Jallikattu Tug of War, and Indian Supreme Court's Tango marking a Giant Leap in Reverse for Legal Personality of Animal kind

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Abstract

The article discusses how the landmark judgment of Animal Welfare Board of India (AWBI) v. A. Nagaraja (2014), delivered by Supreme Court of India was superior in content, spirit and wisdom as compared to the latest AWBI v. UOI (May 2023). The former declared bulls unsuitable for sports like Jallikattu and bullock cart races. The court had then emphasised the need to interpret the Prevention of Cruelty Act, 1960 (PCA 1960) liberally in favour of animal welfare. It also assumed the role of parens patriae, responsible for safeguarding the rights of animals. The court argued that animals should not be treated as mere property, but as sentient beings deserving of legal protection. Animals became legal persons as a necessary effect of that judgement, though the court did not declare the same explicitly.

However, the latter judgement has reversed the progress made in animal welfare. The Supreme Court's judgment in Animal Welfare Board of India v. UOI, delivered in 2023, allowed the resumption of Jallikattu and similar bovine sports. The court based its decision on amendments made by Tamil Nadu, Maharashtra, and Karnataka to their state legislations, presuming that these changes eliminated the cruelty associated with these sports. The court emphasised the need to consider the amended rules alongside the legislation to understand their true effect.

The article highlights the paradox between India's professed concern for humane treatment of animals and the prevailing practice of animal abuse. It argues that unless laws regarding the legal status of animals are revised, meaningful change in their treatment cannot be achieved. The writing concludes by stating that the recent judgment has undone the progress made since the Nagaraja case, jeopardising animal welfare in India.

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I. **Introduction**

Nine years ago, in the judgment of *Animal Welfare Board of India* v. A. *Nagaraja*, (2014) 7 SCC 547, dealing with *Jallikattu* and bullock cart races in Maharashtra, the Supreme Court of India found bulls to be unsuitable for being involved in any sports. The Bench found that the bulls were not performing animals and did not have any natural inclination for running like a horse.[2]

The primary reasons[3] were that the Prevention of Cruelty Act, 1960 (PCA 1960) was found to be a welfare legislation, the provisions of which were to be liberally construed in favour of the weak and infirm. The court asserted that it was well empowered to strike down any rule/regulation that purported to dilute or defeat the welfare legislation. Also, the court took upon itself the role of *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.[4]

Further, the court, brilliantly reasoned that section 11(3) of the PCA 1960[5] which provides for 5 exceptions [which permit a certain cruel treatment of animals] were incorporated based on the 'doctrine of necessity' and that too without inflicting unnecessary pain or suffering. Additionally, the court pointed out that the Legislature, through section 28 of the PCA 1960[6], favoured the killing of animals in a manner required by the religion of any community. *However*, the court emphatically underscored that 'entertainment, exhibition or amusement did

[2] *Animal Welfare Board of India* v. *A. Nagaraja*, (2014) 7 SCC 547, para 33.
[3] *Animal Welfare Board of India* v. *A. Nagaraja*, (2014) 7 SCC 547, paras 26-27.
[4] *Animal Welfare Board of India* v. *A. Nagaraja*, (2014) 7 SCC 547, para 26.
[5] *See*, section 11(3) of the Prevention of Cruelty to Animals Act, 1960: https://www.indiacode.nic.in/bitstream/123456789/11237/1/the_prevention_of_cruelty_to_animals_act%2C_1960.pdf.
[6] *See*, section 28 of the Prevention of Cruelty to Animals Act, 1960: https://www.indiacode.nic.in/bitstream/123456789/11237/1/the_prevention_of_cruelty_to_animals_act%2C_1960.pdf.

not fall under these exempted categories and could never be claimed as a matter of right under the doctrine of necessity.'[7]

This line of logic was solid and difficult to fracture. It thus formed the foundation of the case whereby the Supreme Court declared that anatomically, bulls were not meant to be performing animals, but were forced to perform, upon infliction pain and suffering, which was a total violation of Section 3 and Section 11(1)(a)(e) and (m) of the PCA Act 1960.[8]

In response to the same, the author wrote a case comment[9], excerpts, or underlying theme of which have/has been relied upon here.

The author maintained that animals were sentient beings and yet were 'property ' in the legal sense of the term. There was a collective need to ponder why over the many thousand years of human existence and creation of civilised societies, law has given a raw deal to animals. The Case Comment argued that unless the laws governing legal status of animals were over-hauled, it would not be possible to ensure any tangible change in their treatment by the humankind. In other words, as long as they were viewed as property, animals would continue to suffer for the social and economic benefit of human beings.

A season of welcome change was set in motion through the *Nagaraja* judgement of the Supreme Court in 2014.[10]

However, India has been a land of strange paradoxes. There has always been a seemingly absurd gap between our professed concern with humane treatment of animals and the overriding practice of abuse.[11] The present case comment echoes this thought and asserts that the good work of 9 years (since 2014) has been

[7] *Animal Welfare Board of India* v. *A. Nagaraja*, (2014) 7 SCC 547, para 31.
[8] *See*, section 3 of the Prevention of Cruelty to Animals Act, 1960: https://www.indiacode.nic.in/bitstream/123456789/11237/1/the_prevention_of_cruelty_to_animals_act%2C_1960.pdf.
[9] Bharti, S., 'Animals No More a Property! Are They 'Persons' Then? Some Reflections on the Judgement in *Animal Welfare Board of India* v. *A Nagaraja*' (2014) 7 SCC 547, Journal of Law Teachers of India (August 31, 2015). Available at SSRN: https://ssrn.com/abstract=4368054 or http://dx.doi.org/10.2139/ssrn.4368054.
[10] *Animal Welfare Board of India* v. *A. Nagaraja*, (2014) 7 SCC 547.
[11] Francione, G.L., Animals, Property & the Law: Ethics and Action (1995), p.10.

undone by the apex court in *AWBI* v. *UOI*[12] by allowing *Jallikattu* and similar bovine sports.

II. The Old Case of *Nagaraja*

To provide a brief on the 2014 *Nagaraja* case and its aftermath, it is relevant to mention that post the ban on *Jallikattu* in Tamil Nadu and similar sports in the states of Maharashtra and Karnataka in 2014, amendments were made and Rules framed under the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, The Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017 and The Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017 enacted by the respective State Legislatures.

The Rules/Notification made under the aforesaid Acts sought to rigidly regulate conducting the bull related sports. For example, for organising Bullock Cart Races, the manner of race and length of the track was determined, and rest period for bulls mentioned. Use of sharp objects and sticks for beating and poking the bulls, pouring chilli powder in their eyes, twisting their tails etc was prohibited.

III. The New *Jallikattu* Case 2023

This (above) alleged change was the mainstay of the recent SC judgement *Animal Welfare Board of India* v. *UOI*, WRIT PETITION (CIVIL) NO. 23 OF 2016 (delivered on May 18, 2023) that reversed the conscionable work intended to be implemented through the *Nagaraja* judgement. It is unfortunate that the apex court proceeded on the presumption that the continued performance of *Jallikattu* and similar bovine sports cease to be cruel, just because the three states (Tamil Nadu, Karnataka and Maharashtra) had carried out amendments in their concerned state legislations.

To quote, the court stated that,

> [T]hus, we accept the argument of the petitioners that at the relevant point of time when the decision in the case of A. Nagaraja was delivered, the manner in which *Jallikattu* was performed did breach the aforesaid provisions of the 1960 Act and hence conducting such sports was

[12] *Animal Welfare Board of India* v. *UOI*, (May 18, 2023 SC).

> impermissible.[13] . But that position of law has changed now, and the Amendment Acts have introduced a new regime for conducting these events. It is a fact that the Amendment Acts per se seeks to legitimise the aforesaid three bovine sports by including them by their respective names and the body of the Statute themselves do not refer to any procedure by which these sports shall be held.

It went on to clarify that the Rules should be read in conjunction to the aforestated legislations to understand their true effect. In brief, the court declared that the defects pointed out by *A. Nagaraja* had been corrected or removed.[14]

It further stated that, 'we, however, cannot proceed in exercise of our judicial power on the assumption that a law ought to be struck down on apprehension of its abuse or disobedience.'[15]

The author asserts that the court nonetheless *did* act on the presumption that all mischief stands removed just because the laws stand amended. The author further submits that the activities sought to be legitimised through cosmetic changes and their doubtful implementation remain destructive and contrary to the provisions of Sections 3, 11(1)(a) and (m) of the PCA Act 1960.[16] This is because, use of animals for entertainment per se is a detestable, retrograde idea that seems to suggest that it is ok to arrange for venationes even in this era, all in the name of maintaining tradition. It puts mental development and social evolution in reverse gear and legitimises the obnoxious belief of human superiority over other species.

IV. **Analyses on Right-Duty Correlation of Hohfeld**

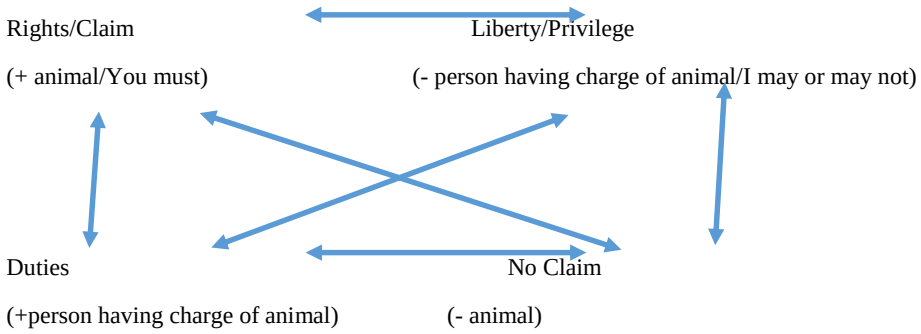
[13] *Animal Welfare Board of India* v. *A. Nagaraja*, (2014) 7 SCC 547, para 28.
[14] *Animal Welfare Board of India* v. *UOI*, (May 18, 2023 SC), para 27.
[15] *Animal Welfare Board of India* v. *UOI*, (May 18, 2023 SC), para 30.
[16] Supra note 7.

If the legal status of animals is analysed on the basis of the Hohfeldian thesis, as done by the author in the earlier case comment[17], it would be clear how the animals do have a right to be treated without cruelty.

Section 3 of the Act dealt with duties of persons having charge of animals, so it confers a corresponding 'right 'on animals to be so treated.[18]

However, the SC in *AWBI* v. *UOI* has relegated animals to being the 'objects' over which one has rights and not as 'subject' of rights. It is here that the AWBI court makes a sharp U- turn from *Nagaraja*, as their status has been degraded back to being chattel.

Based on the Hohfeldian thesis[19], the following analysis of *Nagaraja* results:



[17] Bharti, S., 'Animals No More a Property! Are They 'Persons' Then? Some Reflections on the Judgement in *Animal Welfare Board of India* v. *A Nagaraja*' (2014) 7 SCC 547, Journal of Law Teachers of India (August 31, 2015). Available at SSRN: https://ssrn.com/abstract=4368054 or http://dx.doi.org/10.2139/ssrn.4368054.

[18] See, section 3 of the Prevention of Cruelty to Animals Act, 1960: https://www.indiacode.nic.in/bitstream/123456789/11237/1/the_prevention_of_cruelty_to_animals_act%2C_1960.pdf.

[19] This is a legal relationship matrix given by Hohfeld in which jural/legal correlatives are vertical arrows signifying presence of claim in one party impliying existence of duty in the other and vice versa. Jural opposites are diagonal arrows signifying presence of duty in one party and consequent absence of liberty in the same party and vice versa. It explains two faces of the same coin. Finally, the jural contradictories are horizontal arrows.

1. Presence of right in the animal to say, 'You must treat me as per section 3 of the 1960 Act.'
2. Consequently, there is presence of duty in the person having charge of animal to so treat him.
3. Since the person having charge of the animal is duty-bound to display a particular conduct, liberty is absent in him. He does not have the discretion to say he may or may not treat the animal as per the requirements of the section. He simply has to.
4. Absence of liberty in the person having charge of animal means there is corresponding absence of 'no claim' in the animal because claim is present in him to be treated in the desired way.
5. It must be noted that liberty is nothing but freedom from the claim of others.

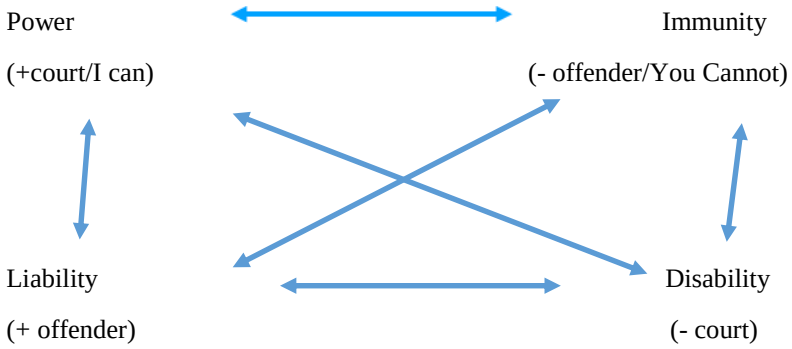
While the theoretical possibility of above Hohfeldian logic was always a part of classroom and academic discussions, especially when one discusses the cruelty provisions against animals; the novelty of *Nagaraja* case was that it bridged the gap between possibility and reality, by indirectly recognising animals as legal persons.

The SC also stated that it was also under a duty as *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings.[20]

Hence, in any given case, the court has the power to enforce the rights of animals with legal sanction.

[20] See note 8 above.

On the Hohfeldian Scheme, it would reflect as follows:



Here the fundamental duty under Art 48A needs to be studied as well. On the Hohfeldian scheme, it would be an absolute duty, as propounded by John Austin. In the words of Austin, duties are either absolute and relative. Relative duties are those for which there is a corresponding right and absolute duties are those that do not have any corresponding rights. They remain meaningful nonetheless. He mentions four kinds of such absolute duties[21]--

1. Duty towards self or self-regarding duties such as a duty not to commit suicide
2. Duties towards public at large, e.g. a duty not to commit a nuisance.
3. Duties towards God and lower animals, birds, etc.
4. Duty towards the sovereign or the state.

Article 48A of the Indian Constitution states that, 'the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.'[22] This is an absolute duty of the State which mandates that even if there is no right coming forth, the state must safeguard the forests and wildlife of

[21] CAMPBELL, R., AUSTIN, J., LECTURES ON JURISPRUDENCE: OR, THE PHILOSOPHY OF POSITIVE LAW (Scholarly Press 1977) 196.

[22] *See* Art. 48A, Constitution of India: https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf.

the country. The ratiocination of Austin cannot be pierced here. Despite such brilliant, intellectually, and legally sound material before its good self, the SC in *AWBI* case was moved not by its intrinsic logic but by the exception made by the three state legislations whereby bulls have been removed from the protective mechanism of the 1960 Act on account of maintaining tradition. Despite contrary history and without due investigation, the court was convinced that no unnecessary pain and suffering would be inflicted upon the bulls, as undertaken by the three states through their legislations.[23]

The author submits that this was not only devoid of any intelligible criteria and hence arbitrary, but also amounted to treating some alleged tradition as paramount against the law and wisdom of any dynamic, civilised society.

Further, in *AWBI*, the SC declined to consider animals as subject of rights on the basis that 'animals cannot demand their right in the same way human beings can assert for bringing a legislation'[24] and because they could not find any precedent conferring fundamental rights on animals.[25] The court stated, 'we do not think it will be prudent for us to venture into a judicial adventurism to bring bulls within the said protected mechanism. We have our doubt as to whether detaining a stray bull from the street against its wish could give rise to the constitutional writ of habeas corpus or not.' [26] It concluded that 'the question of elevation of the statutory rights of animals to the realm of fundamental rights' should be left to the Legislature to decide.

The author however submits that this too appears to be a flawed line of argument. It is a *given* that if some semblance of legal personality is to be granted in favour of animals, they *would* require a human agent or a nonhuman legal person to fight on their behalf as they are ill-equipped to contest their rights themselves. However, this *should not and cannot* be read as a hindrance to granting personality in their favour, as the same happens in case of minors, religious maths, companies (the last two are artificial legal persons). Secondly, judicial history of India is pregnant with facts that prove that the responsibility of

[23] Animal Welfare Board of India v. UOI, (May 18, 2023 SC), para 32.
[24] Animal Welfare Board of India v. UOI, (May 18, 2023 SC), para 23.
[25] Animal Welfare Board of India v. UOI, (May 18, 2023 SC), para 24.
[26] Animal Welfare Board of India v. UOI, (May 18, 2023 SC), para 24.

enlarging the concept of personality has been discharged mostly by the Judiciary and not by the Legislature.

A classic such case is the 1980 judgement of *Mathura Ahir*[27] where the SC of India held that a religious institution such as a *Math* has a legal personality and is capable of holding and acquiring property. As to the ownership of the concerned property-the ownership is in the institution or the idol. From its very nature a *Math* or an idol can act and assert its rights only through human agency known as a *mahant* or *shebait* or *dharmakarta* or sometimes known as trustee.

This linkage of legal personality with natural personality is a legal necessity and hence the law recognises certain human agents as representatives of the *math* or idol.

> [W]hen an idol was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a *Shebait* or manager is appointed to act on its behalf. In that sense, relation between an idol and *Shebait* is akin to that of a minor and a guardian.
>
> Likewise, in this background, and on over-all considerations, the SC in another case maintained that *Guru Granth Sahib* was a Juristic Person though it could not be equated with an idol as idol worship was contrary to Sikhism.[28]
>
> All this shows that the concept of Legal/Juristic Person is not roped in any defined circle. With the changing thoughts, changing needs of society, fresh juristic personalities have been created from time to time. The same could be done in the context of animals, instead of passing the onus on to the Legislature.

Then, the wordplay that the SC indulged in when it conceded that human beings do have an obligation to ensure that animals do not suffer from pain and injury; however, it was only limited protection from *unnecessary* pain and suffering, presented a weak logic. It seems to suggest that there is some version of

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[27] *Sri Krishna Singh* v. *Mathura Ahir* 1980 SCR (2) 660.
[28] *See, Shriomani Gurudwara Prabandhak Committee, Amritsar* v. *Shri Som Nath Dass* 2000 (2) SCR 705.

'necessary' pain and suffering that can be allowed and that too in the name of tradition and human entertainment.

V. Conclusion

The landmark judgment of *Animal Welfare Board of India* v. *A. Nagaraja* in 2014 marked a significant step forward in recognising the welfare and rights of animals. The Supreme Court of India firmly established that bulls, being unsuitable for sports such as *Jallikattu* and bullock cart races, should not be subjected to pain, suffering, or forced performances.

The author's case comment echoed the sentiment that animals, despite being sentient beings, were still considered mere property in legal terms. It highlighted the necessity of reevaluating the legal status of animals to bring about tangible changes in their treatment by humanity. However, the subsequent judgment of the Apex Court undermines the progress made by the *Nagaraja* case. The reemergence of activities like *Jallikattu* and similar bovine sports, raises concerns about the continued suffering and exploitation of bulls for human pleasure and enjoyment.

There is an urgent need to revisit and reform the existing laws and mindset governing the legal status of animals to bridge the gap between professed concern for animal welfare and actual practice. Without recognising animals as more than mere chattel, their suffering is likely to persist, contradicting the principles of humane treatment and societal progress.