

# Constitution versus Customs with Special Reference to the Jallikattu

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## Abstract

Jallikattu is a traditional practice in which a Bos indicus bull that is of Pulikulam or Kangayambreeds, is released into a crowd of people, and participants try to grab the large hump that is on the bull's back with both arms and hang on it while the bull attempts to escape. Jallikattu is basically practised in state of Tamil Nadu as a part of Pongal celebration. There were events of injury and death associated with this sport, both to the participants and animals.

When this traditional practice was challenged in the Supreme Court of India then a question arose that whether Jallikattu can be given the status of cultural rights and be protected. It is a traditional practice and according to Art 29(1) of the Indian constitution, any section of the citizens residing in the territory of India or any part thereof having a distinct language script or culture of its own shall have right to conserve the same, but then conflict arises between constitution and custom when a confusion comes to our mind that if Jallikattu is upheld by the constitution bench as a cultural rights and part of "collective culture" of the people of Tamil Nadu under Art 29(1), provisions of other laws like Prevention of Cruelty to Animals Acts, 1960 may run the risk of struck down.

This paper would deal with the issue constitution v customs in which the research would be on the matter that whether constitution comes in the way of customs by taking the help of Jallikattu case.

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## **Introduction**

Custom is one of the major sources of law under Indian legal system. The courts of India have recognized custom as the law only if the custom is-

1. Ancient or immemorial in origin.
2. Reasonable in nature and continuous in use
3. Certain

Here Ancient or immemorial means that custom can be considered law if the custom is very ancient and by the fact that by the long use it has obtained the force of law.

For the custom to be considered as law it also must be reasonable in nature at the time of its inception and present exercise. And the last one is "certain" that means the custom must be invariable to become a law.

Article 244, 244-A, 371-a and fifth and sixth schedules of Indian constitution provides protection of indigenous tribal communities and their custom.

The fifth schedule talks about the administration of schedule areas and tribal in the states outside of the north-eastern areas of India. The sixth schedule talks about the administration of tribal area in the north-eastern states of India. It grants tribes considerable administrative autonomy, granting each regional administrative unit with its own regional council, and each district level unit with local district councils.

## **Do Customs Come In The Way Of The Constitution?**

Yes, of course, sometimes custom do comes in the way of a constitution. But it's a very debatable topic which can be understood by the following points with regards to Jallikattu;

1. An integral part of Tamil culture

For many Jallikattu supporters the fight for Jallikattu is a fight for Tamil pride. They say that Jallikattu is a centuries-old tradition and an integral part of the Tamil culture. "Sangam" literature, which is nearly about 2000 years old, talks about "Eruthazhuvuthal" hugging bull, as a rite of passage for a man seeking a girl's hand in marriage.<sup>2</sup>

The Supreme Court said on its part that "mere presence of tradition can't justify practice" in response to the Tamil Nadu Government's argument that the sport should be allowed as it's a cultural tradition.<sup>3</sup>

2. A Cruel Sport

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<sup>2</sup> Mayilvaganan, *An end to the Bull Run*, THE TIMES OF INDIA (May 11, 2018, 06:07AM), <https://timesofindia.indiatimes.com/home/sunday-times/deep-focus/An-end-to-the-bull-run/articleshow/34949721.cms.html>.

<sup>3</sup>Animal Welfare Board Of India v. A. Nagaraja&Ors , (2014) 7 SCC 547.

Many people opposing the Jallikattu says that it's a cruel sport which involves torturing a frightened animal in the arena. But others disagree with the above view. They say that it's a wrong perception that the bull-taming sport is a cruel one. Just like we train a dog for a pet show, they train bull to take part in the Jallikattu.

Our constitution gives us the right to live peacefully and also gives the right to life, which should also be applicable to the animals, but some customs like Jallikattu comes in the way of rights that are given by the constitution.

The constitution is, of course, one of the major source of law under an Indian legal system, but sometimes the custom get so old and in the modern era it should be also changed but it is continued by the opinion that it's an ancient practice of particular culture and should be practiced but in today's generation when a lot of has changed from the part in terms of laws thinking of people, we need to change the custom as it sometimes come in the way of many statutes and constitution.

### **Jallikattu Issue**

Jallikattu which is also known as the Eruthazhuvuthal is an event which is held in Tamil Nadu as a part of Pongal celebrations. People of the village used to breed the bull for the event and event is attended mainly by temple bulls .During this event, prizes are announced and after the event tamed weak bulls are used for agriculture and untamable bulls are used for breeding.

According to the literature, it is a practice which is 2,000 years old practice in which bull is hugged as a rite of passage for a man seeking a girl's hand in marriage.

As in Jallikattu bulls are used who got hurt during this event and various people had also lost their life because of this event.

Because of the Jallikattu, many bulls got hurts and lose their life which violates many animals right act. In May 2014, on a petition by PETA and the animal's welfare board of India (AWBI), the SC said that "Bulls can't be allowed as performing animals "either for Jallikattu events or bullock cart races in the state of Tamil Nadu, Maharashtra or elsewhere in the country.

After this in January 2016, the center overturn the SC ban and modified its 2011 notification and issued a new one which said Jallikattu can be held in 2016. After the challenge by AWBI and PETA, the court gave an interim stay preventing Jallikattu. The event has ban supported by the majority of people including the state government and central government. PETA had

been protesting against the sport since 2004 and finally, the SC of India passed a verdict banning the festival in 2014.<sup>4</sup>

### **Constitutional and Legal Rights of Animals**

Today, in India cruelty is done with an animal for the personal amusement. There are so many cases in which the animals are hurt or killed for the personal amusement and for the practice of custom.

In ancient period it was quite normal to hurt the animal for the personal amusement or anything because in the ancient period the laws were not so modified, even there were no laws regarding this and people used to hurt an animal for the continuance of their culture.

But, today the time has changed and we are having many laws for the protection of animals.

The society has changed so we need to follow the modern laws which are in accordance with the today's generation.

It is good to say that some customs are very old and had been continued since last 2000 years but now the time has changed in the modern era and we need to live that custom which hurt the animals.

So for this many steps have been taken to protect the animals and many rights are also available for the protection of animals which are mentioned below<sup>5</sup>:-

1. The National Green Tribunal has placed an interim ban on glass -coated flying strings after a petition by PETA because it causes the death of many birds.
2. In December 2016, the Hyderabad high court upheld the ban on an act cockfighting in Andhra Pradesh and Telangana, after a petition was filed by AWBI, HSI India (Human Society International), PFA and others organizations.
3. The Gujarat high court banned the caging of bird in Dadra and Nogar Haveli after an appeal was filed by PETA India, as it is the fundamental right of the bird to live freely in the open sky.
4. If the birds are kept caged it would amount to illegal confinement.

### **Indian Wildlife Protection Act 1973**

Wildlife Protection Act, 1972 has been enacted for the protection of wild animals, plants, and birds. In this, the act of hunting means “Capturing, killing, poisoning, snaring or trapping and

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<sup>4</sup>MalavikaVyawahare, *Jallikattu reflects poorly on India: PETA India CEO after 'bullying'*, HINDUSTANTIMES (May. 24, 2018, 13:25PM), <https://www.hindustantimes.com/india-news/cruelty-to-animals-is-anti-india-says-peta-india-ceo-amid-jallikattu-protests/story-kJgbed7mmFiMPoq9vB8oSO.html>.

<sup>5</sup> PETAIndia, *India Passes New Rules to Protect Animals*, PETAINDIA (May 27, 2018, 7:53PM), <https://www.petaindia.com/blog/india-passes-new-rules-protect-animals.html>.

wild animal" Even if anybody hurt, damage or steal a body part of any animal it constitutes to hunting.

Earlier the punishment for these offenses was not harsh, but after January 2002, the amendment was brought in the act and the punishment was made more stringent.

### **Prevention Of Cruelty To animal (PCA) Act,1960**

Sec 11, of PCA Act, 1960 says that if any person beats, kicks, overrides, overload, torture or give any kind of unnecessary pain or being the owner permits to do so or in any manner treat animals cruelly, then such act would be a punishable offence.

Bears, Monkeys, Tigers, Panthers, Lions and Bulls are prohibited from being trained and used for entertainment purpose either curser or streets under Section 22(11), PCA, Act 1960.<sup>6</sup>

### **Indian Penal Code, 1860**

Section 428 and 429 of Indian Penal code provides that, it is illegal to paralyze or injure any animal. Acts like throwing acid on cows, injuring street dogs and cats also invites punishment, which in a way serves a caveat for many reckless drives on the road. This code also makes illegal for the cores to hit the animal and kill them. In this kind of act, the offender is either handed over to local protection group or a police station. The further criminal case is filled against them.

### **Legal Development of the Case**

In this case the bullfighting sport Jallikattu, which was popular in South Indian state of Tamil Nadu was traditionally played during the annual Pongal celebrations & had a lot of cultural significance.

But the activists opposed to the practice of bull taming and alleged that this practice injure the bulls and sometimes these injuries cause to the death of bull which infringe their right to life which is given under Art 21 of the constitution of India.

In response to the protest against the bullfighting sport and the petition filled by the PETA and Animal welfare Board of India, the supreme court of India banned Jallikattu in May 2014.

But after this decision of SC, the government of India had later lifted the ban on Jallikattu by promulgating an ordinance in the parliament an ordinance in the parliament. Some sections of the society and most of the leading political parties supported the Jallikattu and argued that it was a part of South Indian culture.

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<sup>6</sup>Nair N.R. & Ors v. Union of India, 2001 (3) SCR 353.

## **Precedent : A Publication of Jus Dicere Center of Research In Law**

In Jan 2016, India's Ministry of Environment and Forest (MEF) issued a notification allowing Jallikattu in the South India state of Tamil Nadu. The decision of the MEF was questioned by the animal rights groups who alleged that there were political motives behind the order. However, Jallikattu received support from a section of society which considered it as a symbol of South Indian culture and tradition.

However, after this a petition was again filed by the Animal Welfare Board of India (AWBI) challenging the central government's notification, the SC of India on 12<sup>th</sup> Jan ordered a stay, issued notices to the central government and the government of Tamil Nadu and later refused to lift the stay imposed. After this numerous Jallikattu events were held across Tamil Nadu in protest of the ban because of which the central government requested the Supreme Court to delay its verdict on Jallikattu to avoid the unrest and SC agreed on it following the centre's request.

Due to these protests, on 21 Jan, a new ordinance was passed by the governor of Tamil Nadu on 23<sup>rd</sup> Jan 2017; the Tamil Nadu legislature passed a bi-partisan bill, with the accession of the Prime Minister, exempting the Jallikattu from PCA act 1960. But still the legality of the Jallikattu is in confusion as the law was made by promulgating the ordinance by the central govt. and not by the parliament. So still, it is to be decided by the Supreme Court of India.

### **Supreme Court On Jallikattu**

1. On 7<sup>th</sup> of May 2014, the SC of India pronounced a very historic judgment in the case of *Animal Welfare Board of India v. A. Nagaraja & Ors*<sup>7</sup> and several related appeals and petition and the Hon'ble court banned the use of such as Jallikattu and the bullock cart races.
2. The SC of India stood for the Animals rights and declared that the rights of animals are an issue of seminal importance.<sup>8</sup>
3. On the fundamental rights of animals, SC of India stated that "Rights guaranteed under Sec 3, 11 etc. are only statutory right. The same have to be elevated to the status of fundamental rights, as it has been done by few countries around the world, so as to secure their honour and dignity".<sup>9</sup>
4. Rights and freedoms guaranteed to the animals under section 3 & 11 have to be read along with Art. 51(g) & (h) of the Constitution.<sup>10</sup>

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<sup>7</sup>Animal Welfare Board of India v. A. Nagaraja & Ors, (2014) 7 SCC 547.

<sup>8</sup>*Ibid.*

<sup>9</sup>*Ibid.*

<sup>10</sup>*Ibid.*

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5. The SC in para 54 of the judgement stated about the five internationally recognized freedoms for animals which are-

- Freedom from hunger, thirst and malnutrition.
- Freedom from fear and distress.
- Freedom from physical and thermal discomfort.
- Freedom from pain, injury and disease; and
- Freedom to express normal patterns of behaviour

The SC of India on “Culture and Tradition” disagreed by the context of arguments of state of Tamil Nadu and the govt. of India that it is a part of their culture and tradition to deal with animals in certain manner.

In the paragraph 44 of the judgment, the hon’bleSC stated that according to Isha-Upnishads “The universe along with its creatures belongs to the land. No creature is superior to any other. Human being should not be above nature”.

In the para 43 of the judgment stated that PCA act, “welfare legislation in their view overrides the tradition and culture”.

The Supreme Court on the right to life of all species stated that:

- “Every species has the right to life and security.
- Animal’s welfare and wellbeing is recognized under sec 3&11 of the PCA act.
- Animals also have the right against the humans to not to be tortured.”
- After centre passed an ordinance of January 2017 and issued a notification lifting ban on Jallikattu inn Tamil Nadu with certain restrictions, the SC in 2018 referred to a constitution bench to decide whether the people of Tamil Nadu can preserve Jallikattu as their cultural heritage under Art 29(1) of the constitution & demand its protection.
- This five judge-branch was referred by chief justice of India Dipak Mishra and JusticeRohinton FaliNariman to strike down the PCA Act 2017.

The constitution branch would also look into whether the Jallikattu is a cultured right under Art 29(1) of constitution of India.

### **Conclusion**

After going through my research I came to a conclusion that custom is of course one of the important source of law in the Indian legal system, but sometimes this custom comes in the way of constitution or other statutes. As in this case we saw that the Jallikattu is an ancient culture of people of south which is being continued since last 2,000 years. Earlier there were not that much awareness regarding the rights of each species but today the generation has

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changed and we all are aware of the rights of each species and these rights are also mentioned under the statutes and Constitution of India. So, now the time has come when we need to change our mindset and stop believing in the customs which are being continued from the ancient time and are infringing the rights of any species.

In this research paper we saw that there are rights given for each species in the statutes and Constitution of India but some customs are also their which are infringing these rights and this contradict the rights that are mentioned under the constitution of India.

It's a topic of debate that ancient custom should be abolished or not, but after going through the research, the conclusion on which I came is that we don't need to protest against all custom but what we just need is that to change our mindset as we are today in 21<sup>st</sup> century so we should think about the rights of all species and try not to harm the animals just because of a custom by saying that this custom shows their pride.