

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[ORDER XXI RULE 3(1) (a)]
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2020
(WITH PRAYER FOR INTERIM RELIEF)

[Against the Judgment and final order dated 16.06.2020 passed by the Hon'ble High Court of Kerala at Ernakulam in Writ Petition (C) No.11142/2020(S)]

IN THE MATTER OF:

P.E Gopalakrishnan @ Acharya Thrypuram & Ors. ...Petitioners

Versus

Muraleedharan.T & Ors. ...Respondents

WITH

I.A. NO. _____ OF 2020

**[APPLICATION SEEKING PERMISSION TO FILE SPECIAL
LEAVE PETITION]**

AND

I.A. NO. _____ OF 2020

**[APPLICATION SEEKING PERMISSION TO FILE LENGTHY
SYNOPSIS AND LIST OF DATES]**

AND

I.A. NO. _____ OF 2020

**[APPLICATION FOR EXEMPTION FROM FILING OFFICIAL
TRANSLATION]**

VOL.I

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PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONERS: **A. KARTHIK**

SYNOPSIS

1. The Petitioner is assailing the order dated 16.06.2020 passed by the Hon'ble High Court of Kerala at Ernakulam in Writ Petition (C) No. 11142/2020(S) whereby the challenge to the constitutional validity of Kerala Animals and Bird Sacrifices Prohibition Act, 1968 [hereinafter referred to as the "**impugned Act**"] was dismissed *in limine*. The Hon'ble High Court did not consider the impleadment application (I.A No.4/2020) filed by the Petitioners herein and the contentions raised therein, despite being listed before the Hon'ble High Court on 16.06.2020 when the impugned order was passed.
2. The Kerala Animals and Bird Sacrifices Prohibition Act, 1968 prohibits propitiation of deity through sacrifice of animals and birds in temples and temple precincts. Interestingly, the mental condition alone i.e killing or maiming of any animal for propitiating any deity alone is the core consideration as per the provision of the Act and the converse, if the act is not for propitiating any deity, but for personal consumption even in temple premises, is not forbidden.
3. Petitioner No. 1 herein belongs to a family that has been traditionally following Shakthi worship. He is presently involved in teaching and propagation of *Shakthi* worship practices of which animal sacrifice is an inalterable part. Petitioners Nos. 2 to 4 are *Shakthi* worshippers of which animal sacrifice practices is an integral part. Aggrieved by incomplete performance of *bali* and diminishing the power of the *kula devadha* due to the restrictions imposed by the impugned Act, they reasonably apprehend the wrath of Devi.
4. This Hon'ble Court is currently seized of a similar case involving the prohibition of animal sacrifice for religious purpose in *State of Tripura v. Subhas Bhattacharjee & Ors.* [Special Leave to Appeal (C) Nos.

25280/2019 which was tagged with a pending appeal in *Maheswar Singh and Anr. v. State of Himachal Pradesh and Ors.* [Special Leave to Appeal (C) Nos, 27686-27688/2014]

5. The grounds on which the Constitutional validity of the impugned Act was challenged, and the finding of the Hon'ble High Court can be summarised as under:

A. Violative of Article 14 of the Constitution of India

- i. **Manifest Arbitrariness** - The impugned law reeks of manifest arbitrariness and ought to be struck down for gross violation of Article 14 of the Constitution by considering the disparate effect of the law for following reasons:
- a. The exclusion of identical practices by other religious communities, without the same being founded on any *intelligible differentia* justifying the classification made by the impugned legislation; and
 - b. Criminalisation of animal or bird sacrifice for the purpose of propitiation of deity, while excluding animal or bird sacrifice for all other purposes, such as personal consumption even in or in the precincts of temple premises; and
 - c. The aforementioned classifications are not founded on any rational nexus between the exclusion and the object sought to be achieved by the impugned legislation. On the contrary, if the object of the law were to ensure preservation and protection of animals, it would demand its uniform application across all religious communities.
- ii. Unequal treatment is meted out by the impugned Act because: *first*, selective application only to Hindu temples despite similar practices being carried out in other religious places; *second*, unequal treatment when juxtaposed with the protection granted to other citizens who continue to enjoy exemption due to Section 28 of the Prevention of Cruelty to Animals Act, 1960.

- iii. Questions regarding selectivity of the law was raised in the Legislative Assembly debates, however it was reasoned that in other religious practices, the animals were consumed. This ignores similar practice followed by the Petitioners where sacrifice is only a pre-cursor to offering to the deity and consumption of the meat.
- iv. The impugned Act criminalizes the intent behind the animal sacrifice, and not animal sacrifice *per se*. If the sacrifice is not for propitiating any deity but for personal consumption even in the precincts of temple, it is not forbidden. This arbitrary classification is violative of Article 14 of the Constitution of India. Despite raising the aforementioned grounds, the Hon'ble Court erred in not considering the same as Learned Counsel for the Petitioners therein contended that he is not pressing the ground and thus placing on record that there is no need to advert to the same.
- v. However, in a Petition assailing the constitutional validity of a statute, contentions regarding Part III violation ought not to have been mechanically left unconsidered based on the submissions of the Ld. Counsel. The Hon'ble Court was duty-bound to consider the same despite it not having been pursued by the Ld. Counsels. Further, had the contentions raised in the Impleadment Application filed by the Petitioners herein been considered and not dismissed *in limine* the violation of Article 14 had been vehemently argued.

B. Animal sacrifice is an essential religious practice mandated by religious texts and scriptures

- i. Several doctrinal materials has been placed on record by virtue of a detailed list of scriptural mandate indicating the essentiality and inalterability of the practice of animal sacrifice to the religious customs and traditions of the Petitioners herein.

- ii. Vedic and tantric tests uphold sacrifice of animals as essential to Yajñham and *Yagam*, the performance of which is deemed incomplete in its absence. Some examples indicating the essentiality of the practice:
 - a. *Yajurveda* refers to *awsamedha yagam* in which the sacrifice of animals is essential.
 - b. Among *Kaulas* and *Sakhteyas* animal sacrifice is an integral part.
 - c. *Yagnas* and *Yagas* consider animal sacrifice essential to its performance.
- iii. Without considering the aforementioned contentions, the Hon'ble Court has reasoned that no material has been brought on record to indicate the essentiality of the practice. In stating so, it has not considered the detailed chart annexed in the application for impleadment, regarding essentiality of the practice of animal sacrifice.

C. Unreasonably interferes with the rights of the Petitioners under Articles 25 and 26 of the Constitution of India

- i. Two primary tests have not received judicial consideration: *first*, whether in the absence of this practice the religion is fundamentally altered? And *second*, whether the practice is in conflict with restrictions imposed under Article 25(1) and other rights under Part III of the Constitution?
- ii. The mandate of religious scriptures ought to have been sufficient in understanding the inalterable nature of the practice. This inalterability flows from mandatory nature of the act, coupled with repercussions in the event of non-adherence.
- iii. The Hon'ble High Court has placed reliance upon Part IV and IV-A of the Constitution to draw referential restriction on the exercise of Article 25. This reading relies upon Part IV to erode fundamental rights

conferred under Part III, altering the non-justiciable nature of Part IV of the Constitution of India.

- iv. This flawed interpretation also overlooks the wording of Article 25(1) which is, “*Subject to public order, morality and health and to the other provisions of this Part...*”
- v. The Hon’ble High Court relied upon decision in *Subhas Bhattacharjee v. State of Tripura*. In that case, the Hon’ble Court had relied on scriptures to conclude the obligatory and non-mandatory nature of the act. This is in contrast to the present case where scriptures indicate its mandatory nature coupled with adverse consequences in case of non-adherence. This critical distinction between the two cases has been overlooked.
- vi. Despite this, the Hon’ble Court has proceeded to state that no materials are forthcoming to establish that sacrificing animals and birds are essentials of the religion to drive home the case that impugned Act is interfering with Articles 25 and 26 of the Constitution.

D. The impugned Act (State legislation) is repugnant to The Prevention of Cruelty to Animals Act, 1960 (Central Legislation) and therefore, void in view of Article 254 of the Constitution of India

- i. Both the legislations derive their legislative power from Entry 17 under List III, Schedule VII of the Constitution of India.
- ii. While List III grants legislative power to both the Parliament and the State Assemblies to formulate legislations, the same is subject to Article 254 (1) which states that the laws passed by the Parliament shall gain precedence in cases of conflict.
- iii. While the Central legislation grants an exemption to the killing of animals for religious purposes, the impugned Act selectively criminalizes the same, thus negating the provision of the former.

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- iv. Despite referring to the judgment in *Subhas Bhattacharjee v. State of Tripura*, the Hon'ble Court has failed to engage with a critical aspect of the decision which states that Section 28 prescribes that if an animal is killed in a manner required by the religion of any community, then such killing cannot be construed to be an offence.
 - v. It resorts to a distinction pertaining to the terminologies used, the former employing the term 'killing', and the latter employing the term 'sacrifice'. This is done in ignorance of Section 2(b) of the State Act which defines 'sacrifice' to include within its ambit killing, and maiming.
 - vi. Despite this, the Hon'ble High Court has reasoned that there is no repugnancy between the impugned Act and The Prevention of Cruelty to Animals Act, 1960 (Central Legislation) since the former is to prohibit sacrifice of animals and birds in the precincts of temples in the State of Kerala and the latter is to prevent cruelty to animals.
6. The aforementioned arguments were listed out in a detailed fashion in the Impleadment Application filed by the Petitioners herein before the Hon'ble High Court. However, the dismissal of the writ petition *in limine* without considering the application for impleadment, led to non-consideration of constitutional contentions critical to the determination of constitutional validity of the impugned Act.
 7. Therefore, on account of the above mentioned grounds, the impugned order is liable to be set aside and the Kerala Animals and Bird Sacrifices Prohibition Act, 1968 is liable to be declared as unconstitutional, discriminatory, void and liable to be set aside for violation of Part III of the Constitution of India.
 8. Hence the present Special Leave Petition.

LIST OF DATES

Date	Event
26.01.1950	<p>The Constitution of India, as adopted by the Constituent Assembly came into complete effect on 26.01.1950. The relevant provisions of the Constitution of India for the adjudication of the present SLP are extracted hereinbelow for the sake of convenience:</p> <p><i>“12. Definition.</i></p> <p><i>In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.</i></p> <p><i>13. Laws inconsistent with or in derogation of the fundamental rights.</i></p> <p><i>(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.</i></p> <p><i>(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.</i></p> <p><i>(3) In this article, unless the context otherwise requires,—</i></p>

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

14. Equality before law.

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. (1) *The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

(2) *No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—*

(a) *access to shops, public restaurants, hotels and places of public entertainment; or*

(b) *the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.*

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(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

25. Freedom of conscience and free profession, practice and propagation of religion.

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

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(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

PART XI

RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I.—LEGISLATIVE RELATIONS

Distribution of Legislative Powers

245. Extent of laws made by Parliament and by the Legislatures of States.

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of

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India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra- territorial operation.

246. *Subject-matter of laws made by Parliament and by the Legislatures of States.*

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

254. *Inconsistency between laws made by Parliament and laws made by the Legislatures of States.*

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(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

1960 The Union Parliament passed the Prevention of Cruelty to Animals Act, 1960 with the objective to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals.

The relevant provisions necessary for the present dispute in extracted hereinbelow:

“ 11. Treating animals cruelly.— (1) If any person —

(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated; or

(b) employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed;

(c) wilfully and unreasonably administers any injurious drug or injurious substance to any animal or wilfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any animal; or

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

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(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h) being the owner of 1[any animal] fails to provide such animal with sufficient food, drink or shelter; or

(i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or

(j) wilfully permits any animal, of which he is the owner, to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or

(k) offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or

(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or

(m) solely with a view to providing entertainment—

(i) confines or causes to be confined any animal (including tying of an animal as a bait in

a tiger or other sanctuary) so as to make it an object of prey for any other animal; or

(ii) incites any animal to fight or bait any other animal; or

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(n) organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o) promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting;

- he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both

(2) For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

*(3) Nothing in this section shall apply to—
(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or*

(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering.

28. Saving as respects manner of killing prescribed by religion.— Nothing contained in this Act shall render it an offence to kill any animal in a manner required by the religion of any community.”

A true copy of the Prevention of Cruelty to Animals Act, 1960 is herewith annexed and marked as **ANNEXURE P-1 [Pages 129 to 149]**.

- 26.12.1960 The Prevention of Cruelty to Animals Act, 1960 received the assent of the President of India on 26th December, 1960.
- 15.07.1963 The Central Government *vide* Notification No. S.O. 2000, dated 11th July, 1963 appointed 15.07.1963 as the date the Act would come into force in respect of the States of Assam, Andhra Pradesh, Bihar, Gujarat, Kerala, Madras, Maharashtra, Madhya Pradesh, Mysore, Orissa, Rajasthan, Uttar Pradesh and West Bengal and in respect of the Union territories of Delhi, Himachal Pradesh, Manipur and Tripura.

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Sri P Ramunni Kurup, Member of Legislative Assembly of Kerala, moved the Kerala Animals and Birds Sacrifices Prohibition Bill, 1968 before the Assembly to be finally passed.

Sri C.H Muhammed Koya (then Education Minister of Kerala), Member of Legislative Assembly of Kerala seconded the Bill.

Whereas, there was a detailed discussion on the Bill, Sri K.C. Zakariah rightly pointed out that the *“Bill that ensures protection to animals and birds is really a good Bill. But in the preamble of this Bill it is said that the Bill is applicable only to Hindu temples. My suggestion is to consider this on a broad basis. It is not only in Hindu temples that we find the slaughtering of goats and chicken. Lakhs of chickens are slaughtered in Christian churches in relation to feasts and other celebrations. For example, in the Puthupally church a lot of chickens received as offerings during feasts are slaughtered.”*

It was further pointed out by Sri. P Unnikrishnapilla, Member of the House, that there were a lot of Hindus in his constituency Karunagapally who go to Puthupally church that sent chickens to the church as offerings. Also, that the chickens are then slaughtered there in the way of sacrifice.

Pursuant to the above discussion, it was proposed by Sri K.C. Zakariah that in the Preamble, “Christain churches” should be added after “Hindu Temple”. Since he has witnessed chicken heads lying in the front yard of the Puthuppaly church like stars

in the sky. That it shouldn't be restricted only to Hindu temples and "Christian churches" should also be added in the Preamble.

Sri. K.M George remarked that it was quite natural that the habit of giving goats, chickens or any other poultry as offerings in temples, churches and mosques by believers.

Sri P Ramunni Kurup (Minister for Irrigation and Co-operation) remarked on the sacrifices held at Christian churches, that they are slaughtered to be eaten and that the government wished to leave the slaughtering of animals for food to the belief and heart of the one doing it.

After the brief discussion, the Kerala State Assembly passed the Kerala Animals and Birds Sacrifices Prohibition Bill, 1968.

A true translated copy of record of discussion of the Kerala State Assembly before it passed the Kerala Animals and Birds Sacrifices Prohibition Bill, 1968 is herewith annexed and marked as **ANNEXURE P-2 [Pages 150 to 155]**.

17.09.1968 The State Legislature of Kerala passed the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 with the objective to consolidate and amend the laws relating to prohibition of the sacrifice of animals and birds in or in the precincts of Hindu temples in the State of Kerala.

The relevant provisions of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 necessary for the adjudication of the present dispute is extracted hereinbelow:

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“Sec. 2 (b) "sacrifice" means the killing or maiming of any animal or bird for the purpose, or with the intention, of propitiating any deity;

Section 3. Sacrifice of animals and birds in temples or its precincts prohibited.- No person shall sacrifice any animal or bird in any temple or its precincts.

Sec. 4. Officiating at sacrifice, etc., prohibited.-

No person shall –

(a) officiate or offer to officiate at, or

(b) perform or offer to perform, or

(c) serve, assist, or participate, or offer to serve, assist or participate, in any sacrifice in a temple or its precincts.

Sec. 5. Temple or its precincts not to be allowed to be used for sacrifice .- No person shall knowingly allow any sacrifice to be performed at any place which-

(a) is situated within any temple or its precincts, and

(b) is in his possession or under his control.

Sec. 6. Penalties.-

(1) Whoever contravenes the provisions of section 3 shall be punishable with fine which may extend to three hundred rupees.

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(2) Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to three hundred rupees:

Provided that if the offender is an officer, servant, authority trustee or priest of the temple or the holder of any office in receipt of emoluments or perquisites for the performance of any service in the temple, he shall be punishable with simple imprisonment for a terms which may extend to three months, or with fine which may extend to three hundred rupees, or with both.

(3) Whoever contravenes the provisions of section 5 shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extent to three hundred rupees, or with both.”

The Kerala Animals and Bird Sacrifices Prohibition Act, 1968 prohibits propitiation of deity through sacrifice of animals and birds in temples and temple precincts. Interestingly, the mental condition alone i.e., killing or maiming of any animal for propitiating any deity alone is the core consideration as per the provision of the Act and the converse, if the act is not for propitiating any deity, but for personal consumption even in temple premises, is not forbidden.

A true copy of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is herewith annexed and marked as **ANNEXURE P-3 [Pages 156 to 158]**.

2012 One Ms. Sonali Purewal filed a Writ Petition viz. CWP No. 5076 of 2012 before the Hon’ble High Court of Himachal

Pradesh at Shimla raising the issue of slaughtering of thousands of animals in the name of religious sacrifice by devotees throughout the State of Himachal Pradesh. Ms. Sonali Purewal pleaded that this practice was not in conformity with Article 51-A (h) of the Constitution of India seeking direction to the State to stop illegal animal slaughtering in the temples and public places and direction to the Deputy Commissioners of all the District of Himachal Pradesh to ensure complete ban on animal sacrifices in temples and public places.

26.09.2014 The Hon'ble High Court of Himachal Pradesh at Shimla decided CWP No. 5076 of 2012 along with CWP No. 4499 of 2012 and CWP No. 9257 of 2011 by judgement and final order dated 26.09.2014, allowed the Writ Petition CWP No. 5076/2012 and issued the following mandatory directions, prohibiting/banning animal/bird sacrifice in the temples and public places, directing that:

1. No person throughout the State of Himachal Pradesh shall sacrifice any animal or bird in any place of religious worship, adoration or precincts or any congregation or procession connected with religious worship, on any public street, way or place, whether a thoroughfare or not, to which the public are granted access to or over which they have a right to pass;
2. No person shall officiate or offer to officiate at, or perform or offer to perform, or serve, assist or participate, or offer to serve, assist, or participate, in any sacrifice in any place of public religious worship or adoration or its precincts or in any congregation or procession, including all lands,

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buildings near such places which are ordinarily used for the purposes connected with religious or adoration, or in any congregation or procession connected with any religious worship in a public street;

3. No person shall knowingly allow any sacrifice to be performed at any place which is situated within any place of public religious worship, or adoration, or is in his possession or under his control;
4. The State Government shall publish and circulate pamphlets henceforth to create awareness among the people, to exhibit boards, placards in and around places of worship banning the sacrifice of animals and birds;
5. The State Government shall give due publicity about the prohibition and sacrifice in media both audio and visual, electronic and in all the newspapers; and
6. The Deputy Commissioners and Superintendents of Police of all the Districts shall personally be responsible to prevent, prohibit the animal / bird sacrifices throughout the State of Himachal Pradesh.
7. The expression 'temple' would mean a place by whatever designation known, used as a place of public worship and dedicated to, and for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship. The temple premises shall also include building attached to the temple, land attached to the temple, which is generally used for the purposes of worship in the temple, whether such land is in the property

of temple area or place attached to the temple or procession is performed.

A true copy of the judgement of the Hon'ble High Court of Himachal Pradesh at Shimla in CWP No. 5076 of 2012 is herewith annexed and marked as **ANNEXURE P-4 [Pages 159 to 268]**.

The judgement of the Hon'ble High Court of Himachal Pradesh at Shimla in CWP No. 5076 of 2012 was challenged before this Hon'ble Court by filing of Special Leave to Appeal (C) Diary No. 32595/2014.

08.10.2014 This Hon'ble Court was pleased to grant permission to file the SLP in Special Leave to Appeal (C) Diary No (s). 32595/2014 and issue notice by the Order dated 08.10.2014.

A true copy of the order dated 08.10.2014 of this Hon'ble Court in Special Leave to Appeal (C) Diary No (s). 32595/2014 is herewith annexed and marked as **ANNEXURE P-5 [Pages 269 to 270]**.

10.04.2017 This Hon'ble Court, by the Order dated 10.04.2017 in Special Leave to Appeal (C) Nos. 27686 - 27688 of 2014, was pleased to grant Special Leave to Appeal the judgement of the Hon'ble High Court of Himachal Pradesh at Shimla in CWP No. 5076 of 2012.

This Hon'ble Court further directed that in the meantime, if any slaughter of animals was done for the purposes involved in the petitions, it should be done in an area which is set up in accordance with law and that the Municipal Authority shall ensure such compliance. A true copy of the Order dated

10.04.2017 of this Hon'ble Court in Special Leave to Appeal (C) Nos. 27686 - 27688 of 2014 is herewith annexed and marked as **ANNEXURE P-6 [Pages 271 to 272]**.

After the grant of special leave by this Hon'ble Court, Special Leave to Appeal (C) Nos. 27686 - 27688 of 2014 were renumbered as C.A. Nos. 5195 - 5197/2017 respectively and are pending before this Hon'ble Court.

27.09.2019 Meanwhile, the Hon'ble High Court of Tripura at Agartala had an occasion to consider similar questions in Writ Petition (C) (PIL) No. 2/2018 which are as below:

“Whether act of the State in offering an animal for sacrifice in the Temples in Tripura, can be said to be a secular activity and as to whether prohibiting the same would infringe the Fundamental Right, as envisaged under Article 25(1) of the Constitution of India?”

“Whether the age long practice of 500 years of sacrificing animals, after stoppage of practice of human sacrifice, in Tripureswari Devi Temple, Udaipur, Gomati District, Tripura can be construed as an essential and integral part of religion, as protected under Article 25(1) of the Constitution of India?”

And as a corollary, “Whether a religious practice based on a ritual, custom, tenet, tradition, not being an essential part of religion, can be allowed to continue notwithstanding the provisions of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as ‘the Prevention Act’) and Article 21 (Part - III) & Article 48, 48A and 51A(g) (Part IVA) of the Constitution of India?”

The Hon'ble High Court of Tripura at Agartala answered the above stated questions in the following terms:

1. That the State by an enactment can only regulate or restrict any economic, financial, political or secular activity which may be associated with a religious practice. The role of the Government in regular activities of the temple is limited to such religious activities which are secular in nature. Act of the State of offering one goat every day, for a sacrifice in the Mata Tripureswari temple and other temples on certain occasions, lacks the essence of economic, commercial, political or secular character and hence, the action of the State in offering such an animal for sacrifice is neither permissible under the Indian Constitution nor any statute. That the right of offering an animal for sacrifice is not an integral and essential part of the religion, protected under Article 25 (1) of the Constitution. As such, no right of the freedom of professing any religion by the State can be said to have been violated. State has no religion other than constitutionalism and the expression 'person' under Article 25 has to be in reference to natural person (Sabarimala). Withdrawal of such practice would not tantamount to any change, fundamental in character of the religion.
2. The age long practice of a sacrifice of animal, either by the State or by an individual, cannot be said to be an essential part of the religion and as such, is not protected under Article 25(1) for it being against the principle/doctrine of morality and health, as also provisions of the Prevention of Cruelty to Animal Act, 1960.

Right to freedom of religion is subject to the rigours of public order, morality, health and the other provisions of Part-III. Sacrifice of an animal in a temple, not being an essential part of religion, is also violative of Article 21 of the Constitution of India.

3. That Constitutional values are to be embraced and not to be superseded by personal beliefs. Religious practice, not being an integral and essential part of religion cannot override the provisions, specifically Section 3 of Prevention of Cruelty to Animal Act and other provisions of Part III, Part IV and Part IVA of the Constitution. Section 28 of the Prevention Act merely makes killing for a religious purpose not a punishable crime and more so in the light of the Article 25 does not make it permissible to commit such acts in the temple. Section 28 of the Prevention Act has to be interpreted in the light of Article 21, 48, 48A, 51A(g), 51A(h) and 51(A) (i) of the Constitution.

A true copy of the judgement of the Hon'ble High Court of Tripura at Agartala in Writ Petition (C) (PIL) No. 2/2018 is herewith annexed and marked as **ANNEXURE P-7 [Pages 273 to 344]**.

Petitions were filed before this Hon'ble Court appealing the judgement of the Hon'ble High Court of Tripura at Agartala in Writ Petition (C) (PIL) No. 2/2018.

08.11.2019 This Hon'ble Court in the State of Tripura v. Subhas Bhattacharjee & Ors. viz. Special Leave Petition (C) No. 25280/2019 passed an Order in the following terms:

1. Granted Special Leave to Appeal the impugned order of the of the judgement of the Hon'ble High Court of Tripura at Agartala in Writ Petition (C) (PIL) No. 2/2018.
2. Granted permission to file Special Leave Petition D. No. 38604/2019.
3. By way of an interim order directed that if any slaughter of animals is done for the purposes involved in the petitions, it shall be done in an area which is set up in accordance with law. The Municipal Authority shall ensure such compliance.
4. Tagged the Special Leave Petition (C) No. 25280/2019 with C.A. Nos. 5195-5197/2017.

A true copy of the Order dated 08.11.2019 passed by this Hon'ble Court in Special Leave Petition (C) No. 25280/2019 is herewith annexed and marked as **ANNEXURE P-8 [Pages 345 to 346]**.

03.06.2020 Mr. Muraleedharan T. and Mr. Vimal C.V. filed a Writ Petition viz. W.P. (C) No. 11142 of 2020 before the Hon'ble High Court of Kerala challenging the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 on the following facts:

1. That they were Hindus by birth and profess and practice Hindu religion and its textual directions as well.
2. That they hail from Northern Kerala, which is famous for the innumerable traditional 'Saaktheya Kavuvu' where

Saaktheya rituals were being performed as per Textual prescriptions which include sacrifice of Animals, subsequently the flesh of which will be cooked and consumed after the ritual as 'Holy Prasadam'. That the practice for long has been discontinued on account of the prohibition in that regard prevalent in Kerala.

3. That they are reasonably articulate in religious texts in Hinduism, Christianity and Islam.
4. That the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 succeeded the Madras Animals and Birds Sacrifices Prohibition Act, 1950 and the Travancore-Cochin Animals and Birds Sacrifices Prohibition Act, 1953.
5. That while the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 prohibits killing or maiming of any animal or bird for the purpose or with the intention of propitiating any deity, it does not prohibit killing of animals.
6. That Hindu religious texts assert that animal and bird sacrifices for the purpose of propitiating the deity is sacrosanct. That references to Hindu Texts including Vedas are innumerable in this regard. That temple practices essentially require sacrifice of birds or animals but with a higher mental composure.
7. That other religions like Christianity, Islam or the like also have similar practices. There are dedicated passages and writings there in bible itself glorifying the sacrament. Even in special masses and festivals

performed in Christian churches animals are killed and used for feast of the devotees. Same practices are applied in Islam religion as well and every killing done as Halal is sacrifice to almighty under Islam.

8. That petitioners and persons like petitioners strongly believe that due to the restraint on sacrifice of animals and birds as mentioned in the religious texts of Hindu religion, for propitiation deities, the blessings from the deities are not properly conferred on them. The sacrifice is done for specified deities, as per the Texts.
9. That the prohibition under the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is arbitrary and discriminatory of integral and essential practices of the Hindu religion.

The Writ Petition contested the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 on the following grounds:

1. That the field of legislation vis-a-vis prevention of cruelty to animals is traceable to entry 17 under List III Schedule VII of constitution of India. That the Parliament had enacted the Prevention of Cruelty to Animals Act, 1960. Therefore, the power exercised by the Parliament as by the above legislation makes the Act of 1960 conclusive and that the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is repugnant to the Prevention of Cruelty to Animals Act, 1960 and consequently void.

2. That while the Act prohibits killing animals as a sacrifice as an offer to the Gods, it does not prohibit killing of animals. That the Act is irrational and unreasonable.
3. That this Hon'ble Court in innumerable decisions concluded that Art 25 and 26 of the Constitution of India duly protect religious practices which had been in practice for long. That all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion under Article 25 of the Constitution of India. That the practices which are not against public order, morality and health cannot be forbidden as per law.
4. That sacrifice in a Hindu temple by a Hindu or any person in the State of Kerala is forbidden whereas same practice outside Kerala is permitted. Thus, the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is discriminatory.
5. That other religions have similar practices and yet these practices in other religions are not prohibited. That discriminating Hindus by prohibiting their religious practices, as opposed to permitting other religions like Christianity, Islam or the like to continue similar practices is violative of Art 14 and 15 of the Constitution of India.
6. That the 'Yajurveda' in particular refers about "awsamedha yagam" and other rituals in which sacrifice of animals is an essential part. Likewise, among "Kaulas" and "sakhteyas", animal sacrifice is an integral

part as per the texts applicable to them. The ‘Yajna’s’ and ‘Yagas’ consider this as an integral part in its performance. Therefore, the enactment is forbidding integral and essential part of the Hindu religious practice, and therefore violative of Art 25 of the Constitution of India.

A true copy of the Writ Petition filed by Mr. Muraleedharan T. and Mr. Vimal C.V. viz. W.P. (C) No. 11142 of 2020 before the Hon’ble High Court of Kerala at Ernakulam is herewith annexed and marked as **ANNEXURE P-9 [Pages 347 to 364]**.

10.06.2020 Mr. Vasudevan Bhattathirippad, Mr. P.T. Narayanan Bhattathirippad, Mr. Agnisarman Vasudevan Bhattathirippad, Mr. Shambhu Madhavan Potti and Mr. O.R. Sreekanthan filed a common Petition viz. I.A. No. 1 of 2020 for impleadment in W.P. (C) No. 11142 of 2020 before the Hon’ble High Court of Kerala under Rule 148 of the Kerala High Court Rules on the following grounds:

1. That they were necessary and essential parties to the above-mentioned writ petition as they are vitally interested in the adjudication of the subject matter in issue therein and they were persons directly affected by the outcome of the above-mentioned writ petition.
2. That Mr. Vasudevan Bhattathirippad is the Thanthri (hereditary Chief Priest) of more than 400 temples across Kerala, Tamil Nadu and Karnataka including Aattukal Devi Temple. That Mr. P.T. Narayanan Bhattathirippad is also hereditary Thanthri of nearly 500 temples in various parts of India including Nagarkovil and Panayannarkavu

temples. That Mr. Agnisarman Vasudevan Bhattatirippad is having *thanthram* in more than 500 temples across India including Aranmula and Pallimukkam. That Mr. Shambhu Madhavan Potti is Thanthri of Aryankavu and nearly 200 other temples. That Mr. O.R. Sreekanthan is a retired civil servant and is the working President of Shakta Collective and an ardent worshipper of Thanthric path.

3. That not far away from the High Court Buildings in the well-known Edappally church, every year a large number of birds are sacrificed in the church premises, cooked there and eaten as part of the religious practices. Yet nobody has so far touched that practice till date solely because the scarifying of birds in churches are not covered by the Kerala Animals and Birds Sacrifices Prohibition Act, 1968. If such sacrifice is made in a Hindu temple or close to it, that will attracted penalty under the Kerala Animals and Birds Sacrifices Prohibition Act, 1968. There cannot be a more blatant discriminatory Act than the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 passed by the State Assembly of Kerala.
4. That it is common knowledge that the very festival Bakrid, practiced by the Muslims is primarily sacrificing goats a ritual practiced by believers for centuries together. The very expression “Bakri” indicates goat. Thus, large number of goats are sacrificed throughout India including Kerala, even within the premises of Mosques during Bakrid. That while the practices of Islam is not touched by the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 it seeks

to prohibit Hindu practices. The Kerala Animals and Birds Sacrifices Prohibition Act, 1968 amounts to blatant discrimination against the Hindus and therefore, cannot be sustained in view of the equality clauses in the Constitution of India.

5. That the provisions of the Prevention of Cruelty to Animals Act, 1960 that specifically permits sacrificing of an animal as ritual in Hindu temples throughout India which is a Central Act is occupying the legislative field. That occupied field cannot be touched by any legislation by the State, in view of the constitutional bar particularly contained in Articles 245 and 254 of the Constitution of India.
 6. That a Five Judge Bench decision of this Hon'ble Court in the case relating to entry of woman in Sabarimala has declared in unmistakable terms and there cannot be discrimination even between men and women among those professing Hinduism, and that there cannot be discrimination between different religions. The Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is therefore, liable to be declared altogether void and inoperative on account of flagrant violation of the equality clauses of the Constitution of India besides conflict with the Central law occupying the field already.
- seeking to be impleaded as additional Respondents in the abovementioned Writ Petition and be permitted to file a Counter Affidavit and to urge all important constitutional issues arising in the case.

II

A true copy of the Impleadment Application filed by Mr. Vasudevan Bhattathirippad, Mr. P.T. Narayanan Bhattathirippad, Mr. Agnisarman Vasudevan Bhattathirippad, Mr. Shambhu Madhavan Potti and Mr. O.R. Sreekanthan viz. I.A. No. 1 of 2020 in W.P. (C) No. 11142 of 2020 before the Hon'ble High Court of Kerala at Ernakulam is herewith annexed and marked as **ANNEXURE P-10 [Pages 365 to 371]**.

15.06.2020 The Petitioners namely Mr. P.E Gopalakrishnan @ Acharya Thrypuram, Mr. Amulraj K.K, Mr. Raji. V, Mr. Babu N.K filed a common Petition viz. I.A. No. 4 of 2020 for impleadment in W.P. (C) No. 11142 of 2020 before the Hon'ble High Court of Kerala under Rule 148 of the Kerala High Court Rules on the following grounds:

1. That the Petitioners are necessary and essential parties in W.P. (C) No. 11142 of 2020 before the Hon'ble High Court of Kerala, as they are vitally interested in the adjudication of the subject matter in issue herein and are persons directly affected by the outcome of the writ petition.
2. That the Petitioner No. 1 is a Sri Vidya Upasaka and belong to the Guru lineage of Sri Bhasurananda Natha (BhaskaraRayaMakhin) and a disciple of Sree AnangananadaNatha Padatheertha and belong to a family that has been traditionally following Shakti worship. That the Petitioner No. 1 has authored several books on Shaktheyam and Shakthi worship namely Shakteya Tatwam, Kaali Tatwam, Anushtana Laghu Padathi, Shaktheya Pooja Padathi, Communism-Vedantham-

Tantram, Bija-akshara Nighnadu, Oru Sadhakante Kannadi, Shakthi Pooja Rahayasam all dealing with Shaktheya practices and Shakthi pooja in detail That the Petitioner No. 1 also attended and presented papers on Sri Vidya Upasana, Tantra Shastra and Shiva Tatvam at various International conferences.

3. The Petitioners No. 2 to 4 are members of Scheduled caste communities who are Shakthi worshippers for generations and Saktha practices are an integral part of their communal culture. The family deities of the Petitioners are Shakthi form of female Goddesses who they believe are protectors of their life and harmony. The family deities (Kula Paradevadha) of all the Petitioners are Bhadrakali form of Devi which are embodied and worshipped in various temples where these deities were consecrated through animal/bird sacrifice until a prohibition was created by the Kerala Animals and Birds Sacrifices Prohibition Act, 1968. Ever since such restrictions, the Petitioners are unable to perform 'bali' rituals which they believe is diminishing the power of the kula devadha. The Petitioners have strong faith in the power of Devi and reasonably apprehend that the wrath of Devi due to incomplete consecration might bring disturbances to their peaceful lives.
4. Shaktism or Shakthi tantric practices are a major tradition of Hinduism, wherein the metaphysical reality is metaphorically considered as a woman and Shakti is regarded as Supreme. It includes many goddesses, all considered as manifestations of the same supreme Goddess.

Shaktism is based on Upasana of Dash-Maha vidyas, the 10 forms of parah-shakti. Shaktism has different sub-traditions, ranging from those focused on gracious Parvati to that of fierce Bhadrakali. In Shakthi worship as per its scriptures and practices popularly known as “pramanas”, animal sacrifice is essential and unavoidable for the propitiation of the deity and necessarily forms a part of the consecration by the devotee or shakti worshipper.

5. The Petitioners are adversely affected by the prohibition imposed by the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 since the sacrifice of animals/birds is an essential element in the consecration of the Sakthi according to the ancient scriptures and texts. Ever since the ban on animal sacrifice was imposed by the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 the Petitioners are employing representational methods including use of Ash Gourd (“Kumbalanga”) to carry out rituals in connection with animal sacrifice which Shakteya tradition believe as an incomplete/flawed consecration.
6. That the purpose of the act is not to provide a protection for animals but to prevent any acts of killing or maiming with the sole intention of propitiating the deity. Any other form of killing or maiming for any other purpose is not prohibited under the said act and hence the operation of the act is limited to its intervention with the religious practices of members of Hindu religion. The Petitioners also beg to submit that the act of animal sacrifice forms part of an essential religious practice of Shakthi worshippers and

hence the statute is violative of Article 25 and 26 of the Constitution of India.

7. Additionally, in a pluralistic society like that of Kerala, where several religions coexist, a State intervention in the form of a legislation exclusively to prohibit the religious sacrifice and killing of animals/birds by members of a particular community alone is arbitrary and violative of Article 14.
8. Resultantly, Hindu communities practicing animal/bird sacrifice for consecration of their deities are singled out and expressly prohibited from carrying out the same. Such state interference in the religious practices of a religion/community without reasonable justification or rationale is itself arbitrary in nature and violative of Article 14, 25 and 26 of the Indian Constitution. That the Petitioners 2 to 4 belong to scheduled caste communities who are devout believers of Bhadrakali Devi and practitioners of Shakti tantric practices for generations. The essential nature of animal sacrifices in tantric practices is indisputable and hence the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is an unwarranted and arbitrary interference in the cultural and religious practices of socially oppressed communities and a violation of the Fundamental Rights guaranteed to them by the Constitution of India.
9. That prevention of cruelty to animals is a subject matter included as Entry No. 17 in the Concurrent list and the Parliament has already promulgated a legislation viz. the

Prevention of Cruelty to Animals Act in 1960. In Section 28 of the said act even though an exemption is granted for killing of animals for religious practices of a community, the State legislation under challenge in this writ petition penalizes such act provided it happens in or in the precincts of a Hindu temple. On a close reading of both legislations, section 28 of the Central Act and Section 3 of the State Act are repugnant to each other, in which circumstances the provision of the Central act should prevail as per Article 254 of the Constitution of India.

- seeking to implead the Petitioners in the accompanying Interlocutory Application as additional respondents in W.P. (C) No. 11142 of 2020 before the Hon'ble High Court of Kerala and permit them to file a counter affidavit placing all necessary materials and contentions before the Hon'ble Court of Kerala for a detailed consideration of the Constitutional validity of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968.

A true copy of the Impleadment Application filed by Mr. P.E Gopalakrishnan @ Acharya Thrypuram, Mr. Amulraj K.K, Mr. Raji. V, Mr. Babu N.K viz. I.A. No. 4 of 2020 in W.P. (C) No. 11142 of 2020 before the Hon'ble High Court of Kerala at Ernakulam is herewith annexed and marked as **ANNEXURE P-11 [Pages 372 to 383]**.

The case status taken from the website of the Hon'ble High Court of Kerala shows that the above-mentioned application was filed on 15.06.2020 before the Hon'ble High Court.

A true copy of the case status W.P. (C) No. 11142 of 2020 taken from the website of the Hon'ble High Court of Kerala at Ernakulam is herewith annexed and marked as **ANNEXURE P-12 [Pages 384 to 385]**.

16.06.2020 The Hon'ble High Court of Kerala, by final judgment and order dated 16.06.2020 dismissed W.P. (C) No. 11142 of 2020 and all applications therein, holding that there was no repugnancy between the Prevention of Cruelty to Animals Act, 1960 and the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 and therefore, upheld the constitutional validity of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968. The impleadment application filed by the Petitioners was not considered by the Hon'ble High Court and therefore the Petitioner was not permitted to advance any argument before the Hon'ble High Court.

The Hon'ble High Court dismissed W.P. (C) No. 11142 of 2020 holding as follows:

1. That there was no repugnancy between the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 and the Prevention of Cruelty to Animals Act, 1960 and that both the legislations operated in different fields with different objects.
2. That ground has been raised that other religions practice such sacrifices whereas the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 only prohibits only Hindu practices allowing similar practices of other religions thereby violating Article 14 of the Constitution of India,

and yet the learned Counsel for the Petitioners did not press the ground and there was no need to address the same.

3. That no materials were forthcoming to establish that sacrificing animals and birds is an essential part of the religion to drive home the case that the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is violative of Articles 25 and 26 of the Constitution of India.

With regard to the abovementioned observations of the Hon'ble High Court of Kerala, the Petitioners herein would like to submit the following

1. It is pertinent to mention that the Hon'ble Kerala High Court has not considered the ground of violation Article 14 of the Constitution of India, that the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 prohibits Hindu practices but not similar practices of other religions, since the Counsel for the Writ Petitioners in W.P. (C) No. 11142 of 2020 did not press the ground. That the Hon'ble High Court of Kerala, being a Constitutional Court dealing with the constitutionality of a Statute, should have tested the impugned legislation on Article 14 of the Constitution of India immaterial of whether the Counsel pressed it before the Hon'ble Court.
2. That the present Petitioners had filed a detailed impleadment Application before the Hon'ble High Court of Kerala wherein the Petitioners provided a detailed extract of the various traditional Hindu scriptures and texts that extensively discuss about animal/bird sacrifice as an essential part of the consecration in Sakthi worship.

3. That the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is repugnant to the provisions of the Prevention of Cruelty to Animals Act, 1960 insofar as the Act operates in the same entry and criminalizes an act which the Union Legislation chooses explicitly not to criminalize.

The Hon'ble High Court of Kerala upheld the constitutional validity of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968.

IMPUGNED ORDER

25.06.2020 Hence, the present SLP.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

[ORDER XXI RULE 3(1)(a)]

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2020

(WITH PRAYER FOR INTERIM RELIEF)

BETWEEN:

POSITION OF PARTIES

**Before the In this
High Court Hon'ble
Court**

1. P.E Gopalakrishnan @ Acharya Thrypuram	Not a Party	Petitioner No.1
2. Amulraj K.K	Not a Party	Petitioner No.2
3. Raji. V	Not a Party	Petitioner No.3
4. Babu N.K	Not a Party	Petitioner No.4

VERSUS

1. Muraleedharan T.	Petitioner No.1	Contesting Respondent No.1
2. Vimal C.V.		No.1
3. State of Kerala		
4. Union of India	Petitioner No.2	Contesting Respondent No.2
5. Animal Welfare Board		
	Respondent No.1	Contesting Respondent No.3
	Respondent No.2	Contesting Respondent No.4
	Respondent No.3	Contesting
	Respondent No.5	

TO,
THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the present Special Leave Petition is being preferred against the judgment and final order dated 16.06.2020 passed by the Hon'ble High Court of Kerala at Ernakulam in Writ Petition (C) No.11142/2020(S) wherein the Hon'ble Court upheld the constitutional validity of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 reasoning that there was no repugnancy between the Prevention of Cruelty to Animals Act, 1960 and the Kerala Animals and Birds Sacrifices Prohibition Act, 1968. However, in considering the constitutional validity of the aforementioned Act, the Hon'ble High Court has not considered Impleadment Application No.4/2020 filed by the Petitioners herein, therefore, the judgment has been passed in the absence of hearing of all concerned parties, and consideration of the contentions put forth by them.

2. **QUESTIONS OF LAW:**

The following substantial questions of law arise for consideration by the Hon'ble court:

- A. Whether the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is liable to struck down applying the Doctrine of Manifest Arbitrariness?
- B. Whether the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is violative of the right to equality safeguarded under Article 14 of the Constitution of India insofar as the Act has no rational basis to prohibit the animal sacrifice only in or in the precincts of Hindu temples for the purpose of propitiating their deity whereas allow other religions to practice sacrificing animals or birds for the purpose of propitiating their deity?
- C. Whether the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is violative of the right against discrimination safeguarded under Article 15 of the Constitution of India insofar as the Act amounts to discrimination on the ground of religion alone?
- D. Whether claims regarding violation of Constitutional Rights protected under Part III of the Constitution of India can be left without adjudication on account the same not having been pursued by the Counsel?
- E. Whether the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is in violation of the religious freedoms secured under Article 25 of the Constitution in light of the essentiality of animal sacrifice decipherable through religious scriptures of Hinduism?
- F. Whether Section 28 of the Prevention of Cruelty to Animals Act, 1960 grants exemption from culpability to acts which are carried out pursuant to religious dictums?
- G. Whether the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 is repugnant to the provisions of the Prevention of Cruelty to Animals Act, 1960 and therefore void in view of Article 254 of the Constitution of India?

- H. Whether the Hon'ble High Court should have entered into the merits of the challenge and the assumption of non-availability of material at the stage of admission?
- I. Whether the challenge to constitutional validity of a Statute be dismissed *in limine* by the High Court exercising powers under Article 226 of the Constitution?

3. **DECLARATION IN TERMS OF RULE 3(2):**

The Petitioner states that no other petition seeking special leave to appeal against the final judgment and order dated 16.06.2020 passed by the Hon'ble High Court of Kerala at Ernakulam in Writ Petition (C) No.11142/2020(S).

4. **DECLARATION IN TERMS OF RULE 5:**

The averments regarding Annexure P - 1 to P - 12 were pleaded before the Court below. Since the Petitioners were not made a party before the Hon'ble Court, the present Special Leave Petition is being filed along with an application seeking permission to file the same. The said annexures produced along-with the present special leave petition are true copies of the documents and are required for proper adjudication of the present petition

5. **GROUND:**

The present special leave to appeal is sought on the following grounds without prejudice to one another:

Violation of Article 14 of the Constitution of India

- A. Because, it is to be noted that the arguments regarding violations of Article 14, among other constitutional contentions, had been raised before the Hon'ble High Court in I.A No. 4/2020, however since the

application was dismissed *in limine*, none of the arguments advanced received judicial consideration. This was despite the fact that the said application was on record on the date of passage of the impugned judgment. Further, the impugned judgment makes no reference to I.A No. 4/2020 or the contentions raised therein.

- B. Because, the Hon'ble High Court has erred in not considering the contention regarding violation of fundamental rights enshrined in Part III of the Constitution citing the following reasoning:

“Though grounds have been raised that other religions permit sacrifices and that there is discrimination, violating Article 14 of the Constitution of India, Mr.P.Sathisan, learned counsel for the petitioners, contended that he is not pressing the ground. Placing on record, there is no need to advert to the same.”

However, the Hon'ble High Court ought to have examined this critical challenge to the Act, irrespective of whether the same has been pressed by the Counsels. In the absence of this, inequality and arbitrary State action which strike the heart of the Act have wholly been left unconsidered by the Hon'ble Court.

- C. Because, a perusal of the object and reasons for the Act would indicate the selective, and arbitrary nature of its application. The object and reasons of the impugned Act is as follows:

“An Act to consolidate and amend laws relating to prohibition of the sacrifice of animals and birds in or in the precincts of Hindu temples in the State of Kerala.”

Therefore, the applicability of the Act is confined to the following:

- i. Hindus; and
- ii. Animal or bird sacrifices carried out in or in the precincts of temples.

In light of this, the foremost question that ought to have been answered is whether the Act can withstand the test of equality in light of its selective application to Hindus in the state of Kerala. Article 14 mandates equality before law and equal protection of all laws within the territory of India. In the instant case, only one religious denomination has faced legislative interference in the performance of its essential religious practices, without similar practices being regulated when carried out by religious denominations other than Hindus, which stands in stark contrast to the mandate of equality under Part III of the Constitution of India.

D. Because, the impugned legislation reeks of manifest arbitrariness in violation of the mandate of Article 14 of the Constitution of India. The doctrine of manifest arbitrariness ought to be applied to test the constitutional validity of law which is discriminatory in its operation, thus disproportionately and adversely impacting a singled group of citizens. Thus, the disparate effect of a supposedly facially neutral provision ought to be considered.

This test extends beyond the traditional consideration of Article 14 which merely involves consideration of *intelligible differentia* and rational connection between the measure and the objective. Prof. Tarunabh Khaitan illustratively lays down a set of questions that could be asked over and above the traditional two questions:

- i. Does the rule have a disproportionate impact on different classes of persons?
- ii. Is the *differentia* presumptively impossible?
- iii. Is the apparent objective genuine?
- iv. Is the apparent objective legitimate?

In the instant case, the application of the doctrine of manifest arbitrariness would indicate that the impugned legislation would fall foul of Article 14 due to the following reasons:

- a. The legislation is selectively applicable to Hindu religious community alone, despite identical practices being followed by other religious communities. The classification of these two sects is not founded on any reasonable *intelligible differentia* that exists between the two groups justifying the inclusion of one, and the exclusion of all others from the rigors of the law.
- b. The aforementioned classification is not founded on any rational nexus between the exclusion and the object sought to be achieved by the impugned legislation. On the contrary, if the primacy of the law were to ensure preservation and protection of animals, the same would demand its uniform application across all religious communities. Therefore, the impugned legislation has been passed capriciously, irrationally and in the absence of an adequate determining principle against the spirit of Article 14 of the Constitution of India. The observations of Justice Nariman in *Shayara Bano v. Union of India* [(2017) 9 SCC 1] would be relevant in this context:

“Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. The words ‘excessive and disproportionate’ appear to refer to the impact of a measure and to that extent cover the disproportionate, adverse effect which constitutes disparate impact. The absence of an ‘adequate determinative principle’ is the absence of a

justification necessary to sustain a measure of indirect discrimination.”

- c. Further, the application of the law extends only to animal or bird sacrifice carried out for propitiating of deity in or in the precincts of temples, while animal or bird sacrifice in or in the precincts of the temple for any other purpose such as personal consumption is deemed permissible, thus criminalizing the intent behind the act, rather than the act *per se*. No reasoning has been afforded by the impugned legislation explaining this criminalizing of intent. The absence arbitrariness in action is an integral facet of equality under Article 14 which stands violated in the instant case.
- E. Because the practice of animal, and bird sacrifices is not limited to Hindu religion. The following table is indicative of religious scriptures in Islam and Christianity which mandate animal sacrifice:

Sl. No.	Scripture	Chapter/Verse	Particulars
1.	Quran	Quran 22:36	“The animal offerings are among the rites decreed by God for your own good. You shall mention God's name on them while they are standing in line. Once they are offered for sacrifice, you shall eat therefrom and feed the poor and the needy. This is why we subdued them for you, that you may show your appreciation.”
2.	Bible	Exodus 29:19-22	“Then you shall take the other ram, and Aaron and his sons shall lay their hands on the head of the ram. You shall slaughter the ram, and take some of its blood and put it on the lobe of Aaron's right ear and on the lobes of his sons' right ears and on the thumbs of their right hands and on

			the big toes of their right feet, and sprinkle the rest of the blood around on the altar. Then you shall take some of the blood that is on the altar and some of the anointing oil, and sprinkle it on Aaron and on his garments and on his sons and on his sons' garments with him; so he and his garments shall be consecrated, as well as his sons and his sons' garments with him.”
3.	Bible	Exodus 29:31	“You shall take the ram of ordination and boil its flesh in a holy place.”
4.	Bible	Leviticus 7:11-15	“Now this is the law of the sacrifice of peace offerings which shall be presented to the Lord. If he offers it by way of thanksgiving, then along with the sacrifice of thanksgiving he shall offer unleavened cakes mixed with oil, and unleavened wafers spread with oil, and cakes of well stirred fine flour mixed with oil. With the sacrifice of his peace offerings for thanksgiving, he shall present his offering with cakes of leavened bread.”
5.	Bible	Leviticus 9:3-4	“Then to the sons of Israel you shall speak, saying, ‘Take a male goat for a sin offering, and a calf and a lamb, both one year old, without defect, for a burnt offering, and an ox and a ram for peace offerings, to sacrifice before the Lord, and a grain offering mixed with oil; for today the Lord will appear to you.’”
6.	Bible	Leviticus 23:19	“You shall also offer one male goat for a sin offering and two male lambs

			one year old for a sacrifice of peace offerings.”
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F. Because, even at the stage of discussion of the impugned Act in the Legislative Assembly, questions regarding the application of the Act beyond Hindu temples were raised indicating that the practice of animal sacrifice was carried out as per the religious mandate in Islam and Christianity as well. In response, it was stated that in other religious practices, it could not be considered as sacrifice as the animals were later cooked and consumed. Further, with regard to animal sacrifice particularly practiced in churches, the response received was that the object of the legislation was not to criminalize intent, and thus applied only to the acts carried out in or in the precincts of Hindu temples. This reasoning suffers from the following flaws:

- i. This ignores customs and practices of the Petitioners herein where after the sacrifice of the animal, the same is cooked and served to the believers. Thus, sacrifice is only a pre-cursor to offering to the deity and consumption of the meat by the believers.
- ii. The impugned Act, in its present form, criminalizes the intent behind the animal sacrifice, and not animal sacrifice *per se*. Thus, if the act is not for propitiating any deity but for personal consumption even in the precincts of temple, it is not forbidden. The elevated mental stage of offering the animal flesh to the deity is prohibited which is arbitrary and stands in stark violation of the mandate under Article 14 of the Constitution of India.

G. Because the violation of the right to equality enshrined under Article 14 of the Constitution ought to be further contextually understood in light of criminalization of animal sacrifice in the state of Kerala

applicable only to Hindu temples, coupled with Section 28 of the Prevention of Cruelty to Animals Act, 1960. As a result, the co-joint effect would be that while individuals from states apart from Kerala continue to enjoy the protection granted under Section 28 of the Central enactment which exempts criminal liability in case of those acts which are mandated by the religion itself, the Petitioners continue to be penalized by virtue of the impugned law. Thus, unequal treatment is meted out to Hindus in the State of Kerala on two fundamental grounds:

- i. Selective application of the Act only to Hindu temples despite similar practices being carried out in other religious places as well; and
- ii. Unequal treatment when juxtaposed with the protection granted to other citizens of States where such a prohibitory law is not in force who continue to enjoy exemption by virtue of the Central enactment.

H. Because in the context of the fundamental right secured under Article 14, in order to bring forth an argument of persuasive value, the Tamil Nadu Animals and Birds Sacrifices Prohibition Act, 1950 was referred. This legislation, akin to the impugned legislation at hand, criminalized animal sacrifice in or in the precincts of Hindu temples in the state of Tamil Nadu. *Prima facie*, it stands in stark contrast to the mandate of Article 14 on the ground of selective application. Subsequently, the Act was repealed in 2004 by virtue of The Tamil Nadu Animals and Birds Sacrifices prohibition (Repeal) Act, 2004. However, the Hon'ble High Court overlooking the intricate argument of palpable discrimination proceeded to erroneously dismiss the strength of the argument by noting as follows:

“On the aspect of Government of Tamil Nadu, repealing Act, 1948 by Act 20 of 2004, it is purely the decision of State of Tamil Nadu, which cannot be said to have an application on the ground that States in India being federal, is empowered to take decision. Decision taken by the State of Tamil Nadu is not binding on the State of Kerala.”

This reasoning changes the fundamental edifice of the contention. The argument raised pertained not to the legislative competence to pass the said law, but the extent of gross arbitrariness at the heart of the enactment, violating all principles of equality under Article 14 of the Constitution.

Violation of Articles 25 and 26 of the Constitution of India

- I. Because the true purport, nature and extent of protection guaranteed under Article 25 of the Constitution of India has not received adequate judicial consideration by the Hon’ble High Court.
 - i. *First*, for a religious practice to be protected under Article 25 of the Constitution, it needs to satisfy the following tests:
 - a. The practice is an essential religious practice in the absence of which the religion is fundamentally altered.
 - b. The said practice is not violative of the restrictions placed in Article 25 and other rights under Part III of the Constitution.
 - ii. *Second*, the Article commences with, *“Subject to public order, morality and health, and to the other provisions of this Part...”* which therefore, imbibes within its ambit inherent limitations to the exercise of this right. In this aspect, the question that ought to have arisen is whether there is a need to demarcate between those practices which are essentially religious and those which are not.

The very structure of the Article specifying both the right and its restrictions ought to preclude threshold enquiries separating the religious from the non-religious. A flawed interpretation of the essential religious practice coupled with that of Article 25 of the Constitution has virtually rendered the first part of Article 25 (1) redundant.

- J. Because the Hon'ble High Court has also proceeded to refer to Article 48 of the Constitution of India which lays down a duty on the State to take steps to prohibit slaughter of cows and calves and other such milch and draught cattle. This analysis is flawed on the following grounds:
- a. It enables the application of Part IV of the Constitution, despite its non-justiciable nature to referentially draw restrictions on the exercise of fundamental rights of the Petitioners, and to state that *“there is enough and more compassion extended under the provisions of the Constitution to the protect the well-being and interest of animals”*
 - b. Further, it relies on Part IV-A of the Constitution to conclude that every Indian citizen is duty bound to protect and improve nature environment and *“to have compassion for living creatures.”*
 - c. This analysis proceeds to a stark deviance from a rights- based approach that ought to have been resorted to determine religious freedoms. Fundamental duties and directive principles of state policy ought not to be interpreted as a ground for limiting the exercise of fundamental rights under Part III of the Constitution.
 - d. It overlooks the inherent limitations placed on the exercise of Article 25 rights which is confined to:
“Subject to public order, morality and health and to the other provisions of this Part...”

Therefore, any considerations beyond public order, morality, health, and other parts of Part III would be an extraneous consideration beyond the permissible sphere of interpretation of Article 25.

- K. Because, it would be pertinent to note that the Parliament in its enactments have continually attempted to safeguard constitutional right, particularly religious freedoms under Article 25.
- L. A foremost example of careful drafting is found in Section 11 of Prevention of Cruelty to Animals Act, 1960 which lays down a list of 16 acts which would be construed as cruelty towards animals. However, none of these 16 listed acts consider animal sacrifice as cruelty. It would be pertinent to note that the language employed by the Legislature is exhaustive, and not inclusive in nature. Therefore, the Act only covers the 16 acts which it recognizes as cruel treatment, and an expansive interpretation of Section 11 to include animal sacrifice would be impermissible. This Section is indicative of the commitment of the Legislature to protect and safeguard constitutional recognized religious freedoms under Articles 25, and 26. Any interpretation to the contrary would involve assigning greater force of law to legislative enactments rather than to the grundnorm.

Non-consideration of essentiality of the practice and non-application of the Essential Religious Practices Test

- M. Because, the Hon'ble High Court dismissed the Impleadment Application filed by the Petitioners herein *in limine*, it failed to consider the plethora of material produced before it which are determinative of the dictums laid down in texts and scriptures mandating animal sacrifice.

For instance, in *Shakthi* worship, as per scriptures and practices known as '*pramanas*', animal sacrifice is essential and unavoidable for propitiation of deity and forms part of the consecration by the devotee. The essentiality of this practice has been recognized in the following scriptures:

Sl. No.	Chapter Name/No.	Chapter Name/No.	Page No.	Para No.	Translated Explanation
1.	Manusmruthi	5		Shloka – 41	In the event of ' <i>Madhu Parka</i> ' ' <i>Yagna</i> ' offering animal sacrifice to ancestral deities is part of the <i>Yagna</i> and in no other situations can such sacrifice be observed.
		5		Shloka – 42	If the Brahmin, who knows the spirit of Veda, does the sacrifice of the animal, he and the animal which was sacrificed will be blessed and they both will be led to salvation.
				Shloka	The god like people eat the meat prepared according to ' <i>shastra</i> ' to offer ' <i>yajna</i> ' and those who do opposite to this are demons.
2.	Devibhagavath a	Skanda 3/26		Shloka – 32	Those who eat meat can conduct animal sacrifice. They can sacrifice pig, buffalo etc.

				Shloka – 33	If anything sacrificed before Devi they are blessed. If they are sacrificed for ' <i>devi pooja</i> ' (pooja for Devi) then they attain salvation.
3.	Mahabharatha Anushasana Parva	14		Shloka – 116	These are words in Vedas that says animals are created for ' <i>yajnas</i> '. The brahmana is pleased in the <i>yajnas</i> which are involved with sacrifice of animal.
4.	Koulavali	51064	23 23	Shloka – 10 Shloka - 6	There is no sin in killing birds and animals for 'blessings of the deity'. But sin gradually grasp the ones who do not use meat in the offerings. It is said that the sacrifice of swan, pigeon and cock are for the blessings of the goddess ' <i>chandika</i> '.
5.	Purascharyarn avam	11			For the daily offering based on special offerings are to be done with the sacrifice of bison. It is done for the victory and to fulfil all desired salvation offered by the goddess

N. Because, despite coherent materials placed indicating the essentiality of the practice of animal sacrifice for propitiation of deity, the Hon'ble High Court has erred in not considering the same. The sole reasoning given by the Hon'ble Court to determine essentiality of the practice is as follows:

“Therefore, merely by stating that freedom of conscience and free profession, practice and propagation as well as freedom to manage religious affairs are protected under Articles 25 and 26 of the Constitution of India, the petitioners are entitled to get the reliefs as sought for, to continue with sacrifices for propitiating any deity, cannot be sustained. So much so, no materials are forthcoming to establish that sacrificing animals and birds are essentials of the religion to drive home the case that Act, 1968 is interfering with Articles 25 and 26 of the Constitution.”

The Hon'ble Court in reasoning so has merely reached the conclusion that the practice of animal sacrifice is not essentially religious, without attributing reasons for the same, particularly in light of adequate scriptural backing.

O. Because the Hon'ble High Court of Kerala failed to apply the test of essential religious practice even though a detailed extract of the various traditional Hindu scriptures and texts that extensively discuss about animal/bird sacrifice as an essential part of the consecration in *Shakthi* worship was placed before it.

P. Because the application of the essential religious practices require the Court to scrutinize the religious scriptures, tenets, beliefs to determine whether the practice claiming constitutional protection meets the pre-requisites of the test as to its essentiality. In the instant case, Vedic and tantric tests uphold sacrifice of animals as essential to *Yajnam* and

Yagam. Following are some examples indicating the essentiality of the practice as per religious scriptures:

- i. *Yajurveda* refers to *awsamedha yagam* in which the sacrifice of animals is essential.
- ii. Among *Kaulas* and *Sakhteyas* animal sacrifice is an integral part.
- iii. *Yagnas* and *Yagas* consider animal sacrifice essential to its performance.

Q. Because the approach to be adhered to in determining essentiality of a religious practice would not be at the stage of determining the scope of the right itself, but at the justification stage – whether the restriction on the right is justified. It is at this stage that public norms of proportionality enable discerning which religious freedom claims are worthy of protection, and which are not, while also avoiding the problem associated with artificially determining beforehand whether a claim counts as a religious freedom claim.

R. Because the Hon'ble High Court has erred by misinterpreting the term “essential”. The term which ought to have been contextually understood with reference to the qualifying nature of the practice, has been interpreted to mean qualifying its importance within a religion. Although *prima facie* it might seem like a minor grammatical shift, it allows the judiciary to define questions that are internal to the religion in a judicial enquiry, and thereby defining the very nature of the religion. This approach of testing religious practices against the touchstone of the Constitution is at variance with the approach followed in other jurisdictions wherein the Court only concerns itself with whether the practice in question is sincerely held by its adherents, this would require the Court to go into the adherent's past behavior and conduct, but not into the substantive nature of the practice itself.

- S. Because the Hon'ble High Court overlooked an integral aspect of the application of the essential religious practices test which would require the understanding of the said practice in the context of its corollary effect on individual rights. The enquiry, therefore, is not restricted to whether the said practice is truly religious, but whether its effect is to subordinate, exclude or otherwise signal that one set of members are entitled to lesser degree of individual rights than the others, resulting in an exclusionary practice. However, the Hon'ble High Court has not engaged in these nuanced considerations in the application of this test, and has proceeded to mechanically dismiss the Impleadment Application *in limine*.
- T. Because in upholding the constitutionality of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968, the Hon'ble High Court relied on the decision rendered by the Hon'ble High Court of Tripura in *Subhas Bhattacharjee v. State of Tripura*. However, the following distinction between the aforementioned case and the case at hand has been overlooked:
- i. Relied on several texts to reach the conclusion that sacrifice of animals was only obligatory in performing puja at Mata Tripureswari Temple, and instead of the animal sacrifice, devotees may offer sweets and fruits to the deity. Thus, the practice is only optional and not done of necessity.
 - ii. The Hon'ble Court also tested the practice on the grounds of health and morality, and constitutional morality.

However, in the instant case, the converse is true:

- i. Doctrinal evidence indicates the mandatory nature of animal sacrifice to the practice of religion by the Petitioners herein. It is not merely regarded as an obligatory act, but mandatory.

Further, non-performance of the said ritual would attract the wrath of the Goddess.

- ii. The Hon'ble Court fails to engage in a deeper analysis of religious freedoms under Article 25, and the grounds on the basis restrictions may be imposed on the exercise of the same.

Repugnant to the provisions Prevention of Cruelty to Animals Act, 1960, thus attracting Article 254(1) of the Constitution of India rendering it void

- U. Because, the legislative competence for the enactment of Prevention of Cruelty to Animals Act, 1960 and the impugned legislation is derived from List III – Concurrent, Entry 17, which provides for the power to legislate upon matters concerning prevention to cruelty to animals. In matters concerning subjects provided for under List III, Article 254 of the Constitution gains significance in the eventuality of conflict between a State enactment vis-à-vis a Central enactment.
- V. Because, the Prevention of Cruelty to Animals Act, 1960 clearly carves an area of exemption to acts which are performed pursuant to religious dictums by virtue of Section 28, by granting exemption from culpability to such acts. It is in this scope of exemption that the impugned State Act comes into operation and negates the effect of the Central legislation. As a corollary, the exemption granted to religious acts by virtue of Section 28 ceases to operate as a result of criminalization of the very same act by the impugned law. This highlights the inherent conflict in the mandate of the impugned law vis-à-vis the Central enactment.
- W. Because, the purpose of Article 254 of the Constitution of India is to resolve any conflict that may arise between Central and State enactments with respect to the entries in List III i.e. the Concurrent List. It grants precedence to Central enactments passed by the

Parliament in cases where State enactments are found to be repugnant, thus rendering them void to the extent of their repugnancy vis-à-vis the Central enactment.

The only exception to this interpretation is provided by Article 254(2) which states that in cases where the State enactment is reserved for the consideration of the President and the same has received his assent, the State enactment shall prevail in that particular State. Therefore, Article 254 (2) operates as a special provision, attracted only in limited sphere requiring the assent of the President to the State enactment. However, in the instant case, Article 254(2) is not attracted due to the absence of meeting the pre-requisite mentioned therein. Thus, rendering it void as per Article 254(1) of the Constitution of India.

- X. Because the Hon'ble High Court reaches the following conclusion regarding the interpretation of Section 28 of the Prevention of Cruelty to Animals Act, 1960 to hold that there exists no repugnancy between the statutes. The findings of the Hon'ble High Court with regard to the interpretation of Section 28 of the Prevention of Cruelty to Animals Act, 1960 is extracted herein below (is flawed):

“With due regard to the argument advanced to Section 28 of the Prevention of Cruelty to Animals Act, 1960, that nothing contained in this Act shall render it an offence to kill any animal, in a manner required by the religion of any community, there are no materials on record to substantiate which community of the religion is required under the Hindu or any other religion, to kill an animal, for propitiating, if not personal consumption, in the manner required in the religion. We are also of the view that the expression used in Section 28 is “killing” and not sacrifice and, therefore, the said provision is intended to protect the manner of killing by any particular community, but not for any religious purpose.”

This interpretation suffers from three severe flaws:

- i. It overlooks the plethora of doctrinal evidence put forward by way of religious texts and scriptures which indicate the essential and integral nature of animal sacrifice which is deemed mandatory and not merely obligatory.
- ii. It resorts to a hyper-technical argument pertaining to a distinction between the terminologies used in the Central Act vis-à-vis the State Act. The former employing the term ‘killing’, and the latter employing the term ‘sacrifice’.
- iii. It does not engage with Section 2(b) of the Kerala Animals and Birds Sacrifices Prohibition Act, 1968 which defines the word ‘sacrifice’ as follows:

"Sacrifice" means the killing or maiming of any animal or bird for the purpose, or with the intention, of propitiating any deity"

Thus, the word recognizes animal sacrifice in two ways:

- a. Killing
- b. Maiming

Therefore, the reasoning of distinction between the words “killing” and “sacrifice” superimposed to the two legislations takes away from the meaning afforded to it by the definition clause of the Act, thereby engaging in an act of substitution of the wisdom of the Legislature.

Y. Because, while relying on the decision of the Hon’ble High Court of Tripura in *Subhas Bhattacharjee v. State of Tripura*, the Hon’ble High Court of Kerala has overlooked the interpretation of Section 28 of the Prevention of Cruelty to Animals Act, 1960 provided in the same judgment as follows:

“Its (Section 28) language is simple and unambiguously clear. It does not exempt applicability of any one of the provisions of the Act. All that is prescribed is that if an animal is killed in a manner required by the religion of any community, then such killing could not be construed to be an offence. It only exempts from the culpability of an offence. But that would not mean that provisions contained in Chapter I, II and III of the Prevention Act became ineffective, inoperative or made redundant, when it comes to killing of an animal for a religious purpose, unless such religion requires such killing in a particular manner, the provision of Section 3 would stare in the face of the State.”

This interpretation of Section 28 only requires the answering of two primary questions:

- i. Whether the animal was killed for religious purpose?
- ii. Whether the religion requires the killing in a particular manner?

Therefore, the crux of determination continues to be the essential religious test to evaluate the extent of religious freedoms. This interpretation also ensures that the constitutional right of religious freedoms is not negated by legislative action, so long as the restrictions imposed by the Constitution is met.

- Z. Because the Hon’ble High Court, in its impugned judgment has severely failed to consider the constitutional question that have arisen in the context of animal sacrifice as an essential religious practice. The Hon’ble Court has mechanically proceeded to reject the argument of repugnancy of the State enactment with that of the Central enactment, and as a result has upheld the constitutional validity of the same. This ignores the contentions raised regarding Article 14, and 25 of the Constitution of India which are crucial to the determination of the constitutional validity of the impugned statute.

6. GROUND FOR INTERIM RELIEF:

- A. The impugned Act is liable to be struck down as unconstitutional violative of rights under Article 14, 15, 25 and 26 of the Constitution.
- B. The impugned Act is liable to be struck down as the impugned Act (State legislation) is repugnant to The Prevention of Cruelty to Animals Act, 1960 (Central Legislation) and therefore, void in view of Article 254 of the Constitution of India.

7. MAIN PRAYER:

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Grant special leave to appeal against the judgment and order dated 16.06.2020 passed by the Hon'ble High Court of Kerala at Ernakulam in Writ Petition (C) No. 11142/2020(S).
- (b) Pass such other order and further order(s) as this Hon'ble Court may be pleased to consider just and necessary in the interest of justice.

8. PRAYER FOR INTERIM RELIEF:

Whereof, in the light of the facts and circumstances of the present case, the applicant humbly prays that this Hon'ble Court may be pleased to:

- (a) Grant a stay of the operation and enforcement of the Kerala Animals and Bird Sacrifices Prohibition Act, 1968 till the final adjudication and disposal of this Petition;

(b) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and thereby render justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS DUTY BOUND SHALL EVER PRAY

DRAWN BY:

FILED BY:

1. A.KARTHIK, AOR
2. ANANTHU BAHULEYAN, ADV
3. SARVESHWAR KANNAN, ADV AND
4. ANUSHKA PARDIKAR

(A. KARTHIK)

ADVOCATE FOR THE PETITIONERS

Drawn on: 23.06.2020

Filed on: 25.06.2020