

**HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**

**WP(C). No.322 of 2023**

Sri Arun Kumar Chakma

**.....Petitioner**

**\_V\_E\_R\_S\_U\_S\_**

The State of Tripura & 4 Others

**.....Respondents.**

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|-------------------|---|-----------------------------------------------------------------------------------------------------------------|
| For Petitioner(s) | : | Mr. P. K. Ghosh, Advocate.                                                                                      |
| For Respondent(s) | : | Mr. M. Debbarma, Addl. G.A.<br>Mr. K. Datta, Advocate.<br>Mr. S. Datta, Advocate.<br>Mr. B. Debbarma, Advocate. |

Date of hearing and delivery  
of judgment and order : **14.12.2023**  
Legal reporting : **YES**

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**HON'BLE MR. JUSTICE T. AMARNATH GOUD**  
**\_J\_U\_D\_G\_M\_E\_N\_T\_O\_R\_D\_E\_R\_[ORAL]**

Heard Mr. P. K. Ghosh, learned counsel appearing for the petitioner also heard Mr. M. Debbarma, learned Addl. G.A., Mr. K. Datta, learned counsel, Mr. S. Datta, learned counsel and Mr. B. Debbarma, learned counsel appearing for the respondents.

[2] The present petition has been filed under Article-226 of the Constitution of India for quashing the order dated 02.01.2023 passed by the Janardhan Talukdar Adam Chakma Samajik Parisad, Machmara Unakoti, Tripura out casting/socially boycotting the entire family of the petitioner. Further, for cancelling the Chakma Customary Bill, 2019.

[3] The facts in brief are that the petitioner belongs to Indigenous community. He has his wife, four daughters and one son. His eldest daughter Smti Jharjhari Chakma married one Sri Kumar Sarvottam, son of Satyadeo Singh who is a Doctor of All India Medical Science, New Delhi and a certificate of marriage to that effect was issued by the Special Marriage Officer, West Tripura, Agartala, under Special Marriage Act, 1954 vide Book No. 15, Sl. No. 29 dated 19<sup>th</sup> November, 2013. After about 9 years of their marriage, on 13/5/2022 the Respondent No.4, i.e. the President (Karbari) of Janardhan Talukdar Adam Chakma Samajik Parisad issued 3 Notices to the petitioner

alleging that the marriage ceremony of his daughter, Chakma customs and rituals were violated and for resolving the social obligations, notices were issued to him which was not received by the petitioner and thereby the petitioner has committed disrespect to the society at large and further the petitioner neither by himself nor through his representative had even bothered to appear before the Janardhan Talukdar Adam Chakma Samajik Parisad. He was given an ultimatum to appear before the said parisad and submit his defense, as otherwise the Janardhan Talukdar Adam Chakma Samajik Parisad would take appropriate action to the petitioner.

[4] Hence, this petition has been filed by the petitioner before this Court for redress.

[5] Mr. P. K. Ghosh, learned counsel appearing for the petitioner has submitted that on 13/5/2022 the respondent No.4, i.e. the President of Janardhan Talukdar Adam Chakma Samajik Parisad issued a Notice to the petitioner alleging that on 25/4/2022 a letter was issued by the President, the Respondent No.4 stating that during marriage ceremony of his daughter, Chakma customs and rituals were violated and for resolving the social obligations, a notice was issued to him which was not received by the petitioner and thereby the petitioner has committed disrespect to the society at large.

[6] Similar notice was also issued to the petitioner on 29/9/2022 alleging that during marriage ceremony of his daughter, Chakma customs and rituals were violated and for resolving the social obligations, a notice was issued to him, which was not received by the petitioner and thereby the petitioner has committed disrespect to the society at large. The daughter of the petitioner was residing peacefully with her husband and after about 9 years of the marriage of Smti Jharjhari Chakma, daughter of the petitioner, the Respondent No.4, President, of Janardhan Talukdar Adam Chakma Samajik Parisad, Machmara, Unakoti, issued a notice to the petitioner dated 29/9/2022 asking the petitioner to show cause that the marriage of his daughter which was solemnized on 19/11/2013, was not as per ritual and customs of Chakma Community. He was given an ultimatum to appear on 10/10/2022 before the said Parisad and submit his defense, as otherwise the Janardhan Talukdar Adam Chakma Samajik Parisad would take appropriate action to the petitioner.

[7] By reply dated 6/10/2022, the petitioner made a representation to the Respondent No.4, President of Janardhan Talukdar Adam Chakma Samajik Parisad mentioning that the complaint regarding his daughter's marriage was imaginary which is not acceptable to any man of ordinary prudence and it was an act of insult. The petitioner prayed that social stigma and torture should be stopped and peace and harmony should prevail for the upliftment of the society.

[8] To the utter surprise of the petitioner, the said Respondent No.4 by letter dated 2/1/2023 informed that the petitioner was found guilty for disobeying the social rules and was declared as outcast. The said declaration dated 2/1/2023 mentioned that the marriage of the daughter of the petitioner was solemnized with a youth of different caste and as social rituals were violated, three notices were issued upon the petitioner, but the petitioner did not appear before the said Parisad. Moreover, it has been alleged that the petitioner had misbehaved with the Panchayet representatives and had rebuked them and for maintaining harmony among the community, decision has been taken against the petitioner and his family members.

[9] It is pertinent to mention here that the Respondent No.2 is empowered 3(1) of the 6th Schedule of the Constitution of India to make laws relating to the property, marriage land social customs in areas all over the District and it is stated here that Chakma Community Bill, 2019 as mentioned above has never been placed before the TTAADC and the same was never enacted as a law. According to the Chakma Community Bill, 2019, this shall come into force on the date of publication in Tripura Gazette. But no such notification is published and as such, the respondent No.4 has not been empowered to exercise the said bill and as such, the order passed by the Respondent No.4 calling upon the society to socially boycott the petitioner and his family members is without jurisdiction, illegal and not tenable in the eye of law.

[10] The notices issued by the Respondent No.4 alleging the solemnized the marriage of the daughter of the petitioner with a different caste, is itself violative of the provision of Constitution of India and no decision by any person, authority or institution can be taken in violation of the provision of the Constitution of India. As such, the order of out-casting the entire family of the

petitioner is void and violation of the Constitution of India and defamatory from all angles.

[11] It has been further submitted that as a natural sequel of the order dated 02.01.2023 passed by the respondent No.4, the petitioner and his family members are facing different types of social harassment in different places frequently and most unfortunately the close relatives of the petitioner are also avoiding them in rituals and social functions and thus adding fuel to fire of such insult defamation caused by the petitioner and his family members due to the said order.

[12] Learned counsel appearing for the respondents has submitted that in terms of the Chakma Community Bill, 2019 the respondents have issued a notice and there is nothing contrary to the law and supported the action of the respondents and prayed to dismiss the case. Learned Addl. G.A. appearing for the respondent-State has submitted that the dispute between the petitioner and the un-official respondent and they are only a formal party in this proceeding.

[13] Every citizen of India has right to lead life as per rights constituted under the Constitution, right to equality right to preach and follow any religious custom. There cannot be any restriction. Right to life and liberty. Any order boycotting a person from the country and village is nothing else against humanity and against the Constitution of India. This Court comes heavily against the action of the respondents.

[14] The attention of this Court is also drawn by the learned counsel appearing for the petitioner to a judgment of the Division Bench of this Court wherein, the Court while disposing of the writ petition has held thus “*Insofar as the order passed by respondent No.4 socially boycotting (outcasting) the petitioner and his parents, such order cannot be sustained and is set aside.*”. In the said judgment it has been categorically stated that the social stigma of boycotting the petitioner in the in the said writ cannot be sustained and is set aside. In view of the same having regard to the facts and circumstances of the case, this Court declares that a citizen of India cannot be boycotted by any person or any instrumentality of the State.

[15] Let us know what is actually mean by the words ‘social Boycott’ according to the legislation, a social boycott’s meaning refers to the

administrative attempt to hinder the collective refusal of another individual or group from following any social or religious custom or ritual or from participating in a social, religious, or community ceremony, assembly, sanctuary, gathering, or procession individual freedom is challenged in the guise of *jati panchayats*, religion, tradition, or denial of the freedom to pursue a career of one's choosing, which amounts to a social boycott.

[16] Freedom includes the ability to marry beyond one's caste, visit places of worship, dress as one pleases, and speak any language. Discrimination based on morality, political leanings, or sexuality is also considered a social boycott. Examples include preventing kids from playing in a certain region or denying access to burial plots, community centres, or educational institutions with nefarious motives. Reasons for the Law Against Social Boycotts:

“(i) In India, a heritage caste system was formed in ancient times and is still in practice, and its manifestation can already be observed directly.

(ii) The execution of gavki jati panchayats in Maharashtra and the famously known khap panchayats in Haryana are instances of the caste system's rigorous enforcement.

(iii) After convening, these committees issue extrajudicial judgments that are inhuman and go against the individual's dignity and are sometimes brutal and severe.

(iv) For example, after putting black paint on their faces, women were paraded through the village naked, individuals were shunned because they broke the assembly's so-called set rules, and individuals were whipped and lashed. In rare situations, the rape victim was married to the rapist.

(v) These extrajudicial declarations are still being carried out in rural regions where the caste system and social hierarchy are quite prevalent.”

[17] Provisions for Punishment against Collective Refusal:

“(i) On obtaining information about the possibility of an unlawful assembly for the imposition of a social boycott, a Collector or District Magistrate/Deputy Commissioner might issue an order prohibiting a crowd of people.

(ii) A sentence of up to three years in prison or a fine of up to Rs. 1 lakh will be imposed if you are convicted of the crime of social boycott. Individual or group abetment will result in the same punishment.

(iii) It is a cognisable and bailable offence that will be tried by a Judicial Metropolitan Magistrate or a Judicial Magistrate First Class. The trial would have to be finished within six months of filing the charge sheet to achieve prompt justice under the Act.”

[18] The Impact of the Act with the government's active involvement and the passage of legislation to combat the evil of social boycotts, members of the community could exercise their constitutional rights more easily and legally. People can now marry outside of their caste, and public places, wells, and temples are open to the public. The government has gone even farther, declaring that sexual orientation is a personal choice and that boycotts along those lines will face the same sanctions as the legislation listed above. Maharashtra's government has taken a positive move in the right way. As a result of legal backing for the prohibition of social boycott measures, the number of people who can now express their rights more effectively and have the opportunity to live a better life will rise. Furthermore, because these rights are already enshrined in the Constitution, they will be better utilised by various individuals. The Act is an excellent example of citizen empowerment. However, as with any other Indian Act, implementation is crucial.

[19] The social boycott is the prolonged avoidance of an individual by other members of society. It is the refusal of a society to engage a person in normal social and commercial relationships. Its purpose is to make the person so uncomfortable that he decides to leave society voluntarily.

[20] Article-21 of the Constitution of India defines protection of life and personal liberty wherein it has been stated that '*No person shall be deprived of his life or personal liberty except according to procedure established by law*'.

[21] The principle of reasonableness, which legally as well as philosophically, is an essential element of equality of non arbitrariness, pervades Article-14 like a brooding omnipresence and the procedure contemplated by Article-21 must answer the test of reasonableness in order to be in conformity with Article-14. It must be "right and just and fair and not arbitrary, fanciful or oppressive otherwise, it would be no procedure at all and the requirement of Article-21 would not be satisfied.

[22] Right to Live with Dignity-Articles-21, 39(e), (f), 41 and 42 has been meant to ensure a life with human dignity. Right to live with human dignity enshrined in Article-21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article-39 and Articles-41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against

abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State-neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials. [*Bandhua Mukti Morcha v. Union of India*, (1991) 4 SCC 177].

[23] Right to life does not include right to die. It provides protection of life, a right to live with dignity up to natural death, including a dignified procedure of death, but does not comprehend extinction of life which amounts to an unnatural death, *Gian Kour v. State of Punjab*, (1996) 2 SCC 648: 1996 SCC (Cri) 374.

[24] Right to dignity and privacy of women: freedom of women in respect of their bodies and bodily functions. Women have a right to control their own bodies. Menstrual status of a woman is deeply personal and an intrinsic part of her privacy and person. Women have a constitutional entitlement that their biological processes must be free from social and religious practices, which enforce segregation and exclusion. Practices which legitimise menstrual taboos, due to notions of "purity and pollution", limit the ability of menstruating women to attain the freedom of movement, the right to education and the right of entry to places of worship and, eventually, their access to the public sphere.

[25] These practices result in humiliation and a violation of dignity. Menstrual status of a woman cannot be a valid constitutional basis to deny her the dignity of being and the autonomy of personhood. Exclusion of women between age group of 10 to 50 years, based on their menstrual status, from entering Sabarimala, can have no place in a constitutional order founded on liberty and dignity. A claim for the exclusion of women from religious worship, even if it be founded in religious text, is subordinate to constitutional values of liberty, dignity and equality. Exclusionary practices are contrary to constitutional morality.

[26] Article-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;

(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.

Nature and scope of right protected by Article 25(1)-"All persons" inheres only in natural persons and means that every individual, without any distinction, discrimination and exception, is equally entitled to freedom and right conferred under Article 25(1), subject to restrictions stated thereunder, theme of equality under Article-14 applies to Article-25(1). Article-25 is gender neutral and confers inter faith as well as intra faith parity. Right to profess, practice and propagate religion includes all acts done in furtherance of thought, belief, faith and worship, though subject to the restrictions delineated in Article 25(1) itself i.e. so long as they do not violate constitutional morality or other provisions of Pt. III. Primacy between Articles 25 and 21, when there is a conflict.-Article 25 is subject to Article 21 and if a particular religious practice is threatening the health and lives of people, such practice is not entitled to protection under Article 25. In any case, balancing can be done by allowing the practice subject to those conditions which ensure nil or negligible effect on health.”

[27] Right to freedom of conscience and Right to freely profess, practise and propagate religion under Article-25(1), and essential religious practices protected thereunder, are subject to constitutional morality, as "morality" in Article-25(1) means constitutional morality. "Morality" to which right under Article-25(1) is subject, is governed by fundamental constitutional principles of justice, liberty, equality, dignity and fraternity combined with secularism, and not by popular opinions or social/ mainstream conceptions which keep on changing. Values of constitutional morality are a non-derogable entitlement. Court must deny protection to practices which detract from constitutional vision of justice, liberty, dignity and equality irrespective of source from which they claim legitimacy, even if based on religious text, if such practices are contrary to constitutional morality.

**An Act to provide for the prohibition of social boycott of a person  
or group of persons including their family members, and for matters  
connected therewith or incidental thereto.**

[28] With a view to ensure that the people in the State live in harmony with their human rights, it is expedient to provide for the prohibition of social boycott of a person or group of persons including their family members, and for matters connected therewith or incidental thereto; it is hereby enacted in the Sixty-seventh Year of the Republic of India as follows:-

1. (1) This Act may be called the Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016.

(2) It extends to the whole of the State of Maharashtra.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Caste Panchayat” means a Committee or a body formed by a group of persons belonging to any community, whether registered or not, which functions within the community to regulate various practices in the same community, controls personal and social behaviour of any member and collectively resolves or decides any disputes amongst its members including their families, by issuing oral or written dictums, whether called as a “panchayat” or a “gavki” or by any other name or description;

(b) “Community” in relation to a Caste Panchayat means a group, the members of which are connected together by reason of the fact that by birth, conversion or the performance of any religious rites or ceremonies, they belong to the same religion or religious creed and includes a caste, sub-caste ;

(c) “Government” or “State Government” means the Government of Maharashtra;

(d) “Human rights” shall have the same meaning as assigned to it in clause (d) of section 2 of the Protection of Human Rights Act, 1993;

(e) “Member” means a person who is a member of any community;

(f) “Social Boycott Prohibition Officer” means any officer of the Government designated by the State Government, by notification in the Official Gazette, under section 15;

(g) “Social boycott” means the gesture or an act, whether oral or written, of any social discrimination between the members of the community, specified in section 3;

(h) “Victim” means any individual who has suffered or experienced physical or monetary harm or harm to his property as a result of the commission of social boycott and includes his relatives, legal guardian and legal heirs.

(2) Words and expressions used but not defined in this Act and defined in the Indian Penal Code, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 or the Protection of Human Rights Act, 1993, or as defined in any other law for the time being in force, as the case may be, shall be deemed to have the meanings, respectively, assigned to them in those enactments.

3. Any member or a group of members who commit any of the following act or acts shall be deemed to have imposed social boycott on a member or members of the community:

(i) If he prevents or obstructs or causes to prevent or obstructs any member of his community from observing any social or religious custom or usage or ceremony or from taking a part in a social, religious or community functions, congregation, assembly, meeting or procession;

(ii) If he refuses or denies or causes to refuse or deny any member of his community the right to perform marriage, funeral or other religious ceremonies and rites which the members of his own community usually and ordinarily perform;

(iii) If he commits or causes to commit social ostracism on any grounds; (iv) if he shuns or refuses any member of his community from engaging in the society or cut-of social or commercial ties with such member resulting in making the life of such member miserable;

(v) If he prevents or obstructs or causes to prevent or obstruct any member of his community from having access to or from using any place used or intended to be used for a charitable, religious or public purpose which is established or maintained wholly or partly by his own community for and on behalf of the community out of the funds of such community and is normally available for use to or by any other member of his own community;

(vi) If he prevents or obstructs or causes to prevent or obstruct any member of his community from having access to or using the facilities of any school, educational institution, medical institution, community hall, club hall, cemetery, burial ground or any other place used by, or intended to be used by, or for the benefit of, his community; or any other public place;

(vii) If he prevents or obstructs or causes to prevent or obstruct any member of his community from enjoying any benefit under a charitable trust created for the benefit of his community;

(viii) If he incites or provokes or encourages any member of his community, directly or indirectly, to sever social, religious, professional or business relations with any other member or members of his community;

(ix) If he prevents or obstructs or causes to prevent or obstruct any member of his community from entering, lodging in or otherwise using any place of worship or pilgrimage, which is ordinarily open to the members of his community;

(x) If he prevents or obstructs or causes to prevent or obstruct any member of his community from establishing or maintaining such social, professional or business relations as he would ordinarily establish or maintain with other members of his community;

(xi) If he prevents or obstructs or causes to prevent or obstruct any children of his community from playing together with the children of specific family or families in the community;

(xii) If he obstructs or denies or causes to obstruct or deny any member of his community from enjoying human rights;

(xiii) If he discriminates or causes to discriminate amongst the members of the community on the basis of morality, social acceptance, political inclination, sexuality or any other basis;

(xiv) If he creates or causes to create cultural obstacle or compel any member of his community to wear any particular type of clothes or use any specific language;

(xv) If he expels or causes to expel any member of his community from the said community; and

(xvi) If he commits any other similar acts which amount to social boycott.

4. The social boycott is hereby prohibited and its commission shall be an offence.

5. Any person imposes or causes to impose any social boycott on any member of his community, shall, on conviction, be punished with imprisonment of either description, which may extend to three years, or with fine which may extend to one lakh rupees, or with both.

6. No person or group of persons shall gather, assemble or congregate at any time and at any place with the view or intention to deliberate on issue of imposing social boycott on any member of the community ; and such gathering or assembly or congregation shall be treated as an unlawful assembly and every person convening and organizing such assembly and every member thereof participating therein shall be punishable with fine which may extend to one lakh rupees.

7. Every person who aids or abets the commission of an offence under Section-4 shall be punished with imprisonment which may extend to three years, or with fine which may extend to one lakh rupees, or with both.

8. (1) Any action of social boycott, on the date of commencement of this Act shall, with effect from the date of such commencement, be void and be of no effect.

(2) Any Caste Panchayat, which imposes or cause to impose social boycott shall be deemed to have committed an offence under section 4 and shall be liable to be punished under section 5.

9. If the accused is convicted, the Court shall, hear the victim on the quantum of sentence, and then only pass the sentence.

10. Any offence punishable under this Act shall be cognizable and bailable and triable by a Judicial Magistrate of the First Class.

11. The offence punishable under this Act may, with the consent of the victim and with the permission of the court, be compoundable :

Provided that, the Court shall, by an order, grant permission for compounding of offence subject to the condition of performance of such community services to be rendered by the accused person, as the court may think fit.

12. (1) The victim or any member of his family may file a complaint either through the police or directly to the Judicial Magistrate of the First Class.

(2) The Magistrate before whom the complaint is filed under sub-section (1) may direct the police to conduct the investigation.

(3) The Magistrate may also direct the police and other concerned authorities to provide the victim and his family, any kind of assistance or help that he thinks necessary till the conclusion of trial.

13. Upon receiving the information of the offence of social boycott under this Act a police officer may,—

(a) Remove, or cause to be removed, any barricade or obstruction erected or placed in any place if such police officer has reasonable ground to believe that the barricade or obstruction was so erected or placed in order to be used for the purpose of committing an offence under this Act; or

(b) Open or cause to be opened any gate or door, if such police officer has reasonable ground to believe that such gate or door has been closed for the purpose of committing an offence under this Act.

14. (1) Where the Collector or District Magistrate, as the case may be, receives information that there is likelihood of convening of unlawful assembly for imposition of social boycott, he shall, by order, prohibit the convening of any such unlawful assembly and doing of any such act towards the commission of any offence under this Act by any person in any areas as may be specified in the order.

(2) The Collector or District Magistrate, as the case may be, may take such steps as he thinks necessary to give effect to such order, including giving of appropriate directives to the police authorities.

15. The State Government may, by notification in the Official Gazette, designate any officer of the Government, as the Social Boycott Prohibition Officer as it may consider necessary and may also notify the area or areas within which he shall exercise the powers and perform the duties prescribed by rules....”

[29] ***In Lata Singh vs. State of U.P. and Ors.***, reported in (2006) 5 SCC 475, this Court, in paragraphs 17 and 18, held as under:

“17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is

a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of “honour” killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism.”

Equality is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed, cabined and confined’ within the traditional and doctrinaire limits. From the positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies. Where an act is arbitrary, it is implicit that it is unequal both according to political logic and constitutional law and is therefore violative of Article-14. Based on the facts and circumstances of the case, let us discuss the contents which have been discussed under Article-14 of the Constitution of India:

“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 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”

[30] The equality clause contained in Article-14 requires that all persons subjected to any legislation should be treated alike under like circumstances and conditions. Equals have to be treated equally and un-equals ought not to be treated equally. While the article forbids class legislation, it does not forbid classification for purposes of implementing the right of equality guaranteed by it. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

[31] In ***Prem Chand Somchand Shah & Another vs. Union of India & Another***, reported in (1991) 2 SCC 48, the Hon’ble Apex Court has held thus:

1. The right to equality guaranteed under Article 14 ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstance shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that

event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question. [242H, 243A-B]

[32] It appears, therefore, that unless one were to hold that a religious creed is not a religious denomination (and thus open the floodgates to threshold litigation over whether a particular group constitutes a creed or a denomination), a significant section of the Boycott Act is unconstitutional *under the interpretation of Articles 25 and 26 advanced by the Saifuddin Court*. One might argue that the problem of unconstitutionality can be got around in two ways: one, by excluding from the scope of the Act instances of boycotts that are imposed *purely* on religious grounds. That, however, appears to do violence to the plain language of many of Section 3's sub-clauses, which are clearly meant to deal with religion-based community exclusion. The second is a similar move i.e., to limit the operation of the Act to instances that may properly be characterised as a "social boycott" (as the name suggests). Here again, it is doubtful whether this interpretive move is possible, since in the scheme of the Act, the social and religious boycotts are inextricably linked (See Sections 3(i), 3(ii), 3(iii) and 3(viii)).

[33] Clearly, the Act *prima facie* infringes Articles 19(1)(a), (b), and (c). It is a rather trite proposition that the freedom to associate includes the freedom not to associate. Undeniably, the Act affects the freedom not to associate in fact that is the point! Section 3(iv) prohibits the cutting off of social or commercial ties, 3(viii) prohibits instigating others from social, religious, professional or business relations with the boycotted member – and of course, 3(xv) prohibits expulsion. The Explanation II to Section V states that persons who participate in a meeting with a view to impose a social boycott, or who vote for imposing a social boycott, are deemed to have committed an offence. This is a *prima facie* infringement of Articles 19(1)(a) and 19(1)(b).

[34] The other response and one that I am sympathetic to, is to read the "morality" restriction under Articles 19(2) (4) as referring to constitutional morality. Previously on this blog, I have argued that a combined reading of Articles 15(2), 17 and 25(2) yield something that we can call the "anti-exclusion" principle: the Constitution respects the autonomy of groups and communities *until the point* (and no further) that their actions lead the exclusion

of individuals from access to basic goods (including cultural goods) that are required to lead a dignified life. The Maharashtra Social Boycott law is based upon the anti-exclusion principle, and is therefore a reasonable restriction upon the Article 19 freedoms. I do feel, however, that a few of the sub-clauses of Section 3 will fail this test. For instance, I am not sure whether Section 3(xi) dealing with preventing or obstructing children of the community from playing with children of specific families will meet the constitutional threshold.

[35] Recently, in a shocking incident, around 40 Dalit families in Kantio Kateni village of Dhenkanal district in Odisha were allegedly subjected to social boycott after a 15-year-old girl plucked flowers from the garden of an upper-caste man. The village comprises over 700 families, of which 40 belong to the Scheduled Caste Naik community. According to the villagers, the girl belonging to Dalit community had plucked the flowers two months ago. The girl's parents also apologized and begged the village panchayat to pardon them but there no response from upper caste people. Their ordeal ended following the intervention of police and administration. Harmon Mohalik, villager and member of upper caste community said, it was a little issue between Dalit community and our community. The matter has been already solved in front of police and other officials.

[36] The Indian tribal woman exiled for garlanding Nehru forced to leave her home and job, Budhini Manjhiyain, a tribal woman from the Indian state of Jharkhand, spent her entire life in exile. Manjhiyain, who died last month, was just 15 when she was ostracized by her tribe, the Santhals for garlanding India's first Prime Minister Jawaharlal Nehru 63 years ago. Under Santhal customs, exchanging garlands is akin to marriage.

[37] This Court is of the view that Chakma Community Bill, 2019 is not the law of the land till today and there cannot be a law against the Constitution of India and this bill cannot stand to the test of the Constitution of India. The so-called wedding is also taken place in the year 2013 and the relevance placed to this bill of 2019 cannot have a retrospective effect. Viewed from any angle, the action of the respondents is unconstitutional.

[38] In view of above discussion and for the ends of justice, the present petition liable to be allowed with further directions that the respondents No.1-2 to take steps for protecting the rights construed upon the petitioner under the

Constitution of India under Article-21. The petitioner is also at liberty to take steps against the respondents in accordance with law before competent forum, if so advised for any other relief.

[39] In view of above observations, the present petition preferred by the petitioner stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

**T. AMARNATH GOUD, J**

*A. Ghosh*

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