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**Critical overview on the religious practice of animal sacrifice in India**

**Aishwarya Parameshwaran**

## **INTRODUCTION**

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Albeit being praised across the globe for its diversity, some have been skeptic about the age-old traditions which clash with their conscience. One such age-old tradition is ritual sacrifice of animals. The concept of ritual sacrifice to appease deities has been prevalent since time known. This practice has established a value for itself in various religions, around the world. Our study is limited to India and the laws pertaining to this ritual sacrifice.

In this research my approach would be to critically analyze statutory provisions, judgements and comments made in connection with animal sacrifice. Furthermore, through this research I seek to find answers to the question whether animal cruelty is to be permitted under the garb of religious tradition and can judiciary ban this ancient practice. I also seek to understand whether traditions can be adhered to in a compassionate way without inflicting pain and suffering.

This research paper is divided into 4 parts. Part I gives the introduction, Part II deals with the existing laws on animal rights in connection with ritual sacrifice. Part III analyses whether the judiciary can intervene in this religious matter since India has declared itself as a Secular state and the citizens possess freedom of religion as a fundamental right. Part IV concludes the research paper.

### **CONTRASTING ANIMAL RIGHTS LAWS**

In India, Prevention of Cruelty to Animals (PCA) Act, 1960 is the principal legislation which governs, regulates and criminalizes animal cruelty<sup>1</sup>. The motive of this Act is to prevent unnecessary cruelty to animals and amend the law relating to animal cruelty.<sup>2</sup>

Section 11 of this Act emphasizes on the acts which are recognized as cruelty to animals. Although this section considers killing of animals in an unnecessary cruel manner as an act of cruelty which shall be punishable, no specification has been given with regards to killing of animals for religious purposes.<sup>3</sup> Section 11 (3)(e) states that unless there is infliction of

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<sup>1</sup>'Cruelty towards Animals and Animal Rights in India', (Vakil No. 1, 26 December 2018) <[https://www.vakilno1.com/legal-news/cruelty-towards-animals-and-animal-rights-in-india.html#\\_ftn6](https://www.vakilno1.com/legal-news/cruelty-towards-animals-and-animal-rights-in-india.html#_ftn6)> accessed on 20 August, 2020

<sup>2</sup> Prevention of Cruelty to Animals Act 1960

<sup>3</sup> Cruelty towards animals and animal right law in India, *Supra* note 1

unnecessary pain and suffering to an animal, killing an animal to provide food for mankind shall be an exception to PCA Act.<sup>4</sup>

Section 28 is important to our study, since it's the only section under the PCA Act which is pertaining to animal sacrifice. The section states that no provision laid down under PCA Act shall render killing of an animal in a manner required by the religion of any community as an offence.<sup>5</sup>

The High Court (HC) of Uttarakhand interpreted and established a relation between Section 11(3)(e) and Section 28 of the PCA Act in the case of *Gauri Maulekhi Vs State of Uttarakhand*. HC held that if an animal is sacrificed, it should be done in a manner prescribed by the religion of any community, but such sacrifice should solely be for arranging food for mankind and no other purpose.<sup>6</sup>

Through the statutory provisions of PCA Act and the judgement given by Uttarakhand HC, we understand that the PCA Act doesn't include animal sacrifice within the ambit of animal cruelty. If we analyze the judgement, the key ingredient of sacrificing animals should only be to arrange food for mankind and not merely to appease gods. Maybe the intention of the legislature was to prevent unnecessary infliction of pain and suffering on animals and make killing of animals under circumstances permissible.<sup>7</sup>

Gauging the rights availed to animals can be only done through the interpretation of statutes made in various judgments. The fundamental right guaranteed under Article 21 (Right to life and liberty) was given a new dimension by the Supreme Court (SC) in *Animal Welfare Board of India Vs A. Nagaraja and Ors*. Through this case, the SC incorporated non-humans within the ambit of Article 21.<sup>8</sup> This inclusion of animals within the ambit of Article 21 can strike down many laws and regulations pertaining to animals as unconstitutional and one such thing is permissibility of ritual sacrifice.

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<sup>4</sup> PCA Act, *Supra* note 2, s 11(3)(e)

<sup>5</sup> PCA ACT, *Supra* note 2, s 28

<sup>6</sup> *Gauri Maulekhi Vs State of Uttarakhand* [2010] Writ Petition (PIL) No. 77 *with People for Animals DebraDun, Dehradun Vs State of Uttarakhand and others*, [2010] Writ Petition (PIL) No. 73

<sup>7</sup> Ananthakrishnan G, 'There is a dichotomy: SC notice to Kerala on law banning animal sacrifice in temples', (*The Indian Express*, 17 July 2020) <<https://indianexpress.com/article/india/sc-seeks-kerala-govts-reply-on-plea-against-law-prohibiting-animal-sacrifice-6509396/>> accessed 13 September 2020

<sup>8</sup> *Animal Welfare Board of India Vs A. Nagaraja and Ors* (AIR 2014 SCW 3327)



When the Fundamental Duties under Article 51A was incorporated in the Constitution, the intent was to impose responsibilities amongst the citizens although being legally unenforceable. The duties laid down under Article 51A are essential to be abided by each citizen for a wholesome development of the country.

The fundamental duties in connection with our study are Article 51A(g) and Article 51A(h). The former imposes a duty to prevent and improve the natural environment and to have compassion for all living creatures. Whereas, the latter directs the citizens to develop a scientific temper, have humanism and inculcate a spirit of inquiry and reform.<sup>9</sup> By including the word ‘scientific temper’ in the Constitution, maybe the legislature sought to eliminate India from the shackles of superstition and blind faith like animal sacrifice to appease deities..

The fundamental duties even have its implications on perception and interpretations made by judges on certain age-old traditions etc. In *Ramesh Sharma Vs State of Himachal Pradesh*, HC noted that ritual of animal sacrifice was prevalent only in the prehistoric times and in this era these practices were merely based on superstition and ignorance.<sup>10</sup> In the case of *N. Adithayan vs. Travancore Devaswom Board and others*, SC highlighted that even though the tradition has been followed from the pre-constitution period, it cannot be considered as a source of law.<sup>11</sup> SC also highlighted that the agenda of drafters of the Constitution was to instill scientific temper amongst the citizens and to liberate the country from blind faith and superstition.<sup>12</sup>

Using a similar lens, in 2019 Tripura HC ordered a complete ban on animal sacrifice in Hindu Temples of Tripura. HC stated that all religions call for compassion and no religion requires sacrificing of animals in the temple.<sup>13</sup>

If the fundamental rights had been enforceable, a lot of ancient traditions would have become illegitimate.

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<sup>9</sup> Constitution of India 1950, Bare Act

<sup>10</sup> *Ramesh Sharma Vs State of Himachal Pradesh* CWP No. 9257 of 2011 and CWO No.s 4499 and 5076/2012 , MANU/HP/0934/2014

<sup>11</sup> *N. Adithayan vs. Travancore Devaswom Board and others*, (2002) 8 SCC 106

<sup>12</sup> Ramesh Sharma, *Supra* note 10

<sup>13</sup> Dhananjay Mahapatra, ‘Tripura HC bans state-sponsored goat sacrifice at Tripureswari temple’, (*Times Of India* 28 September 2019) <<https://timesofindia.indiatimes.com/india/tripura-hc-bans-state-sponsored-goat-sacrifice-at-tripureswari-temple/articleshow/71343834.cms>> accessed on 13 September 2020

## JUDICIAL INTERVENTION IN RELIGIOUS SACRIFICE

Although a few courts have emphasized why animal sacrifice is immoral, often there is contention whether judicial intervention in religious matters interrupts the exercise of Article 25 (Freedom of religion). Let's further study this aspect in depth.

The term 'Secularism' incorporated in the Preamble, specifies that India has no religion of its own. It also mentions that the state shall give equal respect, support and protect all the religions residing in India.<sup>14</sup> In the case of *Kesavananda Bharati Vs State of Kerala*, it was determined by SC that 'Secularism' forms a basic structure of the Constitution.<sup>15</sup> Now the question is, if secularism forms the basic structure of the Constitution, can courts intervene in religious matters or is freedom of religion an absolute right.

As per my research, there isn't any statutory provision which absolutely bars Indian courts to intervene in religious matters. Additionally, Article 25 of the Constitution which safeguards the freedom of religion, itself limits the exercise of this right under certain circumstances.<sup>16</sup> The addition of reasonable restrictions makes it evident that even the framers of the Constitution didn't intend to grant the right absolutely.

If we closely analyze Article 25(1), a connection between right to life and freedom of religion can be established. Article 25 (1) enumerates that every person is free to profess, practice and propagate religion, provided that it doesn't hinder public order, morality, health and other provisions of Part III of the Constitution, i.e. the fundamental rights.<sup>17</sup> Since freedom of religion is not an absolute right, people defending the practice of ritual sacrifice cannot seek defense on the grounds that it's a violation of their freedom of religion.

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<sup>14</sup>Preamble To The Indian Constitution', Legal Services India.com <<http://www.legalserviceindia.com/legal/article-750-preamble-to-the-indian-constitution.html>> accessed on 14 September 2020

<sup>15</sup> *Kesavananda Bharati vs State Of Kerala And Anr* [24 April 1973]

<sup>16</sup> Constitution, *Supra* note 9

<sup>17</sup> Constitution, *Supra* note 9

In Part II of this research paper we already studied that Article 21 is extended to animals and whenever there is a violation of a fundamental right, the judiciary can intervene. The rest is up to the discretion of the court whether animal sacrifice violates Article 21.

When it comes to judicial intervention in matters of religious animal sacrifice, there have been contrasting opinions of the judges. In 2015, when a PIL challenging religious animal sacrifice was filed under Article 32, SC refused to intervene and stated that the judiciary cannot intervene in age-old traditions.<sup>18</sup> The judges even pointed out that it's a sensitive matter and they cannot completely shun these centuries old traditions.<sup>19</sup>

However, in 2019 HC of Tripura banned religious sacrifice in all temples situated in Tripura.<sup>20</sup> Justice Karol opined that it is the duty of the state to bring necessary reforms in the society.<sup>21</sup> He also stated that instead of practicing such traditions, the state should enforce laws banning slaughtering of animals in temples as it is against public order, morality and health which forms a reasonable restriction under Article 25 (1).<sup>22</sup>

If we analyze these two contrasting judgements mentioned above, the difference is the jurisdiction in which the PIL was filed. While refusing to intervene in the age-old tradition of ritual sacrifice, SC pointed out that the PIL was filed under Article 32. Calling the matter very sensitive, maybe SC was only trying to maintain harmony across the nation.<sup>23</sup>

Whereas, in the judgment given by HC of Tripura, the PIL was filed under Article 226. The PIL focused only on animal sacrifice in Hindu temples situated in Tripura. The petitioner did not challenge the practice of animal sacrifice observed by the Muslim Community on Bakri Eid.<sup>24</sup>

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<sup>18</sup> Dhananjay Mahapatra 'Can't interfere in animal sacrifice tradition: Supreme Court' (Times News Network, 28 September 2015) <<https://timesofindia.indiatimes.com/india/Cant-interfere-in-animal-sacrifice-tradition-Supreme-Court/articleshow/49144192.cms>> accessed on 14 September 2020

<sup>19</sup> *Ibid.*

<sup>20</sup> 'Tripura HC bans animal sacrifice in all Tripura temples' ( *India Today*, 28 September 2019) <<https://www.indiatoday.in/india/story/tripura-hc-bans-animal-sacrifice-in-all-tripura-temples-1604085-2019-09-28>> accessed on 14 September 2020

<sup>21</sup> 'Tripura HC bans state-sponsored goat sacrifice at Tripureshwari Temple' *Supra* note 13

<sup>22</sup> 'Tripura HC bans state-sponsored goat sacrifice at Tripureshwari Temple', *Supra* note 13

<sup>23</sup> 'SC refuses to interfere with animal sacrifice as religious practice', ( *Business Standard*, 28 September 2015) <[https://www.business-standard.com/article/news-ians/sc-refuses-to-interfere-with-animal-sacrifice-as-religious-practice-115092801411\\_1.html](https://www.business-standard.com/article/news-ians/sc-refuses-to-interfere-with-animal-sacrifice-as-religious-practice-115092801411_1.html)> accessed on 14 September 2020

<sup>24</sup> 'Tripura HC bans state-sponsored goat sacrifice at Tripureshwari Temple', *Supra* note 13

Maybe the courts of the state have the power to intervene and enforce a ban on religious animal sacrifice within the state. Maybe there cannot be a blanket ban on animal sacrifice.

To understand whether there can be a blanket ban on animal sacrifice, we'll have to refer to the judgement given by SC in *Hanif Qureshi & Others vs The State of Bihar*. The judgement of this case was given in 1958, prior the enactment of PCA Act. In this case, the SC invalidated a nation-wide ban on the slaughter of all bovine animals purely because such an imposition would economically affect the minorities dealing in related occupation.<sup>25</sup> Hence, the state government was given the authority whether or not to impose a ban on their respective state. The possible effect on the livelihood of those dealing in the related field of animal slaughter, could be one of the reasons why SC has been reluctant to even interfere and order a blanket ban on animal sacrifice in India.

So far, several cases have been filed across the country which challenges the constitutionality of certain religious practices. In 1954, to resolve the dilemma of judicial intervention in religious matters, the SC in *Shri Shirur Mutt* case, for the first time established a doctrine to test the essentiality of a religious practice.<sup>26</sup> The test was invented to determine which religious practices shall form an integral part of a religion.<sup>27</sup> Let's understand whether animal sacrifice is an essential religious practice under the two dominating religions followed in the country, i.e., Hinduism and Islam.

As far as religious sacrifice in Hinduism is concerned, the SC in *Ramesh Vs State of Himachal Pradesh* has construed that animal sacrifice cannot be treated as a fundamental to follow religious faith.<sup>28</sup> Reason being, there is no record which contends animal sacrifice as an essential religious practice, nor is it an obligation to sacrifice animals within the precincts of temples.<sup>29</sup>

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<sup>25</sup> Nazima Parveen 'Ban on Cattle Slaughter Is a Direct Attack on Right to Occupation' (*The Quint* 29 May 2017) <<https://www.thequint.com/voices/opinion/ban-on-cattle-slaughter-direct-attack-on-fundamental-right-to-occupation>> accessed on 14 September 2020

<sup>26</sup> *The Commissioner, Hindu Religious Endowments, Madras vs. Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt* [1954] AIR 282, [1954] SCR 1005

<sup>27</sup> 'Sabarimala order: What is the 'essentiality' test in religious practice?' (*Indian Express*, 15 November 2019) <<https://indianexpress.com/article/explained/explained-supreme-courts-sabarimala-order-and-the-essentiality-test-in-religious-practice-6119369/>> accessed on 14 September 2020

<sup>28</sup> Ramesh Sharma, *Supra* note 10

<sup>29</sup> Ramesh Sharma, *Supra* note 10

This judgement given by the SC has made it clear that animal sacrifice is not an essential religious practice and hence judiciary can impose a ban as far as ritual sacrifice in Hinduism is concerned.

So far, the courts haven't determined whether animal sacrifice on Eid-ul-Adha is an essential religious practice in Islam. Although the Qureshi case clearly enumerated that sacrificing of cows on Eid-ul-Adha cannot be considered as an essential religious practice, the judgement failed to give any clarity on sacrifice of animals other than cows.<sup>30</sup> If we have to understand whether animal sacrifice on Eid-ul-Adha is an essential religious practice, we'll have to first understand the significance and reason for this practice.

As narrated in Quran, Prophet Ibrahim had dreamt of sacrificing his beloved son, Ismail as an act of submission to Allah. When Ibrahim woke up, he found that a goat had been sacrificed and Ismail, his dear son, was alive.<sup>31</sup> To feel the pain of Prophet Ibrahim, people having faith in Islam, raise animal with love and then offer them to god as an act of devotion and submission. So, the whole ideology is to feel pain by sacrificing something which has been extremely dear to the person. The essence is not just to sacrifice a dear possession, but also sharing one-third of the meat with the poor as charity.

Although the observance of Eid-ul-Adha is done in order to commemorate Prophet Ibrahim, the one thing we must realize that, during the Prophet's era, a man's status was evaluated on the number of domestic animals he owned. Times have changed, people no longer evaluate the wealth of a man solely on the basis of the number of animals he owns. Today, people who are economically sound, generally live in cities and do not rear animals. In this 21st century, most people find money as dear possession.

In 2020, when the pandemic has stricken, believers of Islam sought to know whether a donation to the poor could be made in lieu of animal sacrifice.<sup>32</sup> Addressing the issue, Maulana Khalid Saifullah Rahmani, the Secretary of All India Muslim Personal Law Board (AIMPLB) stated that,

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<sup>30</sup> *State Of W.B vs Ashutosh Labiri* [1994]

<sup>31</sup> 'Bakri Eid 2019: From history to significance, here's all you need to know about the Muslim festival' (Firstpost, 12 August, 2019) <<https://www.firstpost.com/india/bakri-eid-2019-from-history-to-significance-heres-all-you-need-to-know-about-the-muslim-festival-eid-al-adha-7148071.html>> accessed on 14 September 2020

<sup>32</sup> Syed Mohammed 'Bakrid:confusion over donation in lieu of animal sacrifice' (*The Hindu*, 19 July 2020) <<https://www.thehindu.com/news/cities/Hyderabad/bakrid-confusion-over-donation-in-lieu-of-animal-sacrifice/article32128195.ece>> accessed on 14 September 2020

the intent to donate money instead of sacrificing an animal is not ill, but the true reason of sacrificing is different, here a portion of meat goes to the needy.<sup>33</sup> He added that sacrifice is obligatory unless there was a law contrary to it.<sup>34</sup>

First of all the argument made by the Secretary of AIMPLB on the sacrifice of an animal is not strong enough, reason being the whole and sole purpose behind giving away a portion of meat to poor or donating money to the poor is the same, which is charity, the only difference is the mode of donation. Secondly, the Secretary has admitted that sacrifice is obligatory unless there is a law which prevents the sacrifice of animals.<sup>35</sup> If the comments made by the Secretary of AIMPLB are to be taken seriously, then it shall only mean that animal sacrifice on Eid-ul-Adha is not an essential religious practice. Therefore, if an amendment is made in the PCA Act and Section 28 of the Act is repealed then, this ancient practice of animal sacrifice in Hinduism and Islam can be ended.

## CONCLUSION

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The analysis made in Part II and Part III of this research paper concludes that so far, the laws pertaining to ritual sacrifice have been contrasting which is perceived and interpreted vividly by the judiciary. Through this research, we could understand the significance of animal sacrifice and the essentiality of this practice. Now, the rest is up to the legislature and the judiciary if they want to evolve the law which has remained static in this area or want to continue the pre-historic tradition.

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*