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ANIMAL CRUELTY VERSUS **RELIGIOUS SACRIFICE**

AUTHORED BY - KUMAR SHREE SHYAM

INTRODUCTION

The Kerala Animals and Birds Sacrifices Prohibition Act, 1968 (hereinafter "Kerala Act") was upheld as constitutional in *Muraleedharan T v. State of Kerala*¹ on June 16, 2020, by the Kerala High Court. A Shakti Worshiper filed an appeal against the Kerala High Court's ruling, and the Supreme Court is currently hearing this case together with related appeals from the high courts of Himachal Pradesh and Tripura. The current article's focus shall be on evaluating the constitutionality of the Kerala Act.

The sticking point is the Kerala Act's ban on animal sacrifice in temples and precincts throughout the state. In this context, the term "sacrifice" refers to any action that "kills or maims" animals with the goal of "propitiating a deity." The petitioners had contested the legality of the Kerala Act on the grounds that Articles 14, 15, 25 and 26's guarantees of fundamental rights were being broken. Additionally, the petitioners claim that the Kerala Act violates the Prevention of Cruelty to Animals Act, 1960 (hereafter "Central Act"), citing the principles outlined in Article 254².

In response to the petitioners' above assertions, the Kerala High Court made the following observations. To start, Articles 25 and 26 haven't been broken because killing animals and birds for sacrifice is not a religious practice, hence they aren't protected. Second, there has not been a violation of Article 254 because the Kerala Act and the Central Act have quite distinct goals and purposes, hence there is no repugnance. Thirdly, there is no evidence on file to support a claim that Articles 14 and 15 have been broken because the petitioners' counsel did not pursue this claim. It is further emphasised that the Kerala High Court did not take into account the appellant's impleadment application—on whose behalf an appeal has been filed—which expressed concerns about the rights of the Shakti Worshipers. Due to the possibility that the

¹ 2020 SCC Online Ker 2313.

² The Constitution of India, art 254

Supreme Court would be considering the Shakti Worshippers' arguments for the first time³, this article will also examine the allegations made by the worshippers.

Now, it will be determined whether the Kerala Act violates the following three legal issues:

1. Religious Rights under Articles 25 and 26
2. Principles of Non-Arbitrariness under Articles 14 and 15
3. Doctrine of Repugnancy enshrined under Article 254.

Challenge Based on Articles 25 And 26

A. Article 25 Challenge: Individual Vs Legislation

According to Part III of the Indian Constitution, the right to freedom of religion under Article 25 is subject to other fundamental rights, public morals, and public health. Additionally, the state can impose restrictions on nonreligious activities linked to a particular religion and adopt laws that forbid certain behaviours or call for social reforms.

A practise must be an "essential" component of religion in order to be included under Article 25. To prevent non-integral secular practises from being shielded under the phoney guise of religiosity, the question of essentiality is to be addressed by the courts based on evidence. Essential practises are those that are fundamental to a religious belief and serve as the foundation upon which the superstructure of religion is built. Without essential practices, "a religion will be no religion," while "alterable" practise of religion are unquestionably not its core and serve only as adornments to the non-essential practises.⁴

Herein, it is respectfully submitted that, despite the complete ban on human sacrifices and the uncontested ban on animal sacrifices imposed by the Kerala Act for the past 52 years and by the Madras Animals and Birds Sacrifice Prohibition Act, 1950, it is not a necessary practise of

³ "Animal Sacrifice An Essential Religious Practice"; Plea In SC Against Kerala HC Judgment Upholding Law Prohibiting Animals and Birds Sacrifices", LiveLaw, June 25, 2020, available at: <https://www.livelaw.in/top-stories/animal-sacrifice-an-essential-religious-practice-plea-in-sc-against-kerala-hc-judgment-upholding-law-prohibiting-animals-and-birds-sacrifices-158914>

⁴ Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770, para. 9.

the petitioners' Shakthi Tradition to conduct sacrifices because of its alterable nature.

Although evaluating animal sacrifice on the basis of the Essential Practices Test involves a number of factual complexities, it can be reasonably concluded from the well-reasoned rulings by the High Courts of Kerala, Tripura, and Orissa that the general legal position appears to support the idea that animal sacrifice is not a necessary component of Hinduism.

The Honorable Supreme Court has further ruled that all kinds of life, including animal life, are included in the definition of "life" under Article 21, and that this implies an inherent right to life, subject to human necessity. The Central Act defines human necessity as primarily including the killing of animals for sustenance and for religious purposes. If animal sacrifices are permitted in this situation, it is important to understand what exactly falls within the "religious activities" provision. In fact, the Judiciary's development of the Essential Practices Test was inspired by Dr. Ambedkar's renowned argument that since religious conceptions in India encompass all facets of life, from conception to death, the term "religion" must be restricted to ideas that are "essentially religious."⁵ If any religious act that involves animal death were to fall under the "religious activities" category, it would essentially legalise the endless mistreatment and killing of animals in the name of religion.

A court must interpret statutory provisions in accordance with the legislative objective, which in the instance of the Central Act is to "prevent the infliction of unnecessary pain or suffering on animals," as the lengthy title of the Act indicates. Accordingly, such an interpretation would be unreasonable.

As a result, it is argued that only necessary practises should be exempted, whereas non-necessary ones (such as animal sacrifices) ought to be considered violations of the Article 21 rights upheld by the Tripura High Court. Additionally, where Article 21 clashes with the entitlement under Article 25, which is subject to "other provisions of Part III," the Kerala Act's effects should be upheld.

⁵ Gautam Bhatia, "Two cheers for the Supreme Court", The Hindu, Aug. 14, 2017, available at: <https://www.thehindu.com/opinion/lead/two-cheers-for-the-supreme-court/article19547560.ece>

B. Article 26 Challenge: Denomination Vs Legislation

1. Who worships the goddess Shakti—religious people or not?

There are two conditions that must be met in order to be covered by Article 26. First, it must be demonstrated that the Shakti Worshippers meet the criteria for a "religious denomination," which are a shared religion, a common organization, and a unique name.

The establishment and management of the temples sought to be safeguarded by the Shakti Worshippers' denomination must also be demonstrated. It is politely argued that neither of the conditions is met in the current instance.

According to the Delhi High Court, the First Prerequisite is missing since Shakti Worshippers are an "amorphous" collection of people who follow several religious traditions, failing to satisfy the Triple Prerequisite. The Second Prerequisite appears to be missing as well because the Shakti Worshippers must demonstrate that they founded and run every temple in Kerala, which is a highly unsupportable claim, in order for the claim to be upheld against the ban on sacrifice in all temples in Kerala. The Kerala Act lawfully forbids the non-essential practise of performing animal sacrifices by law in accordance with the values embodied in Article 26 since Article 26(d) mandates that religious properties be managed "in accordance with law".

2. Particular significance and optionality

Alternately, if the sacrifice is thought to be necessary, then the location where it is sought out to be conducted must also have "particular significance" for the faith.⁶ The Kerala Act does not impose a general prohibition on sacrifices; rather, it exclusively forbids them in temples and precincts. Therefore, it is necessary to demonstrate the special significance of offering sacrifices inside Keralan temples.

Additionally, if a practise is optional, it cannot be said to be "essential" ; consequently, it must be demonstrated that even the potential of performing sacrifices outside the boundaries of a temple is forbidden by religious law. It is argued that there is little evidence to support the "particular significance" of animal sacrifice in temples and precincts, as opposed to everywhere

⁶ Dr. Ismail Faruqui v. Union of India, (1994) 6 SCC 360, para. 78.

else.

3. The ban: a step towards progressiveness?

Additionally, the temples are valued and frequented by tourists as well as the locals, thus practises that can arouse disgust must be avoided because every animal is revered in Hindu mythology and is connected to a god. As a result of the unsanitary conditions and barbarism caused by the live blood flowing in drains, the screams of the animals, the chanting of mantras with severed heads, etc., offering sacrifices may also be harmful to public health and morality. They may also cause serious panic and shock to some devotees.

Additionally, India is a developed society, and as societal norms have changed, religion has also undergone reforms. Therefore, if proven to be in violation of the law, non-essential religious practices that originated purely out of superstitious beliefs can be limited. Additionally, Article 37 charges the government with upholding the DPSPs stated in Part IV of the Constitution. When evaluating the limitations imposed on fundamental rights, a court must take the DPSPs and Fundamental Duties into account.⁷

If two requirements are met, namely, (1) the restriction is not in "clear conflict" with the fundamental right, and (2) the restriction imposed by legislation is within the "legislative competence" of the legislature, then any restriction based on DPSPs placed on basic rights shall be acceptable. As backed by Article 25(2), which is an enabling provision to empower the state to enact laws for "social welfare and reform," the responsibility of correcting religious beliefs must be left to the state in the pluralistic Indian society.

Therefore, as confirmed by a five-judge Supreme Court panel, the state may lawfully impose restrictions on harmful practises involving human and animal sacrifice.⁸

The Kerala Act now provides for the application of the values outlined in Articles 48, 51-A(g), and 51-A(h) of the Constitution. While clauses (g) and (h) of Article 51A are essential obligations that promote the compassionate treatment of living animals and the development of a scientific temper, humanism, and spirit of change, Article 48 is a DPSP that emphasises the prohibition of the killing of cattle. In light of the limitations of Article 26 as well as the

⁷ Akhil Bharat Goseva Sangh v. State of A.P, (2006) 4 SCC 162, para. 67

⁸ Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, AIR 1962 SC 853, para. 17.

relevant DPSPs and basic Duties, it is argued that the constraints in question in no manner directly conflict with the basic right guaranteed by Article 26.

Challenge Based on Articles 14 And 15

A. Article 14: The Permissible Classification Test

The broad idea of equality before the law is embodied in Article 14, and Article 15 applies the aforementioned principle to particular circumstances. Two requirements must be met for a classification to be considered lawful under Article 14, namely (1) an understandable differentia and (2) a sensible relation between the differentia and the goal being pursued. Although the Kerala Act's definition of "sacrifice" in section 2(b) makes it appear that every act of animal sacrifice is prohibited, its application is constrained by sections 3, 4, and 5 to only forbid acts that take place inside temples or their grounds.

Therefore, the discernible distinction is the ban on animal sacrifice for religious purposes inside temples or its grounds. It appears that the Kerala Act's goal is to forbid animal sacrifice in places of worship rather than to outlaw all forms of sacrifice. Such a law is in line with Article 26(d), which gives the legislature the power to control how religious properties are managed. The Kerala Act's goals are rationally tied to the discernible distinction surrounding the ban on animal sacrifice in temples and precincts. Animal sacrifice may not have been prohibited in certain other holy buildings, which would surely warrant examining this exclusion under Article 14.

However, the Supreme Court has emphasised that these cases of "under-inclusion" do not violate Article 14's guarantee of equal treatment of the law. Additionally, as the aggregate effect should be taken into account, individual cases involving sacrifices in places of worship, such as the one instance of the Edapally Church, cannot be used to invalidate the legislation.

Additionally, Justice Krishna Iyer famously stated that the court's responsibility is "not to hammer out equal justice" but rather to evaluate if the classification is illogical and unconnected to the goal of the legislation. Since the Kerala Act does not appear to violate Article 14 in this instance, the result of the legislation appears to be perfectly in line with the goals.

B. The Manifest Arbitrariness Test, Article 14

The Manifest Arbitrariness Test has a more contentious history than the Permissible Classification Test, which is upheld by all branches of the judiciary. While the Supreme Court initially rejected the Arbitrariness test in some cases, it appears that this view has lately changed under the leadership of Justice Nariman, with a strong leaning in favour of the manifest arbitrariness test.⁹

The legal community has reacted in a variety of ways to the expansion of this test's application throughout time, from being restricted to Article 14 to its current version that includes other fundamental rights as well. Nevertheless, for the sake of conciseness, the current study will be restricted to the most recent judicial developments regarding the enforcement of Article 14 rights.

The Apex Court has concluded that legislation might be deemed manifestly arbitrary if it is capricious, irrational, and/or lacking in an acceptable governing principle, or if the consequence is excessive or disproportionate, while also describing the parameters of the Manifest Arbitrariness Test. The Supreme Court recently invalidated Sections 377 and 497 of the IPC based on the aforementioned standard. The Kerala Act will be judged in two ways based on the standard of manifest arbitrariness.

1. Whether the Kerala Act is capricious, irrational and/or without adequate determining principle

Since Section 377 was based on a theory that has been refuted by contemporary psychiatric studies that acknowledge the lack of a mental disorder and refer to such acts as a natural event, it has been deemed capricious and irrational.

In other words, Section 377 is obviously arbitrary since it punishes consensual activities that are typical of daily life by labelling them as "against the order of nature," which makes the total result arbitrary and capricious. Additionally, it was decided that Section 377's guiding principle is "too open-ended" to qualify as a criminal provision, which increases the potential for abuse.

⁹ Shayara Bano v. Union of India, (2017) 9 SCC 1; Navtej Singh Johar v. Union of India, (2018) 1 SCC 791; Joseph Shine v. Union of India, AIR 2018 SC 4898.

The outdated Section 497 was also repealed since it was "utterly irrational" in light of current constitutional principles. It was also determined that section 497 lacked an effective guiding principle because it is based on the archaic patriarchal principle of "preserving the sexual exclusivity of a married woman—for the benefit of her husband, the owner of her sexuality."

It is said that the Kerala Act's scope is unambiguous and imposes a logical classification built upon a strong guiding concept. The Kerala Act criminalises the practice of offering animals or birds as sacrifices to deities within temples and other sacred spaces. This is morally right because it upholds the values outlined in Article 21 when read in conjunction with the DPSPs and Fundamental Duties. However, the Kerala Act's Section 2(a) definition of the ambiguous term "precincts" as follows is likely to pose the only difficulty.

In particular, the mandapams, prakarams, back-yards, and foot-yards of the temple, by whatever name called, as well as the ground on which the temple car ordinarily stands, are included in the definition of "includes all lands and buildings near a temple, whether belonging to the temple or not, which are ordinarily used for purposes connected with the worship conducted inside the temple or outside".

According to the argument, the concept of "precincts" maybe "too open-ended" (could be obviously arbitrary in light of the Navtej Johar case) and may leave room for abuse.

However, the Rule of Severability preserves the legitimacy of the Kerala Act since only those parts of a statute that are in conflict with the Fundamental Rights are declared inoperative, as opposed to invalidating the entire statute. As a result, even though Section 2(a)'s invalidation is highly likely, the Kerala Act's overall legality may be unaffected.

Additionally, it has already been stated that the Kerala Act is founded on an "adequate determining principle" under the examination of the Permissible Classification Test. Therefore, even if the Kerala Act has a good probability of passing the test under the current heading, the Supreme Court may exercise stringent scrutiny on section 2(a)'s too-broad breadth.

2. Whether the Kerala Act is excessive or disproportionate

The Supreme Court ruled that the potential of certain people engaging in natural, consensual sexual activity receiving terms of up to life in jail was excessive and disproportionate, hence

Section 377¹⁰ also failed to pass the criteria under the present part.

The Kerala Act, on the other hand, stipulates very lenient penalties, with the maximum being a simple sentence of three months' imprisonment and a fine of up to 300 rupees, which in no way appears to be excessive or disproportionate in its impact.

C. Article 15 Challenge

The state is not allowed to discriminate against a citizen on the basis of race, caste, sex, place of birth, or, most crucially, religion, according to Article 15(1). The Supreme Court, however, limited the scope of Article 15(1) by only applying it to an individual citizen, therefore ruling that a group of citizens' rights would not be protected.

Currently, the protection provided by Article 15(1) is demanded in order to combat the alleged discrimination against the Shakti Worshippers, who make up a "class" of citizens. Because it is an individual right, it is argued that Shakti Worshippers cannot use the protection provided by Article 15(1).

Challenge Based on Article 254

If both laws are under the concurrent list and cover the same area of law, Article 254 awards parliamentary legislation priority over state legislation. The Kerala Act is being challenged on the grounds that it violates the Central Act by criminalising animal sacrifice in temples, which renders the Central Act unconstitutional to the point of repugnance and shares the same legislative domain as the Kerala Act.

The doctrine of pith and substance must be used to assess whether repugnancy exists. The literal rule of interpretation must be observed and if the wording is plain and unambiguous, courts should obey it. When interpreting a statute, the legislative intent is to be ascertained from the language employed. Furthermore, the legality of the act shall be presumed, and it shall be the burden of the person challenging the Act to establish the contrary.¹¹

According to the Central Act, "Nothing contained in this Act shall make the killing of any

¹⁰ The Indian Penal Code, 1862 (Act 45 of 1862), s. 377

¹¹ M. Karunanidhi v. Union of India, (1979) 3 SCC 431, para. 24

animal in a manner prescribed by the religion of any community an offence". The phrase "nothing contained in this Act" reasonably implies that the Central Act restricts the scope of the Act itself in cases involving the killing of animals as "required by the religion of any community," rather than legalising the practise. Therefore, the Kerala Act's ban on animal sacrifice applies to the area (including religiously motivated killings) that was "intentionally" left out of the Central Act.

As previously stated, only behaviours that are "essential" to a religion shall be protected, even if such acts are "legalized". Animal sacrifice cannot be protected by the Central Act because it is not a necessary practice¹².

The Kerala Act must pass the following three criteria in order to be considered repugnant:

1) The Direct Conflict Test

Repugnancy exists when there is an obvious and direct conflict between the two laws that is "absolutely incorrigible," making it impossible to follow one without breaking the other.

It is argued that the Kerala Act does not, in this instance, directly conflict with the Central Act because religious sacrifices are not covered by the Central Act in any way.

2) The Occupied Field Test

According to these criteria, repugnancy exists even when there isn't a clear conflict between the competing laws because they both apply to the same body of law. However, repugnancy does not occur if the state law deals with distinct issues even if they are of a "cognate or allied nature," rather than the issues that are the focus of the parliamentary legislation.

In this instance, there is no repugnance because the Kerala Act deals with a subject that the Central Act expressly excludes from its purview: religious sacrifice. As a result, there is no chance that the two laws could possibly cover the same ground.

¹² Subhas Bhattacharjee v. State of Tripura, 2019 SCC OnLine Tri 441, para. 127.

3) The Intended Occupation Test

If state legislation goes against the aim of the federal act to "cover the whole field," repugnancy may result.¹³ In the case of the Kerala Act, the Parliament "purposefully" limited the scope of the Central Act to exclude animal killing "as required by religion". Therefore, there is no repugnancy if there is no such aim.

Because it is "in consonance with the established canons of law to tilt the balance in favour of the legislation rather than invalidating the same, particularly when the Central and State Law can be enforced symbiotically to achieve the ultimate goal," the doctrine of incidental encroachment saves the inferior statute even in cases of fractional overlapping where both statutes can coexist mutually¹⁴.

Conclusion

If reason were to rule, the activities that constitute as "human necessities" could only be regulated, as done by the Central Act, and not stopped. But it is necessary to end barbarous customs like animal and human sacrifice since they are incompatible with the values embodied in the Indian Constitution.

By outlawing sacrifice in temples and precincts, the Kerala Act seeks to start reforms on a small scale. The Apex Court must reject any attempts to portray this prohibition, implemented by the government chosen by the people, as discriminatory and abhorrent, as such claims could lead to the start of a process known as reverse aging, which would undo countless progressive reforms carried out over several decades by various executive regimes.

If started by the judiciary, such an unjustified repeal of progressive executive programmes is not only harmful to constitutional ideals but might also constitute a significant, even dangerous challenge to the fundamental foundations of our democracy.

¹³ Innovative Industries Limited v. ICICI Bank, (2018) 1 SCC 407, para. 42

¹⁴ Girnar Traders v. State of Maharashtra, (2011) 3 SCC 1, para. 187.