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Kodava Arms License Exemption: A Legal Conundrum

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This paper explores the multifaceted discourse surrounding the Kodava community in India, renowned for its martial traditions and annual 'gun festival,' Kailpodh. The Kodava arms license exemption, extended until 2029, has recently come under scrutiny with a plea challenging its validity in the Supreme Court. The ongoing legal proceedings have ignited debates on firearms ownership and regulation, with proponents emphasizing the community's cultural practices and the need for self-defence. At the same time, opponents express concerns about potential violence and conflicts. Delving into historical narratives and legal nuances, this article provides a comprehensive examination of the constitutional aspects and provisions of the Arms Act. The analysis considers whether the exemption safeguards cultural rights or a potential compromise to law and order. In light of the given dispute in narratives, the author finds it crucial to highlight the contentions of each side and strive towards achieving a harmonious balance between the cultural identity of a community and the citizen's right to equality guaranteed under Article 14 of the constitution. The paper aims to contribute to the ongoing discourse by presenting a balanced exploration of the arguments, enabling readers to critically assess whether the arms license exemption for the Kodava community is a fundamental right or a societal privilege.

Keywords: *kodava community, martial traditions, cultural rights, article 14.*

INTRODUCTION

The Kodavas are well known to be one of India's martial races who embrace in their culture, a devotion to their ancestors and arms. This pride and devotion also, come September, manifests itself into Coorg's 'gun festival', *Kalipodh*. In 2019, the Kodava arms licence exemption was extended by 10 years making it valid till 2029.¹ More recently, in 2022 the Supreme Court sought a response from the Karnataka Government as regards a plea² filed against the Karnataka HC order which upheld the validity of said exemption in 2021. As the hearings in this matter continue in the Supreme Court to date, it has raised concerns and sparked debates on various aspects of firearms ownership and regulation. The proponents not only argue that granting arms licenses to the Kodava community in India is a necessary step to safeguard their rights and protect themselves from potential threats³, but also primarily argue that the Kodava people have a long-standing tradition of responsible gun ownership and should be allowed to possess firearms for self-defense and cultural practices. On the contrary, opponents believe that granting arms licenses to the Kodava community could have adverse consequences with increased pessimism that it may fuel violence and escalate conflicts in the region, given the history of insurgency and small arms trafficking. In the present Indian landscape that strives to soak into its broader cultural makeup, all communities, and distinct cultures, we may as well assume that such exemption enriches the cause. Then again, do we strive to protect such an exemption at the cost of law and order? This article aims to cover the historical narratives and legal nuances by delving into the constitutional analysis and provisions of the Arms Act, which would help the readers ultimately decide: is this a right or is it a privilege?

¹ Brijesh Kalappa, 'Happy Kalipodh! What's that?' *Times of India* (04 September 2013) <<https://timesofindia.indiatimes.com/blogs/emphasis/happy-kailpodh-what-s-that/>> accessed 10 February 2024

² *Capt. Chethan Y.K. v Union of India* WP No 1386/2018

³ Mithun Das et. al., 'Association of metabolic syndrome with obesity measures, metabolic profiles, and intake of dietary fatty acids in people of Asian Indian origin' (2010) 1(3) *Journal of Cardiovascular Disease Research* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2982201/>> accessed 10 February 2024

CUSTOM AND HISTORY

Bearing arms is an important custom in the Kodava community. Going by Holland's definition, a custom is 'a generally observed course of conduct'. In Coorg, a district in the South Indian state of Karnataka, the reverberation of every gunshot fired holds meaning- the conclusion of the harvest festival, the birth of a child, or even a death in the family. The Indian legal perspective regarding custom has been clearly articulated the SC⁴ defined it as a 'Rule which in a specific family, district, sect, class, or tribe, has acquired the force of law through longstanding practice'. This characterization has been applied to the Kodava community for many years, establishing it as an acknowledged custom within the community. The custom has been a crucial ingredient in their composition as a martial race that has contributed to fearless men like Commander in Chief KM Cariappa and Chief of Army Staff KS Thimmaiyya. The notable features of the Kodava tradition were listed out by Benjamin Lewis Rice in the 1878 Gazette wherein he made a note of the jewelry, weaponry, dresses, and practices. The overall martial essence is well encapsulated in the importance of the daggers 'Odekatthi' and 'Peechekatthi' along with their firearms which have been in use over time for various reasons like hunting, self-defense, tilling one's farmland, et cetera.

Historically, under the rule of the Haleri Dynasty, the kings did not maintain an army but rather distributed weapons amongst civilians for protection. Further on, when the British deposed the ruler Wodeyar in 1834, the residents in Coorg could possess and carry firearms. The origin of the exemption from carrying a firearms license may be traced to the cause that the Kodavas continue to pursue, laying the spotlight on the genocide inflicted upon them by one, Tipu Sultan. When the British introduced the Indian Arms Act in 1834, they made an exception for the Kodavas in strong support of the valiant fight put up by them against Tipu Sultan, against forced conversions, atrocities, and mass killings of their community⁵. Thus extended until the first war of independence of 1857. After, 1857 the British introduced the Disarming Act which ruled the possession of weapons out of the scope of law but in 1861, the Chief Commissioner for Coorg,

⁴ *Hurpurshad v Sheo Dyal* (1876) SCC PC 12

⁵ 'Religion of The Kodavas' (*COORG Tourism Info*) <<https://www.coorgtourisminfo.com/culture/religion/>> accessed 19 February 2024

Mark Cubbon granted the exception to possess firearms to the Kodavas for their honor, valor, and fearlessness. In 1878, the British introduced the Indian Arms Act, through which they provided an exception to the Kodavas and Jamma land tenure holders from the regulations on arm licensing. The foundation of this exemption for the Kodavas and Jamma land tenure holders can be traced back to the broader acknowledgment and respect shown by the British towards the customs and traditional practices of the community, as demonstrated throughout history. The British roots to this have been called to question more recently, with an increased skepticism towards British intentions and the plausible adverse consequences that may arise from such exemptions. A prominent example of such contentions is a writ petition filed by Captain Chetan YK, challenging the exemption on grounds of being violative of the principle of equality and being discriminatory.

LEGAL PERSPECTIVES

Arguments against the Exemption: The plethora of existing reservations has been clearly expressed in one Writ petition of 2021 in the High Court of Karnataka by Captain Chethan Y.K (Retd), like a public interest litigation, wherein the petitioner raised various grounds before the High Court. The primary contention of the petitioner is that the exemption granted to every Kodava and Jamma tenure holder in Coorg is discriminatory, arbitrary, and violative of Article 14 of the Constitution of India⁶. A core principle in Indian jurisprudence concerning the right to equality under Article 14 is that of reasonable classification. This, in the simplest sense, means that any attempt made to classify persons to accord to them any distinct treatment must be a reasonable differentia and must be proximate to the objective sought to be achieved by the legislation under which such distinction is made. In pursuance of this principle, the petitioner contended that the classifications 'every person of Coorg Race' and 'every Jamma tenure-holder in Coorg' in the notification granting said exemption (dated 6.7.1963) are based on race and land tenure, both of which are irrelevant, arbitrary, discriminatory, illegal, anti-public interest, and do not serve the fundamental values of justice, equality, and fraternity, thereby violating Articles 14 and 15 of the Indian Constitution. The petitioner, who is a resident of Coorg, further claimed

⁶ Constitution of India 1950, art 14

that the designation and use of the term 'Coorg Race' promotes caste discrimination among Coorg inhabitants, which is forbidden by Article 15 of the Indian Constitution. This is to underline that Coorg's demographic is not confined to Kodavas, but also includes those who do not belong to such a race and for whom such exemption does not apply, resulting in generational skepticism and estrangement.

The petitioner has further contended the exemption based on provisions of the Arms Act, 1959. Firstly, The exemption does not apply, resulting in generational cynicism and isolation. The petitioner also claimed the exemption under Section 41 of the Arms Act, 1959⁷ can only be granted, if there is a public interest involved, which must be considered when granting such an exemption. In the present case, there is no public interest involved, and thus, the issuance of the impugned notification for reasons unrelated to Section 41 of the Arms Act, 1959, is an arbitrary exercise of power by the Government of India. As a result, it breaches Article 14 of the Indian constitution. Secondly, Sections 3⁸ and 4⁹ of the Arms Act, of 1959, outline a thorough procedure for obtaining an arms licence, which has been eliminated by issuing the disputed notification. As a result, people have been exempted and are authorized to possess weapons without any inspection of their criminal records, which violates Article 21 of the Constitution of India¹⁰. Thirdly, in Section 14 of the Arms Act, of 1959,¹¹ the licensing body has the option to give or refuse a gun license. However, in the case of those belonging to the Coorg Race and Jamma tenure-holders, the licensing authority does not have such a power, and even the licensing authority cannot scrutinize their cases, hence the notification issued by the Government of India is unlawfully discriminatory and violates Articles 14 and 21 of the Indian Constitution, as well as the legislative prohibitions found in the Arms Act of 1959.

⁷ Arms Act 1959, s 41

⁸ Arms Act 1959, s 3

⁹ Arms Act 1959, s 4

¹⁰ Constitution of India 1950, art 21

¹¹ Arms Act 1959, s 14

Arguments for the Exemption: Much to the relief of every proponent of the exemption, the respondents in the petition have put forth arguments that convince the proponents of their position and also pacify much of the reservations one may have against it. To begin, they argue that exception is required for a specific region for Coorg aborigines and all Jamma tenure holders in Coorg due to their unique characteristics and lifestyle. Coorg District is a hilly region with a culture and tradition that is distinct from the rest of the country, and the exemption is given based on the State Government's report. The exemption promotes their fundamental right to life and liberty and puts them on par with the rest of the population, protecting life, property, and plantations from regular attacks by wild animals in the Coorg District. Furthermore, they claim that the exemption is exclusively offered to the original inhabitants of the land and that there is no discrimination based on gender, religion, or caste, among other factors. Given the aforementioned reasoning grounding, the difference appears to be rather acceptable.

Second, the exemption is not unregulated because the Ministry of Home Affairs regularly monitors the country's internal security situation in coordination with the Central and State Security agencies, reviews its rules, and makes amendments as needed based on the current situation and reports. The notification clearly states that it is only valid for a limited period and may be reviewed at any moment. They argue that the challenged notification does not contradict the constitutional provisions governing people's fundamental rights and that any such exemption is subject to periodic review.

Additionally, the responders have said that the exemption is not all-inclusive and that the relevant authorities have put in place the necessary limitations to grant the relevant group of people access to the exemptions outlined in the Indian Arms Act. The aforementioned sections are free from some Arms Act provisions, but this does not mean that they are exempt from all of them; they still need to apply for an Exemption Certificate from the Deputy Magistrate, which is given following police verification and other procedures. The respondents argue that the petition filed by the petitioner may potentially upset the social and cultural fabric of Coorg. Socially, the exemption granted to the Coorg Race has been in place since before independence,

taking into consideration the social and cultural fabric of the society. A stigma has been cast without any justification for it.

CONCLUSION

It is an indisputable fact that the Kodavas are an endangered race with an approximate populace of only 1,25,000 persons living across India¹². With a diminishing populace, the urge to hold onto one's culture and tradition becomes a rather natural reaction. In the modern-day context wherein India strives to retain every culture within a broader Indian culture and give them the recognition that each distinct culture deserves, such a goal runs parallel with a sense of according everything an Indian identity and simultaneously questioning the institutions and mandates of the British regime.

An exemption dating back to the British regime increases the skepticism towards the right to hold arms without a license amongst other concerns of arms regulation and small arms trafficking. On the parallel side, there are increasing concerns of the Kodava community to protect one culture, in which arms ownership plays a huge role. Beyond the legal analysis of each argument, the article identifies a broader trade-off, which the whole debate boils down to whether to pacify the skepticism towards the exemption or to help one community retain the strong sense of their martial culture. The mantle now falls on the policymakers along with the judiciary to be able to achieve a harmonious balance between the two policy measures via policies and precedents that cover the concerns on both ends of the spectrum, which are required now more than ever, within a broader Indian demographic comprising of multiple such minorities with the same sense of self-determination and cultural identity.

¹²Manu Aiyappa, 'Kodavas face threat of dwindling numbers' *Times of India* (09 November 2011) <<https://timesofindia.indiatimes.com/city/bengaluru/kodavas-face-threat-of-dwindling-numbers/articleshow/10662687.cms>> accessed 10 February 2024