Tamil Nadu in January 2017 promulgated an ordinance for conducting the sport to which the President gave his assent. It was titled the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Ordinance, 2017 and sought to amend the PCA Act on which the Supreme Court had relied in its 2014 judgment. It was said to be promulgated with a view to ensuring survival and well-being of the native breed of bulls and preserving cultural traditions of Tamil Nadu. Thereafter, the Animal Husbandry, Dairying and Fisheries Department of Tamil Nadu Government framed Tamil Nadu Prevention of Cruelty to Animals (Conduct of *Jallikattu*) Rules, 2017. Eventually, the Central Government withdrew its earlier notification on 7 January 2016. Hence, the Petitioners in the pending cases filed against the (now withdrawn) Notification were permitted to amend their prayers and pleadings and the Supreme Court set the hearing of the matter in the upcoming months.

This action of the State government made it clear that they concurred with the public sentiment that the sport is an important cultural practice despite the Supreme Court outlawing such sport as having no cultural significance in 2014. In fact, this judgment not only elevates animal rights but also places obligations on humans to take care of the animal.

### Legal Framework for Protection of Cultural Rights in India and under International Covenants

The Constitution of India provides for protection of cultural rights (*Article 29*) and also places obligation on the State to organise animal husbandry (*Article 48*) which includes taking steps to preserve and improve breeds and protect draught cattle. *Entry 17* of the Concurrent List of Seventh Schedule empowers both the Centre and the States to make laws to prevent cruelty to animals and a maze of laws have been legislated including the model legislation being the Prevention of Cruelty to Animals Act of 1960.

Further, the *General Comment 21* on the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 of which India is a party, clearly outlines culture as a broad and inclusive concept. *Article 15* of the ICESCR states that '*...Parties to the present Covenant recognize the right of everyone ...to take part in cultural life...to achieve the full realization of this right include those necessary for the conservation [...] of culture.*' The Committee considers that culture under *Article 15 (1) (a)*, encompasses, *inter alia*, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, **sport and games**, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. They further follow through that communities and individuals pass on these practices to generations and is stated to engender respect for cultural values. The Universal Declaration of Human Rights and other International Instruments also recognise the right to participate in cultural life of the community. The *General Comment 21* on ICESCR categorises this as a freedom and in order to fulfil this right State parties have a negative obligation of non-interference and a positive one to ensure preconditions for participation, facilitation and promotion are taken care. The decision to participate is a cultural choice and is to be respected and protected.

However, this right is not without limitations. The limitation placed on enjoying this right is mainly in order to ensure that the practice of this right does not impinge the enjoyment of other human rights that are guaranteed. Therefore, limitations must have a legitimate aim, must be proportionate to the harm that is sought to be stopped and be strictly necessary for the promotion of general welfare in a democratic society.

In India, while the governments have succumbed to popular sentiments, the courts have refrained from such susceptibilities and instead enlarged the meaning of 'life' to include inherent dignity of animals and their right to live peacefully. The question to be considered is how far culture must be permitted to shield cruelty.

The concept of humane treatment has grown over the years, does that require cultural practices also to evolve along with it; or perhaps, if needed, can cultural practices be tempered to be more humane? In which direction would one sway if cultural practices conflict with humane treatment of other living creatures? This brings us back to the question of permissible limits of State interference in cultural rights of people; courts capacity to strike down practices in violation of law as well as the duty to respect, protect and fulfil the enjoyment of cultural rights and the choice of participation therewith.

### **Preserving Cultural Rights in India: Lessons from Jallikattu**

While the Constitution of India enshrines under Article 51-A a fundamental duty on all citizens to '*value and preserve the rich heritage of our composite culture*', it also emphasizes on the need '*to have compassion for living creatures*'. Such constitutional compasses are seldom recalled in the ugly mire of public debates. While regulation of such age-old cultural events is certainly needed given our constant strive as a civilization towards ascription to more humane values towards all 'living creatures', however, such regulations must not be at the cost of completely obscuring such 'cultural survivals' like *jallikattu*. While cultural survivals are often misunderstood and misused, they represent unique ways in which communities assert their right to self-determination of charting their futures and ensuring their social integrity.

The cultural tempest in Tamil Nadu represents one such back clash against foisting of complete ban on their cultural survivals and their assertion of right to self-determination over their culture. Besides, to completely discount the existence of such traditions based on the unregulated events where there have been instances of cruelty to animals may not be completely well-founded. Such traditional events also serve the purpose of preserving and improving indigenous breeds (*bos indicus*) of draught animals (*Kangayam, Pulikulam, Alambadi, Ongole*) as there are restrictions on the use of non-indigenous bulls in such sport. Thus, such events also serve the purpose of preserving the indigenous gene pool of such draught animals. Moreover, the by-products of such indigenous animals are used to compound traditional medicines such as *panchkarma* products. Amidst the onslaught of mechanized agriculture, a complete ban by the Court may force the farmers to abandon the raising of such indigenous livestock.

Further, for a country like India that scarcely extols sports or sporting culture, the preservation of traditional sports like *Jallikattu* becomes imperative given the purpose it serves in integrating communities and stimulating sportsmanship. In this context, it may be prudent for the Supreme Court to revisit its decision of imposing a forceful abandonment and complete ban on such traditional sports as *jallikattu* on a cultural community.

### **Conclusion**

The case of *jallikattu* offers crucial lessons for India where increasing attempts are being made to purge out malcontents in various cultural practices under the guise of culture levelling which may in the long run jeopardise our unique cultural gene pool. There are both good and bad outcomes in any slugfest, perhaps, the case of *jallikattu* may help us to cautiously stride through the cultural minefields in India.

An onerous task rests with the Supreme Court of India over the decision of either the retaining a complete ban on the *jallikattu* or regulating the controversial practice. In either ways, this case remains a cliffhanger and a dangerous mark of State intervention in regulating of cultural rights in India. In the given circumstances, the only mediative recourse remains by way of ensuring strict regulation of *jallikattu* instead of invoking a complete ban which could set a precedence for upstaging other cultural practices in India which have enjoyed social protection for variegated reasons.

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