

# ANIMALS' PROTECTION VIS-À-VIS FREEDOM TO PRACTISE RELIGION: A DICHOTOMY BETWEEN RIGHTS

Written by *Aakriti Vikas\** & *Ashish Agarwal\*\**

*\*4th Year BA LLB Student, School of Law, Christ (Deemed to be University)*

*\*\*4th Year BA LLB Student, School of Law, Christ (Deemed to be University)*

## Abstract

Animals are the true weaker sections of the society. These dumb creatures cannot raise voices for their rights and do not even qualify for being regulated by legislations. But law is dynamic and open to interpretations. Thus, the voice to protect animals for human satisfaction and protection of biodiversity resulted in the enactment of the Prevention of Cruelty to Animals Act, 1960. The Act prevents causing harm to animals and birds on account of cruelty meted out to them. However, the Act under section 28 provides ground for animal sacrifice if essential for any religion. This has resulted in a tryst between the Freedom to practise religion and the right of protection of animals. Therefore, the paper seeks to highlight the attempt of various High Courts and the apex court to expand the meaning of Right to Life to include life of animals. The article shall endeavour to contest against animal sacrifice in the name of religion through valid reasoning. The paper also aims to describe the pros and cons of the PCA. Finally, the authors give a description of attempts taken to prevent this nefarious act by various shrines which shall act as epitomes of success in the area forever.

**Keywords:** Animal Sacrifice, Dynamism, Protection, Religion, Rights.

## **PROLOGUE**

Animals have been treated as lower creatures since primitive ages and subjected to inhumane treatment. During the old age period, oxen were stoned to death if they attacked humans or hurt them despite it being the fault of the humans themselves. Their rights have never been recognised as they are not considered a legal person in the eyes of law. Salmond, categorically, highlights that animals are protected only to protect the interest of humans and do not have a legal personality of their own<sup>1</sup>. The practice of animal sacrifice is barbaric and deprives poor animals of their lives. It is completely against the provisions of Article 21 of the Indian Constitution which provides for 'Right to Life'. It may be argued that the Right to Life under Article 21 is enshrined only upon human beings and not animals. However, extension of the meaning of Article 21 of the Constitution to mean that it is assurance to life and meaning to all living organisms is the need of the hour. It was written by Justice Bhagwati in his article titled, '*Judicial Activism in India*' that "there are cases where a decision one way or the other will count for the future, will advance or retard sometimes much, sometimes little, the development of the law in a proper direction. It is in these types of cases where the judge is to leap into the heart of legal darkness where the lamps of precedent and common law principles flicker and fade, that the judge gets an opportunity to mould the law and to give it its shape and direction. This is what we have been trying to do in India."<sup>2</sup> The duty cast upon every civilized nation today is to protect the environment, to promote values of morality and thereby, to eliminate violence and cruelty on organisms to the maximum possible extent. Therefore, in consideration with the aforementioned idea the Himachal Pradesh High Court, while expanding the meaning of 'life' in *Ramesh Sharma v. State of Himachal Pradesh*<sup>3</sup>, said all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. The learned judges added that "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." The founders of the Indian Constitution made their desires crystal clear in Article 51A (g) of the Constitution, which lays down the Fundamental Duty of every human being to be compassionate towards

---

<sup>1</sup> Fitzgerald P. J, '*Salmond on Jurisprudence*', Sweet and Maxwell Publications, 12<sup>th</sup> Ed. 2004.

<sup>2</sup> Bhagwati P. N, '*Judicial Activism in India*'.

<sup>3</sup> *Ramesh Sharma v. State of Himachal Pradesh* [MANU/HP/0934/2014]

every living creature, be it a human or an animal. “Citizens of the country are duty bound to show respect for the animate world”, stated in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors*<sup>4</sup>. The duties impose an obligation upon the legislature to keep them in mind while framing laws for welfare of ‘living creatures’ for regulating the conduct of human beings. Also, a similar obligation is cast on the judiciary to read these duties to give purposeful meaning to laws enacted for welfare of living creatures. Following this, Justice Radhakrishnan stressed on the point that “until now the rights that we, as a nation, bestowed upon animals were merely statutory rights and the time has come for animal rights to be elevated to the status of fundamental rights in the Indian constitution”<sup>5</sup>.

### **PREVENTION OF CRUELTY TO ANIMALS ACT, 1960**

Animals' well-being and welfare have been statutorily recognised under sections 3 and 11 of the Prevention of Cruelty to Animals Act, 1960 (hereinafter PCA) and all the rights framed under this 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 animals under sections 3 and 11 of the PCA. Further, right to dignity and fair treatment is not confined to human beings alone, but to animals as well. Right not to be beaten, kicked, over-ridden, overloaded is also a right recognized by section 11 read with section 3 of the PCA. Nevertheless, it has come on record that the killing of animals in a brutal manner causes immense pain, strain, agony and suffering to the animals. The animals are left to bleed after inflicting injuries on their parts. The blood is strewn all over. Thus, the practice of animal sacrifice which runs counter to these provisions is completely unlawful and illegal. The Hon'ble Supreme Court in the case of *Sardar Syedna Taher Saifuddin Sahib v. State of Bombay*<sup>6</sup>, have already held human and animal sacrifice to be deleterious.

In *Animal Welfare Board of India case*<sup>7</sup>, an issue of seminal importance with regards to rights of animals under the Indian Constitution, with reference to the Prevention of Cruelty to Animals Act, 1960, in connection with Jallikattu/Bullock-cart race had been raised. The petitioner, Animal Welfare Board, was a statutory body established under the PCA<sup>8</sup> for the

---

<sup>4</sup> *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors* [2016 SCC OnLine SC 1382]

<sup>5</sup> *Ibid.*

<sup>6</sup> *Sardar Syedna Taher Saifuddin Sahib v. State of Bombay* [AIR 1962 SC 853]

<sup>7</sup> *Animal Welfare Board of India v. A. Nagaraja* [MANU/SC/0426/2014]

<sup>8</sup> §4, PCA

promotion of welfare and protecting the animals from being subjected to unnecessary sufferings and pains, made a submission for the ban of the practice of Jallikattu. While allowing the petition, the Hon'ble Court provided a new dimension to the interpretation of 'right to life and personal liberty' by introducing 'negative' as well as 'positive' obligation on the State which covers not only 'duty to restraint' but also 'duty to facilitate entitlements'. The inference is that animal sacrifice though does not deprive humans of their life but animals are essential for human existence. Thus, it becomes duty of the State to facilitate the protection of animals to ensure Right to life with dignity to humans. On the other side, it was argued that the Act does not prohibit the infliction of all forms of pain or suffering. For examining the rival contentions, the Court considered well-being and welfare of animals as a decisive factor for determining the issue at hand. The practice of Jallikattu was examined against the provisions of the Act and was clearly found that the conduct of human beings towards the animal was contrary to the scheme of the Act. The Hon'ble Court refused permission to inflict pain and suffering to the animals in the name of religious or traditional practices.

Though the PCA was enacted by the Parliament to curb inhuman treatment of animals and birds, same animal sacrifice is rampant and carried out under apparent sanction of religion. It is often contested that section 28 of the PCA provides ground for animal sacrifice in the name of religion. Nevertheless, the true essence of section 28 is often misinterpreted to commit these nefarious acts. The said provision reads as follows: "Nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community". However, the section only provides an exemption for manners of killing animals "if prescribed by a religion" and does not condone animal sacrifice per se. the words "manner required by religion" is a sine qua non of this provision. Thus, animal sacrifice can only be acceptable if and only if a specific community requires such practice for the accomplishment of its religious obligations. This enactment has been carried out to prevent the infliction of unnecessary pain on animals and not to provide for the same.

## **INTERNATIONAL INFLUENCES**

The Welfare Quality Project (WQP) research partnership of scientists from Europe and Latin America founded by the European Commission<sup>9</sup> has developed a standardized system for assessing animal welfare as under:

- "Animals should not suffer from prolonged hunger, i.e. they should have a sufficient and appropriate diet.
- Animals should not suffer from prolonged thirst, i.e. they should have a sufficient and accessible water supply.
- Animals should have comfort around resting.
- Animals should have thermal comfort, i.e. they should neither be too hot nor too cold.
- Animals should have enough space to be able to move around freely.
- Animals should be free from physical injuries.
- Animals should be free from disease, i.e. farmers should maintain high standards of hygiene and care.
- Animals should not suffer pain induced by inappropriate management, handling, slaughter or surgical procedures (e.g. castration, dehorning).
- Animals should be able to express normal, non-harmful social behaviours (e.g. grooming).
- Animals should be able to express other normal behaviours, i.e. they should be able to express species - specific natural behaviours such as foraging.
- Animals should be handled well in all situations, i.e. handlers should promote good human-animal relationships.

---

<sup>9</sup> Abigail Perdue, Randall Lockwood, *Animal cruelty and freedom of speech: when worlds collide*, Purdue University Press, 2014

- Negative emotions such as fear, distress, frustration or apathy should be avoided, whereas positive emotions such as security or contentment should be promoted."

In the absence of any International Covenant for the recognition of animal rights, the reliance is generally placed on the United Kingdom Farm Animal Welfare Council which has prescribed five freedoms for animals, i.e., Freedom from hunger and thirst, discomfort, pain and injury, fear and freedom to express normal behaviour. However, killing of animals for religious purposes does not serve the essence of these criteria<sup>10</sup>.

### ANIMAL SACRIFICE AS A RIGHT

Sacrifice of animals in the name of religion is often defended as a right conferred under Article 25 of the Indian Constitution. The provision imparts freedom to people to freely profess, practise and propagate any religion and thus, the practise of animal sacrifice on religious occasions is protected by the said provision. To decide whether a practise or ritual can be protected under Article 25, the act must be in conformity to a specific religion and not of any sect of that religion as already decided in the case of *Commissioner of Police and Ors. v. Acharya Jagadishwarananda Avadhuta and Anr*<sup>11</sup>. The petitioner was a follower of Ananda Marga, a sect of Hindu religion and claimed the performance of *tandava* dance with a skull and knife as a practise of Hindu religion and shall attract the protection under Article 25 of the Indian Constitution. The Hon'ble Supreme Court held that the protection under Articles 25 and 26 of the Constitution of India extend guarantee for rituals and observances, ceremonies and modes of worship which form part and parcel of religion. A practice becomes a part of religion only if it satisfies the two tests or provisos under Article 25; **firstly**, the test of absoluteness and **secondly**, a practice as an essential part of a religion.

#### ➤ Test of Absoluteness

No Fundamental Right is absolute and even rights conferred under Art. 25 and Art. 26 are subjected to public order, morality and health. In *Javed & Ors. v. State of Haryana*<sup>12</sup>, the court analysed Art. 25(2)(b) and held, while distinguishing between "religious practices" and

---

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

<sup>11</sup> *Commissioner of Police and Ors. Vs. Acharya Jagadishwarananda Avadhuta and Anr.* [MANU/SC/0218/2004]

<sup>12</sup> *Javed & Ors. v. State of Haryana* [AIR 2003 SC 3057]

“religious beliefs”, if religious practices run counter to public order, morality or health or a policy of social welfare then the latter prevails over religious practices. Further, in *N. Adithyan v. Travancore Devaswom Board & Ors.*<sup>13</sup> the court held that any custom or usage offending human rights, dignity and social equality cannot be upheld by the courts of the country. In the case of *Abdul Jaleel and others vs. State of U.P. and Ors.*<sup>14</sup>, their lordships have held “In our order dated 23rd September, 1983 it has been pointed out that the fundamental rights conferred on all persons and every religious denomination under Article 25 and 26 of the Constitution are not absolute but the exercise thereof must yield to maintenance of public order.” It is not denied that animal sacrifice has been an indispensable custom of various religions and has become an inevitable part of their daily routine. However, as it has been very accurately pointed out in *Bai Tahira v. Ali Hussain*<sup>15</sup> that “Law is dynamic and its meaning cannot be pedantic but purposeful.” Thus, it is *a fortiori* contended that animal sacrifices lack reasonability and morality, two most essential elements of a valid custom and, hence it does not suit the purpose of law, that is, to provide equity and justice.

➤ **Animal Sacrifice as an essential part of a religion**

Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is - to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution<sup>16</sup>. Nobody can say that essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the 'core' of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non-

---

<sup>13</sup> *N. Adithyan v. Travancore Devaswom Board & Ors.* [2002 8 SCC 106]

<sup>14</sup> *Abdul Jaleel and others vs. State of U.P. and Ors.* [AIR 1984 SC 882]

<sup>15</sup> *Bai Tahira v. Ali Hussain* [AIR 1979 SC 362]

<sup>16</sup> Jain M. P, ‘*Indian Constitutional Law*’, Lexis-Nexis Butterworth, Wadhwa, Nagpur, 6th ed. Reprint 2012.

essential part or practices. What would constitute an essential part of religion or religious practice is to be determined with reference to the Doctrine of a particular religion which includes practices which are regarded by the Community as part and parcel<sup>17</sup>.

It would, therefore, not be wrong to infer that the practice of animal sacrifice cannot be treated as fundamental to follow a religious belief and practice. It is only if taking away of that part of practice can result in a fundamental change in the character of that religion or belief that could be treated as essential or integral part. We reiterate that if animal sacrifice is taken out, it will not result in fundamental change in the character of any religion or in its belief. Their lordships of the Hon'ble Supreme Court in the case of *State of Karnataka and another v. Dr. Praveen Bhai Thogadia*<sup>18</sup> have held that the core of the Hindu religion is based upon spiritual values which the Vedas, Upanishads and Puranas were said to reveal to mankind, which seem to be "love others, serve others, help ever, hurt never."

Also with regard to sacrifices in the Islamic religion, the Apex Court has held that killing of cows on Bakrid is not an integral part of Muslim religion. The Hon'ble Supreme Court in the case of *Sardar Syedna Taher Saifuddin Sahib V State of Bombay*<sup>19</sup> has already held human and animal sacrifice to be pernicious. The learned judges stated that "We have invoked 'doctrine of *Parens Patriae*' along with other Constitutional provisions to protect the basic rights of animals."

## EPILOGUE

A religion may not only lay down a code of ethical rules for its followers to accept, but also prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion and the forms and observances might expand even to matters of food and dress. But it is also essential to keep note that in the light to ensure fair play, it is simultaneously necessary to determine what constitutes the essential/integral part of the religion and the same has to be ascertained in respect of the doctrine of that religion itself. However, the author fails to understand that the act something as barbaric as animal sacrifice may at all form an essential part of the religion and the same is being asserted only after due consideration to the doctrines of religion itself. The overt act of sacrificing animals in the

---

<sup>17</sup> Nanditha Krishna, 'Sacred Animals of India', Penguin Books Limited, 2014

<sup>18</sup> *State of Karnataka and another V. Dr. Praveen Bhai Thogadia* [[MANU/SC/0291/2004](#)]

<sup>19</sup> *Supra*, Note 6



temples or its premises is not obligatory to reflect religious belief and idea. Hereby, it would be noteworthy that their lordships of the Hon'ble Supreme Court in the case of *Durgah Committee, Ajmer v. Syed Hussain Ali and Ors*<sup>20</sup>. have held that even practices though religious, may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are bound to constitute an essential and integral part of a religion, the protection under Article 26 of the Constitution of India is not available.

It is indeed promising to note several reformist tendencies which have finally begun to take birth and some of them are being listed as follows:

**Kalighat (Kolkata)** is where, amidst drum-beating, thousands of sheep are sacrificed. The *Durga Pooja/Dassera* celebrations include animal sacrifice/*bali* in several parts of India. Buffaloes, cock, goats, and sheep are ritually sacrificed in hundreds; their flesh consumed as *prasad*. The same has been taking place in other kali temples too. However it is indeed interesting to note that the same devotees who consider sacrifice as an essential part in most of the kali temples reform their ideology when worshipping in Dakshineshwara Kali temple (the biggest Kali shrine in India) where unlike other *Kali* temples, animals are not allowed to be sacrificed.

Symbolic *Bali* is the ritualistic sacrifice of white pumpkin and sugarcane and is gradually becoming more frequent, replacing animal sacrifices, e.g. ***Sandhi Puja on Ashtami*** at the Ramakrishna Math and Mission at Belur.

At the **Bhadrakali shrine** in Orissa also vegetables such as white pumpkin and cucumber are “sacrificed” – not animals.

At the **Kamakhya Devi Temple** near Guwahati in Assam, one of the most venerated *Durga/Shakti* shrines in India, male animals are sacrificed in thousands. However, for the past few years a select group of *tantriks* have been gathering at there on *Durga Ashtami* and sacrificing instead of humans and animals, effigies made of flour.

On **Mahashtami Day** goats, lambs and cocks were sacrificed at a *Durga* temple in Sirlo, Orissa. But it has stopped now. It is understood that since 1985 animal sacrifices have been stopped at the *Kataka Chandi* temple and at the *Sarala* temple in the area.

---

<sup>20</sup> *Durgah Committee, Ajmer V. Syed Hussain Ali and Ors*. [MANU/SC/0063/1961]

These are few epitomes that invoke the belief that ‘where there is will, there is way’. Being rigid and adhering to superstitions in the name of religion is not a solution to any problem but it simply leads astray. It gives opportunity to tricksters and fraudulent preachers to take undue advantage of such belief. Moreover, in a country like India where a spark in the name of religion turns out to be a forest fire, this practice helps the eager politicians who wait for such opportunities and create chaos in the nation. Fighting for unnecessary privileges which do not conform to Fundamental Rights shows a complete disrespect towards the Constitution, the Fundamental Rights it guarantees and also its framers. The examples above, very clearly proves that it is not impossible to amend such practices and the only thing needed is to snap out of the veil of tradition and realise that even religion needs to change with time.