

Supreme Court of India

Animal Welfare Board Of India vs A. Nagaraja & Ors on 7 May, 2014

Bench: K.S. Radhakrishnan, Pinaki Chandra Ghose

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5387 OF 2014
(@ Special Leave Petition (Civil) No.11686 of 2007)

Animal Welfare Board of India

आर्क्ष. Appellant

Versus

A. Nagaraja & Ors.

आर्क्ष. Respondents

WITH

CIVIL APPEAL NO. 5388 OF 2014
(@ Special Leave Petition (Civil) No.10281 of 2009)

CIVIL APPEAL NOS. 5389-5390 OF 2014
(@ Special Leave Petition (Civil) Nos.18804-18805 of 2009)

CIVIL APPEAL NO. 5391 OF 2014
(@ Special Leave Petition (Civil) No.13199 of 2012)

CIVIL APPEAL NO. 5392 OF 2014
(@ Special Leave Petition (Civil) No.13200 of 2012)

CIVIL APPEAL NO. 5393 OF 2014
(@ Special Leave Petition (Civil) No.4598 of 2013)

CIVIL APPEAL NO. 5394 OF 2014
(@ Special Leave Petition (Civil) No. 12789 of 2014)
(@ SLP(C) आर्क्ष.4268 of 2013)

WRIT PETITION (C) NO.145 OF 2011

AND

T.C. (C) Nos.84, 85, 86, 97, 98 and 127 of 2013

K.S. Radhakrishnan, J.

1. Leave granted.

2. We are, in these cases, concerned with an issue of seminal importance with regard to the Rights of Animals under our Constitution, laws, culture, tradition, religion and ethology, which we have to examine, in connection with the conduct of Jallikattu, Bullock-cart races etc. in the States of Tamil Nadu and Maharashtra, with particular reference to the provisions of the Prevention of Cruelty to Animals Act, 1960 (for short "the PCA Act"), the Tamil Nadu Regulation of Jallikattu Act, 2009 (for short "TNRJ Act") and the notification dated 11.7.2011 issued by the Central Government under Section 22(ii) of the PCA Act.

3. We have two sets of cases here, one set challenges the Division Bench Judgment of the Madras High Court at Madurai dated 09.03.2007, filed by the Animal Welfare Board of India (for short "AWBI"), Writ Petition No. 145 of 2011 filed by an organisation called PETA, challenging the validity of TNRJ Act and few other writ petitions transferred from the Madras High Court at Madurai challenging/enforcing the validity of the MoEF Notification dated 11.07.2011 and another set of cases, like SLP No. 13199 of 2012, challenging the Division Bench judgment of the Bombay High Court dated 12.03.2012 upholding the MoEF Notification dated 11.07.2011 and the corrigendum issued by the Government of Maharashtra dated 24.08.2011 prohibiting all Bullock-cart races, games, training, exhibition etc. Review Petition No. 57 of 2012 was filed against the judgment of the Bombay High Court, which was dismissed by the High Court on 26.11.2012, against which SLP No. 4598 of 2013 has been filed.

4. ABWI, a statutory Board, established under Section 4 of the PCA Act for the promotion of animal welfare and for the purpose of protecting the animals from being subjected to unnecessary pain or suffering has taken up a specific stand that Jallikattu, Bull/Bullock-cart races etc., as such, conducted in the States of Tamil Nadu and Maharashtra respectively, inherently violate the provisions of the PCA Act, particularly, Section 3, Sections 11(1)(a) & (m) and Section 22 of the PCA Act. ABWI, through its reports, affidavits and photographs, high-lighted the manner in which Jallikattu is being conducted, especially in the Southern Part of the State of Tamil Nadu, and how the bulls involved are physically and mentally tortured for human pleasure and enjoyment. Details have also been furnished by the 2nd respondent, in SLP No. 13199 of 2012, along with photographs explaining how the Bullock-cart race is being conducted in various parts of the State of Maharashtra and the torture and cruelty meted out to the bullocks. ABWI has taken up the stand that, by no stretch of imagination, it can be gainsaid that Jallikattu or Bullock-cart race conducted, as such, has any historical, cultural or religious significance, either in the State of Tamil Nadu or in the State of Maharashtra and, even assuming so, the welfare legislation like PCA Act would supersede the same, being a Parliamentary legislation. ABWI has also taken up the specific stand that the bulls involved in Jallikattu, Bullock-cart race etc. are not "performing animals" within the meaning of Sections 21 and 22 of the PCA Act and that the MoEF, in any view, was justified in issuing the notification dated 11.7.2011 banning the exhibition of Bulls or training them as performing animals on accepting the stand taken by it before this Court. Further, it has also taken up the stand that the TNRJ Act is repugnant to the provisions of the PCA Act and the rules made thereunder and State cannot give effect to it in the absence of the assent of the President under Article 254 of the Constitution of India. Further, ABWI also submits that the Bulls which are forced to participate in the race are subjected to considerable pain and suffering, which clearly violates Section 3 and Sections 11(1)(a) & (m) of the PCA Act read with Article 51A(g) and Article 21 of the

Constitution of India and hence exhibition or training them as performing animals be completely banned.

5. Organizers of Jallikattu and Bullock-cart races, individually and collectively, took up the stand that these events take place at the end of harvest season (January and February) and sometimes during temple festivals which is traditionally and closely associated with village life, especially in the Southern Districts of the State of Tamil Nadu. Organizers of Bullock-cart races in the State of Maharashtra also took the stand that the same is going on for the last more than three hundred years by way of custom and tradition and that extreme care and protection are being taken not to cause any injury or pain to the bullocks which participate in the event. Organizers also submitted that such sport events attract large number of persons which generates revenue for the State as well as enjoyment to the participants. Further, it was also stated that no cruelty is meted out to the performing bulls in Bullock-cart races so as to violate Section 11(1)(a) of the PCA Act and the District Collector, Police Officials etc. are always on duty to prevent cruelty on animals. Further, it is also their stand that the sport events can only be regulated and not completely prohibited and the State of Tamil Nadu has already enacted the TNRJ Act, which takes care of the apprehensions expressed by the Board.

6. The State of Tamil Nadu has also taken up the stand that every effort shall be made to see that bulls are not subjected to any cruelty so as to violate the provisions of the PCA Act and the sport event can be regulated as per the provisions of the TNRJ Act. Further, it was also pointed out that the bulls taking part in the Jallikattu, Bullock-cart Race etc. are specifically identified, trained, nourished for the purpose of the said sport event and owners of Bulls spend considerable money for training, maintenance and upkeep of the bulls. Further, the State has also taken up the stand that the Bulls are not performing animals, and since there is no sale of tickets in the events conducted, Section 22 will not apply, so also the notification dated 11.7.2011. State has also taken up the stand that complete ban on such races would not be in public interest which is being conducted after harvest season and sometimes during temple festivals as well. The State of Maharashtra has not challenged the judgment of the Bombay High Court and hence we have to take it that the State is in favour of banning the exhibition or training of Bulls, whether castrated or otherwise as performing animals.

7. MoEF, as early as on 2.3.1991, issued a notification under Section 22 of PCA Act banning training and exhibition of bears, monkeys, tigers, panthers and dogs, which was challenged by the Indian Circus Organization before the Delhi High Court but, later, a corrigendum was issued, whereby dogs were excluded from the notification. On the direction issued by the Delhi High Court, a Committee was constituted and, based on its report, a notification dated 14.10.1998 was issued excluding dogs from its purview, the legality of the notification was challenged before this Court in N. R. Nair Others v. Union of India and Others (2001) 6 SCC 84, which upheld the notification. Later, MoEF issued a fresh notification dated 11.7.2011, specifically including Bulls also, so as to ban their exhibition or training as performing animals, while this Court was seized of the matter.

8. MoEF has now abruptly taken up the stand that though Bull has been included in the list of animals, not to be exhibited or trained as performing

tamers, Bull Racers, spectators, participants or the respective States or the Central Government, since we are dealing with a welfare legislation of a sentient- being, over which human-beings have domination and the standard we have to apply in deciding the issue on hand is the "Species Best Interest", subject to just exceptions, out of human necessity.

Bulls – Behavioral ethology

13. Bulls (Bos Indicus) are herbivores, prey by nature adopted to protect themselves when threatened engaging in a "flight response", that is run away stimulus, which they find when threatening. Bulls, in that process, use their horns, legs, or brute force to protect themselves from threat or harm. Bulls are often considered to be herd animals. Bulls move in a relaxed manner if they are within a herd or even with other Bulls. Individual Bull exhibits immense anxiety if it is sorted away from the herd. Bulls vocalize when they are forced away from the rest of the herd and vocalization is an indicator of stress. Bulls exhibit a fight or flight response when exposed to a perceived threat. Bulls are more likely to flee than fight, and in most cases they fight, when agitated.

14. Bulls usually stand to graze and pattern of grazing behavior of each herd member is relatively similar, which moves slowly across the pasture with the muzzle close to the ground and they ruminate resting. Bull is known to be having resting behavior and will avoid source of noise and disturbance and choose non-habitual resting sites if the preferred ones are close to the noise or disturbance, which is the natural instinct of the Bull. Study conducted also disclosed that Bulls have long memories. Factors mentioned above are the natural instincts of Bulls.

15. Bulls, as already indicated, accordingly to the animal behavior studies, adopt flight or fight response, when they are frightened or threatened and this instinctual response to a perceived threat is what is being exploited in Jallikattu or Bullock-cart races. During Jallikattu, many animals are observed to engage in a flight response as they try to run away from arena when they experience fear or pain, but cannot do this, since the area is completely enclosed. Jallikattu demonstrates a link between actions of humans and the fear, distress and pain experienced by bulls. Studies indicate that rough or abusive handling of Bulls compromises welfare and for increasing Bulls fear, often, they are pushed, hit, prodded, abused, causing mental as well as physical harm.

JALLIKATTU

16. Jallikattu is a Tamil word, which comes from the term "Callikattu", where "Calli" means coins and "Kattu" means a package. Jallikattu refers to silver or gold coins tied on the bulls' horns. People, in the earlier time, used to fight to get at the money placed around the bulls' horns which depicted as an act of bravery. Later, it became a sport conducted for entertainment and was called "Yeruthu Kattu", in which a fast moving bull was corralled with ropes around its neck. Started as a simple act of bravery, later, assumed different forms and shapes like Jallikattu (in the present form), Bull Race etc., which is based on the concept of flight or fight. Jallikattu includes Manjuvirattu, Oormaadu, Vadamadu, Erudhu, Vadam, Vadi and all such events involve taming of bulls.

17. AWBI gives a first hand information of the manner in which the event of Jallikattu is being conducted in Southern parts of Tamil Nadu, through three reports submitted along with the additional affidavit filed by the Secretary of the Animal Welfare Board, MoEF, Government of India on 7.9.2013, flouting the various directions issued by this Court, High Court and the regulatory provisions of TNRJ Act. Dr. Manilal Vallyate and Mr. Abhishek Raje, the Observors of AWBI, have submitted the first report regarding Jallikattu events that took place at Avnlapuram on 14.1.2013, Palamedu on 15.1.2013 and Alanganallur on 16.1.2013. Relevant portions of the reports read as under:

Ã I. Executive Summary In a comprehensive investigation authorized by the Animal Welfare Board of India, investigators observed jallikattu events at venues in Avaniapuram, Palamedu and Alanganallur on the 14th, 15th and 16th of January 2013, respectively. During the course of the investigation, one bull died and many more were injured. Investigators observed that bulls were forced to participate and were deliberately taunted, tormented, mutilated, stabbed, beaten, chased and denied even their most basic needs, including food, water and sanitation. The findings of this investigation clearly show that bulls who are used in jallikattu are subjected to extreme cruelty and unmitigated suffering.

All the acts of cruelty to animals detailed in the below observations contravene the orders of the Supreme Court of India and Madurai High Court, which mandate that bulls should not be harmed or tortured in any way. Such animal abuse is also in violation of numerous clauses of section 11(1) of The Prevention of Cruelty to Animals Act, 1960.

II. Welfare Implications and Violations of the Law

1. Ear Cutting/Mutilation At least 80 per cent of the bulls observed had their ears cut, with three-fourths of the external ear pinna absent. When asked about the reason for the mutilation, many bull owners explained that by cutting the ear, the animal would be able to hear sounds even from the back, which they deemed to be very important while the animals are in the jallikattu arena.

Welfare Concerns Cutting the external ear in no way helps to improve a bull's hearing. Instead, the bull loses his natural ability to receive sounds signals with appropriate positioning and movement of the ear pinna. Cutting the ear causes intense pain and distress as the external ear pinna consists of cartilage and is highly vascular with a rich nerve supply. The procedure leads to physiological, neuroendocrine and behavioural changes in the animal. Bulls strongly resist being touched on the head or around the ear because of painful past experiences. Many animals get agitated if someone tries to do so.

Violation This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(l), which prohibits the mutilation of an animal's body.

2. Fracture and Dislocation of Tail Bones Many bulls suffered from dislocated or even amputated tails caused by deliberate pulling and twisting.

Welfare Concerns The tail, which has nearly 20 small bones, is an extension of the spinal cord and vertebral column. Dislocation and fracture of the tail vertebrae are extremely painful conditions.

Violation This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(l), which prohibits the mutilation of an animal's body.

3. Frequent Defecation and Urination Ninety-five per cent of the bulls were soiled with faeces from below the base of their tails and across the majority of their hindquarters. Welfare Concerns Bulls were forced to stand together in accumulated waste for hours on end. Frequent defecation and urination are indicators of fear and pain in cattle.

Violation Section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, prohibits treating any animal in a way that causes unnecessary pain or suffering.

4. Injuries and Death Because of the absence of a contained collection area 1/2 in Avaniapuram, a bull died after a head-on collision with a moving passenger bus. In Palamedu, a terrified bull sustained a crippling leg injury after he jumped more than 10 feet off a narrow road to escape a mob carrying sticks. In Alanganallur, two bulls, who were terrified after being chased by onlookers, ran amok and fell into open wells in an agriculture field. Both sustained serious injuries. Welfare Concerns An injury involving muscles, bones, nerves and blood vessels causes an animal tremendous pain. A complete fracture of a lower joint in large animals takes time to heal and leads to a deformation of the leg that leaves the animal unfit for any kind of work. Bulls also suffer from chronic pain as well as mental trauma brought on by the injury and the handlers' and bull tamers' cruel treatment.

Violation Section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, prohibits treating any animal in a way that causes unnecessary pain or suffering.

III. Cruel Practices and Violations of the Law

1. **Biting a Bull's Tail** On many occasions, bulls' tails bitten by the organizers and owners of the animals in the waiting area and inside the vadi vassal. The vadi vassal is a chamber that is closed off from public view. Abuse runs rampant in vadi vassals. Bulls are poked, beaten and deliberately agitated before they are forced into the jallikattu arena, where more than 30 bulls' tamers are waiting.

Welfare Concerns Considered an extremity of the body, a bull's tail has many vertebrae but very little muscle or subcutaneous tissue to protect it. Any direct pressure or injury to the tail bones causes extreme pain that sends bulls into a frenzy.

Violation Section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, prohibits treating any animal in a way that causes unnecessary pain or suffering.

2. **Twisting a Bull's Tail** Owners routinely beat the bulls and twist their tails in order to induce fear and pain while they are in the waiting area and the vadi vassal. Many bulls had dislocated or even amputated tails. Welfare Concerns The tail, which has nearly 20 small bones, is an extension of the spinal cord and vertebral column. Frequent pulling and bending of the tail causes extreme pain and may lead to a dislocation and/or fracture of the tail vertebrae. This causes severe chronic pain and psychological changes that make an animal easily frightened when someone goes behind him or tries to catch or hold his tail. Violation This is violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(l), which prohibits the mutilation of an animal's body.

3. **Poking Bulls with Knives and Sticks** Many bulls were poked with sticks by owners, police officials and organizers inside the vadi vassal and near the collection yard. People inside the vadi vassal often poked bulls on their hindquarters, faces and other parts of their bodies with pointed wooden spears, tiny knives, sticks and sickle-shaped knives used for cutting nose ropes. Welfare Concerns Poking bulls with sticks or sharp knives causes immense pain and agitation. Distressed bulls often adopt a flight response and desperately try to escape through the half-closed gates of the vadi vassals. While attempting to flee from people in the arena, agitated bulls often injure themselves when they

run into barricades, electric polls, water tanks, tractor carriages and police watch towers placed inside the jallikattu arena.

Violation Section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, prohibits treating any animal in a way that causes unnecessary pain or suffering.

4. Using Irritants Irritant solutions were rubbed into the eyes and noses of bulls inside the vadi vassal in order to agitate them.

Welfare Concerns Eyes and noses are very sensitive, sensory organs, and the use of any irritating chemicals causes pain, distress and an intense sensation. Bulls who try to escape from such torture often end up injuring themselves by hitting walls, gates, fencing and other erected structures inside the Vadi Vasal and jallikattu arena Violation This practice violates section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering. It also violates section 11(1)(c), which prohibits the willful and unreasonable administration of any injurious drug or substance to any animal.

5. Using Nose Ropes Nose ropes were frequently pulled, yanked or tightened in order to control bulls before they were released into arenas and collection yards. Some animals were even bleeding from the nose as a result of injuries caused by pulling the rope.

Welfare Concerns Pulling or twisting the nose rope exerts pressure on the nerve-rich and extremely sensitive septum, causing bulls pain and making it easier for handlers to force them to move in a desired direction. According to one study, 47 per cent of animals whose noses were pierced had lacerations and ulcerations, and 56 per cent had pus in their nostrils. They study also pointed out that 57 per cent of cattle had extensive and severe nose injuries. Violation Section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, prohibits treating any animal in a way that causes unnecessary pain or suffering.

6. Cramped Conditions Bulls were packed so tightly into narrow waiting corridors that they were unable to take a step forwards or backwards. Forced to stand for more than eight hours in line at the waiting area for a health examination and in the vadi vassal, bulls had no protection from the blistering sun and the crowds of people, who shouted and hooted at them, harassed them and frightened them. Bull owners start lining up the night before the jallikattu event, and they are given serial numbers. Some were in line until the events ended at 2

pm the next day.

Welfare Concerns Bulls were denied shade and were not allowed to lie down and rest. This causes exhaustion and extreme distress and discomfort. Violation This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(f), which prohibits trying an animal for an unreasonable time with an unreasonably short rope.

7. Forcing Bulls to Move Sideways The animals were forced to move sideways at a slow pace for more than eight hours over a distance of approximately 500 to 1000 metres. Welfare Concerns Forcing bulls to walk sideways which is an unnatural gait for any animal for a long duration causes them extreme discomfort. Violation This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(d), which prohibits conveying any animal in such a manner or position as to cause unnecessary pain or suffering.

8. Lack of Food and Water All the bulls observed were not offered food, water or shelter from 8 am, when they were forced to line up, until the jallikattu events ended at 2.30 pm. Though concrete water troughs were available at the registration area and collection yards, none of the animals were offered water. Bulls were so terrified and focused on surviving at the collection yards in Palamedu and Alanganallur that they did not drink water. Several bulls became recumbent and were unable to stand up because of dehydration and exhaustion. Many people kicked, beat and bit the bulls in order to force them back onto their feet. Welfare Concerns As ruminants, bulls normally graze for several hours a day in an open field or eat a bulk quantity of feed when kept in stalls. They loiter around chewing their cud before grazing or eating again. During jallikattu, the animals are starved and prevented from chewing their cud (they won't do it when they are frightened or in pain distress). No intake of food and water and the absence of shade lead to dehydration and exhaustion. This often results in injuries or death.

Violation This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(h), which states that failing to provide animals with sufficient food, drink or shelter is an act of cruelty.

9. Forcing Bulls to Drink Liquids On many occasions, bulls were forced to drink fluids that were likely liquor. Animals' heads were raised by pulling on the nose ropes, and the fluids were forced into their mouths using a plastic bottle. Welfare Concerns Forcing bulls to drink causes them physical discomfort and fear. They often become excited and frenzied as the alcohol affects their central nervous system. Forcing them to drink can also cause the aspiration of fluid in the upper and lower respiratory tracts (lungs). This can cause pneumonia, a serious respiratory disease that can lead to death. Normally, bulls drink water at their own pace from a bucket, but no such allowances were witnessed during any of the jallikattu events.

Violation This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(c), which states that giving any injurious drug or substance to any animal is prohibited.

10. Forcing Bulls to Stand in their Own Waste In the waiting areas, bulls were forced to wait for more than eight hours while standing in their own faeces and urine. Welfare Concerns No sanitation facilities were made available, and bulls were forced to stand together in the accumulated faeces and urine for hours. The accumulated waste attracts flies that bother the animals and cause them discomfort. The eggs laid by the flies may lead to maggot infestation of any wounds the bulls may have. Violation This is a violation of Supreme Court and Madurai High Court orders, which mandate that sanitation facilities should be made available during jallikattu events and that bulls should not be allowed to suffer in any. Section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960 prohibits treating any animal in a way that causes unnecessary pain or suffering.

11. Spectators Beating and Agitating Bulls When collection yards were not present or not used, injured, exhausted bulls were tormented by spectators as they exited. Parallel jallikattu events happened at each venue as the aggressive crowds agitated the bulls exiting the arena by shouting at them, beating them and jumping on them. Many people, including police officials, beat exhausted bulls with sticks and jumped in front of the bulls in an effort to frighten them. Running for their lives, terrified bulls ran amok, stumbling into shops and houses and slamming into barricades and vehicles parked nearby. Both the bull who died after a head-on collision with a passenger bus in Avaniapuram and the bull who fractured his leg after jumping off a road in Palamedu were running loose when their

injuries occurred. Parallel jallikattu is often considered to be the real jallikattu, as the most risky action takes place during the deliberate harassment by spectators. Welfare Concerns When bulls are not afraid, they stand still and engage in normal behaviour to the species, such as grazing, chewing cud, lying down or grooming. None of these types of behavior were seen at any point during any of the jallikattu events. Jallikattu causes bulls severe mental and physical anguish. When bulls are frightened or in pain, they adopt a flight response that can often lead to serious physical injuries and even death. Near the collection area, the spectators didn't allow the bulls to calm down and relax they instead induced further fear, distress, discomfort and pain. Violation This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which states that beating, kicking, torturing or otherwise treating any animal so as to subject the animal to unnecessary pain or suffering is an act of cruelty.

12. Restraining and Roping When bulls entered the collection yard, they were caught using looped rope that was attached to a long stick. At no point were the frightened bulls allowed to calm down. After a long struggle, bulls were captured by handlers who inserted two fingers into their noses and pulled them to the nearest tree while three to four men held their horns and necks using multiple ropes. Once an animal was tied to a tree, a new thick nose rope was forcefully inserted through the existing hole in the nasal septum. Often the rope was very thick, and pulling it vigorously caused injuries to the nasal septum, which led to profuse bleeding in many animals.

Welfare Concerns As a prey animal, bulls are better controlled using behavioural techniques instead of crude and painful restraining techniques that cause intense mental suffering and physical injuries. Such a painful experience will cause long-lasting psychological and behavioural changes in bulls.

Violation Section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, prohibits treating any animal in a way that causes unnecessary pain or suffering.

IV. xxx xxx xxx

V. Injuries and Deaths

Jallikattu is dangerous not only to bulls but also to humans. Many

participants and spectators sustained serious injuries at all three jallikattu events. A total of 58 participants and 56 spectators were injured in the three jallikattu events. One police constable was also injured in Avaniapuram.

1. In Avaniapuram, a total of 55 persons were injured during the jallikattu event. Of the 26 people who were injured while trying to tame the charging bulls by clinging to their backs, five were seriously injured. Twenty-four spectators, including a police constable, were injured following a melee after some bulls ran into the crowd. Five people were injured when a section of the gallery erected for spectators collapsed because of severe crowding.

2. In Palamedu, 21 people, including 11 tamers, were injured during the jallikattu event. Ten spectators were injured by bulls who escaped the fighting arena. The 21 people who suffered injuries were admitted to the Palamedu Primary Health Centre. One onlooker, who was hit in the abdomen, was later moved to the Government Rajaji Hospital in Madurai while others were treated as outpatients.

3. In Alanganallur, 38 people were injured during the jallikattu event. Twenty-one were tamers, and others injured included onlookers and owners. Two people who were seriously wounded were admitted to the government hospital in Madurai.

VI. xxx xxx xxx

VII. xxx xxx xxx

VIII. Conclusion

Bulls are prey animals. According to animal behavioural studies, bulls adopt a flight or fight response when they feel frightened or threatened. This instinctual response to a perceived threat is deliberately exploited by jallikattu organizers. During jallikattu, many animals are observed to engage in a flight response as they run away from people when they experience pain or fear. This flight response is not surprising, given the amount of pain and terror bulls are subjected to before, during and after jallikattu. Bulls are beaten, poked, prodded, harassed and jumped on by numerous people. They have their tails bitten and twisted and their eyes and noses filled with irritating chemicals. Many peer-reviewed papers demonstrate a link between the actions of humans and the fear, distress and pain experienced by animals. Research has shown that rough or abusive handling of

animals compromises welfare by increasing an animal's fear of humans. Bulls who are pushed, hit, prodded and abused in jallikattu suffer mentally as well as physically.

Detailed Reports on Jallikattu in Avaniapuram, Palamedu and Alanganallur The cruelty and animal abuse detailed below in sections A, B and C also violate the Prevention of Cruelty to Animals Act, 1960. Observations of three jallikattu locations have been grouped broadly under four categories:

- . Waiting area
- . Vadi vasal
- . Arena
- . Collection yard

Avaniapuram 14 January 2013

Waiting Area

- . Bulls were forced to stand in long lines for more than eight hours without shade, food and water or room to move. . Many animals were forced to drink fluids, likely alcohol, to disorient them.
- . Bulls were continuously pulled and yanked by nose ropes. . Handlers forced bulls to move in the lines sideways by painfully pulling and yanking their tails.
- . Some reluctant bulls jumped out of the line and attacked their owners out of fear.
- . None of the animals had the JK number given to them by the Animal Welfare Board of India on their horns, which is a registration requirement.

Vadi Vasal . Bulls were pulled by nose ropes into the narrow, closed enclosure. Participants also pushed on the bulls' backs as the animals resisted.

- . Inside the vadi vasal, nose ropes were cut with a sharp sickle. At times, bulls were poked with these sickles in order to force them to enter the arena. Much of the cruelty the bulls were subjected to during jallikattu happened inside the vadi vasal. . Closed off from the public, the high-walled vadi vasal is a torture chamber. Here, organizers hit the bulls with wooden sticks and owners bit and brutally twisted

bulls' tails. Organisers and owners of bulls also beat bulls with their bare hands, whipped them with snapped nose ropes and poked them with small, sharp knives.

. Some animals returned to the vadi vasal after being terrified by the jallikattu participants.

Arena . The Supreme Court's guideline for arena barricades calls for them to be no less than 8 feet high. This guideline was flagrantly ignored, and the barricade in the main area was as low as 5-1/2 feet. The non-compliance of a guideline as basic as the barricade's height endangers the lives of spectators. . The Supreme Court's guideline of double barricading was not implemented anywhere around the arena or along the path from the main arena to the town's street.

. As many as six to eight matadors jumped onto bulls to take them. Unable to carry the weight, the bulls often fell to the ground.

Collection Yard

. There was no collection yard.

. Because of the absence of a collection yard, the bulls ran amok in the streets, which were lined with unruly crowds eager to hit the scared animals.

. Many spectators pounded on the petrified bulls and tried to perform jallikattu on the streets.

. Bulls entered bylanes and trampled both men and parked vehicles. . Because of the lack of a collection area, one bull lost his life after a head-on collision with a moving passenger bus.

2. Palamedu 15 January 2013 Waiting Area . The bulls were forced to move sideways for hours as they inched closer to the vadi vasal. This sideways gait is unnatural and uncomfortable to them.

. Even though there were water troughs near the medical examination area, bulls were not allowed to drink water because the owners did not want to lose their place in line. . There was no food or fodder for the bulls who were forced to stand in line the night before the event.

. The bulls in line defecated constantly, which is a sign of fear. . The ears of almost all the bulls were cut and mutilated. . Several bulls in

line were dragged by their tails. . Owners dragged bulls around by inserting their fingers into bulls' noses and pulling them.

. Bulls were forcibly beaten, pushed and pulled into the vadi vasal. The reluctant bulls had their tails painfully twisted, broken and bitten. These abusive practices, though common, were particularly rampant in Palamedu.

. Bulls were hit and poked with wooden sticks. One of the organiser's sole duty was to force bulls into the vadi vasal by striking and prodding them with a wooden stick. . Shockingly, police in uniform blatantly hit and poked the bulls with their wooden lathis instead of stopping the abuse. . On the sly, owners forced suspicious liquids, likely alcohol, down the throats of bulls in order to disorient them.

Vadi Vasal . The vadi vasal is hidden from the view of the public and media and can be accessed and viewed only by select jallikattu personnel.

. The vadi vasal was a permanent cement structure. Its walls hid some of the cruelty from spectators and TV cameras. . The practice of inflicting pain by poking and hitting the bulls is common. Almost every bull that stayed in the vadi vasal for more than a couple of seconds after his nose rope was cut was subjected to physical torture. This rampant cruelty proves that the court's guidelines regarding jallikattu are completely disregarded.

. Bulls' tails were brazenly twisted and broken in order to force bulls to run out of the vadi vasal into the arena. . A bull's anus was deliberately injured to cause pain to the animal.

. Inside the vadi vasal, bulls' eyes and noses were forcibly rubbed with irritant liquids to disorient and agitate them. . Feeling immense fear, some bulls jumped against the exit door of the vadi vasal to try to flee the enclosure.

Arena . The path from the arena to the collection area was dotted with dangerous obstructions, such as tractor carriages, water tanks, and a small truck. These obstructions posed serious threats to speeding bulls who were being chased away by participants. . The Supreme Court's guidelines were not implemented as the barricades were not 8 feet high.

. An electric pole posed grave danger to speeding bulls who charged out of the vadi vasal.

Collection yard . The Collection yard was nowhere close to half an acre in size as instructed by the court guidelines.

. The collection area was also impractical by design as bulls sped right through its narrow enclosure, which was erected in the path from the main arena to the town's streets. . Because of the insufficient collection yard, bulls ran along streets and into moving traffic.

. Bull were brutally beaten by unruly spectators who drew sadistic pleasure in landing blows with their fists and sticks. As the loud crowd hooted, bulls ran for cover.

. Some bulls injured themselves when they jumped off the narrow roads into fields that were 10 feet below. Others jumped into dry river beds.

. One bull who was being chased and beaten by a mob jumped into a field and fractured his front leg. It took 90 minutes for the suffering animal to receive medical attention proving that having ambulances on standby is of no use.

. Several bulls trampled the metal barricades and ran into residential homes and bylanes.

- . One bull entered a house.
- . Another bull plunged into a sewage drain that was more than 10 feet below the road.
- . Several young people were injured when bulls trampled them on the streets.

4. Alanganallur - 16th January 2013

Waiting Area

- . The waiting area had long lines.
- . No shade or fodder was supplied to the bulls.
- . The breaking, twisting and biting of bulls' tails was rampant in the line.
- . One person's sole job was to force bulls into the vadi vasal by beating them with sticks.
- . Bull owners were seen rubbing suspicious liquids into the eyes

of bulls moments before the bulls were taken inside the vadi vasal.

Vadi Vasal . The vadi vasal at Alanganallur was no different from those in previous jallikattu locations. Bulls were subjected to barbaric cruelty inside the enclosure, which was shielded from public view. . Organisers armed with sticks perched inside the vadi vasal and repeatedly hit bulls who were reluctant.

. The practice of biting tails was most rampant in this vadi vasal, as every other bull had his tail bitten by people sitting inside.

. Bulls had their tails pulled, twisted and broken inside the vadi vasal.

. Some bulls were brutally hit on the bridge of the nose right before their nose ropes were cut open.

. Bulls were kicked in their hindquarters.

. People guarding and sitting on top of the vadi vasal smoked

beedis, completely disregarding the safety of the bulls. . Cruelty was most rampant and brazen in this vadi vasal.

Collection Yard . In Alanganallur, the collection area did not prevent bulls from running amok and injuring spectators and villages standing outside the barricades.

. Many bulls ran straight out of the collection area and into the nearby fields. Two bulls fell into wells filled with water and injured themselves.

. The fact that bulls fell into wells in spite of a collection yard that was erected as per the Supreme Court's guidelines proves that the lives of bulls are at stake even if the guidelines are followed. The scope for mishaps is immense. . Several bulls who ran into the collection yard were frightened by the bull catchers and ran back into the barricaded passageway to the main arena.

. Cops standing on a tractor carriage in the passageway between the main arena and collection yard often hit the bulls with long wooden sticks.

. Bulls who escaped from the collection yard ran amok and stayed into nearby fields. The bulls also trampled and injured spectators around the collection yard.

Manoj Oswal, Animal Welfare Officer to the Board, submitted the second interim report on 25.1.2012 with regard to the events witnessed at various places like

Avanlapuram and Palamedu. The operative portion of the report reads as under:

~ Primary observation:

While it is not possible to conduct animal sport like Jallikattu without causing trauma and cruelty to animals, it was anticipated that the guidelines and rules would ensure that the cruelty is minimum.

The events at the surface looked very organized and orderly but scratching a little below the surface showed that the abuse and violations now have been hidden away from the main arena. The unruly people have been found their own place away from media glare and eyes of Animal Welfare Officers.

The fundamental issue remains that a large section of people come to the events with a hope-expectation that they are also a part of the action, which indeed has been a way of Jallikattu always. Such people continue to handle bulls in crude fashion, continue to risk their own lives and create hazard for themselves and others and they undo whatever the system has built as check and balance.

Queuing of bulls The most stressful time for the animals is the long wait, particularly when events are back to back. The same animals participate in many events and travel to new events every day. No animal has the possibility of basic shelter from sun and wind, food or water while it awaits its turn.

The situation in all districts remain the same as it was last year. Between 200 to 400 bulls come to the venue but the facility of pens and shelter are symbolic, holding at the most 10-12 animals. These poster boys are shown as how well bulls were treated. However, in reality they are not even a fraction of the bulls that participate.

The bull are held tightly by their ropes. There is no possibility to move even an inch. The bull that cannot even lower hold itself to its natural position, it is held up tightly that is how it remains in that single position for hour at a stretch. If the bull stands naturally the holder will have bend himself in an awkward position.

In such a situation there is no possibility of either feeding or watering the animal. The bull start queuing from 1 am and they are held that way till 4pm till then the program usually ends. The bull coming first may get released about 2 hours earlier.

Cruelty before release The bull does not want to go into the arena. It does not like people and does not like the crowd. The only way to get it go before the crowd is to prod it and threaten it. Cause the animal so much pain and fear that it believes that going before the thousands of people is a better escape than being tortured here in the small box like enclosure.

The methods of torture vary, but the essence remains the same. The bull has to run for its life. The bull is scared of both scenarios the large crowd outside and the captive and painful life with the current owner. Given an opportunity the bull prefers to stay in the small enclosure than run into a crowd of strangers, the way the bull is made to run is to give it immediate pain or restrain it unnaturally.

Despite ban, people were seen giving alcohol to the animal in the sly. The tail of the animal is one of the sensitive part of the body, so is the nose and the eyes. Torture to these parts is one quick way to get the bull run.

Cruelty within arena:

Mental Torture Physical abuse is not the only kind of injury that is illegal and hurtful. Mental abuse is also amongst the worst kind of abuse as it leaves a lifelong mark on the mind.

It is a known fact that victims of accident, crime or disasters recover from their physical injuries in certain time but mental injuries remain etched for decades, play havoc in day to day life. Animals, irrespective of the fact whether they can express it or not, in this particular case were seen going through the same shock and terror as a person goes into in a hostage situation. Constant fear of death and continuous torture.

Physical torture With the entire world watching at the events, it was not expected that the animals will be harassed in the arena. The animals got a respite from physical abuse in the arena that was well covered by media, however, as soon as they left the main arena, the tale of torture remained the same what it has been for long.

Outside the Arena:

What has changed

- Registered bulls marked in five out of six venues (not so in Previyasuriyal).
 - Symbolic testing done for alcohol (actual testing done in Previyasuriya, rest of the places the test was just a cover up).
 - Obvious and visible forms of cruelty disallowed in public view.
 - The double barricades were less porous and so it was not easy for unruly people to enter arena. (not so in Siravayal) Everything else, the issues highlighted in the report in 2011 remain active
1. Queuing of animals and holding them in unnatural position for hours without food and water.
 2. In the secluded and enclosed area, all forms of animal abuse.
 3. The animals are invariably not going into the yard but onto the street, groves, cluttered vegetation, dry canals and other free-for- all areas, all misnamed as yards.
 4. Animals running out the yard to escape brutality straying into the streets of the village.
 5. Jallikattu barricades punctured at certain points or that they being open at one end leading to non participants indulging in the same kind of cruelty that were seen last year.
 6. A complete parallel set of jallikattus happening with the crowd as people release the unregistered bulls into the crowd, this is more particular and obvious in Sivagangai.
 7. A less obvious but with same effect, parallel Jallikattu happening in areas designated as bulls yards. So instead of rest, the bull yards are the areas designated as bull yards. So instead of rest, the bull yards are the areas where the bulls get tortured the most.
18. We have also perused the recent affidavit filed by Smt. Uma Rani, the Secretary, AWBI, MoEF, Chennai on 7.4.2014, giving the details of the manner in which Jallikattu was conducted in various parts of Tamil Nadu, like Avaniapuram, Palamedu etc., and the torture and cruelty meted out to the Bulls, which is unimaginable.

19. We notice that the situation is the same in the State of Maharashtra also. The details furnished by the 2nd respondent in I.A. No. 5/2014 on 20.1.2014 along with the photographs, depict the state of affairs, which is also cruel, barbaric, inhuman and savage. Report highlights the manner in which it is being conducted.

BULLOCK-CART RACE IN MAHARASHTRA:

20. We notice, in various parts of Maharashtra, varied types of Bullock- cart races are being organized. Bailgada Sharyat is a race where no person rides the cart. In such a race, at times, Bullocks are brought to the venue blind folded through trucks and let free, through a ghat either side of which spectators, large in number, assemble. Due to sudden exposure to the light, after unfolding, and the huge noise source made by spectators, Bullock get terrified and run in straight on the slope. Many of the Bullocks are tortured and whipped to make them run and the price is decided on the basis of time taken to cover gap of approximately 300 meter distance. Races are also there where Bullocks have to cover 10 kilometres and more. Before and during the course of the race, cruel practices like beating, twisting of tail, biting tail, poke with spiked instruments, electric shock etc. is given. Races, such as, Ghoda Bail Sharyat which involves a horse and a bull on the same cart is also being held. Sometimes, a bigger Bullock is paired with a smaller one. Various forms of torture are adopted in all these races.

21. We are sorry to note, in spite of the various directions issued by this Court, in the conduct of Jallikattu, Bullock-cart Race etc., the regulatory provisions of TNRJ Act and the restrictions in the State of Maharashtra, the situation is the same and no action is being taken by the District Collectors, Police Officials and others, who are in-charge to control the same, to see that those directions are properly and effectively complied with and the animals are not being subjected to torture and cruelty. Being dumb and helpless, they suffer in silence.

22. We notice, following the Central Government notification dated 11.7.2011, the Committee constituted in the State of Maharashtra to monitor animal welfare laws in the State, submitted a letter dated 1.8.2011 to the then Chief Minister, with specific reference to the notification dated 11.7.2011, stating as follows:

Now that the exhibition and training as performing animals of bulls also is prohibited, bullocks cart races which are very widely organized in the State become illegal. During the month of Shravan, many such races are organized in the rural parts of the State and these must be stopped in compliance with the above notification.

We, therefore, request you to issue instructions through the Collectors all over the State, prohibiting such bullock cart races with immediate effect.

This issue has been agitated in the State of years now by animal welfare activists and the Central Government's move should put an end to it. As the notification may not have come to the notice of people and even administration at large, we hope you will kindly take necessary action as requested above at the earliest.

Thanking you, Yours sincerely, For Committee to Monitor Animal Welfare Laws in Maharashtra Sd/-

C.S. Dharmadhikari Chairman of the State of Maharashtra, based on the notification dated 11.7.2011 and the letter dated 1.8.2011 of the Committee, issued a notification dated 24.8.2011, the operative portion of the same reads as follows:

Reference Item No. 1 above, as per the Notification of Environment & Forest Department of Central Government dated 11.7.2011, has been brought on training, exhibition and as such the performance of animals like bears, monkeys, tigers, leopards, lions and bullocks etc. Accordingly, it was under consideration of the State Government to bring about a ban on the bullock cart races and various exhibitions taking place in the State.

Accordingly, by this notification, a ban has been imposed on bullock cart races / games/ training / exhibition in the State in accordance with the above reference item No. (1) Notification of the Central Government.

As per order of the Government of Maharashtra.

Sd/-

C. N. Suryavanshi Deputy Secretary, Govt. of Maharashtra of the State of Maharashtra later issued a corrigendum dated 12.9.2011 clarifying that the word Bull be read as Valu/Sand, meaning thereby, it would take both Bulls whether castrated or not. The State of Maharashtra later, through the Government decision dated 20.4.2012 imposed total prohibition in the State of organizing Bull/Bullock-cart Races, Bulls Fight, Training of Bulls/Bullocks for the sport, sport activities. The operative portion of the order reads as follows:

PREAMBLE The organization of animal sports in State, mainly in its rural hinterland especially sports such as bull ox/ bullock cattle exhibition, organizing their race, their cart race, fight etc., is nothing but violence to these dumb animals for which, to stop the continuation of the same, to prohibit the same, the State Government has already taken a decision to prohibit them on 24.8.2011. Moreover,

as in the list in this regard of prohibited animals by Central Government as bulls, bullock has not been included but not in State Government, the State Government issued a corrigendum by prohibiting bulls instead of bullock in State Govt. list too. In this regard, the corrigendum of the State Government was issued on 12.9.2011. But by opposing this corrigendum of State Government, above referred No.1, and No.2 cases were filed in the Hon'ble High Court, Mumbai. In accordance with the judgment given by the Hon'ble High Court, Mumbai in those cases, to the State Government issued abovementioned circular Nos.4 and 5 are superseded now and the government decision in this regard is now being issued as under:-

GOVERNMENT'S DECISION:

In compliance of Central Govt.'s Department of Forest and Environment Departmental Notification dated 11.7.2011 and also in the light of relevant judgment pronounced by Hon'ble High Court, Mumbai Bullock Cart Race, Bullock Race/ Bull Fight/ training of bull / Bullock / Ox for such race, fights / using them for any animal sport activities is being prohibited herewith now.

In accordance with letter dated 7.10.2011 of Central Government, Bamboo Cart / Cart / Ox / Cow / Calf etc., are also increased in the broader sense of technical definitions of Bulls prohibited under this act which must be prohibited for usage as sort sporting / animal sporting/ fighting / right sports related training.

If anybody is found guilty of the aforesaid prohibited act and activities, then on such offenders, let action be taken stringently and effectively against them under the provisions of cruelty to animals act and the concerned District Collectors, Police Superintendents have the entire enforcement responsibility.

Under the directions of and in the name of Hon'ble Governor of Maharashtra State.

Sd/-

(S. T. SHENDE) Under Secretary Govt. of Maharashtra

23. We have already indicated that the State of Maharashtra has accepted the judgment of the High Court and the Government decision dated 20.4.2012 is also not under challenge.

24. We have to examine, in the light of the above facts, whether the events that are being conducted in the States of Tamil Nadu and Maharashtra are in violation of Sections 3, 11(1)(a) & (m), 21 and 22 of the PCA Act read with Articles 51A(g) and (h) of the Constitution and the notification dated 11.7.2011.

PCA ACT:

25. The PCA Act was enacted even before the introduction of Part IV-A dealing with the fundamental duties, by the Constitutional 47th Amendment Act, 1956. Earlier, the then British in India enacted the Prevention of Cruelty Act, 1890 for the human beings to reap maximum gains by exploiting them with coercive methods with an idea that the very existence of the animals is for the benefit of the human beings. During the course of administering the above mentioned Act, many deficiencies were noticed by the Government of India and a Committee was constituted to investigate and suggest measures for prevention of cruelty to animals. Following that, a Bill was introduced in the Parliament and, ultimately, the PCA Act, 1960 was enacted so as to prevent the infliction of unnecessary pain or suffering on animals and to amend the law relating to prevention of cruelty to animals.

JUDICIAL EVALUATION

26. 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. Court also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state of affairs. 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, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of parents patriae to take care of the rights of animals, since they are unable to take care of themselves as against human beings.

27. The PCA Act, as already indicated, was enacted to prevent the infliction of unnecessary pain, suffering or cruelty on animals. Section 3 of the Act deals with duties of persons having charge of animals, which is mandatory in nature and hence confer corresponding rights on animals. Rights so conferred on animals are thus the antithesis of a duty and if those rights are violated, law will enforce those rights with legal sanction. Section 3 is extracted hereunder for an easy reference:

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 Act has got two limbs, which are as follows:

- i) Duty cast on persons-in-charge or care to take all reasonable measures to ensure the well-being of the animal;
- ii) Duty to take reasonable measures to prevent the infliction upon such animal of unnecessary pain and suffering.

Both the above limbs have to be cumulatively satisfied. Primary duty on the persons-in-charge or care of the animal is to ensure the well-being of the animal. Well-being means state of being comfortable, healthy or happy. Forcing the Bull and keeping the same in the waiting area for a number of hours and subjecting it to scorching sun, is not for the well-

being of the animal. Forcing and pulling bulls by nose ropes into the narrow closed enclosure of vadi vassal, subjecting it to all forms of torture, fear, pain and suffering by forcing it to go the arena and also over-powering it at the arena by the Bull tamers, are not for the well-being of the animal. The manner in which the Bull tamers are treating the bulls in the arena is evident from the reports filed before this Court by ABWI. By forcing the bull into the vadi vassal and then into the arena, by no stretch of imagination, can be said to be for the well-being of such animal. Organizers of Jallikattu are depriving the rights guaranteed to the bulls under Section 3 of PCA Act. Sadism and perversity is writ large in the actions of the organizers of Jallikattu and the event is meant not for the well-being of the animal, but for the pleasure and enjoyment of human beings, particularly the organizers and spectators. Organizers of Jallikattu feel that their bulls have only instrumental value to them, forgetting their intrinsic worth. First limb of Section 3, as already indicated, gives a corresponding right to the animal to ensure its well-being. AWBI, a body established to look after the welfare of the animals has to see that the person-in-charge or care of the animals looks after their well-being. We have no hesitation to say that Jallikattu /Bullock- cart race, as such, is not for the well-being of the animal and, by undertaking such events, organizers are clearly violating the first limb of Section 3 of the PCA Act.

28. We will now examine whether the second limb of Section 3 which casts a duty on the person in-charge or care of animal to prevent the infliction upon an animal, unnecessary pain or suffering, discharges that duty. Considerations, which are relevant to determine whether the suffering is unnecessary, include whether the

suffering could have reasonably been avoided or reduced, whether the conduct which caused the suffering was in compliance with any relevant enactment. Another aspect to be examined is whether the conduct causing the suffering was for a legitimate purpose, such as, the purpose for benefiting the animals or the purpose of protecting a person, property or another animal etc. Duty is to prevent the infliction of unnecessary pain or suffering, meaning thereby, no right is conferred to inflict necessary/unnecessary pain or suffering on the animals. By organizing Jallikattu and Bullock-cart race, the organizers are not preventing the infliction of unnecessary pain or suffering, but they are inflicting pain and suffering on the bulls, which they are legally obliged to prevent. Section 3 is a preventive provision casting no right on the organizers, but only duties and obligations. Section 3, as already indicated, confers corresponding rights on the animals as against the persons in-charge or care, as well as AWBI, to ensure their well-being and be not inflicted with any unnecessary pain or suffering. Jallikattu or Bullock-cart race, from the point of the animals, is not an event ensuring their well-being or an event meant to prevent the infliction of unnecessary pain or suffering, on the contrary, it is an event against their well-being and causes unnecessary pain and suffering on them. Hence, the two limbs of Section 3 of PCA Act have been violated while conducting Jallikattu and Bullock-cart race.

CRUELTY TO ANIMALS:

29. Section 11 generally deals with the cruelty to animals. Section 11 confers no right on the organizers 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. The relevant portion of Section 11 reads as follows:

11. Treating animals cruelty.- (1) If any person-

- a) Beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated; or
- b) xxx xxx xxx
- c) willfully and unreasonably administers any injurious drug or injurious substance to any animal or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any animal; or
- d) xxx xxx xxx

other cases which may not come within the meaning of the preceding clause. In our view, the said principles also can be safely applied while interpreting Section 11(1)(a).

30. Pain and suffering are biological traits. Pain, in particular, informs an animal which specific stimuli, it needs to avoid and an animal has pain receptors and a memory that allows it to remember what caused the pain. Professor of Animal Welfare, D.M.Broom of University of Cambridge in his articles appearing in Chapter fourteen of the Book *Animal Welfare and the Law* Cambridge University Press (1989) says:

Behavioural responses to pain vary greatly from one species to another, but it is reasonable to suppose that the pain felt by all of these animals is similar to that felt by man.

Suffering has the same function, but instead of informing the animal about stimuli to avoid, which informs it about a situation to avoid. An animal might be regarded as suffering, if is in pain, distress, or acute or unduly prolonged discomfort. Consequently, to experience the suffering, the animal needs an awareness of its environment, the ability to develop moods that coordinate a behavioral response, and the capacity to change adverse situation or avoid them. Reports submitted by AWBI clearly indicate that Bulls are being treated with extreme cruelty and suffering, violating the provisions of Section 11(1) of the PCA Act. Over and above, Section 11(1), clauses (b) to (o) also confer various duties and obligations, generally and specifically, on the persons in charge of or care of animals which, in turn, confer corresponding rights on animals, which, if violated, are punishable under the proviso to Section 11(1) of the PCA Act.

DOCTRINE OF NECESSITY:

31. Section 11(3) carves out exceptions in five categories of cases mentioned in Section 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.

32. Sections 3 and 11, as already indicated, therefore, confer no right on the organisers of Jallikattu or bullock-cart race, but only duties, responsibilities and obligations, but confer corresponding rights on animals. Sections 3, 11(1)(a) & (o) and other related provisions have to be understood and read along with Article 51A(g) of the Constitution which cast fundamental duties on every citizen to have compassion for living creatures. Parliament, by incorporating Article 51A(g), has again reiterated and re-emphasised the fundamental duties on human beings towards every living creature, which evidently takes in bulls as well. All living creatures have inherent dignity and a right to live peacefully and right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering etc. Human life, we often say, is not like animal existence, a view having anthropocentric bias, forgetting the fact that animals have also got intrinsic worth and value. Section 3 of the PCA Act has acknowledged those rights and the said section along with Section 11 cast a duty on

persons having charge or care of animals to take reasonable measures to ensure well-being of the animals and to prevent infliction of unnecessary pain and suffering.

PERFORMING ANIMALS

33. All animals are not anatomically designed to be performing animals. Bulls are basically Draught and Pack animals. they are live-stock used for farming and agriculture purposes, like ploughing, transportation etc. Bulls, it may be noted, have been recognized as Draught and Pack animals in the Prevention of Cruelty to Draught and Pack Animals Rules, 1965. Draught means an animal used for pulling heavy loads. Rules define large bullock to mean a bullock the weight of which exceeds 350 Kgs. Bullocks have a large abdomen and thorax and the entire body has a resemblance to a barrel shape, which limits ability to run. Bulls have also limitations on flexing joints and the rigid heavily built body and limited flexion of joints do not favour running faster. Due to that body constitution, the Prevention of Cruelty to Animals (Transportation of Animals on Foot) Rules, 2001, especially Rule 11 says that no person shall use a whip or a stick in order to force the animal to walk or to hasten the pace of their walk. Bulls, it may be noted, are cloven footed (two digits) animals and two digits in each leg can comfortably bear weight only when they are walking, not running. Horse, on the other hand, is a solid hoofed plant-eating quadruped with a flowing mane and tail, domesticated for riding and as a draught animal. Horse power, we call it as an imperial unit of power, equal to 550 foot-pounds per second. Horse's anatomy enables it to make use of speed and can be usefully used for horse racing etc., unlike Bulls.

34. Bulls, therefore, in our view, cannot be a performing animal, anatomically not designed for that, but are forced to perform, inflicting pain and suffering, in total violation of Sections 3 and Section 11(1) of 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:

Section 22. Restriction on exhibition and training of performing animals : No person shall exhibit or train

(i) any performing animal unless he is registered in accordance with the provisions of this Chapter;

(ii) as a performing animal, any animal which the Central Government may, by notification in the official gazette, specify as an animal which shall not be exhibited or trained as a performing animal.

35. The words "exhibit" and "train" are defined in Section 21 of the PCA Act, which is as follows:

21. Exhibit and train defined: In this Chapter, "exhibit" means exhibit or any entertainment to which the public are admitted through sale of tickets, and "train" means train for the purpose of any such exhibition, and the expressions "exhibitor" and "trainer"

have respectively the corresponding meanings.

36. Section 23 of the PCA Act deals with the procedure for registration. Section 24 of the PCA Act deals with the powers of the court to prohibit or restrict exhibition and training of performing animals. Section 25 of the PCA Act confers powers on any authorised person to enter into the premises to examine as to whether the statutory requirements are properly complied with. Section 26 of the PCA Act deals with the offences and Section 27 of the PCA Act deals with exemptions. Performing Animals Rules, 1973 define performing animal to mean any animal which is used at, or for the purpose of any entertainment to which public are admitted through sale of tickets. Jallikattu, Bullock-cart races, it was contended, are conducted without sale of tickets and hence Section 22 of the PCA Act would not apply, so also the notification dated 11.7.2011. We find no substance or logic in that submission. It may be noted that when Bull is specifically prohibited to be exhibited or trained for performance, the question whether such performance, exhibition or entertainment is conducted with sale of tickets or not, is irrelevant from the point of application of Sections 3 and 11(1) of the PCA Act.

37. We may, in this respect, refer to Section 11(1)(m) which reads as follows:

11. Treating animals cruelly.- (1) If any person-

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 Section 11(1)(m)(ii), therefore, says, if any person, solely with a view to providing entertainment incites any animal to fight, shall be punishable under the proviso to Section 11(1). In Jallikattu, Bull is expected to fight with various Bull tamers, for which it is incited solely to provide entertainment for the spectators by sale of tickets or otherwise.

Inciting the Bull to fight with another animal or human being matters little, so far as the Bull is concerned, it is a fight, hence, cruelty. Jallikattu, Bullock-cart Race, therefore, violate not only Sections, 3, 11(1)(a) & (m) and Section 22, but also the notification dated 11.7.2011 issued by the Central Government under Section 22(ii) of the PCA Act.

38. We may, in this connection, also refer to the Performing Animals (Registration) Rules, 2001. Rule 8 deals with the general condition of registration. Rule 8(v) states that the owner shall ensure that any animal is not inflicted unnecessary pain or suffering before or during or after its training or exhibition. Rule 8(vii) specifically caution that the owner shall train the animal as a performing animal to perform an act in accordance with the animals' natural instinct. Bull is trained not in accordance with its natural instinct for the Jallikattu or Bullock-cart race. Bulls, in those events, are observed to carry out a flight response i.e. running away from the crowd as well as from the Bull tamers, since they are in fear and distress, this natural instinct is being exploited.

39. Animal Welfare Division of MoEF, represented by its Director, submitted a note file on 27.1.2011 to the Minister specifically referring to the affidavit filed by the AWBI before this Court in Writ Petition No. 145 of 2011 and the relevant portion of the affidavit reads as follows:

I affirm on behalf of the Animal Welfare Board of India that Jallikattu is indeed an extremely cruel and barbaric sport, in which the Bulls that are forced to participate are brutalized and subjected to unnecessary pain and suffering. Surrounded by huge crowds of shouting, screaming people intent upon seeing them cruelly subdued and overpowered, regardless of what they endure, the bulls are subjected to terrible acts of cruelty. They are beaten, kicked, and chilly- powder rubbed into their eyes. Their humps and horns are seized and twisted and turned during the course of the sport, leading to injuries, tears and bleeding and the animals toppling over. All of this occurs while they are surrounded by the jeering, frenzied crowd. In fact, the tails of the animals are routinely pulled, twisted and turned, leading to painful injuries and often to broken tails. By no stretch of imagination can the bulls be termed as performing animals or trained for the sport. In fact, what occurs during the event is that the participating bulls are forced to endure unnecessary pain and suffering beyond measure. It is for this reason that the answering respondent had represented to the Central Government that this barbaric, pre-historic event masquerading under the guise of sport, be banned.

(emphasis supplied) Further, it was also stated in the affidavit that:

“ I also affirm on behalf of the Answering Respondent that seeking to regulate a barbaric event involving unnecessary pain and suffering for the animals forced to participate in the same cannot legalize or confer legitimacy upon the event. Moreover, that the Tamil Nadu Regulation of Jallikattu Act 2009 is ultra vires the Constitution of India, and repugnant to the provisions of the Prevention of Cruelty to Animals Act. Note referred to above also made a reference to the Madras High Court judgment pointing out that Jallikattu and other related events are exhibition of performance of trained animals, permitted under Chapter V of PCA Act. Noticing all those aspects, especially taking note of the stand of AWBI, it recommended that all such events be stopped, especially Bulls as performing animals under Section 22 of PCA Act, similar to the ban already introduced in the case of Bears, Tigers etc.

40. Stand of the Animal Welfare Division of MoEF and AWBI was accepted by the Central Government (MoEF) and a notification dated 11.7.2011 was issued, which was also gazetted on the same date, including Bull also in the category of banned animals. Power is conferred on the Central Government under Section 22(ii) to ban the exhibition or training of any animal as a performing animal. Following its earlier notification dated 14.10.1998, as already stated, the MoEF issued another notification dated 11.7.2011 including Bull also as an animal not to be exhibited or trained for exhibition as a performing animal, which is a conscious decision taken by the MoEF on relevant materials, while this Court was seized of the matter. AWBI's advice under Sections 9(a) and (l) as well as the note of Animal Welfare Division of MoEF was accepted by the Central Government and now it cannot take a contrary stand, that too, without consulting the AWBI, whose advice was already accepted and acted upon.

41. Jallikattu as well as the Bullock-cart races etc., as an event, according to the Board, violate Sections 3 and 11(1)(a) & (m) of the PCA Act read with Article 51A(g) of the Constitution of India. MoEF, in exercise of its powers conferred under Section 22 of the PCA Act, as already stated, after noticing the stand of the Board, issued a notification specifying that Bulls shall not be exhibited or trained as performing animals, that position still stands. MoEF, it is seen, so far as the State of Maharashtra is concerned, is not recognising that Bullock- cart race is part and parcel of the tradition of the people of Maharashtra and that it has any cultural, historical or religious significance. The State of Maharashtra, in its order dated 20.4.2012, has clearly acknowledged that the organisation of animal sports in the State, mainly in its

rural hinterland, like Bull /Ox / Bullock-cart race etc. is nothing but violence to the dumb animals and has to be prohibited. The State Government evidently did not give its stamp of approval to the so-called cultural, historical importance to the Bullock-cart Race and that order has not been challenged. But, so far as the State of Tamil Nadu is concerned, now a proposal has been made to exempt bulls, participating in Jallikattu from the purview of the notification dated 11.07.2011 stating that it has historic, cultural and religious significance in the State.

CULTURE AND TRADITION

42. 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 over-powering the bull, to show human bravery. Jallikattu means, silver or gold coins tied to the bulls horns and in olden days those who get at the money to the bulls 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.

43. PCA Act, a welfare legislation, in our view, over-shadows 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 the pleasure, amusement and enjoyment. We have a history of doing away with such evil practices in the 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. Thravancore Dewaswom Board and Others (2002) 8 SCC 106, while examining the scope of Articles 25(1), 2(a), 26(b), 17, 14 and 21, held as follows:

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.

44. 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.”

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

46. 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, recognizing 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.

INTERNATIONAL APPROACH TO ANIMALS WELFARE

47. We may, at the outset, indicate unfortunately, there is no international agreement that ensures the welfare and protection of animals. United Nations, all these years, safeguarded only the rights of human beings, not the rights of other species like animals, ignoring the fact that many of them, including Bulls, are sacrificing their lives to alleviate human suffering, combating diseases and as food for human consumption. International community should hang their head in shame, for not recognizing their rights all these ages, a species which served the humanity from the time of Adam and Eve. Of course, there has been a slow but observable shift from the anthropocentric approach to a more nature-right centric approach in International Environmental Law, Animal Welfare Laws etc. Environmentalist noticed three stages in the development of international environmental law instrument, which are as under:

(a) The First Stage: Human self-interest reason for environmental protection

- The instruments in this stage were fuelled by the recognition that the conservation of nature was in the common interest of all mankind.

- Some the instruments executed during this time included the Declaration of the Protection of Birds Useful to Agriculture (1875), Convention Designed to Ensure the Protection of Various Species of Wild Animals which are Useful to Man or Inoffensive (1900), Convention for the Regulation of Whaling (1931) which had the objective of ensuring the health of the whaling industry rather than conserving or protecting the whale species.

- The attitude behind these treaties was the assertion of an unlimited right to exploit natural resources which derived from their right as sovereign nations.

(b) The Second Stage: International Equity

- This stage saw the extension of treaties beyond the requirements of the present generation to also meet the needs to future generations of human beings. This shift signalled a departure from the pure tenets of anthropocentrism.

- For example, the 1946 Whaling Convention which built upon the 1931 treaty mentioned in the preamble that it is in the interest of the nations of the world to safeguard for future generations the great natural resource represented by the whale stocks. Similarly, the Stockholm Declaration of the UN embodied this shift in thinking, stating that man bears a solemn responsibility to protect and improve the environment for present and future generations and subsequently asserts that the natural resources of the earth must be safeguarded for the benefit of present and future generations through careful planning and management. Other documents expressed this shift in terms of sustainability and sustainable development.

(c) The Third Stage: Nature's own rights

- Recent Multinational instruments have asserted the intrinsic value of nature.

- UNEP Biodiversity Convention (1992) Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, educational, cultural, recreational and aesthetic values of biological diversity and its components [we have] agreed as follows:..... The World Charter for Nature proclaims that every form of life is unique, warranting respect regardless of its worth to man. The Charter uses the term nature in preference to environment with a view to shifting to non-anthropocentric human-independent terminology.

48. We have accepted and applied the eco-centric principles in T. N. Godavarman Thirumulpad v. Union of India and Others (2012) 3 SCC 277, T. N. Godavarman Thirumulpad v. Union of India and Others (2012) 4 SCC 362 and in Centre for Environmental Law World Wide Fund - India v. Union of India and Others (2013) 8

SCC 234.

49. Based on eco-centric principles, rights of animals have been recognized in various countries. Protection of animals has been guaranteed by the Constitution of Germany by way of an amendment in 2002 when the words "and the animals" were added to the constitutional clauses that obliges the state to respect animal dignity. Therefore, the dignity of the animals is constitutionally recognised in that country. German Animal Welfare Law, especially Article 3 provides far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners' fundamental rights to property and the animals' interest in freedom from unnecessary suffering or pain, damage and fear.

50. Animals Welfare Act of 2006 (U.K.) also confers considerable protection to the animals from pain and suffering. The Austrian Federal Animal Protection Act also recognises man's responsibilities towards his fellow creatures and the subject of the Federal Act aims at the protection of life and well being of the animals. The Animal Welfare Act, 2010 (Norway) states that animals have an intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain. Section 26 of the Legislation prohibits training an animal to fight with people, the operative portion of the same reads as follows :

Any person who trains animals and who uses animals which are used for showing, entertainment and competitions, including those who organise such activities, shall ensure that the animals:

a) xxx xxx xxx

b) xxx xxx xxx

c) xxx xxx xxx

(d) are not trained for or used in fights with other animals or people.

51. When we look at the rights of animals from the national and international perspective, what emerges is that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks.

52. Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals. Five freedoms referred to in UDAW, which we will deal with in latter part of the judgment, find support in PCA Act and the rules framed thereunder to a great extent.

53. World Health Organization of Animal Health (OIE), of which India is a member, acts as the international reference organisation for animal health and animal welfare. OIE has been recognised as a reference organisation by the World Trade Organisation (WTO) and, in the year 2013, it has a total of 178 member countries. On animal welfare, OIE says that an animal is in good state of welfare if (as indicated by Scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress.

FREEDOM:

54. Chapter 7.1.2 of the guidelines of OIE, recognizes five internationally recognized freedoms for animals, such as:

- i) freedom from hunger, thirst and malnutrition;
- ii) freedom from fear and distress;
- iii) freedom from physical and thermal discomfort;
- iv) freedom from pain, injury and disease; and
- v) freedom to express normal patterns of behaviour.

Food and Agricultural Organisation (FAO) in its *Legislative and Regulatory Options for Animal Welfare* indicated that these five freedoms found their place in Farm Welfare Council 2009 U.K. and is also called Brambell's Five Freedoms. These five freedoms, as already indicated, are considered to be the fundamental principles of animal welfare and we can say that these freedoms find a place in Sections 3 and 11 of PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India.

55. Animals are world-wide legally recognised as *property* that can be possessed by humans. On deletion of Article 19(1)(f) from the Indian Constitution, right to property is more a fundamental right in India, this gives the

Parliament more a leeway to pass laws protecting the rights of animals. Right to hold on to a property which includes animals also, is now only a legal right not a fundamental right. We have also to see the rights of animals in that perspective as well.

56. 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 51A(g)(h) of the Constitution, which is the magna carta of animal rights.

COMPASSION:

57. Article 51A(g) states that it shall be the duty of citizens to have compassion for living creatures. In State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others (2005) 8 SCC 534, this Court held that by enacting Article 51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51A(g), therefore, enjoins that it was a fundamental duty of every citizen to have compassion for living creatures, which means concern for suffering, sympathy, kindness etc., which has to be read along with Sections 3, 11(1)(a) & (m), 22 etc. of PCA Act.

HUMANISM:

58. Article 51A(h) says that it shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform. Particular emphasis has been made to the expression humanism which has a number of meanings, but increasingly designates as an inclusive sensibility for our species. Humanism also means, understand benevolence, compassion, mercy etc. Citizens should, therefore, develop a spirit of compassion and humanism which is reflected in the Preamble of PCA Act as well as in Sections 3 and 11 of the Act. To look after the welfare and well-being of the animals and the duty to prevent the infliction of pain or suffering on animals highlights the principles of humanism in Article 51A(h). Both Articles 51A(g) and (h) have to be read into the PCA Act, especially into Section 3 and Section 11 of the PCA Act and be applied and enforced.

SPECIESISM:

59. Speciesism as a concept coined by Richard Ryder in his various works on the attitude to animals, like *Animal Revolution, Changing Attitudes towards Speciesism* (Oxford: Basil Blackwell, 1989), *Animal Welfare and the Environment* (London: Gerald Duckworth, 1992) etc. Oxford English Dictionary defines the term as

is the assumption of human superiority over other creatures, leading to the exploitation of animals. Speciesism is also described as the widespread discrimination that is practised by man against the other species, that is a prejudice or attitude of bias towards the interest of members of one's own species and against those of members of other species. Speciesism as a concept used to be compared with Racism and Sexism on the ground that all those refer to discrimination that tend to promote or encourage domination and exploitation of members of one group by another. One school of thought is that Castism, Racism and Sexism are biological classification, since they are concerned with physical characteristics, such as, discrimination on the ground of caste, creed, religion, colour of the skin, reproductive role etc. rather than with physical properties, such as the capacity for being harmed or benefited.

60. We have got over those inequalities like Castism, Racism, Sexism etc. through Constitutional and Statutory amendments, like Articles 14 to 17, 19, 29 and so on. So far as animals are concerned, Section 3 of the Act confers right on animals so also rights under Section 11 not to be subjected to cruelty. When such statutory rights have been conferred on animals, we can always judge as to whether they are being exploited by human-beings. As already indicated, an enlightened society, of late, condemned slavery, racism, castism, sexism etc. through constitutional amendments, laws etc. but, though late, through PCA Act, Parliament has recognized the rights of animals, of course, without not sacrificing the interest of human beings under the Doctrine of necessity, like experiments on animals for the purpose of advancement by new discovery of physiological knowledge or of knowledge which will be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants and also destruction of animals for food under Section 11(3) of the PCA Act. Legislature through Section 28 also saved the manner of killing of animals in the manner prescribed by religions, those are, in our view, reasonable restrictions on the rights enjoyed by the animals under Section 3 read with Section 11(1). Evidently, those restrictions are the direct inevitable consequences or the effects which could be said to have been in the contemplation of the legislature for human benefit, since they are unavoidable. Further, animals like Cows, Bulls etc. are all freely used for farming, transporting loads etc., that too, for the benefit of human beings, thereby subjecting them to some pain and suffering which is also unavoidable, but permitted by the Rules framed under the PCA Act.

NON-ESSENTIAL ACTIVITIES:

61. We have, however, lot of avoidable non-essential human activities like Bullock-cart race, Jallikattu etc. Bulls, thinking that they have only instrumental value are intentionally used though avoidable, ignoring welfare of the Bulls solely for human pleasure. Such avoidable human activities violate rights guaranteed to them under Sections 3 and 11 of PCA Act. AWBI, the expert statutory body has taken up the stand that events like Jallikattu, Bullock-cart race etc. inherently involve pain and

suffering, which involves both physical and mental components, including fear and distress. Temple Grandin and Catherine Johnson, in their work on *Animals in Translation* say:

The single worst thing you can do to an animal emotionally is to make it feel afraid. Fear is so bad for animals I think it is worse than pain. I always get surprised looks when I say this. If you gave most people a choice between intense pain and intense fear, they'd probably pick fear. Both anxiety and fear, therefore, play an important role in animal suffering, which is part and parcel of the events like Jallikattu, Bullock-

cart Race etc..

RIGHT TO LIFE:

62. Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word *life* has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, *life* means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognised under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-ridder, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.

63. Jallikattu and other forms of Bulls race, as the various reports indicate, causes 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 is being inflicted in the vadivasal 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 vocalization 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 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 totally dedicated its life for human benefit, out of necessity.

64. We are, therefore, of the view that Sections 21, 22 of the PCA Act and the relevant provisions have to be understood in the light of the rights conferred on animals under Section 3, read with Sections 11(1)(a) &

(o) and Articles 51A(g) and (h) of the Constitution, and if so read, in our view, Bulls cannot be used as a Performing Animals for Jallikattu and Bullock-cart Race, since they are basically draught and pack animals, not anatomically designed for such performances.

REPUGNANCY:

65. We may now examine whether provisions of the TNRJ Act, which is a State Act, is repugnant to the PCA Act, which is a Central Act, since, both the Acts fall under Entry No. 17 in the Concurrent List. Repugnancy between the Parliamentary Legislation and State Legislation arises in two ways:

i) Where the legislations, though enacted with respect to the matters in their allotted sphere, overlap conflict and

ii) Where two legislations are with respect to the same matters in the concurrent list and there is a conflict.

In both the situations, the Parliamentary legislation will predominate in the first by virtue of the non-obstante clause in Article 246(1), and in the second by reason of Article 254(1) of the Constitution. The law on this point has been elaborately discussed by this Court in the case of Vijay Kumar Sharma v. State of Karnataka (1990) 2 SCC 562.

66. Instances are many, where the State law may be inconsistent with the Central law, where there may be express inconsistency in actual terms of the two legislations so that one cannot be obeyed without disobeying the other. Further, if the Parliamentary legislation, if intended to be a complete and exhaustive code, then though there is no direct conflict, the State law may be inoperative. Repugnancy will also arise between two enactments even though obedience to each of them is possible without disobeying the other, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field.

67. In M. Karunanidhi v. Union of India AIR 1979 SC 898, this Court held that, in order to decide the question of repugnancy, it must be shown that the two enactments contain inconsistent and irreconcilable provisions, therefore, they cannot stand together or operate in the same field. Further, it was also pointed out that there can be no repeal by implication, unless inconsistency appears on the face of those statutes. Further, where two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results. Further, it was also noticed that there is no inconsistency, but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

68. In Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another (2000) 5 SCC 231, this Court took the view that the repugnancy may arise between two enactments even though obedience of each of them is possible without disobeying the other, if a competent legislature of superior efficacy, expressly or impliedly, evinces by the State legislation a clear intention to cover the whole field and the enactment of the other legislature, passed before or after, would be over-borne on the ground of repugnancy.

69. We may, bearing in mind the above principles, examine whether there is any repugnancy between PCA Act and TNRJ Act so as to have inconsistent and inconceivable provisions so that they cannot stand together or operate in the same field. Both the legislators trace their legislative power in Entry 17 List III.

~ Prevention of Cruelty to animals.~ 1/2

70. We have to examine whether while enacting the PCA Act, the Parliament has evinced its intention to cover the whole field. To examine the same, we have to refer to the Statement of Objects of the Act, Preamble and other relevant statutory provisions, which would indicate that the Parliament wanted a comprehensive act with the object of promoting message of animal welfare and for preventing cruelty to the animals. The Statement of Objects and Reasons of the Act reads as follows:

Statement of Objects and Reasons The Committee for the prevention of cruelty to animals appointed by the Government of India drew attention to a number of deficiencies in the Prevention of Cruelty to Animals Act, 1890 (Central Act No. 11 of 1980) and suggested a replacement by a more comprehensive Act. The existing Act has restricted scope as:

- 1) it applies only to urban areas within municipal limits;
- 2) it defines the term animal as meaning any domestic or captured animal and thus contains no provision for prevention of cruelty to animals other than domestic and captured animals;
- 3) it covers only certain specified types of cruelty to animals; and
- 4) penalties for certain offences are inadequate.

The Bill is intended to give effect to those recommendations of the Committee which have been accepted by the Government of India and in respect of which Central Legislation can be undertaken. The existing Act is proposed to be repealed.

Besides declaring certain type of cruelty to animals to be offences and providing necessary penalties for such offences and making some of the more serious of them cognizable, the Bill also contains provisions for the establishment of an Animal Welfare Board with the object of promoting measures for animal welfare.

Provisions is also being made for the establishment of a Committee to control experimentation on animals when the Government, on the advice of the Animal Welfare Board, is satisfied that it is necessary to do so for preventing cruelty to animals during experimentation. The Bill also contains provisions for licensing and regulating the training and performance of animals for the purpose of any entertainment to which the public are admitted through sale of tickets.

71. Section 3 has been specifically enacted, as already indicated, to confer duties on persons who are in-charge or care of the animals, which says, it is the duty of such persons to ensure the well-being of such animals and to prevent infliction of unnecessary pain or suffering upon the animals. In other words, the well-being and welfare of the animals is the paramount and dominant intention of the PCA Act and with that intention it has conferred duties on the person in-charge or care of the animals and correspondent rights on the animals. Section 11 confers obligations on all persons, including persons-in-charge or care of the animals to see that Section 3 has been fully obeyed. Exemptions to Section 11 have been provided in sub-section (3) on the doctrine of necessity, which concept we have already dealt with in the earlier part of the judgment. Section 22 of PCA Act, which deals with performing animals, has to be read along with Sections 3, 11(1), 11(3)

of the Act and that expects only the animal to perform in an exhibition and Bull tamers have no role unlike TNRJ Act. Sections 21 and 22 refer to training of animals for performance and not training to withstand the onslaught of Bull tamers. Sections 3, 11 or 22 do not confer any right on the human beings to over-power the animals while it is performing, on the other hand, under Section 11(m), inciting an animal to fight is an offence.

72. Section 38 of the PCA Act confers rule-making powers on the Central Government and, in exercise of its rule-making powers, the Central Government made the Performing Animal Rules, 1973 and the Performing Animals (Registration) Rules, 2001 and thrust of all the substantive and procedural provisions is the welfare and well-being of the animal and the duties and obligations of the persons who are in-charge of the animals and also to safeguard the rights conferred on the animals. Rule 8(vii) specifically refers to animals' basic natural instinct and cautions that the basic natural instinct of the animals be protected and be not exploited.

73. The TNRJ Act, 2009 is an anthropocentric legislation enacted not for the welfare of the animals, unlike PCA Act, which is an eco-centric legislation, enacted to ensure the well-being and welfare of the animals and to prevent unnecessary pain or suffering of the animals. The State Act basically safeguards the interest of the organizers and spectators while conducting the event of Jallikattu. Act has no Preamble and the Statement of Objects and Reasons of the Act reads as follows:

STATEMENT OF OBJECTS AND REASONS.

Jallikattu includes manjuvirattu, Oormadu, Vadamadu or Erudhu vidum vizha. The said function consists of taming of bulls as a part of ancient culture and tradition of the Tamils. The said tradition is in vogue for more than 400 years. At present, there is no legislation to regulate the conduct of Jallikattu, manjuvirattu, Oormadu, Vadamadu, Erudhu vidum vizha or any such activity involving the taming of bulls. The Government have, therefore, decided to bring out a legislation to regulate the conduct of the Jallikattu in the State of Tamil Nadu by prescribing norms to hold such events and to ensure the safety of animals, participants and the spectators.

2. The Bill seeks to give effect to the above decisions. Section 4 deals with the responsibility of the organizers. Section 4(3) provides for double barricade area in order to avoid injuries to the spectators and by-standers, the prime consideration is, therefore, to avoid injuries to spectators and by-standers and not that of the animal. Section 4(iv) deals with the fixing the gallery for the spectators to sit and watch the event. Section 4(vi) empowers the Animal Husbandry Department to test the bulls to ensure that performance enhancement drugs are not administered. Duties have also been assigned to the District Collector, under Section 5 of the Act, to ensure safety of the spectators and to see that bulls are free from diseases and not intoxicated or administered with any substance like nicotine, cocaine etc. to make them more aggressive and ferocious. Sections 5(ix) and (x) authorize the District Collector to give wider publicity to the provisions of the PCA Act

and the rules made thereunder and to ensure the presence of animal welfare activists of AWBI during the conduct of the event. Section 7 deals with penalty, it says "whoever contravenes the provisions of this Act shall, on conviction, be punishable with imprisonment which may extend to one year or with fine, which may extend to Rs.10,000/-, or with both". Section 11 of PCA Act, it may be noted, provides for imprisonment for a term which may extend maximum to three months, to that extent, there is inconsistency between Section 7 of the TNRJ Act as well as Section 11 of the PCA Act.

74. Section 2(d) of the PCA Act speaks of domestic animal and taming the animal for use of men, which is evidently for domestic use, being domestic animal, not for entertainment or amusement. Section 11(3), as already stated, excludes five categories of cases from Section 11 "due to necessity" and Section 28 speaks of killing of animal in a manner required by the religion of any community. Section 22 of the Act speaks of performing animal, meaning thereby, exhibition and training only for performance of the animal. The PCA Act does not speak of "taming of animals" (over-powering animals). Taming of animal for domestic use and taming of animal for exhibition or entertainment are entirely different. Section 2(c) of TNRJ Act speaks of "taming of bulls" which is inconsistent and contrary to the provisions of Chapter V of PCA Act. Sections 4(vii),

(viii) and 5 (viii) speak of Bull tamers. Bull tamers, therefore, tame the bulls at the arena, thereby causing strain, stress, inflict pain and suffering, which PCA Act wants to prevent under Section 11 of the Act. Taming of bulls in arena during Jallikattu, as per the State Act, is not for the well-being of the animal and causes the unnecessary pain and suffering, that is exactly what the Central Act (PCA Act) wants to prevent for the well-being and welfare of animals, which is also against the basic natural instinct of the bulls.

75. PCA Act, especially Section 3, coupled with Section 11(1)(m)(ii), as already stated, makes an offence, if any person solely with a view to provide entertainment, incites any animal to fight. Fight can be with an animal or a human being. Section 5 of TNRJ Act envisages a fight between a Bull and Bull tamers, that is, Bull tamer has to fight with the bull and tame it. Such fight is prohibited under Section 11(1)(m)(ii) of PCA Act read with Section 3 of the Act. Hence, there is inconsistency between Section 5 of TNRJ Act and Section 11(1)(m)(ii) of PCA Act.

76. TNRJ Act, in its Objects and Reasons, speaks of ancient culture and tradition and also safety of animals, participants and spectators. PCA Act was enacted at a time when it was noticed that in order to reap maximum gains, the animals were being exploited by human beings, by using coercive methods and by inflicting unnecessary pain. PCA Act was, therefore, passed to prevent infliction of unnecessary pain or suffering and for the well-being and welfare of the animals and to preserve the natural instinct of the animal. Over-powering the performing animal was never in the contemplation of the PCA Act and, in fact, under Section 3 of the PCA Act, a statutory duty has been cast on the person who is in-charge or care of the animal to ensure the well-being of such animal and to prevent infliction on the animal of unnecessary pain or suffering. PCA Act, therefore, cast not only duties on human beings, but also confer corresponding rights on animals, which is being taken away by the State Act (TNRJ Act) by conferring rights on the organizers and Bull tamers, to conduct Jallikattu,

which is inconsistent and in direct collision with Section 3, Section 11(1)(a), 11(1)(m)(ii) and Section 22 of the PCA Act read with Articles 51A(g) & (h) of the Constitution and hence repugnant to the PCA Act, which is a welfare legislation and hence declared unconstitutional and void, being violative of Article 254(1) of the Constitution of India.

77. We, therefore, hold that AWBI is right in its stand that Jallikattu, Bullock-cart Race and such events per se violate Sections 3, 11(1)(a) and 11(1)(m)(ii) of PCA Act and hence we uphold the notification dated 11.7.2011 issued by the Central Government, consequently, Bulls cannot be used as performing animals, either for the Jallikattu events or Bullock- cart Races in the State of Tamil Nadu, Maharashtra or elsewhere in the country. We, therefore, make the following declarations and directions:

- 1) We declare that the rights guaranteed to the Bulls under Sections 3 and 11 of PCA Act read with Articles 51A(g) & (h) are cannot be taken away or curtailed, except under Sections 11(3) and 28 of PCA Act.
- 2) We declare that the five freedoms, referred to earlier be read into Sections 3 and 11 of PCA Act, be protected and safeguarded by the States, Central Government, Union Territories (in short "Governments"), MoEF and AWBI.
- 3) AWBI and Governments are directed to take appropriate steps to see that the persons-in-charge or care of animals, take reasonable measures to ensure the well-being of animals.
- 4) AWBI and Governments are directed to take steps to prevent the infliction of unnecessary pain or suffering on the animals, since their rights have been statutorily protected under Sections 3 and 11 of PCA Act.
- 5) AWBI is also directed to ensure that the provisions of Section 11(1)(m)(ii) scrupulously followed, meaning thereby, that the person-in-charge or care of the animal shall not incite any animal to fight against a human being or another animal.
- 6) AWBI and the Governments would also see that even in cases where Section 11(3) is involved, the animals be not put to unnecessary pain and suffering and adequate and scientific methods be adopted to achieve the same.
- 7) AWBI and the Governments should take steps to impart education in relation to human treatment of animals in accordance with Section 9(k) inculcating the spirit of Articles 51A(g) & (h) of the Constitution.
- 8) Parliament is expected to make proper amendment of the PCA Act to provide an effective deterrent to achieve the object and purpose of the Act and for violation of Section 11, adequate penalties and punishments should be imposed.

