

## **TUSSLE BETWEEN ANIMALS RIGHTS AND RELIGIOUS SANCTION IN THE 21<sup>st</sup> CENTURY**

*“ Any religion or philosophy which is not based on a respect for life is not a true religion or philosophy.”*

- Albert Schweitzer.

### **INTRODUCTION**

Unseen sufferings, unheard cries, lingering agony and lonely deaths. These words clearly epitomize the pain millions of animals suffer at the hands of humans every single day. Although killing or any form of torture to humans is to be considered a crime instantly but even today our legal system stands a mute witness to the uncountable incidences of animal cruelty happening all around the world. In India, 'zoolatry' has been considered as an indispensable part of our culture. Even the history reflects ethos of conservation and reverence for animals, which was long before animal activism became a global movement and animal laws were enacted in our country as in their present form. But as we move ahead in the rat-race for being a developed country, our morals and ethos are being left behind and superseded by insensitivity and egotistical attitude hidden under the garb of religion.

The ritual of animal sacrifice performed in various religions since time immemorial is not a form of worship but is in essence, it's a social evil that is based on superstition and violence against the helpless.<sup>1</sup> It has nothing to do with either religion or culture. Animals are also a creation of God. They also have a right to live in harmony with human beings and the nature. All Devtas and deities are kind hearted and bless the humanity to prosper and live in harmony with each other.<sup>2</sup> But unfortunately, the rules requiring kindness to animals are being neglected and forgotten. The acts of cruelty that are being perpetrated in the name of religion are absolutely misplaced and based on misconstrued interpretation of the concepts of faith and worship rooted in superstition or observance of condemned practices as a result of blind faith which is contrary to scientific temper and reason.

### **BACKGROUND**

In contrast, the actual position on animal welfare under various religions and particularly within Islam is an excellent example of compassion and concern for those who depend on others for their care. It can be seen that cruelty is strongly condemned over and over in the Qur'an and the hadith of the Prophet. Specifically, cruelty to animals is condemned and punishments are provided for it, just as cruelty to humans is punished.<sup>3</sup> The religion itself specifies that necessary slaughtering must be done in a way to minimize the fear and pain to the animal. Recalling that the general rule is: "The Prophet said that God required being kind in all things. So if you kill, be kind in the killing, and if you slaughter, be kind in the slaughtering."<sup>4</sup>

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<sup>1</sup> Ramesh Sharma v. State of Himachal Pradesh, CWP No. 4499 of 2012

<sup>2</sup> Ibid

<sup>3</sup> Qur'an 99:7-8

<sup>4</sup> Sahih Muslim 3615; Tirmidhi 1329; Nasa'i 4329, 4335-4338; Abu Dawud 2432; Ibn Majah 3161; Musnad Ahmed 16490, 16494, 16506, 16516; Sunan al-Darimi 1888

But with changing times men no longer love or admire the gods but fear them cringingly. There has been decline of the true spirit of religious fervor along with the growth of an intricate ritual, a complex liturgy, a cold, formal and artificial organization of clerical pomp and sacrifices. It would seem that at all such periods there is a deliberate attempt on the part of an increasingly powerful clergy to emphasize the dark and fearful side of religion in order to increase its power over the superstitious minds of its followers.<sup>5</sup>

The act of animal sacrifice is nothing short of a heinous crime and no crime will never become less odious because sanctioned by what any particular sect may designate as religion.<sup>6</sup> No matter how free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as the subjects of punitive legislation<sup>7</sup> without which constitutional guarantee of civil liberty would be a mockery.<sup>8</sup>

## **JUDICIAL DECISIONS THAT CHANGED THE STATUS OF ANIMALS**

Even the Supreme Court of India that stands as a custodian of the Indian Constitution agrees that an argument, that a particular practice is dated about 300 years and is a deep rooted cultural trait does not provide any justification for its continuation because it has been declared by the Hon'ble Supreme Court that custom or usage, even if proved to have existed in pre-Constitutional era, cannot be accepted as a source of law, if such custom violates human rights, human dignity, concept of social equality and the specific mandate of the Constitution and law made by the Parliament. The vision of the founding fathers of the Constitution of liberating society from blind adherence to traditional superstitious beliefs sans reason or rational basis.<sup>9</sup> Therefore, to permit commission of ritual slaughter with any rational basis contravenes the very spirit of the Constitution of India and the basic principles of a progressive and civilized society.<sup>10</sup> Catering to the demands of a man to make professed doctrines of religious beliefs superior to the law of the land is none less that to permit every citizen to become a law unto himself which should not be permitted at any cost.<sup>11</sup>

### **A. Animal Welfare Board of India v. A. Nagaraja and Ors.<sup>12</sup>**

In 2014, the Hon'ble Supreme Court of India passed a landmark judgement also known popularly as the Jalikattu judgment pitching strongly on animal rights in India. It is presently considered a bible in matters of animal laws. The apex court in ¶16 extended the constitutional/fundamental right to life<sup>13</sup> to animals as well.

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<sup>5</sup> *AMAURY DE RIENCOURT, The Soul of India (Revised ed.1986)*

<sup>6</sup> *Board of Education v. Barnette*, 319 U.S. 643 (1943)

<sup>7</sup> D.D. Basu, *COMMENTARY ON CONSTITUTION OF INDIA*, pg no. 3448. (22nd ed.)

<sup>8</sup> *Adelaide Co of Jehovah's Witnesses Inc v. The Commonwealth*, (1943) 67 CLR 116

<sup>9</sup> *N. Adithayan v. Travancore Devaswom Board and Ors.*, (2002) 8 SCC 106

<sup>10</sup> *Ramesh Sharma v. State of Himachal Pradesh*, CWP No. 4499 of 2012

<sup>11</sup> *Reynolds v. United States*, 98 US 145, 244 (1879)

<sup>12</sup> (2014) 7 SCC 547

<sup>13</sup> Art. 21 of The Indian Constitution

*“16...Every species has a n inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Their lordships have further held that so far animals are concerned, “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. Animal has also honour and dignity which can not be arbitrarily deprived of.”*

It is submitted the single worst thing one that do to an animal emotionally is to make it feel afraid.<sup>14</sup> Both anxiety and fear play an important role in animal suffering.<sup>15</sup> Law recognizes the same and therefore, as per law, no animal can be slaughtered in a slaughterhouse in sight of other animals.<sup>16</sup> The slaughterhouse shall provide separate sections of adequate dimensions sufficient for slaughter of individual animals to ensure that the animal to be slaughtered is not within the sight of other animals.<sup>17</sup> It is questioned that if the animal cannot be slaughtered in a slaughter house in sight of other animals, why animals are allowed to be slaughtered in view of other animals, causing immense fear and anxiety among the remaining animals trapped in the fishing nets.<sup>18</sup>

### **B. Mohd. Hanif Quareshi and Ors v. State of Bihar**<sup>19</sup>

The constitutional bench came to the conclusion that it is the duty of every free Mussulman arrived at the age of maturity, to offer a sacrifice on the YD Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslims consists of making sacrifice of any animal, which should be a healthy animal, on Bakri Idd, then slaughtering of cow is not the only way of carrying out that sacrifice. It is, therefore, obviously not an essential religious purpose but an optional one.

For lifting the ban it should be shown that it is essential or necessary for a Muslim to sacrifice a healthy cow on Bakri Idd day and if such is the requirement of religious purpose then it may enable the State in its wisdom to lift the ban at least on Bakri Idd day. Therefore the constitutional bench in ¶9 came to the consensus that: -

*“9.... Similarly it has to be held that if it is not necessary or essential to permit slaughter of a healthy cow for any religious purpose it would be equally not open to the State to invoke its exemption power under S.12 for such a religious purpose. We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on Bakri Idd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily scarified for earning religious merit on Bakri Idd*

<sup>14</sup> TEMPLE GRANDIN & CATHERINE JOHNSON, *Animals in Translation*, (2006)

<sup>15</sup> *Animal Welfare Board of India v. A. Nagaraja and Ors.*, (2014) 7 SCC 547

<sup>16</sup> Rule 6(1), PCA (Slaughter House) Rules, 2001

<sup>17</sup> Rule 6(3), PCA (Slaughter House) Rules, 2001

<sup>18</sup> Rhyne, et al., *DIMENSIONS OF SUICIDE: PERCEPTIONS OF LETHALITY, TIME, AND AGONY. SUICIDE & LIFE THREATENING BEHAVIOUR*, 25(3), 373-380 ((1995))

<sup>19</sup> AIR 1958 SC 731

**C. Sardar Khan & Anr. v. State Of Bihar & Anr.**<sup>20</sup>

It is submitted that as per law, if a slaughter is particularly a ritual slaughter, the knocking section in slaughter house is so planned as to suit the animal and such knocking section and dry landing area associated with it is so built that escape from this section can be easily carried out by an operator without allowing the animal to pass the escape barrier.<sup>21</sup> But the ritual of animal sacrifice involves an unimaginable amount of cruelty towards the sacrificial animals, which are often seen lying around in pain and suffering after receiving blows on their necks, which usually does not kill them in first go. Sometimes, the animal even tries to escape in a fatally wounded condition, which is extremely painful.

**D. Ramesh Sharma v. State of Himachal Pradesh**<sup>22</sup>

The latest judgment of the Himachal Pradesh High Court which dealt with the fact that the religious slaughter should be completely banned because such a practice is based on age old traditions and mystical beliefs which are contrary to scientific temper and logic. Some important ¶ have been reproduced below: -

*“75. The animals have basic rights and we have to recognize and protect them. The animals and birds breathe like us. They are also a creation of God. They have also a right to live in harmony with human beings and the nature. No deity and Devta would ever ask for the blood. All Devtas and deities are kind hearted and bless the humanity to prosper and live in harmony with each other. The practice of animal/bird sacrifice is abhorrent and dastardly.”*

*“76.... It is the man’s special responsibility towards the animals and birds being fellow creatures. We must respect the animals. They should be protected from the danger of unnecessary stress and strains.”*

The agony of death by cutting the throat was rated by medical experts only second to that by burning.<sup>23</sup> PCA Act, 1960 has been enacted to prevent the infliction of unnecessary pain or suffering on animals and cruelty towards animals is punishable under § 11 of the aforesaid Act subject to exception provided in the aforesaid Act. Therefore, the aforesaid Act has been brought into existence to prevent cruelty towards animals and the actual victims of the offence of the above stated Act are animals.<sup>24</sup>

It is Humbly submitted that the ritual of animal sacrifice involves an unimaginable amount of cruelty towards the sacrificial animal, which are often seen lying around in pain and suffering after receiving blows on their necks, which usually does not kill them in first go. Sometimes, the animal tries to escape in a fatally wounded condition, which is very painful.<sup>25</sup>

**E. Varaaki v. UOI**<sup>26</sup>

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<sup>20</sup> Cr.Misc. No.47517 of 2013

<sup>21</sup> Rule 6(5), PCA (Slaughter House) Rules, 2001

<sup>22</sup> CWP No. 4499 of 2012

<sup>23</sup> Ritual Slaughter, <http://www.all-creatures.org/articles/ar-ritual.html>

<sup>24</sup> Sardar Khan & Anr. v. State Of Bihar & Anr., Cr.Misc. No.47517 of 2013

<sup>25</sup> *ibid*

<sup>26</sup> Writ Petition, (C) No. 689 of 2015

This petition dealt with the fact that over the years devotees of various religions in India are perpetrating various inhuman, cruel and blatant acts of violence and slaughter upon animals. It was stated by the Petitioner herein, at the outset, that religion does not in any way condone or prescribe cruelty to animals or other living beings and therefore, the acts of cruelty that are being perpetrated in the name of religion is absolutely misplaced and based on misconstrued interpretation of the concepts of faith and worship rooted in superstition or observance of condemned practices as a result of blind faith which is contrary to scientific temper and reason. The practice of slaughtering of animals in the name of sacrifice does not get the sanction of law neither under S. 28 of the Act nor under Articles 25 and 26 of the Constitution of India.

The Authors herein submits that that the exception provided under S. 28 of the Act does in no manner extend a protection or condonation for animal sacrifice as prescribed by any religion or community. It is submitted that the authors herein that the exception can only be extended to the protection of those methods of killing animals provided as per the religion and not for killing animals in the name of religion per se. It is submitted that the intent and scope of the aforesaid section is to merely protect a particular manner of killing of animals, if provided for by any religion. The concept of *Halaal* and *Dhabihah* as prescribed by the Quran is a method of killing of animals for consumption of meat prevalent amongst devotees of the Islam faith. It is submitted that S. 28 provides for such practices that are mentioned as a manner of killing and not as a blanket sanction for animal sacrifice.

The prominence of values enshrined in the Constitution is above any religious values or values enshrined in any personal or religious law. They have no right, whatsoever, to issue any mandate/dictate in violation of basic human rights of the human beings as well as animal rights. The animals have emotions and feelings like us. Religion cannot be allowed to become a tool for perpetuating untold miseries on animals. If any person or body tries to impose its directions on the followers in violation of the Constitution or validly enacted law, it would be an illegal act.<sup>27</sup>

## CONCLUSION

We need to understand that Saints and supreme religious leaders would come, change and enlighten us on duties and paths according to the necessity of the age. But we need to keep progressing. A society should look forward, of course, by following values of all religions. The essentials of any religion are eternal. The non-essential part such as ritual slaughter is relevant only for some time and cannot be treated as eternal. We have to stand up against the social evils; the society at times is beset with. Social reforms are required to build up a new social order for which we have to take a pragmatic approach.

In the present scenario, the varaaki petition before the Hon'ble Supreme Court seeking ban on slaughter of goats on Bakra Id has been dismissed by September 2015. However, the were allowed to join as a party to the appeal against the Himachal High Court judgment which banned religious slaughter on animals in temples and the matter remains pending before the court. Just as the practices like Sati, child marriage, untouchability,

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<sup>27</sup> Visha Lochan Madan v. UOS and Ors., (2014) 7 SCC 707

female feticide etc. which were once deeply ingrained in our social milieu have almost been eradicated with education and reformational movements as well as judicial interventions, so is expected in th matter of ritual slaughter too.

