

Issue Brief

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Banning Cow Slaughter by Stealth

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TABLE OF CONTENTS

| | | |
|-----|---|----|
| I | Introduction | 1 |
| II | Legislative overreach | 2 |
| III | What is public interest | 6 |
| IV | Constituent Assembly Debates, Fundamental Rights and Directive Principles | 11 |
| V | Cow slaughter and the law | 15 |
| VI | The political narrative | 19 |

ABSTRACT

The contentious issue of cow slaughter has been revived with the notification of The Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules 2017 (the Rules) by the Union Government. When cow slaughter was first raised in the Constituent Assembly of India, there was a move to place it under Fundamental Rights. However, by a compromise, it was placed within Directive Principles of State Policy (DPSP), with the caveat that it will not be implemented with coercion by the state. The Supreme Court, which initially placed DPSP (now Article 48) on a lower pedestal than the Fundamental Rights has since modified its position to treat them as equal. However, the emphasis even in Article 48 is on modern animal husbandry more than cow slaughter, and certainly there is no scope for reading into it a total, blanket ban on cow slaughter. Prima facie, then, the Rules, pose a threat to the freedom of profession of all those who are dependent on slaughter of cattle. By notifying these Rules, the Centre has encroached the jurisdiction of the State Legislatures and upended the federal spirit of the country, writes **Manuraj Shunmugasundaram, Advocate, Madras High Court and National-Media spokesperson, Dravida Munnetra Kazhagam (DMK)**. The present legal position on cow slaughter, he says, may be re-examined in due course when Writ Petitions challenging the Rules are finally heard before the Supreme Court.

I. INTRODUCTION

It is illegal for a government to ban cow slaughter. The Constitution does not allow for it, nor will the Courts endorse it. Which may be the reason why the present Government of India has chosen to notify the Rules in an elaborate attempt to circumvent existing laws on this subject. It provides the government with political mileage amongst its core voters and plausible deniability when questioned in courts. In order to critically review the actions of the Union of India, the subject matter is proposed to be broken down into five primary issues:

I. Whether the Rules notified by the Union Government adhere to the letter and spirit of the Constitution? Can the Centre legislate on animal markets *vide* these Rules?

II. Can Rules framed by the Union Government override fundamental rights of citizens, especially Article 19(1)(g) and Article 25 of the Constitution?

III. What do the Constituent Assembly Debates tell us about the stand on cow slaughter? How did this issue come to be placed in the DPSP?

IV. What have Courts held in the past with regard to cow slaughter legislation especially in the context of DPSP seeking to prohibit cow slaughter?

V. Do these Rules portend a larger political push towards a hardline Hindutva ideology? What are the potential political repercussions?

II. LEGISLATIVE OVERREACH

The Rules were notified by the Government of India on 23 May 2017 by the Ministry of Environment, Forest and Climate Change (MoEFCC). They have been in force from their date of publication in the Gazette on May 23, 2017, even as the draft rules were made public upon publication in the Gazette on January 16, 2017. In the press release issued by the Press Information Bureau¹ on May 27, 2017, MoEFCC sought to dispel doubts about the true intent of the Rules:

“The prime focus of the regulation is to protect the animals from cruelty and not to regulate the existing trade in cattle for slaughter houses. It is envisaged that welfare of cattle dealt in the market will be ensured and that only healthy animals are traded for agriculture purposes for the benefits of the farmers. The livestock markets are intended to become hubs for trade for animal for agriculture through this process and animal for slaughter will have to be bought from the farmers at the farms. The notified rules will remove the scope of illegal sale and smuggling of the cattle which is a major concern. The specific provisions apply only to animals which are bought and sold in the notified live stock markets and animals that are seized as case properties. These rules do not cover other areas.”

There are two primary submissions here: protection of animals from cruelty is the underlying rationale for the Rules; and the objective of the Rules is to stop illegal sale and smuggling of cattle. What the Government has not said in unequivocal terms is that it had come to its notice that illegal sale and smuggling is taking place on the Indo-Nepal and Indo-Bangladesh borders. This is apparent from the subsequent paragraphs of the press release:

“It may be recalled that in the case before the Supreme Court of India in W.P. (Civil) No. 881 of 2014 filed by Gauri Maulekbi versus Union of India and others, the Apex Court passed an order dated 13th July, 2015 to frame guidelines to prevent animals from the being smuggled out of India for the Gadhimai

¹ Press Information Bureau, Government of India, Ministry of Environment and Forests, 2017. "[Rules on prevention of cruelty to Animals \(Regulation of Livestock Market\) to ensure welfare of Animals & Protect Animals from Cruelty: Environment Ministry](#)", May 27.

Festival held in Nepal where large scale animals sacrifices took place. The Supreme Court had constituted a Committee under the Chairmanship of DG, Sabastra Seema Bal (SSB) and some suggestions were made by them, including measures to curb trans-boundary smuggling of cattle. The Supreme Court also inter alia directed that rules with regard to Livestock Market and Case Property animals also be notified. On 12th July, 2016 the Supreme Court by the way of a final order directed this Ministry to frame rules under Section 38 of the Prevention of Cruelty to Animals, 1960.”

This immediately raises the question why new regulations on livestock markets are being imposed in, say, States like Kerala and Maharashtra when they are located thousands of kilometres from the Nepal and Bangladesh borders. Furthermore, can the Union Government, in an effort to review and improve border security and anti-smuggling measures, bring regulations that impact sale of livestock across the country? The Union Government has attempted to take refuge behind the orders passed by the Supreme Court in *Gauri Maulekhi vs Union of India* (W.P. (Civil) 881 of 2014). In that case, the petitioner had sought measures to curb the export of live cattle out of the country. This is clear from the order² passed by the Supreme Court when the case came for hearing on October 17, 2014. The operative portion of that order reads:

“Our attention has been drawn to Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, which authorises the Central Government to formulate the export/import policy. It is submitted that such an export policy has indeed been formulated by the Government whereunder in Schedule-2 at serial no.10 of Table-B insofar as live cattle and buffaloes are concerned, their export is restricted. Only export of live cattle and buffaloes are permitted under licence.

In view of the above, we direct the respondents to ensure that no live cattle and buffaloes are exported out of India into Nepal, but under licence.”

Even if one were to go by a subsequent order of the Supreme Court, in the same case, on November 3, 2014, it would be evident that only the States of Bihar, Uttarakhand, Uttar Pradesh and West Bengal were requested to take part in the consultative process for ensuring that “*no animal is transported across*

² [Supreme Court of India/Judgments.](#)

the border without licence". Subsequently, during the hearing on July 13, 2015, the recommendations made by SSB, which is under the administrative control of the Union Ministry for Home Affairs, and the suggestions arrived at the meeting between the Central Government and above named States, were directed to be implemented. Specifically, the Supreme Court directed the setting up of State Animal Welfare Boards and the Society for Prevention of Cruelty to Animals in each district to be implemented by all State Governments. Finally, on July 12, 2016, the Writ Petition was disposed of with the Supreme Court recording the submission made on behalf of MoEFCC that draft Rules have been prepared in this regard and will soon be finalised. During the entire scheme of the case, there is little to suggest that livestock markets would be regulated across the country in the manner and form in which the Rules have framed them to be.

It is also equally unfathomable that such a measure would be conceived to control cross-border smuggling of buffaloes in the lead up to Gadhimai festival in Nepal. Indeed, it is a long and tedious stretch of the imagination to think that regulation of cattle markets in Vellore or Mallapuram would help the SSB to effectively police the unlicensed transport of buffaloes near Gorakhpur and Kisanganj. Nevertheless, the drafting of the Rules in their present form seem to have emanated from an overenthusiastic executive subjectively interpreting standard judicial directions given in the facts and circumstances of a particular case.

The other glaring overreach by the Union Government is in notifying the Rules under Section 38 of Prevention of Cruelty to Animals Act 1960 (PCA). The PCA is a central legislation which seeks to prevent "unnecessary pain or suffering on animals" and take measures to that effect. The legislation provides the Centre with the power to make rules but there is no reason to assume that this includes regulation of sale of animals in markets or fairs. In other words, there is a question mark over the very legitimacy of notifying the Rules without due authorisation and in contravention of the parent Act. Furthermore, the power of the Centre to enact legislation and, Rules thereafter, is derived from Article 246 (2) of the Constitution (power of Parliament and State Legislatures to make laws with respect to any matter in the Concurrent List (List III) in Seventh Schedule). The 17th item on the Concurrent List is "Prevention of cruelty to animals". However, the subject of "markets and fairs" is squarely to be found only in the State List (List II) and according to Article 246 (3) of the Constitution, only the State Legislatures are empowered to make laws in this regard. The question, therefore, boils down to

where the Rules fall. Within the category of “Prevention of cruelty to animals”? Or within the category of “markets and fairs”?

The crucial aspects of the Rules are the setting up of District Animal Market Monitoring Committees, Registration of Animal Markets, Establishment of New Animal Markets and so on. The Rules contain a definition of “animal market” to mean “a market place or sale-yard or any other premises or place to which animals are brought from other places and exposed for sale or auction and includes any lairage adjoining a market or a slaughterhouse and used in connection with it and any place adjoining a market used as a parking area by visitors to the market for parking vehicles and includes animal fair and cattle pound where animals are offered or displayed for sale or auction”. The Rules envisage any venue where a sale or transaction of animals may take place to be brought under this expansive definition.

The Rules also contain sections, namely ‘Prohibited practices which are cruel and harmful’ (Section 14) and ‘Protection of animals from injury or unnecessary pain or suffering’ (Section 15), which at first glance seem to propound measures to reduce cruelty and suffering amongst animals. But, the sections (i.e. Section 14 and Section 15), when read with the remainder of the Rules, indicate that they have been framed to regulate how the animal markets must function. Therefore, it is curious how the Rules have been framed under “Prevention of cruelty to animals” and not “markets and fairs”. So, the first blow to the constitutionality of the Rules is whether they could be framed by the Union Government on a subject that falls in the State List. At the very least, the Centre’s move seems to be a misinterpretation of the statute; at worst, it could be declared as anti-federal, an abuse of power and against the letter and spirit of the Constitution.

III. WHAT IS PUBLIC INTEREST

The Madras High Court (Madurai Bench) has stayed the operation of the Rules vide order dated May 30, 2017, in a Public Interest Litigation (Writ Petitions 10128, 10129 of 2017) wherein it was contended by the petitioners, in part, that the Rules were framed ultra vires Articles 19 and 25 of the Constitution. These contentions shall be tested to see whether the Rules will come back into operation or if there are significant violations of fundamental rights with regard to Articles 19 and 25. Article 19 (1) (g) of the Constitution states:

“Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

“(g) to practise any profession, or to carry on any occupation, trade or business.”

On the question of the impact of laws restricting the trade of butchers, the Supreme Court discussed this direct point in the case of *Mohd. Hanif Qureshi v. State of Bihar (1959)*, wherein it was held that a butcher deals with meats of different animals and not restricted to the bovine sort. Therefore, any law restricting slaughter of healthy cows may not be construed as a total prohibition on the right of butchers to carry on their trade. The relevant discussion³ is extracted here:

“In Bihar there is, no doubt, a total ban against the slaughter of all animals belonging to the species of bovine cattle which includes buffaloes (male or female adults or calves) but it is still possible for the butchers of Bihar to slaughter goats and sheep and sell goats' meat and mutton for food. As will be seen hereafter the total ban on the slaughter of bulls, bullocks, buffaloes (male or female adults or calves) irrespective of their age or usefulness is, in our view, not a reasonable restriction imposed on the butchers (Kasais) in the interest of the general public and that being, therefore, void, no question can arise, even in Bihar, of any total prohibition of the rights of butchers to carry on their occupation or business. In this view of the matter we need express no final opinion on the vexed question as to whether restrictions permissible under clause (6) of Article 19 may extend to total prohibition. That question was left open by this Court in

³ Mohd. Hanif Qureshi v. State of Bihar (1959) para 20

Saghir Ahmed v. The State of Uttar Pradesh [(1955) 1 SCR 707, 724] and in The State of Bombay v. R.M.D. Chamarbaugwala [AIR 1957 SC 690 at 721] and in the view we have taken on the facts and construction of the several Acts under consideration, does not call for an answer in disposing of these petitions.”

However, the Supreme Court did not make a final determination in this particular matter and left the question open to be argued in any future case. Nevertheless, fundamental rights guaranteed by the Constitution are tempered with a provision subjecting them to “reasonable restrictions” imposed by the State. The restriction on fundamental right to practise any profession or occupation is given by Article 19 (6):

“Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”

Two separate arguments may be devised from a bare reading of Article 19(6) of the Constitution: firstly, whether the laws imposing restrictions on cow slaughter are reasonable or suffer from the vice of unreasonableness; and secondly, whether these laws are made in the public interest. Both these arguments, when analysed separately, enlarge the scope for arguments on either side of the case. With regard to the question, whether these are reasonable restrictions, the Supreme Court analysed an earlier law - Bihar Preservation and Improvement of Animals Act, 1956 - which sought a total ban on cows and calves below the age of three. The Supreme Court held that the total ban, which included even

ageing and unhealthy cows, was unreasonable in light of the economic burden imposed and the difficulties in improving the quality of the breed, as thus⁴:

“After giving our most careful and anxious consideration to the pros and cons of the problem as indicated and discussed above and keeping in view the presumption in favour of the validity of the legislation and without any the least disrespect to the opinions of the legislatures concerned we feel that in discharging the ultimate responsibility cast on us by the Constitution we must approach and analyse the problem in an objective and realistic manner and then make our pronouncement on the reasonableness of the restrictions imposed by the impugned enactments. So approaching and analysing the problem, we have reached the conclusion (i) that a total ban on the slaughter of cows of all ages and calves of cows and calves of she buffaloes, male and female, is quite reasonable and valid and is in consonance with the directive principles laid down in Article 48, (ii) that a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattles as well as buffaloes) as long as they are as milch or draught cattle is also reasonable and valid and (iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding or working as draught animals cannot be supported as reasonable in the interest of the general public.”

It is also evident that any law or regulation made by the government which curtails the freedom of profession must pass the test of public interest or else, it could be held to be ultra vires. The restrictions imposed on the industry of beef, leather, tanning and so on, which depend on the sale of cattle for slaughter, would have to be weighed against the “interests of the general public” as determined by the government. In the case of *Maneka Gandhi v. Union of India (1978)*, the Supreme Court held that the expression “interests of the general public” is a wide expression which covers within its broad sweep all kinds of interests of the general public including interests of the sovereignty and integrity of India, security of India and friendly relations of India with foreign States” and that this may also be understood as ‘public order, decency and morality’. Therefore, for the Rules to be operative, the government has to succeed in showing the courts that the restrictions resulting from the Rules on the

⁴ Mohd. Hanif Qureshi v. State of Bihar (1959) para 45

professions which depend on slaughtering cattle, were brought in in order to maintain and preserve public order, decency and morality.

As for the argument that freedom of religion is also infringed by the Rules via the restrictions imposed on sale of cattle or camel which could be used for religious sacrifice. Article 25, which expounds the freedom of a person to practise any religion, states:

“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”

The restrictions on freedom of religious practice is articulated in Article 25 (2) (a), wherein any ‘secular activity’ i.e. a practice which is not essential to religion can be regulated by the State through legislation. Therefore, the crux of the matter is to test whether the practice of animal sacrifice is an essential religious practice. In *State of West Bengal v. Ashutosh Lahiri (1995)*, the Supreme Court reiterated the observations made in the *Mohd. Hanif Qureshi v. State of Bihar (1959)* and laid down the following law:

“The Constitution Bench decision of this Court in Mohd. Hanif Quareshi case¹ at (SCR) page 650 of the report speaking through Das, C.J. referred to the observations in Hamilton's translation of Hedaya, Book XLIII at page 592 that it is the duty of every free Mussalman arrived at the age of maturity, to offer a sacrifice on the I'd Kurban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons.

It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslims consists of making sacrifice of any animal which should be a healthy animal, on Bakr'id, then slaughtering of cow is not the only way of carrying out that sacrifice. It is, therefore, obviously not an essential religious purpose but an optional one."

As the Supreme Court has decided that slaughtering a healthy cow for Bakr'id is not an essential religious practice, any law placing restrictions on cow slaughter is likely to be held to not infringe upon Article 25 of the Constitution. Taking into consideration the judgments rendered by the Supreme Court and discussed here, the case for the Rules infringing freedom of profession appears to be on a stronger footing than that to do with freedom of religion.

IV. CONSTITUENT ASSEMBLY DEBATES, FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The Union of India may have a more compelling case if it were to openly state that these Rules were notified in pursuance of Article 48 of the Constitution wherein it is stated as follows:

“Organisation of agriculture and animal husbandry - 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.”

Advancing this argument would mean that the Union of India admits that the Rules are as much about prohibiting cow slaughter as they are about prevention of cruelty to animals and bring the Rules within the protection of Article 48. To understand the scope of Article 48, it is important to go back to the Debates of the Constituent Assembly of India.

On November 24, 1948, cow slaughter became the subject of discussion within the Constituent Assembly of India. Though it is not clear what the Drafting Committee had proposed to do, one of the dominant voices on that date, Pandit Thakur Dass Bhargava, moved his amendment to include what is now Article 48 of the Constitution within the DPSP. Reading the proceedings, we see that: At the very beginning of Pandit Bhargava’s speech, he is interrupted by S. Nagappa (representing Madras Presidency) who requests him to speak in English. To that, Pandit Bhargava says that he would like to speak in Hindi as the “subject is a very important one”. Before the debate could even get underway, clear fault-lines emerged between the Hindi-speaking, “cow-belt” region and the non-Hindi-speaking, Southern and North-Eastern states.

A crucial argument placed before the Constituent Assembly of India relied on macro-economic and public nutrition considerations of milch cattle. Pandit Bhargava appealed to the hallowed objectives

of advancement in agriculture and self-sufficiency in food supplies. The relevant portion of his speech before the Constituent Assembly of India delivered on November 24, 1948, is as follows⁵:

“How can you improve your health and food position, if you do not produce full quota of cereals and milk?

This amendment is divided into three parts. Firstly, the agriculture should be improved on scientific and modern lines. Secondly, the cattle breed should be improved; and thirdly, the cow and other cattle should be protected from slaughter. To grow more food and to improve agriculture and the cattle breed are all inter-dependent and are two sides of the same coin. Today, we have to hang our head in shame, when we find that we have to import cereals from outside. I think our country is importing 46 million tons of cereals from outside. If we calculate the average of the last twelve years, namely, from 1935 to 1947, then it would be found that this country has produced 45 million tons of cereals every year. Therefore, it is certain that we are not only self-sufficient but can also export cereals from our country. If we utilize water properly, construct dams, and have proper change in the courses of rivers, use machine sand tractors, make use of cropping and manuring, then surely the production will increase considerably. Besides all these, the best way of increasing the production is to improve the health of human beings and breed of cattle, whose milk and manure and labour are most essential for growing food. Thus the whole agricultural and food problem of this country is nothing but the problem of the improvement of cow and her breed.”

The economic arguments of Pandit Bhargava and Seth Govind Das were substantially countenanced by the words of Syed Muhammad Saiadulla who had formerly served as Premier of Assam. Pandit Bhargava's conclusion⁶ that “the cow is ‘Kam-Dhenu’ to us - fulfiller of all our wants” and Lord Krishna “served cows so devotedly that to this day, in affection he is known as “Makhan Chor””, exposed the religious subtext to his argument, and this is perhaps what caused a great deal of concern

⁵ Constituent Assembly Debates, Book No. 3 Vol VII, page 569

⁶ Constituent Assembly Debates, Book No. 3 Vol VII, page 569

amidst those who fought for a secular Constitution. Nevertheless, Dr B.R Ambedkar accepted the amendment proposed by Pandit Bhargava and the Constituent Assembly resolved to place the issue of cow slaughter, couched in a language of modern science, among the DPSP. Explaining his own stand on how DPSP should be interpreted, Dr Ambedkar, on November 24, 1948, during the discussion on adopting an article on public health and alcohol prohibition which also comes under DPSP, said⁷ :

“I am sure that Mr. Khandekar has not sufficiently appreciated the fact that this clause is one of the clauses of an Article which enumerates what are called Directive Principles of Policy. There is therefore no compulsion on the State to act on this principle. Whether to act on this principle and when to do so are left to the State and to public opinion. Therefore, if the State thinks that the time has not come for introducing prohibition or that it might be introduced gradually or partially, under these Directive Principles it has full liberty to act (so). I therefore do not think that we need have any compunction in this matter.”

Pandit Bhargava’s speech⁸ also makes it evident that Dr. Ambedkar and the Constituent Assembly of India chose to negative a proposal to place the issue of cow slaughter under the fundamental rights. If Dr Ambedkar felt that the time had not come in 1948 to strictly enforce cow slaughter, then isn’t it unfortunate that in 2017, decades after Green Revolution and White Revolution, and as India makes her case on the stage of global economic superpowers, we have been forced to revisit this question? However, Pandit Bhargava believed that with the compromise of placing cow slaughter under the DPSP, the problem could be “solved in such a manner that the objective is gained without using any sort of coercion”. In a June 2016 article in *Frontline* magazine, AG Noorani argued⁹ vehemently that this assurance - of without using any sort of coercion - was the fundamental premise on which present-day Article 48 was adopted by the Constituent Assembly of India. If this contention is accepted, then it must be held that any legislative action or executive decree which seeks to further restrict cow

⁷ Constituent Assembly Debates, Book No. 3 Vol VII, page 566

⁸ Constituent Assembly Debates, Book No. 3 Vol VII, page 568

⁹ Noorani A.G. 2016. "[The ban on cow slaughter](#)", *Frontline*, June 24.

slaughter would be antithetical to the assurance made by the Constituent Assembly of India and thereby ultra vires.

On the question of how DPSP are to be perceived, the Supreme Court has laid down the law in the seven judge bench decision in the State of Madras v. Champakam Dorairajan (1951) wherein it was held that DPSP would run subsidiary to fundamental rights in case of any conflict between the two. The following extract taken from paragraph 10 of the judgment explains the position in detail:

“The directive principles of the State policy, which by Article 37 are expressly made unenforceable by a court, cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under Article 32. The chapter of fundamental rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or order, except to the extent provided in the appropriate article in Part III. The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. In our opinion, that is the correct way in which the provisions found in Parts III and IV have to be understood.”

The case of State of Madras v. Champakam Dorairajan (1951) read along with Dr. Ambedkar’s opinion indicated that the Constituent Assembly as well as the Supreme Court held Fundamental Rights of the citizen to be more valuable than DPSP. Nevertheless, subsequent judgments of the Supreme Court have deviated from this established position and have resulted in divergent interpretations.

V. COW SLAUGHTER AND THE LAW

The treatment of the specific laws banning or restricting cow slaughter by the Constitutional Courts of this country merits a short analysis at this stage. Two landmark decisions have been rendered by the Supreme Court in this regard: (1959) and *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* (2005). In the case of *Mohd. Hanif Qureshi v. State of Bihar* (1959), the Supreme Court had the assistance of Pandit Bhargava in the role of amicus curiae. Adopting a reasoning grounded in economic pragmatism, the judgment in the case of *Mohd. Hanif Qureshi v. State of Bihar* (1959), struck down the Bihar legislation that banned the “slaughter of she-buffaloes, breeding bulls, and working bullocks (cattle and buffalo)”. The Supreme Court declared that “the Bihar Act in so far as it prohibits the slaughter of cows of all ages and calves of cows and calves of buffaloes, male and female, is constitutionally valid and we hold that, insofar as it totally prohibits the slaughter of she-buffaloes, breeding bulls and working bullocks (cattle and buffalo), without prescribing any test or requirement as to their age or usefulness, it infringes the rights of the petitioners under Article 19 (1)(g) and is to that extent void”¹⁰. The rationale for the judgment, which is reproduced below¹¹, was based on a strict reading of the Constitution on this subject, and consequently, held the field for over four decades:

“To summarise: The country is in short supply of milch cattle, breeding bulls and working bullocks. If the nation is to maintain itself in health and nourishment and get adequate food, our cattle must be improved. In order to achieve this objective our cattle population fit for breeding and work must be properly fed and whatever cattle food is now at our disposal and whatever more we can produce must be made available to the useful cattle which are in presenti or will in futuro be capable of yielding milk or doing work. The maintenance of useless cattle involves a wasteful drain on the nation's cattle feed. To maintain them is to deprive the useful cattle of the much needed nourishment. The presence of so many useless animals tends to deteriorate the breed. Total ban on the slaughter of cattle, useful or otherwise, is calculated to bring about a serious dislocation, though not a complete stoppage, of the business of a considerable section of the people who are by occupation butchers (Kasais), hide merchants and so on. Such a ban will also deprive a large

¹⁰ Mohd. Hanif Qureshi v. State of Bihar (1959) para 46

¹¹ Mohd. Hanif Qureshi v. State of Bihar (1959) para 42

section of the people of what may be their staple food. At any rate, they will have to forego the little protein food which may be within their means to take once or twice in the week. Preservation of useless cattle by establishment of Gosadans is not, for reasons already indicated, a practical proposition. Preservation of these useless animals by sending them to concentration camps to fend for themselves is to leave them to a process of slow death and does no good to them. On the contrary, it hurts the best interests of the nation in that the useless cattle deprive the useful ones of a good part of the cattle food, deteriorate the breed and eventually affect the production of milk and breeding bulls and working bullocks, besides involving an enormous expense which could be better utilised for more urgent national needs.”

The judicial position declared by *Mohd. Hanif Qureshi v. State of Bihar (1959)* changed when the seven-judge bench of the Supreme Court, in the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005)*, re-interpreted the relationship between DPSP and Fundamental Rights as follows:

“It was the Sapru Committee (1945) which initially suggested two categories of rights: one justiciable and the other in the form of directives to the State which should be regarded as fundamental in the governance of the country ... Those directives are not merely pious declarations. It was the intention of the framers of the Constitution that in future both the legislature and the executive should not merely pay lip-service to these principles but they should be made the basis of all legislative and executive actions that the future Government may be taking in the matter of governance of the country. (Constituent Assembly Debates, Vol. 7, at p. 41.) (See The Constitution of India, D.J. De, 2nd Edn. 2005, p. 1367.) If we were to trace the history of conflict and irreconcilability between fundamental rights and directive principles, we will find that the development of law has passed through three distinct stages.¹²”

“To begin with, Article 37 was given a literal meaning holding the provisions contained in Part IV of the Constitution to be unenforceable by any court. In State of Madras v. Champakam Dorairajan [1951 SCR 525 : AIR 1951 SC 226] it was held that the directive principles of State policy have to conform to and run as subsidiary to the chapter of fundamental rights. The view was reiterated in Deep Chand v. State of U.P. [1959 Supp (2) SCR 8 : AIR 1959 SC 648] The Court went on to hold that disobedience

¹² State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005) para 36

to directive principles cannot affect the legislative power of the State. So was the view taken in Kerala Education Bill, 1957, In re [1959 SCR 995 : AIR 1958 SC 956].¹³”

“With Golak Nath v. State of Punjab [(1967) 2 SCR 762 : AIR 1967 SC 1643] the Supreme Court departed from the rigid rule of subordinating directive principles and entered the era of harmonious construction. The need for avoiding a conflict between fundamental rights and directive principles was emphasised, appealing to the legislature and the courts to strike a balance between the two as far as possible. Having noticed Champakam [1951 SCR 525 : AIR 1951 SC 226] even the Constitution Bench in Quareshi-I [1959 SCR 629 : AIR 1958 SC 731] chose to make a headway and held that the directive principles nevertheless are fundamental in the governance of the country and it is the duty of the State to give effect to them:

“A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of Part III will be a ‘mere rope of sand’.” (Quareshi-I [1959 SCR 629 : AIR 1958 SC 731] , SCR p. 648) Thus, Quareshi-I [1959 SCR 629 : AIR 1958 SC 731] did take note of the status of directive principles having been elevated from “subordinate” or “subservient” to “partner” of fundamental rights in guiding the nation.¹⁴”

With these observations, the Supreme Court revised its original thinking. DPSP were now no longer seen to be of lesser standing to Fundamental Rights. The doctrine of harmonious construction was applied to place DPSP and Fundamental Rights on an equal footing. The Supreme Court held that the “right of a citizen [however important] or an individual may be it has to yield to the larger interests of the country or the community”¹⁵. The Court, in arriving at this position, was guided by the landmark cases of I and *Keshavananda Bharti v. State of Kerala (1973)*. The Court referred to this in the following manner:

¹³ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005) para 37

¹⁴ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005) para 38

¹⁵ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005) para 40

“The message of Kesavananda Bharati [(1973) 4 SCC 225] is clear. The interest of a citizen or section of a community, howsoever important, is secondary to the interest of the country or community as a whole. For judging the reasonability of restrictions imposed on fundamental rights the relevant considerations are not only those as stated in Article 19 itself or in Part III of the Constitution: the directive principles stated in Part IV are also relevant. Changing factual conditions and State policy, including the one reflected in the impugned enactment, have to be considered and given weightage to by the courts while deciding the constitutional validity of legislative enactments. A restriction placed on any fundamental right, aimed at securing directive principles will be held as reasonable and hence intra vires subject to two limitations: first, that it does not run in clear conflict with the fundamental right, and secondly, that it has been enacted within the legislative competence of the enacting legislature under Part XI Chapter I of the Constitution.¹⁶”

As a result, the Supreme Court in 2005 opined that the judgment of *Mohd. Hanif Quereshi v. State of Bihar (1959)* would have been different had Article 48 been “assigned its full and correct meaning and due weightage was given thereto” and “Articles 48-A and 51-A(g) were available in the body of the Constitution”¹⁷. Today, the Supreme Court is guided by the landmark decision of *Keshavananda Bharti v. State of Kerala (1973)* with regard to the exalted position of DPSP and the fact is that a superior bench in the *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005)* has effectively nullified that judgment of *Mohd. Hanif Quereshi v. State of Bihar (1959)*. This implies that the judiciary would be predisposed to uphold the postulation contained in the DPSP, especially Article 48, over considerations of fundamental rights of the citizen to practise any profession or religion of his/ her choice. But, the primary objective in Article 48 is not the prohibition of cow slaughter. It is the organisation of agriculture and animal husbandry along “modern and scientific lines”. The emphasis seems to be more on scientific advancements and modern technology and using these tools to further preservation of cattle breeds and prohibit the slaughter of “milch and draught” cows and calves. In other words, any law which seeks a blanket ban on the slaughter of cow in general is likely to be only partially allowed, to the extent that it is a milch or draught animal. Therefore, the Rules too shall be held to be valid only to extent that it concerns the slaughter of cow or calf, being a milch or draught animal.

¹⁶ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005) para 41

¹⁷ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat (2005) para 58

VI. THE POLITICAL NARRATIVE

Given that the legal position has been established, it is worthwhile to turn to the political narrative around this issue. The framing of the Rules which in effect prohibit the slaughter of cows, and thereby the consumption of beef, comes in the background of an unmistakable push towards Hindutva. Cow vigilantes have killed and maimed cattle transporters and attacked people on the suspicion of consuming beef; attempts are afoot to make Hindi the sole lingua franca of this country, all of which raise doubts about whether the discourse is heading towards, One Nation, One Language, One Religion. The Rashtriya Swayamsevak Sangh (RSS) has clearly articulated that one language and one religion are important for unifying the nation¹⁸. And yet, cow slaughter is a concern only for Hindus, especially those who belong to the “cowbelt” States. A significant proportion of people belonging to backward classes, Scheduled Castes, Scheduled Tribes as well as other religions (Muslims, Christians, etc) consume beef. Beef consumption is prevalent in the States of Kerala and Nagaland. Regional parties, including the Dravida Munnetra Kazhagam (DMK)¹⁹, the Trinamool Congress (AITC)²⁰, the Indian Union Muslim League (IUML), the Manithaneya Makkal Katchi (MMK)²¹ and the All India Majlis-E-Ittehadul Muslimeen Party (AIMIM)²², and national parties such as the Communist Party of India (Marxist)²³ (CPI(M) have registered their opposition to the Rules framed. The opposition to the Rules have brought together the DMK, INC, CPI(M), CPI, IUML, Viduthalai Chiruthaigal Kartchi (VCK) and MMK in the state of Tamil Nadu. Janata Dal (United) (JD(U)), Samajwadi Party (SP) and Republican Party of India (RPI) have all expressed reservations about the Rules and their implementation. But, this issue has to travel further before it can become an agenda which will unify all opposition parties.

For the government, the immediate challenge will be to table the Rules when Parliament convenes. This will give the opposition parties an opportunity to resist the operation of these Rules. The battle

¹⁸ Ali M. 2015. "India is a Hindu Rashtra: Bhagwat", The Hindu, February 9.

¹⁹ [facebook.com/MKStalin](https://www.facebook.com/MKStalin), May 26, 2017.

²⁰ PTI, 2015. "TMC's Derek O'Brien expresses concern over beef ban in Maharashtra", *Firstpost*, March 11.

²¹ *The Hindu*, 2017. "States rights violated, say parties", May 31.

²² *IndiaToday.in*, 2017. "Owaisi slams BJP over beef 'hypocrisy', says cow 'mummy' in UP, 'yummy' in Northeast", April 1.

²³ *Communist Party of India (Marxist)*, 2017. "Cattle Sale Ban: Communal Agenda", May 27.

will also simultaneously be fought in the courts of law as the cases from various High Courts may necessitate the intervention of the Supreme Court. Lastly, it is the fight to capture the minds of people that may matter the most. Irrespective of the numbers in Parliament or the Constitutional interpretation by the courts, it is the public mood that sets the tone on critical issues. Specific States like Kerala, Tamil Nadu, West Bengal, etc have seen mobilisation. But, this has been limited. Cow vigilantes have caused enough havoc to induce fear in people's minds and the consequent public anxiety is more potent than any law which may be passed in Parliament. The question is: Will a critical mass of people rise above such fear and stand up to the government? Or, will the bogey of cow slaughter crystallise and expand the core Hindutva vote base? Either way, the government has sounded the bugle for the next Parliamentary elections.



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