

A SOCIO-LEGAL PERSPECTIVE OF COW SLAUGHTER IN INDIA

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Abstract

Since ancient times, veneration of the cow has been a part of Hindu culture and beliefs. It is engrained as a critical entity in the socio-cultural landscape of our country. The slaughter of cows in India, hence, has come to be a greatly controversial, volatile and a critically sensitive issue, the debate on which has been raging on for many decades now. Fundamentally, it finds its basis in Hindu religious sentiments and practices attached to the cow, as against the interests of those who slaughter it as a matter of livelihood, religion or even otherwise.

Being a head under the State List, there is no single, uniform law explicitly governing cow slaughter. The issue has thus been subject to considerable judicial scrutiny over the years, which has sought to reason out its legitimacy, emphasising the cultural and economic facets more than the religious aspects, which in turn is seen by many as an effort to elidethe primacy given to dominant Hindu beliefs at the expense of the very idea of constitutional secularism. Consequently, broader issues of majority influence and minority rights, and also the fairness of the judicial system come to the fore.

In light of the new BJP government coming to power, whose election mandate was explicit in lashing out against the practice of slaughter, the paper examines and analyses the societal aspects of the practice with regard to the existing legal framework on the same, concluding that the same needs a thorough relook.

Introduction

The cow in Indian culture is abundant in the fields, present in temples, debated about in Parliament and the media, is a crucial symbol in elections, and is a subject of significant judicial scrutiny in the courts of law. It is evident then, that it is engrained as a critical entity in the socio-cultural landscape of the country.

The slaughter of cows, therefore, becomes a highly controversial issue, given the Hindu religious sentiments and practices attached to the cow on the one hand, and the interests of those whose livelihoods depend on slaughtering it (butchers etc.) and also Islamic traditions, on the other.

With the election of the Narendra Modi led BJP government, the issue of cow slaughter is once again in the limelight. The author, through this paper, has sought to analyse the societal aspects of the practice of slaughter with regards to the existing legal framework on the same. A brief historical background at the start shall provide for a deeper understanding of the topic, coupled with insights on what the provisions of the law state.

Historical Background

Since ancient times, veneration of the cow has been a part of Hindu culture and beliefs. Verses from the Rig Veda, apart from containing various prayers and hymns in praise of the cow, have also at places equated it with God. It is referred to as 'Aghnya', meaning one not to be slain. Furthermore, it is also referred to in Hindu mythology as 'mother'

(“*Gauhamarimatahai*”), being often associated with Lord Krishna and his pastoral background.

Cow slaughter under the Guptas was a capital offence, and even the tenets of other religions including Jainism and Buddhism laid emphasis on non-violence and cow worship.¹ The legend of a Chola king who executed his own son for an accidental killing of a cow is also quite popular in this context.

(However, ancient literature also demonstrates that cow-sacrifice was essential on certain religious events and that beef-eating was mandatory at certain times. According to various accounts given in the Vedas, beef was eaten by priests on many important ceremonial occasions)²

Post ancient times, the advent of the practice of cow slaughter in India can be traced back to the arrival of Islamic invaders from West and Central Asia in around 1000 AD. Although the Mughals during their reign prohibited it, the practice was revived and intensified when the British, who were habitual beef eaters, arrived in the early nineteenth century. Eminent national leaders advocated a ban on this practice including Gandhi, who once referred to ‘cow protection’ as the gift of Hinduism to the world, the most wonderful phenomenon in human revolution.³

The Law Relating to Cow Slaughter

Constituent assembly debates

An amendment for the inclusion of an article seeking to “*prohibit the slaughter of cow and other useful cattle*” was moved before the makers of the Constitution by leaders led by Pandit

¹Seshagiri Rao (ed.), *Encyclopedia of Hinduism* Vol. III, 2010, p. 248.

²S.M. Batra, *Cows and Cow-slaughter in India: Religious, Political and Social Aspects*, Working Paper No. 88, Institute of Social Studies, The Hague, (1981).

³*Supra* note 1.

Thakur Das Bhargava. The demand was initially to incorporate such a provision as a Fundamental Right, but since Fundamental Rights *dealt with human beings only*, upon the insistence of Ambedkar, it was debated as a Directive Principle. Pandit Bhargava termed it as a 'sacrifice', but also as a step reflective of non-coercion towards the non-Hindu population.

The arguments of the members in favour of banning slaughter mainly centred around the *economic usefulness* of the cow rather than religious sentiments. It was asserted that the cow could never be useless and was seen as the '*KamDhenu*' (fulfiller of wants) to India.

However, Syed Muhammad Sa'adulla, opposing the amendment, made a very crucial observation. He made it clear that if religious sentiment was the actual reason behind prohibiting cow slaughter, then that should be clearly stated, rather than masking it with apparent economic motives. He also argued that in context of the usefulness of the cow, both Hindus and Muslims had similar ethical relationships and that there were Muslim farmers, to whom it was as much a capital asset as it was to the Hindus.⁴

Nevertheless, the amendment was adopted by the assembly and today finds its place as a Directive Principle under Article 48 in Part IV of the Constitution.

Present Legal Provisions

The issue of cow slaughter and its prohibition finds its legal basis in the Constitution of India, (as mentioned above) as a Directive Principle of State Policy, under Article 48. It reads:

*"The state shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."*⁵

⁴Constituent Assembly Debates, Official Report, Vol. VII (1999), p. 568.

⁵ Art. 48, The Constitution of India.

Being a Directive Principle, it is although not enforceable in a court of law *per se*, but is required to be kept in mind by the governments while making laws and policies for the country and is to be interpreted harmoniously with the Fundamental Rights under the Constitution.

However, '*Preservation, Protection and Improvement of Stock*' is also a subject under the State List of the Constitution, and therefore, *de facto*, every state is practically empowered to legislate on the matter. As a result there remain only five states- Kerala, Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, and the Union Territory of Lakshadweep that have *no legislations* banning the slaughter of the cow and its progeny. All other states and U.T.'s have either a total prohibition or at least some restrictions.⁶

Moreover, sale of beef is also selectively prohibited in many states, some allowing only beef imported from other states to be sold, and some like Haryana, Himachal and Madhya Pradesh (which has a 7 year punishment for consumption of beef⁷) banning it completely.

Supreme Court Judgements

The Supreme Court in many of its cases and decisions has dealt with the contentious issue of cow slaughter. The issue was first addressed in the landmark case of *Mohammad HanifQuareshiv. State of Bihar*⁸ in 1958. The petition, filed by Muslim butchers contended that their Fundamental Rights under Articles 14, 19(1)(g) and 25 were infringed by cow slaughter legislations. The court however held that under Article 14, their right to equality was not being violated (as against butchers of goat and sheep) and neither was the freedom to practice their religion (Article 25) being taken away. However, as regards their right to carry on trade under Art.19(1)(g), the court made the point that an absolute prohibition devoid of

⁶*ParimalNathwani*, Unstarred Admitted Question No. 2495, Rajya Sabha (April 27, 2012),

⁷M.P. Singh, "Madhya Pradesh Cow Slaughter Act Gets President's Nod", *The Hindu*, January 3, 2012.

⁸*Mohammad HanifQuareshi v. State of Bihar*, AIR 1958 SC 731.

any test for the usefulness or age of cattle was 'excessive restriction', but still the upheld a total ban on the slaughter of "*cows of all ages, and calves of cows*"⁹(but not of other cattle).

In numerous other lawsuits contesting the provisions for regulation of cattle slaughter in the country, the Supreme Court had constantly upheld that a total ban on the slaughter of cows was reasonable but not on that of other cattle breeds. But in a controversial 2005 judgement, the court upheld a total ban not only on the slaughter of cows, but on slaughter of *all* cattle as reasonable citing that such cattle remained useful even after a certain age, not only in terms of manure, but also as a source of biofuel.¹⁰

The Social Landscape

The cow in modern Indian society is a potent symbol of religious difference. It is subject to and an object of great controversy and dispute between the largest religious population and the largest religious minority.

For the Hindus, cows are still held to be sacred, worshipped with great devotion and reverence, and beef eating is repugnant. This belief forms a part of a wider central value system, which seeks to establish a relationship between man and the divine. It is believed that everything that comes from the cow is sacred, and the mother, that is the cow, will lead them to god and salvation. Also, the cow's position as a companion of deities Vishnu and Krishna makes its sanctity even more inviolable.¹¹

⁹*Mohammad Hanif Quareshi v. State of Bihar*, AIR 1958 SC 731.

¹⁰*State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, AIR 2006 SC 212.

¹¹"The cow is the animate form that precedes human birth; if a cow is killed, one has to go all the way back and to pass through 87 animate forms before one enters the animate form of the human body. Secondly, according to Hindu belief, when a soul goes to heaven for salvation, it has to cross a river known as Baitarni, which is full of mud, urine, fire, etc. If a man has donated a cow or has been very kind to cows on earth, he can cross this river by holding on to a cow's tail. The primary objective of a Hindu is thus incomplete without the worship of the cow." See S.M. Batra, *Cows and Cow-slaughter in India: Religious, Political and Social Aspects*, Working Paper No. 88, Institute of Social Studies, The Hague, (1981).

The Muslim population however, are traditionally and historically avid beef eaters, and seek to follow the practice of slaughtering cows on *Bakr-Id*. Moreover, a majority of those involved in the trade of butchers (and related undertakings) in the country are also Muslim.

Consequently then, there is a fundamental conflict of interests and values. It seems that to the Hindus, spiritual values are more important than life itself and that they would rather starve to death than eat the cow. An incident that occurred in Nepal is appropriate to understand the importance of the cow in Hindu culture: A car driven by an American official by accident hit a cow and killed it. In order to avoid an international incident had the official been arrested for murder, the magistrate concluded that the cow had committed suicide.¹² However, the Muslims see the cow as a source of employment, nutrition and one to be sacrificed. Laws prohibiting slaughter are seen by them as an undesirable imposition of Hindu values and a deprivation of their right to freedom of religion and occupation. This, they believe is in contravention of the very principles of constitutional secularism, on which our country prides itself on.

Quite evidently then, the issue of cow slaughter seems to raise strong emotions in a lot of people, and has thus unfortunately been a pretext for communal violence on many occasions, resulting in heavy losses of life and property. Riots between Hindus and Muslims in Azamgarh in 1893 killed more than a 100 people. In 1912-13 violence rocked Ayodhya for similar reasons. In 1916, a mob of 7,000 - 10,000 Hindus, endeavoured to prevent a cow-sacrifice on the occasion of *Bakr-Id* in Patna, created a riot killing several Muslims, in spite of the presence of armed police. More recently, in 1966 a riot broke out outside the Parliament during a demonstration by political parties demanding a country-wide ban on cow

¹²Marvin Harris, "India's Sacred Cow", Vol. 34, *Cultural Anthropology*, 201 (1989).

slaughter.¹³ Religion in such occasions is used more as a means of hate propaganda, rather than a positive tool for tolerance and compassion. Faith and trust disappears and the only purpose of religion remains to be a torchbearer of majoritarian identity.¹⁴

It is not surprising then that the cow in India is a significant political issue too, a tool in the hands of those who base their politics on religious identities. The demands for a ban on cow slaughter and also opposing political views seem to be based not on love for the animal nor for gastronomical reasons, but on a question of identities: religious identities, majority and minority identities.¹⁵

Most observers have tended to criticize the BJP and its allies (including the Sangh Parivar) for using the bovine as a political vehicle. Right from the 'cow protection movement' in 1966 by the RSS to laws described as draconian in Madhya Pradesh (including a seven year jail term merely for consumption of beef), the right wing parties are seen to give such communal policies a religious façade. According to B.K. Gandhi, a political analyst at the Centre for Study of Developing Societies, "*The BJP, over the years, has pushed cow protection as an integral part of their political agenda by including it in their manifesto. It is their way of appeasing the Hindu vote bank.*"¹⁶ However, the so-called secular parties are also equally to blame. They chose to act like mute spectators, turning a blind eye to the growing controversy from its very origins.¹⁷

Questions and Contradictions

¹³A.A. Mahaprashasta, "A Political Tool: An Interview with D.N. Jha", *Centre for Study of Society and Secularism*, 54 (2012).

¹⁴A.K. Pandey, "The Dilemma of Cow Slaughter in India, Cow on Indian Political Chessboard", *Centre for Study of Society and Secularism*, (2012).

¹⁵M. Mukhopadhyaya, "Politics over Ban on Cow Slaughter and My Beef Eating Days", *The Asian Correspondent*, January 4, 2012.

¹⁶Manoj Joshi, "Hindutva Politics and the Holy Cow", *The Daily Mail*, February 4, 2012.

¹⁷*Supra* note 14, at 20.

The debate about the religious significance of the cow and laws prohibiting its slaughter raises several questions as regards not only to its legality, but also its rationale and practicality. The researcher submits that questions need to be answered about certain inherent contradictions in the arguments of those advocating a ban on slaughter. Questions of rights, of freedom, of historical prejudice, of modern realities are all pertinent to the issue.

First and foremost, it is essential to point out that cow slaughter and consumption of beef have been a part of Indian culture since Vedic times itself, and it would be fallacious to assume that these practices were introduced by Muslim invaders. Marvin Harris, in his highly acclaimed work on *'India's Sacred Cow'* points out that the Vedas did not prohibit slaughter of cows, but instead ordained it as a sacrificial right.¹⁸ Even D.N. Jha has stated that "*In the Vedic texts and the Dharmashastras, there are also references to occasions when cows were killed for consumption, and eating of beef was de rigeur*".¹⁹ Therefore, the commonly held belief that the cow in Hindu religion has always been inviolable and sacred is erroneous, and attributing the practice of slaughter solely to the Muslims is completely inaccurate.

The laws governing cow slaughter and even the Supreme Court's judgements on the same are also highly questionable. First, the Constitution guarantees in Art.25(1), to all persons, the right to freely "*profess, practice and propagate religion*"²⁰ subject to "*public order, morality and health*".²¹ The Hedaya Book XLIII states that the sacrifice for one Muslim on *Bakr-Id* is seven goats, or seven persons may sacrifice one cow. Sacrificing one cow (by seven people) as opposed to seven goats (individually) therefore is significantly cheaper, and families who can afford one cow, may not be in a position to afford seven goats. The question then arises, that if the slaughter of cows is not classified as an essential religious practice only because of

¹⁸Harris, *supra* note 12.

¹⁹*Supra* note 13, at 53.

²⁰ Art. 25(1), The Constitution of India.

²¹ Art. 25(1), The Constitution of India.

the existence of alternatives, then cannot economic compulsion also amount to essential practice, and hence be protected under Art. 25(1) as a fundamental right?

Secondly, it remains to be justified as to how banning cow slaughter does not adversely affect the livelihoods of the many Muslims employed as butchers, meat traders, leather workers etc under Art. 19(1)(g). Additionally, while it was held by the Supreme Court that by virtue of yielding more milk the buffalo was of more use than the cow, still a total ban on the slaughter of cows was upheld and not on the slaughter of buffaloes. It can also be argued that the state cannot dictate what an individual can or cannot eat, unless it is injurious to someone, for even though Muslims are forbidden from eating pork, they do not stop others from eating it, then why should the Hindus stop them from eating beef?

Furthermore, being a cheap source of nutrition and diet (with prices almost half of goat's meat), beef continues to be an important part of the diet of many Indians, especially those in the South and North East. According to one estimate, about 40% of Indians consume beef even today. Most of these people either belong to historically marginalised groups or are Muslims, who themselves are one of the most economically and socially weaker groups in the country.²² Even the Supreme Court in its landmark judgement in the *Mohammad Hanif Quareshi* case admitted, "*Beef and buffalo flesh are used for food by a large section of the people in India. It is well known that poorer sections of Muslims, Christians and members of the Scheduled Castes and Tribes consume beef and buffalo flesh. There is also a limited demand for beef by the foreign population.*"²³ Depriving the poorest people of their important source of protein seems to be imprudent, a policy which can do more harm than good. Also, banning beef may lead to a rise in prices of other meat forms and a greater supply of goats,

²²Shraddha Chigateri, "Negotiating the 'Sacred' Cow: Cow Slaughter and the Regulation of Difference in India", in M. Mookherjee, *Democracy, Religious Pluralism and the Liberal Dilemma of Accommodation*, (2011) pp. 137, 156.

²³*Mohammad Hanif Quareshi v. State of Bihar*, AIR 1958 SC 731.

lamb etc. to be slaughtered. Therefore, the rationale behind beef consumption legislations is also questionable. It needs to be seen whether it is a true demand of the population or mere propaganda by certain political interest groups. (Ironically there are more than 32,000 unlicensed slaughter-houses in the country, making beef the most highly produced and consumed meat in India)²⁴

The prohibition of cow slaughter is also questionable on the economic front. While there is a *total* ban on the slaughter of cows, the slaughter of buffalos and other cattle is prohibited with certain conditions i.e., old cattle can be slaughtered when they are no longer of use for milking or working. However, this is not so in the case of cows. Old and useless cows, although compete with humans for land and food resources, and are of no use themselves, cannot be slaughtered. Secondly, cows in India contribute to less than half the milk production, and most cows are not even dairy breeds. Moreover, draft cattle (buffalos) who are preferred over cows for working in the fields, are lesser in number than the cows, and still their slaughter is allowed but not of cows. Even Harris in his paper has calculated that 40 cows are needed to maintain a population of 100 bulls and oxen, and India averages 70 cows per 100 oxen, therefore concluding that the excess 30 million cows were expendable.²⁵ As stated earlier, it is also contended that those who seek to slaughter the cow have similar economic relationships as those who seek to protect it, therefore the ethic of use-value of the cow is not exclusively a Hindu preserve.²⁶

Conclusion

The debate on cow slaughter is a deep social, legal and political issue which involves the interests of a large number of people and stakeholders. At the heart of the issue are diverse

²⁴*Supra* note 22, at 140.

²⁵*Supra* note 18, at 207.

²⁶*Supra* note 22, at 145.

cultural practices and contested ethical claims of two great communities in a religiously plural society. The concern therefore is to regulate and balance these opposing claims in the context of the present social set-up.

The Hindus on one hand worship and revere the cow as a holy religious symbol, slaughtering whom is a great sin which is bound to offend the gods. The Muslims on the other hand, not only seek to slaughter the cow on *Bakr-Id*, but many of them are also historically employed as butchers, leading to a fundamental conflict of beliefs, values and practices.

The law and judicial opinion devised for regulating this conflict in the opinion of the researcher is in need of a serious and thorough relook. It fails to accommodate divergent religious practices but instead has systematically normalised, legitimised and prioritised a dominant Hindu ethic at the expense of the rights and beliefs of the already subjugated Muslim community. There is no statute or case, and not even the Constitution mentions Hindu religious sentiment as the foremost basis for prohibiting slaughter, which quite evidently it is. Hence, the very basis of the concerned legal provisions is fallacious.

Thus, it is vital that the regulations dealing with cow slaughter are re-examined in the context of the present circumstances, and are not followed thoughtlessly. It is also imperative that the judicial decisions be free of majoritarian and societal influence, for in the interest of justice and fairness, reasonable interests of both parties need to be balanced.

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