

Arms, Ancestry, and Autonomy: The Legal and Cultural Saga of Kodava Gun Rights

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Article Info

Received: 5th June 2023

Revised: 30th December 2023

Published: 30th September 2024

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Open Access

DOI:

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ISSN: 2278-1757

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Abstract

The Kodava community of Karnataka represents a unique intersection of cultural heritage, martial tradition, and legal exceptionalism within India's complex sociopolitical landscape. This research explores the historical, legal, and constitutional dimensions of the community's recognising exemption from standard firearms licensing under the Indian Arms Act. By tracing the origins of this privilege from the British colonial era through contemporary legal challenges, the study examines how a specific ethnic community has maintained its distinctive right to bear arms.

The research critically analyses the exemption's foundations, investigating its roots in the Kodavas' historical identity as a martial race and their deep cultural connection to weaponry. Through an examination of legal documents, historical gazetteers, and judicial proceedings, including the landmark case of Captain Chetan Y K (Retd) v. Union of India, the paper demonstrates how the Kodava gun rights represent more than a mere legal anomaly—they embody a profound expression of cultural identity, community resilience, and the intricate negotiations between individual traditions and national legal frameworks.

The investigation is centred on the constitutional principles of equality, non-discrimination, and cultural preservation. The study reveals how the judiciary has balanced these principles, ultimately affirming the Kodava community's unique status while setting important precedents for recognising and protecting distinctive cultural practices within India's diverse social fabric.

Keywords: Kodava, Cultural Rights, Constitutional Law, Ethnic Identity, Legal Exemption.

Introduction: Cultural Heritage and Identity of the Kodava Community

The Kodavas are an ethnic and linguistic community living in the jungles of Kodagu. With a population of 1,25,000 and a history that extends back to independence, the Kodavas are well-recognised as one of India's martial races. They prioritise their culture, ancestry, and arms. People in this region were regarded as warriors centuries ago. Before the British era, they served in numerous armies, including that of the Haleri dynasty and Tipu Sultan Kodavas. Kodavas have traditionally been members of the region's warrior class. People from this region were expected to join the military on short notice.

In the Kodava area of Karnataka, traditional homes often have a variety of weapons, including the Odikathi, a tiny broad-bladed sword, and the peecheekathi, a knife with a dagger-like appearance. Weapons have also been a part of the community. It is believed that weapons are associated with birth and death since residences in this region are secluded or distant. Information was transmitted through firearms. If a male birth has taken place in the house, two shots would be fired in the air to signify the birth of a male heir so that the others can join in their happiness and on the contrary, two shots would be fired simultaneously to signify the death of a male member and one shot to represent the death of a female member and festivals like kali poldh which means the end of the rice harvest and huttari signifying marking of the hunting season had same practices like shooting in the air. Arms have deeply infused the community and made them an integral part of their living and culture; bearing arms has become an essential part of their custom.

Historical Background and Legislative Exemptions for Kodavas under the Arms Act

The Haleri dynasty controlled the province from 1600 to 1834 AD. During this time, the monarchs did not have a permanent army. Instead, they distributed weaponry to residents of the territory and a small number of individuals, such as Kodavas. In 1834, the British removed Haleri's monarch, Chikkavirarajendra Wodeyar. The British praised the Kodavas for their resistance against Tipu Sultan, who had forced them to convert and committed atrocities against the community; in support of this, when the British introduced the Indian Arms Act of 1834, they made an exemption for the Kodavas, allowing them to possess and carry firearms.

This lasted until the First War of Independence in 1857. The British then enacted the Disarming Act, which also excluded them. In 1861, the chief commissioner of Coorg, Mark Cubbon, gave the community an exemption to own weapons for their honour, grit, and fearlessness, stating that “intrepidity characteristic of this little nation of warriors.” In 1878, the Indian Arms Act exempted Kodavas and Jamma land tenure holders from weapon licensing restrictions. It defined them as “Coorg race” or “Jamma tenure holder,” allowing them to conduct military or police responsibilities within their tenure. Exemptions have been given under section 41 of the Arms Act.

The centre brought in the Indian Arms Act of 1959 to control the arms in the nation, possibly curb the uprising, and modify the British-era law. In 1963, the Centre issued an exemption to the Kodavas and the Jamma land tenure holders in Coorg with regards to defining the Kodavas and jamma land owners were given. Even after the merger of Coorg into Mysore state There was no curb on privileges. According to reports, a proposal was put up in the Centre in 1964 to do away with the privileges granted to the Kodavas but was ultimately dropped. This continued for 56 years until it was challenged by Captain Chetan Y K (Retd)

Legal Challenges Surrounding the Gun Rights

Captain Chetan Y k (Retd) filed a petition in the Karnataka High Court in 2015, which was revived in 2018 to threaten the community's privilege enjoyed on paper for more than 158 years. The petitioner had previously argued that the exemption provided to the Kodavas is discriminatory based on race and caste. A division bench consisting of Chief Justice Abhay Sreenivas Oka and Justice Mohammad Nawaz heard the case. C. Sashi Kantha, the assistant attorney general of India for the union, said to the court that the home ministry had appointed a committee to evaluate and propose revisions to the Arms Act. He also stated that the exemption granted since 1963 to a particular class of people in Kodagu from obtaining a license to possess and carry firearms under the act's provisions was being reviewed along with the entire act Arms Act.

In October 2019, the Union home ministry released a gazette notification extending the special provisions provided for the community, exempting them from gun licenses till October 2029. This applies to any person by race of Coorg and all jamma landholders in Kodagu. The notification stated:

“The arms or ammunition carried or possessed by any person being Coorg by race and every Jamma tenure holder in Coorg and herein exempted whilst residing or travelling outside the district of Coorg shall not exceed one rifle with 100 rounds of ammunition for the same and one smooth bore breech or muzzleloading gun with 500 cartridges or the equivalent in leaden shot and gunpowder.”

This notification made the Union government recognise the centrality of arms worship in the Kodavas' cultural practices.

The petitioner argues that the exemption granted in the Arms Act is unconstitutional as it goes against Articles 14, 15 and 21 of the Indian constitution. The petitioner contends that exemption is irrelevant, arbitrary, discriminatory, illegal, and anti-public interest because it uses the words “every person of

Coorg race” and “every jamma landholders,” which is discriminatory under Article 14, and this excludes the other population of the nation, also mentions article 15 wherein he argues that the word mentioned above is promoting casteism and the exemption is particularly given to a particular tribe, culture or religion. It excludes those in the same area with similar religion. The petitioner also pointed out that the Centre granted the exemption under section 41 of the Arms Act 1959 without any public interest litigation, which is to be considered while granting such an exemption, and later argued that the Centre took this from the prior British Act.

Cultural Justifications for the Kodava Exemption

Holland defines custom as “a generally observed course of conduct”, from the Indian legal perspective; we derive it from the “Hurpurshad v Sheo Dayal”, which defines custom as a “rule which in a specific family, district, sect, class, or tribe has acquired the force of law through longstanding practice.” This definition has been applied to the Kodava community for many years and has been established as an acknowledged custom. In his 1878 gazette, Benjamin Lewis Rice mentioned a note on the Kodavas wherein he put forth their jewellery, weapons, dresses, and practices. The overall martial essence is well encapsulated in the gazette. Even the importance of daggers, ‘odekaththi’ and ‘peechekaththi,’ and firearms, which have been used for various reasons like hunting, self-defence, and protecting lands from the wild forests, have been mentioned.

The petitioner in Chethan argued in court that the British did not grant the exemption solely based on the custom of the Kodagu people and stated that loyalty to the British played a more significant role. The respondent defended this by quoting the 1861 notification by Mark Cubbon, which said, “intrepidity characteristic of this little nation of warriors,” as proof that the exemption was granted based on the culture and traditions of the Kodavas living in the region.

The following was also used in the courts to prove the validity of the law when the Centre had allowed the exemption in the arms act in 1963; proposals were made to do away with exemption; at the time, then Deputy Commissioner of Kodagu TP Issar compiled a report in which he linked the connection and relationship between guns and the Kodavas to kirpans (dagger) of Sikhs and to kukri (knife) of the Gurkhas,

“It is a well-known fact that the gun, the Odikathi (a small broad-bladed sword) and the Peechekathi (a type of dagger) are as much a part of the life of a Kodava as the kirpan is for Sikhs and the kukri for Gurkhas. From my study of the old gazetteers and other books on the life and culture of Kodagu and from my knowledge of their present-day customs, I can bear out the truth of the arguments of the Kodavas that these arms are inseparably linked with many of their ceremonial occasions,”

Assessing the Validity of the Kodava Exemption Under Constitutional Principles?

The petitioner in the above case had argued that exemption lacks public interest because it stated ‘Coorg race and jamma land tenure’, which is discriminatory to Article 14 equality before the law and Article 15 Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth herein

he pointed out that exemption given to is discriminatory as it pertains to only one group of people do not confer to the fundamental values of justice, equality and fraternity, and pointed out that this created caste-based hierarchy as it only confers to people of a particular race of a specific region.

The respondent argued that the Coorg is a hilly region with a rich history, culture, and tradition distinct from the rest of the country. The state must protect the culture and protect one's traditions, especially of the vulnerable; the exemption of guns as culture would be justified as they have been infused in their culture and traditions. Quoted, "Even in Sikh community Kirpan is allowed to be used by members of the community, and similarly, Gorkha community is permitted to use kukri etc." and if taken away, would injure fundamental rights such as the right to life and liberty and the exemption is exclusively offered to the original inhabitants of the land. There is no discrimination based on gender, religion, or caste. The respondent argued that the Kodavas do not have classes, the caste system is not present in this tribe, and they do not have any classes such as priestly classes, and they are worshippers of Cauvery mata and arms.

The high court bench of Karnataka held that:

"The Kodava community, which is a martial community, has enjoyed the benefit of exemption since pre-independence, and Jumma tenure holders have enjoyed the exemption since the pre-independence period. They have rightly an exemption for a period of ten years, but it is not the case that they have been granted an exemption indefinitely. Exemption granted is subject to certain terms and conditions. Therefore, the Constitutional validity of the notification is upheld in the petition and exemption provided to the persons of Coorg race and Jumma tenure holder under section 41 of the Arms Act, satisfies the test of reasonable classification under Article 14 of the Constitution of India and the question of questioning the notification dated October 29, 2019, does not arise."

The issue was later heard in the Supreme Court of India, and the court asked the Karnataka government to respond.

The Kodava community has been of martial race for ages, has a culture, and has infused itself into its devotion towards Cauvery mata and arms; this shed light on the exemption given for the Kodavas in the Arms Act. With a diminishing populace, the fear of witnessing their culture and tradition being vanished becomes a natural reaction. The custom has been in question many times in the jury as a British-era exemption raised questions regarding its applicability in recent times; India strives to retain every culture within a broader Indian culture and give them the recognition that each distinct culture deserves, the centre and the judiciary have made sure that the custom has represented as a source of law; by this, the people of the Kodava community enjoy their right to own a gun without a license though there are many requirements, this exemption provided has protected the fundamental rights of the community as a whole and make sure that the state is willing to defend one's culture and tradition. Though its validity has been questioned for a long time, it still thrives and unites the community and has made itself a source of law.

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