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DIWALI CELEBRATION IN INDIA: A CONSTITUTIONAL STUDY- Gargi Pant¹**Introduction**

India is a democracy with a constitution that provides provisions specifically designated rules/laws within a nation or state's Constitution. Constitutional provisions include the rights that need to be provided by the state to its citizens. Although the rights are protected under the Constitution, it is hard to protect everyone's rights when protecting one's right infringing upon the rights of others. For example, the right to religion provided in Article 25 of the Constitution says that everyone has the right to practice their religion. However, the Uttarakhand High Court banned animal sacrifice in religious places². Although the reason given was that the animals are thrown outside in public and they rot, it still infringes upon the rights of the people. As a result, the complexity of rights becomes a reason for the infringement of a citizen.

Right to life v. Right to Religion

Infringement of constitutional provisions can also be seen at a large-scale event that happens every year and includes around a billion people. Diwali is one of the biggest festivals celebrated in India, but it is grounds for infringing on constitutional provisions. As a tradition, firecrackers burst on Diwali, infringing upon the right to health given in Article 21 of the Constitution for elderly citizens and people in general. The smoke and pollution on Diwali are significant because this Hindu festival is celebrated by eighty per cent of India's one billion population. As mentioned in Article 25 of the Constitution, citizens can practice their religion, and as the celebration of Diwali is a religious practice, firecrackers should be allowed. However, allowing

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²Ban on animal sacrifice in open: U'khand HC pulls up state for not complying with orders. (2019). *The Times of India*. [online] 10 Aug. Available at: <https://timesofindia.indiatimes.com/city/dehradun/ban-on-animal-sacrifice-in-open-ukhand-hc-pulls-up-state-for-not-complying-with-orders/articleshow/70611146.cms> [Accessed 26 Jan. 2024].

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firecrackers affects the health of senior citizens as they have vulnerable health, and it infringes on their right to health. To protect that, every time during Diwali, there is a petition to ban firecrackers, but due to Article 25, a total ban around the country is never introduced. The recent Supreme Court judgment has introduced a total ban on firecrackers with barium salts. The above arguments show how fulfilling one person's rights can infringe on others' rights. The Supreme Court has found a way not to hurt the religious sentiments of the citizens and, indeed, be a secular country (no interference in any religion). Article 25 of the Constitution contradicts Article 21 of the Constitution. As there is no total ban on firecrackers, there is an infringement of Article 21 as the health of the citizens is still in danger.

Right to Livelihood

The previous year's bans in certain states in India infringe upon people's livelihoods. Article 21 of the Constitution provides the right to livelihood in *Olga Tellis & Ors v. Bombay Municipal Corporation & Ors*.³ The fireworks services accumulate over 500 industries and 60 ancillary units. The industry provides employment opportunities to over 5 lakh families, mostly uneducated workers, directly or indirectly. If there is a ban, it will directly lead to the closure of all industries and impact employees' livelihoods directly. The Supreme Court also said it cannot ban the firecrackers as it will lead to the loss of livelihood. Already, there is a high unemployment rate in India, and the employment of people involved in firecracker production and sale will suffer. It will also hurt India's economy. So, a total ban on firecrackers in certain states like Delhi infringes upon the constitutional provision or right to livelihood mentioned in Article 21 of the Constitution.

Child labour has been prominent in the factories where firecrackers are manufactured in hazardous environments. It violates Article 24 of the Constitution⁴. The rate of child labour increases in the firecracker factories as there is a high demand for crackers. Due to the poverty levels in India, children have to work in minimal conditions to secure their future and earn to fill their stomachs per day. This makes the children desperate to get a job wherever they can find one. Due to the firecracker demand and more employment opportunities during the Diwali

³*Olga Tellis & Ors v. Bombay Municipal Corporation & Ors*, 1986 AIR 180.

⁴Art. 24, The Constitution of India 1950.

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celebration, the children start working in the factories. The children are also in a place where they have a constant danger to their lives. Many past incidents have been reported about blasts in the firecracker factory. This violates Article 24 and Article 21 of the Constitution, which is the right to live for the children and the other people working in the factory.

Right to Equal Pay

One of India's giant firecracker factories is at Sivakasi in Tamil Nadu. Out of the total workforce, 70% of the workers are women. However, they are not paid equally and, at a maximum, are bound to get only half of what their male counterparts receive.⁵ As mentioned in *Randhir Singh v. Union of India*, there should be "equal pay for equal work".⁶ However, in Sivakasi, quite the opposite of the above principle is seen where the women are paid half as much as the men working in the factory. Article 39(d) of the directive principles of state policy (not enforceable in India) of the Indian Constitution states the constitutional goal of equal pay for equal work for both men and women.⁷ The Constitution of India itself has given the Supreme the power to give a final and binding ruling in Article 141 which means that everybody should get equal pay for equal work is a law that needs to be followed. Hence, at Sivakasi, there is an infringement of constitutional provision as the women are only getting paid half as much as the men when they should be paid equally for their equal work. In addition, these women are also constantly in danger for their lives as there have been reports of blasts in the firecracker, which also infringes upon their right to life in Article 21 of the Constitution. These women still work in these factories even when they are paid less because it provides them women with a livelihood Article 21 of the Constitution. Diwali celebration contributes to the pay gap between women and men. It also infringes upon the constitutional provision as the power to provide a final and binding law is given to the Supreme Court by the Indian Constitution itself, and the Supreme Court states equal pay for equal work.

⁵Dharani Thangavelu, I. com (2021). *In Tamil Nadu's fireworks factories, women form 70% of the workforce but are paid half as much as men*. [online] Scroll. in. Available at: <https://scroll.in/article/991423/in-tamil-nadus-fireworks-factories-women-form-70-of-workforce-but-are-paid-half-as-much-as-men#:~:text=Today%2C%20Sivakasi%E2%80%99s%201%2C070%20medium%20and%20small-scale%20units%20account> [Accessed 26 Jan. 2024].

⁶*Randhir Singh v. Union of India*, 1982 AIR 879.

⁷Art. 39(d), The Constitution of India 1950.

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Animal Rights during Diwali

During Diwali, not only humans but animals also pose a threat to their lives. The Supreme Court in *Animal Welfare Board of India v. A. Nagaraja & Ors* (the Jallikattu case) has held that "*the Court has also a duty under the doctrine of parens patriae to take care of the rights of animals.*"⁸ During Diwali, the animals are threatened for life due to the noise of bursting firecrackers. Animals like dogs and cats have high decibel hearing power, which enhances the already loud noise of the firecracker even more. Many animals have had a nervous shock resulting in their death due to the loud noise from bursting firecrackers. Stray dogs also get hurt when they accidentally come near the burning firecracker.⁹ People also tie firecrackers on dogs for fun, but it gravely injures them. This infringes upon the rights of animals under Article 21 of the Indian Constitution. Protection of animals is also given in Articles 48A and 51A(g) in the directive principle of state policy as a constitutional goal in the Constitution of India. The Supreme Court can give a final and binding law, as stated in *Animal Welfare Board of India v. A. Nagaraja & Ors*. (the Jallikattu case), Animal rights are infringed upon during the Diwali celebration.

Conclusion

In conclusion, the issues mentioned above take time to resolve. There is a contradiction between Articles 21 and 25 of the Constitution. The ban on firecrackers affects the livelihood given in Article 21, and if the ban is not implemented, the right to health of Article 21 is infringed. Child labour infringes upon Article 24 of the Constitution and Article 21, which is the right to life and livelihood. Women are being paid half as much as men even when the Supreme Court of India has said "*equal pay for equal work*". Moreover, lastly, the animal rights mentioned by the Supreme Court. It all suggests infringing the constitutional provisions that occur during the Diwali celebration.

⁸Animal Welfare Board of India v. A. Nagaraja & Ors (2014)7 SCC 547.

⁹India Today. (n.d.). *Effects of loud firecrackers during Diwali can be devastating on pets, say experts*. [online] Available at: <https://www.indiatoday.in/india/story/effects-loud-firecrackers-diwali-devastating-pets-experts-2287947-2022-10-21>.

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