

6. The Kamalesan Case and Its Lesson – Polity

The recent Supreme Court of India decision dismissing Lt Samuel Kamalesan's Special Leave Petition (SLP) and upholding his termination. The case highlights a profound clash between Individual conscience, Freedom of Religion (Article 25), and the Armed Forces' need for discipline, unity, and cohesion (sanctioned by Article 33).

Special Leave Petition (SLP) – Constitutional Framework & Nature of the Remedy

Constitutional Basis under Article 136 – Article 136 grants the Supreme Court a broad discretionary power to entertain appeals against judgments or orders of any court or tribunal in India (except courts martial). The provision is intended as a constitutional safety valve, ensuring that exceptional miscarriages of justice do not go unaddressed simply because no regular appeal route exists. Extraordinary, Not Ordinary Jurisdiction SLP is not a matter of right; unlike statutory appeals, no party can demand admission as a legal entitlement. It is an extraordinary residuary jurisdiction, invoked sparingly when the judicial hierarchy has potentially failed to correct grave injustice. The Supreme Court has repeatedly emphasised that SLP should not become a “third layer of appeal” or a substitute for neglected appellate processes.

Grounds for Admission – SLP may be admitted when there is clear evidence of –

1. Gross miscarriage of justice
2. Perverse or irrational judicial findings
3. Violation of natural justice
4. Substantial questions of constitutional or public law importance
5. Jurisdictional errors by lower courts

The bar for admission is deliberately high to preserve SC's institutional role as a constitutional, not routine, court of correction.

Who May File & Timeline Requirements – Any aggrieved individual, group, or entity may file an SLP. Time limits include –

1. 90 days from the date of the impugned judgment, or
2. 60 days from rejection of a High Court review petition.

Delays may be condoned, but only upon satisfactory demonstration of genuine cause.

Significance & Emerging Challenges – SLP functions as a national mechanism of uniform justice, allowing correction of aberrant judicial outcomes anywhere in India. However, over-reliance on SLPs has led to –

1. Significant docket pressure on the Supreme Court
2. Dilution of its intended exceptional character
3. Transformation of SC into a general appellate body

The Court has therefore attempted to reiterate the narrow scope of SLP admission.

Limitations of SLP Jurisdiction – SLP cannot override or bypass statutory appeal mechanisms intentionally provided by Parliament. The SC avoids interfering with **interim or interlocutory orders**, unless serious illegality or manifest injustice is demonstrated.

Background of the Kamalesan Case – Military Rituals, Conscience, and Discipline

Regimental Culture and Leadership Norms – Kamalesan belonged to a fixed-class infantry regiment with a deeply embedded ritual tradition involving Sikh–Jat–Rajput heritage. Regimental rituals serve as symbols of collective identity, reinforcing unit pride, cohesion, and emotional bonding among troops. Officers are expected to uphold this culture, often participating in all rituals regardless of personal faith, as a visible signal of solidarity with the unit.

Officer's Conduct – Selective Participation – Lt. Kamalesan, a Protestant Christian, participated in all external rituals and parades. He refused only the sanctum entry and puja/aarti, citing religious conscience, and offered a respectful alternative—standing outside without disturbance. His conduct was polite, consistent, and non-aggressive.

Army's Perception of the Refusal – The Army interpreted the refusal as –

1. A public distancing from regimental customs
2. Disobedience of a lawful command
3. Conduct weakening the officer's moral authority and unit cohesion

The matter was framed as a discipline and leadership issue, not a private religious preference.

Institutional Concerns and Precedents The Army feared that granting exceptions could lead to –

1. Fragmentation of uniform discipline
2. Multiple individual exemptions
3. Precedents similar to the IAF beard litigation

Maintaining a uniform code of conduct was essential for operational integrity.

Outcome under Section 19 & Rule 14 – Proceedings under Section 19 of the Army Act (government power to dismiss for misconduct or unsuitability) and Rule 14 (dismissal without court martial after due notice) resulted in dismissal in 2021. The Supreme Court ultimately upheld the dismissal and rejected the SLP.

Judicial Reasoning

Delhi High Court's Stand – The issue was framed as military command obedience, not religious liberty.

Precedents such as *R. Viswan* (1983), *Mohammed Zubair* (2017), and *L.D. Balam Singh* were used to assert that – Military service requires acceptance of limitations on fundamental rights.

Article 33 empowers Parliament to restrict rights for discipline and efficiency. Officers bear greater obligations than enlisted personnel—they must be embodiments of unity, morale, and regimental ethos. “Ordinary citizen standards” cannot be applied to the armed forces.

Supreme Court's Final Position – Reinforced principles of judicial deference to military expertise—courts should not second-guess discipline enforcement. Applied the essential religious practice test, holding that the refusal did not fall within protected essential Christian practices. Saw refusal as disobedience of lawful command, not religious expression. Described the officer as a “misfit for the Army,” emphasising that military cohesion prevails over individual conscience in operational contexts.

Constitutional & Legal Doctrines Involved

Article 25 – Religious Freedom – Protects freedom of belief, conscience, and the right not to participate in rituals of other faiths. However, protection extends only to essential practices, not every personal preference.

Article 33 – Restriction of Rights for Armed Forces – Allows Parliament to legislate restrictions on fundamental rights of soldiers to maintain discipline. Forms the constitutional foundation for military rules overriding individual liberties.

Lawful Command Doctrine in Military Law – Refusal to obey a lawful order is misconduct, irrespective of personal belief. The armed forces operate under a strict hierarchy, where discipline is the backbone of operational effectiveness.

Constitutional Morality & Tolerance (Bijoe Emmanuel Principle) – *Bijoe Emmanuel* (1986) emphasised that respectful non-participation is not indiscipline. However, the Supreme Court distinguished this case by noting the unique institutional demands of the military.

Ethical Analysis – The Core Dilemmas

Individual Conscience vs. Institutional Duty – Kamalesan acted from sincere religious conviction—a case of moral autonomy and integrity. The Army prioritised the doctrine that officers must exemplify unbroken solidarity with their troops. This clash represents an ethical tension between personal integrity and professional obligation.

Positive Secularism vs. Negative Liberty – The Army practices “positive secularism” (Sarva Dharma Sama Bhava), where rituals aim to promote unity, not religious dominance. Kamalesan asserted “negative liberty”—the right to abstain from religious acts. The ethical question becomes whether symbolic participation can override personal faith boundaries.

Leadership Ethics and Command Presence – Military leadership demands participation in shared rituals as a sign of trust and cohesion. The Court interpreted refusal as a symbolic breach of leadership duty.

Utilitarian vs. Deontological Approaches – Army’s view – utilitarian—discipline of many outweighs conscience of one. Officer’s stance – deontological—violating conscience is inherently wrong. The tension reveals competing moral frameworks.

Proportionality and the Possibility of Accommodation – Ethical proportionality would require assessing whether dismissal was the least intrusive measure. The officer did not seek exemption from military duty—only from entering the sanctum. International military practice often allows narrow religious accommodations without compromising cohesion.

Way Forward – Institutional Reform & Ethical Balance

Clearer Ritual Guidelines – Specify what constitutes symbolic vs. religious participation, reducing ambiguity.

Reasonable Accommodation Mechanisms – Allow respectful non-participation in narrowly defined circumstances while ensuring regimental cohesion.

Graduated Sanctions – Before dismissal, apply milder responses such as counselling, temporary posting, or advisory reprimands.

Ethics & Diversity Training – Equip commanders to navigate religious pluralism sensitively, reducing punitive reflexes.

Inclusive Leadership Models – Use historical examples of secular leadership—Brig. Desmond Hayde, Lt. Col. Tarapore, Col. Sofiya Qureshi—to reinforce that cohesion does not require ritual conformity.

Institutional Learning – Excess rigidity may undermine trust in a pluralistic force; flexible solutions often strengthen cohesion, not weaken it.

Conclusion

“When duty meets conscience, the ethical task is not to eliminate one, but to create space where both can coexist.” The Kamalesan case highlights the hard balance between constitutional rights and military discipline under Article 33. While the Supreme Court prioritised institutional cohesion, the long-term ethical health of a diverse military may require calibrated accommodation, clearer policies, and proportionality in sanction.

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