



HOLY COW, CONSTITUTION AND CONTROVERSY: ASSESSING ANTI-COW SLAUGHTER LAWS FROM A CONSTITUTIONAL PERSPECTIVE

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Abstract

The issue of the slaughter of holy cows has always been a volatile issue since the time of independence. Even after the insertion of Article 48A in the Indian Constitution, which advocates for cow protection, the nation continues to grapple with frequent agitations and alarming incidents of Cow vigilantism. These beef ban legislations interfere with the rights of beef traders and individual's choice of food. Furthermore, the draconian provisions of these laws postulate disproportionate punishments in case of breach and procedural injustice in terms of invoking these laws even on mere suspicion which is an insult to constitutional ideals. Enactment of these laws leads to the very imposition of Hindu beliefs over non-Hindus. The conflicting state laws on cow slaughter, in furtherance of Article 48A, lack uniformity, adding complexity to the issue. Through this paper, we explore the nuances of the cow slaughter issue in India, examining its legal, and constitutional aspects. This paper delves into ascertaining the constitutionality of these beef ban laws, as the author attempts to examine it on three fronts- firstly, from the perspective of Indian secularism, which is different from the Western model, secondly, assessing the laws on the anvil of the fundamental rights under Part III of Constitution and thirdly, the proportionality test propounded in the Puttaswamy case. The paper navigates through the sea of opinions and perspectives, shedding light on the potential paths forward in a country that values its secular fabric while respecting individual rights and diversity.

Keywords: Cow Slaughter, Constitution, Secularism, Article 48A, Fundamental Rights

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Introduction

“Secular State does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only limitation that the Constitution recognizes.”³

– Dr BR Ambedkar

In 2023, the Supreme Court in *Mathala Chandrapati Rao v. UOI*⁴ heard an appeal against the National Green Tribunal's (NGT) decision, a plea that had sought a unique and specific direction - the prohibition of cow slaughter. Exercising judicial restraint, the court observed that it cannot compel the legislature to enact a specific law, even within the purview of its writ jurisdiction. Since time immemorial, the contentious question of cow slaughter has been an ever-present thorn, pricking at the nation's conscience. Several times the central government has already expressed its intention to push for a beef ban nationwide, fulfilling its poll promise.⁵ Many states have already taken steps in enacting anti-cow slaughter laws due to which over 99% of Indians are currently living under cow protection laws, some of which are more than 50 years old.⁶

As a democratic nation, India upholds the principles of secularism, right to livelihood and right to life. This brings into focus the constitutional dilemma - on one hand, the protection of cows is considered to be an essential sign of being a Hindu, while on the other hand, citizens have the right to practice their occupation, choose their dietary preferences and practice their faith freely. Critics argue that cow slaughter laws when motivated solely by religious sentiments, may undermine the secular fabric of the nation. They contend that such laws may favour one religious community over others, potentially leading to discrimination and infringing upon the rights of those who do not share the same beliefs.

The concept of secularism is multifaceted in India. The Indian model of secularism is different from that of the Western model in the sense that religious and secular life are so intricately entangled with each other that one cannot clearly differentiate the two. The Indian version of secularism basically means having respect for all religions. Thus, the word ‘Secular’ should

³ Arun Kumar Singh, “Myth and Reality of Secularism in India: An Analysis” Vol. XIX The NEHU Journal (2021).

⁴ *Mathala Chandrapati Rao v. UOI*, (2023) Civil Appeal Nos. 5826-5827/2019 (Unreported).

⁵ Krishna N. Das, “Modi govt says to push for cow slaughter ban in India”, *Reuters*, Mar. 30, 2015.

⁶ Alison Saldanha, “More than 99% Indians now live in areas under cow protection laws, Gujarat has strictest rules”, *Hindustan Times*, Apr. 29, 2017.

not be seen as antithetical to the word ‘religious.’ Cow protection laws primarily stem from the reverence given to cows in Hinduism, Jainism, and other religious traditions, making them a matter of deep-seated faith and cultural significance. These laws tend to paint the picture that the majoritarian views and beliefs of Hindus are being forced upon other communities.

From the ancient Vedic scriptures to modern-day legislation, the debate echoes through the ages, resounding in every nook and cranny of the country. It's a conversation that refuses to be silenced, persistently demanding attention and resolution. Chapter II of this paper specifically delves into the Constituent Assembly debates on the contentious issue of the holy cow and the ban on its slaughter in order to ascertain the legitimacy of the present beef ban laws. Chapter III of the paper digs deeper into the draconian provisions of anti-cow slaughter laws enacted by different states. Chapter V of the paper attempts to test the constitutionality of anti-cow slaughter laws, legal challenges have emerged, questioning whether these laws rupture the secular fabric of the country and infringe upon individual rights and freedoms. Lastly, chapter VI concludes by providing effective solutions to the constitutional dilemmas.

Historical Background

The Constituent Assembly was established in 1946 to frame a new Constitution for a free India. Cow slaughter as a subject was even sensitive when the Constitution was being framed. The Constituent Assembly has debated the issue of cow slaughter and was very close to placing it in Part III of the Constitution. However, the same was not done for two reasons. *Firstly*, it is because the State must remain neutral⁷ in religious matters and placing the issue of cow slaughter under the Fundamental Rights would give the picture as if the State is siding with the Hindu majority population. *Secondly*, Part III dealt with Fundamental Rights dealing with human rights and a ban on cow slaughter was a matter concerning animals.⁸

Dr Rajendra Prasad has expressed his desire for a general ban on cow slaughter.⁹ Thakurdas proposed the amendment for the prohibition on cow slaughter in the draft constitution stressing the ‘economic value’ of the cow rather than just religious sentiments involved.¹⁰ Seth Govind Das, a member of the Constituent Assembly, argued that cow is not only a matter of religion

⁷ Koma Deol, “Cow Protection was a sensitive subject in India even when the Constitution was being framed”, *Scroll*, July 07, 2021.

⁸ Tarun Kavuri, “The Constitutional Scheme of Animal Rights in India”, *Animal Legal & Historical Center* (2020).

⁹ Lovish Garg, “Examining the Constituent Assembly Debates on Cow Protection”, *The Wire* Oct. 15, 2016.

¹⁰ *Ibid*.

but also carries cultural and economic questions. It could be seen that Thakurdas and Seth Govind Das, both made a point on the ‘usefulness’ and economic importance of cows.

In India, there were two influential Muslim leaders, Zahir-ul-Hasan Lari and Syed Muhammad Saadulla. Z.H. Lari in the Constituent Assembly voiced for a ban on cow slaughter. They were of the view that the Assembly must not incorporate the cow slaughter prohibition clause in the Directive Principles of State Policy and make it vague and ambiguous.¹¹ As there has been violence in the name of cow slaughter on the occasion of Bakrid, the State must make its intention clear and make it a fundamental right instead of leaving the matter in the hands of the Provincial Government it would come out making its own laws, thus leading to conflict and differences.¹²

The long debate on the issue culminated with the insertion of Article 48¹³ in the Directive Principles of State Policy-

“That the State shall endeavour to organise agriculture and animal husbandry on modern scientific 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.”

This insertion of the clause as one of the directive principles is thought to be the reflection of the religious preferences of the majority community. The provision clearly speaks of taking steps to prohibit the slaughter of cattle and makes no mention of consumption transportation or possession. Kancha Ilaiah, a Dalit scholar and activist remarked this was ‘cow nationalism’ of the Brahmins and the insertion of the clause as a forceful imposition of the Hindutva forces.¹⁴ While this matter was being debated in the Constituent Assembly, Frank Anthony referred to this issue as ‘an entrenchment on the domain of private life and private liberty.’ He further contended that the fact the ban on slaughter has been inserted as a provision under Directive Principles of State Policy shows that the legislature has adopted an indirect way to give preference to Hindu sentiments.

The year 1966 saw a massive agitation on anti-cow slaughter which eventually turned violent depicting the sensitive and emotive value of this issue.¹⁵ A group of Hindu protestors known

¹¹ Dilip Mandal, “From Constituent Assembly to Azam Khan, Indian Muslims have supported cow slaughter ban”, *The Print*, Oct. 16, 2019.

¹² Ibid.

¹³ Article 48A, The Constitution of India, 1950.

¹⁴ K Ilaiah, “Cow and culture”, *The Hindu*, Oct. 25, 2002.

¹⁵ “Fact Check: 1966 incident of police firing on sadhus goes viral with exaggerated claims”, *India Today*, Dec. 06, 2021.

as Sarvadaliya Goraksha Maha-Abhiyan Samiti backed by Rashtriya Swayamsevak Sangh and Bhartiya Janata Party protested to criminalize cow slaughter.¹⁶ The movement showed a huge number of participation of people from various strata of life including many religious acharya and common people who went on to march outside the parliament peacefully. When their demands were unmet, the group of protesters tried to storm the parliament. However, they were countered by the Delhi Police who sprayed bullets and tear gas at them with many losing their lives.

Then Prime Minister Indira Gandhi sacked her Home Minister Gulzarilal Nanda as he was seen having a sympathetic attitude towards the protesters. As the February 1967 elections were approaching, PM Indira Gandhi formed a high-level committee under the chairmanship of A.K. Sarkar, retired Chief Justice of India to assess the viability of the cow slaughter ban law.¹⁷ The committee was supposed to submit its report by the end of six months, however, it never happened. Eventually, it was after 12 years in 1979 when Morarji Desai became the Prime Minister that this committee was finally wound up.¹⁸

Cow Protection Laws In India: Some Eyes Water; Some Mouth Water

On July 28, 2023, the Supreme Court in *National Federation of Indian Women v. Union of India & Ors.*¹⁹ issued a notice seeking a response from the Union Home Ministry and police chiefs of several states over the alarming rising incidents of mob lynching cases by cow vigilantes. Lynching is an assault on basic human rights and the Rule of law, and the Supreme Court had previously issued guidelines on the prevention of mob violence in 2018.²⁰ There exists a positive correlation between the adoption of cow protection laws and a surge in violence with states having stricter cow protection regimes accounting for almost 54% of the total reported mob lynching cases.²¹

Agriculture²² as a subject which includes animal husbandry has been dealt with under the State List. In furtherance of Article 48A enshrined under the Directive Principle of State Policy, around 20 States have enacted laws prohibiting cow slaughter. While section 48A clearly

¹⁶ Shoaib Daniyal, “Looking back: The first Parliament attack took place in 1955- and was carried out by rakshaks”, *Scroll*, Aug. 28, 2016.

¹⁷ Nalin Mehta, “Indira Gandhi put RSS’s Guru Golwalkar on cow slaughter committee ... wound up after 12 years without a report”, *Times of India*, June 15, 2017.

¹⁸ “The very first attack on Parliament”, *The Hindu*, Nov. 09, 2016.

¹⁹ *National Federation of Indian Women v. Union of India & Ors.*, Writ Petition (Civil) No. 719 of 2023.

²⁰ Apoorva Mandhani, “Lynching: Parliament may create A Special Law”, *Live Law*, July 17, 2018.

²¹ *Cow Slaughter Prevention Laws in India*, CJP, July 02, 2018.

²² The Constitution of India.

prohibits cow slaughter, it doesn't mention placing a ban on their transportation or possession. These laws regulating cow slaughter enacted by several states lack uniformity. The States can be divided into three broad categories based on the kind of law that they adopted²³ - *first*, States like Kerala, West Bengal, Goa and Northeastern which includes Arunachal Pradesh, Mizoram, and Manipur have no restriction on cow slaughter, the *second* category includes Several states have imposed blanket ban on slaughter of all kind of cattle and *third* category includes States which have the mechanism of obtaining slaughter permission for aged cattle that are certified as "fit for slaughter".

In 2017, the Central government made an attempt to bring some consistency in laws by introducing the Prevention of Cruelty to Animals Rules 2017. The rules primarily dealt with preventing the mistreatment of cattle during transportation or slaughter, controlling smuggling and regulating animal markets. This came about after the direction was given by the Supreme Court in the case of *Gauri Maulekhi v Union of India*²⁴ where the issue of cattle smuggling across borders was highlighted. The rules were withdrawn by the Government and a draft was notified titled "Prevention of Cruelty to Animals in Animal Markets Rules 2018".²⁵

The blanket ban or partial ban imposed by the states is nothing but legislative overreach as the states has their own interpretation of the term 'cattle' widening the scope and in addition to slaughter, other activities like transportation, sale, and possession have been criminalized and are dealt with disproportionate punishments. The Maharashtra Animals Preservation Act, 1976 stipulates that cow slaughter is totally banned in the state but the slaughter of bulls, buffaloes and bullocks is permitted on producing a 'fit-for slaughter' certificate. This decision was welcomed by the Muslim Chamber of Commerce and Industry which further appealed to the Prime Minister to impose a nationwide ban on cow slaughter.²⁶

States like Jharkhand, Rajasthan, UP, Uttarakhand, Gujarat, Haryana and Goa have even criminalised the transportation of cattle despite the fact that Article 48A is not concerned about transportation and only slaughter. The laws in these states have criminalised transportation, sale of beef or even the possession of it, this would mean the consumers of beef would be cast as criminals. This section of society would mostly include Muslims and the Dalit population.

²³ "The states where cow slaughter is legal in India", *The Indian Express*, Oct. 08, 2015.

²⁴ *Gauri Maulekhi v. Union of India*, Org 486 of 2016.

²⁵ *All India Jamiatul Quresh Action Committee v. Union of India*, W.P. (Civil) No. 422 of 2017 (Unreprotd).

²⁶ "Muslim chamber welcomes cow slaughter ban", *Zee News*, Mar. 04, 2015.

States like Delhi, Punjab and Maharashtra had placed the burden of proof upon the accused to prove their innocence divulging from the principle of “innocent until proven guilty”.²⁷

In Uttar Pradesh, Chief Minister Yogi Adityanath had even directed the police officers to take strict action against cow slaughter or cow smuggling under National Security Act even on mere suspicion.²⁸ In Sikkim, cow slaughter has been made a non-bailable offence. The data reveals that 76 out of 139 people were booked on cow slaughter charges under the NSA Act.²⁹ This clearly shows the intention of such enactments is corrupt and aimed at mostly targeting people of a certain group.

The Gujarat Prevention of Anti-Social Activities Act stipulates preventive detention of one year for a list of offences, one of which is cow slaughter. The Gujarat Animal Preservation Act, 1954 is one of the strictest laws in place prohibiting cow slaughter as it bans selling, keeping, storing, transporting, offering, or even buying beef or beef products and makes the offence non-bailable.³⁰ In 2017, an amendment was brought in which elevated the punishment for the offence to a minimum of 10 years and a maximum sentence for life imprisonment coupled with an increase in a fine ranging from Rs. 1 lakh – Rs. 5 lakhs.³¹ These regulations blatantly contravene the Supreme Court’s verdict in *Dulla and Ors v. the State*³² which states that no sentence should be excessive to the extent that it undermines the object and erode respect for the law.

Balancing Culture, Religion And Constitutional Freedoms: A Tale Of Constitutional Dilemmas

These laws have been challenged in various instances, but the Apex court of the country has upheld the validity of these laws. The Supreme Court was confronted with the question of whether cow slaughter ban laws interfere with the religious freedoms under Article 25³³ of the Muslim community during the festival of Bakrid in the case of *Hanif Qureshi v State of Bihar*.³⁴ The court opined that the holy scriptures provide for the sacrifice of any person or camel or cow and hence, it was not obligatory for a Muslim to sacrifice only cows. The court simply

²⁷ The Constitution of India.

²⁸ Rajesh Kumar Singh, “Cattle smuggling, slaughter in UP now punishable under National Security Act”, *Hindustan Times*, June 11, 2017.

²⁹ Jitendra Gupta, “Of 139 Booked Under NSA in UP this Year, 76 Accused of Cow Slaughter”, *Outlook*.

³⁰ Alison Saldanha, *Supra* note 4.

³¹ Bharath Kanchaella, “A review of the ‘Prevention of Cow Slaughter’ laws across the country”, *Factly*, Jan. 01, 2021.

³² *Dulla and Ors v. The State*, AIR 1958 All 198.

³³ The Constitution of India.

³⁴ *Hanif Qureshi v. State of Bihar*, 1958 AIR 731.

mentioned that such a ban wasn't a prohibition but a "restriction" without going any other on this distinction.

The cow slaughter ban laws imposed by the State were held to be constitutional in a slew of judicial cases like the *State of West Bengal v. Ashutosh Lahiri*³⁵. The court has distinguished between "useful cattle" and "unproductive cattle" where the slaughter of the latter has been permitted³⁶, however, this was later overturned by the Supreme Court in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors*³⁷. The Mirzapur case³⁸ upheld the validity of these laws on the ground that it falls under reasonable restriction under Article 19 and is in the interest of the public. The court failed to consider the long-term impacts of these laws on the personal liberty of an individual.

A. Anti-Cow Slaughter Laws Vis-À-Vis Indian Secularism

Secularism has become a part of the basic structure of our constitution which cannot be altered by any constitutional amendment.³⁹ Article 26⁴⁰ confers the right of every religion to manage its religious affairs. The Indian model of secularism has three essential inseparable elements to it: freedom of religion, equality, and non-discrimination. Secularism demarcates a line of separation between state and religion.⁴¹ The "equal respect for all religion" allows the court to intervene in religious matters as well unlike the Western model which adopts the path of non-intervention. However, this interventionist and reformist role of courts has further created a lot of problems for the judiciary in tackling questions based on religion.

The concept of 'essential practices' adopted by the courts has solved the problem to a considerable extent. When the state passes any law on a ban on cow slaughter under Article 48A, it doesn't adopt a reformist approach but upholds the purported principles of the majority religion. To assess the validity of such laws in the context of Indian secularism, a two-pronged test is essential- *firstly*, it must be ascertained whether the cow slaughter ban falls under the 'essential practice' of the Hindu religion and *secondly*, if such a ban is permitted within the Hindu religion, then placing a blanket ban which would impact other communities is permissible or not.

³⁵ *State of West Bengal v. Ashutosh Lahiri*, 1995 AIR 464.

³⁶ *Hasmatullah v. State of Madhya Pradesh*, AIR 1996 SC 2076.

³⁷ *State of Gujarat v. Mirzapur Moti Kureshi Jamat*, AIR 1998 Guj 220.

³⁸ *Ibid*.

³⁹ *S.R Bommai v. UOI*, (1994) AIR 1918.

⁴⁰ The Constitution of India.

⁴¹ V Vijaya Kumar, "Constitution and Secularism - A Rejoinder" 6 *National Law School of India Review* (1994).

The Supreme Court's observation in *Commissioner v. Lakshmindra Swamiar*⁴² emphasizes that the determination of the essential elements of a religion should primarily be based on the doctrines and principles within that religion. In the case of *Manohar Joshi*,⁴³ the court interpreted the term Hindutva as a 'way of life.' Similarly, in the case of *Sastri Yagnapurushadji v. Muldas Brudardas Vaishya*,⁴⁴ the court observed that the Hindu religion doesn't worship any single god or follow a certain definite set of religious rites or subscribe to any one dogma or concept and thus, doesn't fulfil the features of a creed or religion. Therefore, the court was of the view that Hinduism is a way of life.

In *Sridharan's case*, the Supreme Court mentioned that the word Hindu embraces within itself many diverse beliefs, faiths, practices and worship. Hinduism is characterized by tolerance and unlimited freedom of private worship with a stringent social code but exhibiting a wide diversity of practices.⁴⁵ Hindus have such diverse practices that it is impossible to bring out an exact definition of Hinduism and described Hinduism as “*encyclopaedic in character*” and “*commonwealth of all faiths*”.⁴⁶

There are two things that can be derived from the aforementioned judgements- *firstly*, Hinduism as a religion does not circumscribe to any single or rigid concept and is more of a 'way of life,' and *secondly*, tolerance, inclusivity and flexibility are the hallmarks of this religion. The term “Way of life” is too broad and can accommodate anything to everything ranging from language, customs, food habits and cultural aspects of life. Using the meat of the cow is considered to be a horrifying trait of Hindu society. However, it is a farfetched idea to declare that beef eating is completely prohibited in the Hindu religion as there is no conclusive evidence for the same.

In *State of Gujarat v. Mirzapur Moti Kureshi Jamat*,⁴⁷ the Supreme Court focused on the nature of the Indian State justifying the insertion of Article 48A and thus held that the provision is in line with the ideals of secularism. Given the fact that a wide Hindu population considers beef eating as a sin, it is unreasonable to put a complete ban on cow slaughter which will affect other communities and interfere with their lifestyle. As reasoned in the *Ram Janmbhoomi*⁴⁸ case the

⁴² *Commissioner v. Lakshmindra Swamiar*, AIR 1952 Mad 613.

⁴³ *Manohar Joshi v. Nitin Bhaurao Patil & Anr*, 1996 AIR 796.

⁴⁴ *Sastri Yagnapurushadji v. Muldas Brudardas Vaishya*, 1966 AIR 1119.

⁴⁵ *Bhagwan Koer v. J.C Bose*, (1903) 31 Cal 11.

⁴⁶ *Ashima v. Narendra*, AIR 6 Cal W N. 1016.

⁴⁷ *State of Gujarat v. Mirzapur Moti Kureshi Jamat*, AIR 1998 Guj 220.

⁴⁸ *M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*, CA 10866- 10867/2010.

court was seen quoting Vedas to justify the concept of secularism: ‘Sarwa Dharma Sambhava’ i.e., tolerance for all religions.

The concept of ‘secularism’ can be best understood by the Ramaswamy views in *Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of UP*⁴⁹ where he mentions that Hindus are the majority and are further divided into various castes and sub-sects. The only way unity is possible is by suppressing violence and encouraging tolerance. At one point in time, Dalits’ entry into the temple premises was considered sinful and this was the belief or ‘way of life’ among the Hindus. However, the court took a stand in the matter by combining the ‘way of life’ of Hindus with that of the democratic way of life. Similarly, in the present scenario, imposing a blanket ban on cow slaughter would be a coercive measure.

B. Constitutionality Of Beef Ban On The Anvil Of Articles 14, 19 And 21

The primary question is the special status given to the cows. Upon analysing the court’s reasoning, they have cited its importance in the Hindu religion and mentioned the ‘usefulness’ of cows as they yield milk. However, in disguise of cows ‘usefulness,’ the court has been consistently inclined towards Hindu sentiments. The report of the National Dairy Development Board mentioned that India produces 176 million tons of milk in total. Out of this, 100 million tons is buffalo milk as against 76 million tons provided by cows.⁵⁰ One could clearly infer that buffalo milk contains twice the fat of cow milk and can be considered more valuable than the cow. This would not justify the special status accorded to cows and therefore, the decision to ban cow slaughter on grounds of its ‘usefulness’ is arbitrary.

A law stands invalid if it fails to satisfy the test of reasonableness and non-arbitrariness. Invoking the National Security Act to arrest the individuals accused of cow slaughter at the whims UP Government is clearly arbitrary. Furthermore, cow slaughter laws are irregular and inconsistent in different states concerning the same issue. A person committing the same crime would be treated differently under different laws of respective states which blatantly violates Article 14.

As per recent rulings in the case of *Ministry of Defence vs Babita Puniya*,⁵¹ *Anuj Garg & Ors v. Hotel Association of India & Ors*⁵² and *Nitisha vs Union of India*,⁵³ it was held that even if

⁴⁹ *Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of UP*, (1997) 4 SCC 606, para 24.

⁵⁰ Aakar Patel, “The Dark Chronology of India’s Cow-Slaughter Law”, *Article 14*, Dec. 30, 2020.

⁵¹ *Ministry of Defence v. Babita Puniya*, 2020 7SCC 469.

⁵² *Anuj Garg & Ors v. Hotel Association of India & Ors*, AIR 2008 SC 663.

⁵³ *Nitisha v. Union of India*, W.P 1469 of 2020 (Unreported).

it appeared to be neutral, the law would not be impartial if it had a differential effect on one group. With regard to cow protection laws, the Dalit and Muslim populations face the brunt of these draconian laws due to their difference in dietary practices.

Article 19(1)(g) mentions the Right to Trade which is not absolute in nature. The judiciary has faced this tedious task of balancing the right to trade and cow slaughter ban laws. The court in the *Abhilash Textile*⁵⁴ and *Sushila Mill*⁵⁵ case observed that the individual cannot assert their right without carrying out their fundamental duty and such restriction on business, trade and occupation is constitutionally valid if it's on account of public interest.

The Karnataka Prevention of Slaughter and Preservation of Cattle Act (2020) has expanded the definition of cattle which now includes *cow, the calf of a cow and bull, bullock and or she buffalo under the age of 13 years.*" Similarly, the Maharashtra Animal Preservation Bill provides for a complete ban on cow, bull and bullock slaughter which was permitted earlier on obtaining a fir-for-slaughter certificate. India is home to many leather-producing industries and contributes 10% of the production of leather products. A blanket ban would hamper their business prospects and would have a detrimental impact on the livelihood of the people involved there. Also, the price of other meat products would rise in the market. In the case of *Olga Tel-lis v. Bombay Municipal Corporation*⁵⁶, the Supreme Court opined that the prohibition of any activity essential for an individual to earn his livelihood would lead to the abrogation of his right to life under Article 21.

An important observation of the judgement of Justice M. Katju in *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*⁵⁷ is that a person had his right to exercise his discretion in their dietary choices and it would form a part of their right to privacy and autonomy under Article 21. Therefore, the prolonged restriction would compel a person to change his dietary practices and would impinge on his fundamental Right.

"... a large number of people are non-vegetarian, and they cannot be compelled to become vegetarian for a long period. What one eats is one's personal affair and it is a part of his right to privacy which is included in Article 21 of our Constitution as held by several decisions of this Court."

⁵⁴ *Abhilash Textile and Ors v. The Rajkot Municipal Corporation*, AIR 1988 Guj 57.

⁵⁵ *Sushila Saw Mill v. State of Orrisa & Ors*, 1995 AIR 2484.

⁵⁶ *Olga Tel-lis v. Bombay Municipal Corporation*, 1986 AIR 180.

⁵⁷ *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*, (2008) 5 SCC 33.

Section 5-D of the Maharashtra Animal Preservation Act 1976 specifies that possession of beef is a criminal offence. The question was brought before the Bombay High Court whether such a provision is violative of Article 21 of the Constitution in the case of *Shaikh Zahid Mukhtar v. State of Maharashtra*⁵⁸. The court struck down Article 5-D and observed that the right to eat the food of one's choice is a part of the right to privacy.

Moreover, the stringent and disproportionate provision for imprisonment in lieu of cow protection impinges on the personal liberty of an individual. As per the court ruling in the *State of Madras vs V.G Row*⁵⁹, to check whether the restriction imposed is reasonable or not, one must not only check the factors of such restrictions but also the manner in which that restriction is being imposed. The court in the *Hinsa Virodhak case* found the restriction to be just and reasonable and relied on *Om Prakash & Ors vs State of UP & Ors*⁶⁰ wherein the court has previously held that municipal bye-law prohibiting the sale of non-veg foods like meat, and fish and egg in Rishikesh was valid as most people who travel there for religious purpose and other population were vegetarian.

An important observation here is that the court took into consideration the nature of food intake while imposing such restriction. Now if we see States like Lakshadweep where around 96.5% population is Muslim⁶¹, the new regulation of Lakshadweep Animal Preservation Regulation, 2021 was enacted which not only bans the slaughtering of cows but also buying, selling and transportation of them in any form. One of the reasons behind the 'Save Lakshadweep' protests was these laws. Regions like Lakshadweep are the places where despite the composition of the population ban was implemented.

C. Proportionality Test

The landmark judgement of *Puttaswamy* affirmed that privacy is an inseparable part of Article 21. The right to choose what to include in one's dietary habits is one such personal choice. No one can dictate to any person to change their taste preference or dietary practices as it forms part of one's 'informational privacy'. As Justice Chandrachud expressed his view,

⁵⁸ *Shaikh Zahid Mukhtar v. State of Maharashtra*, W.P 3395 of 2015.

⁵⁹ *State of Madras v. V.G Row*, 1952 AIR 196.

⁶⁰ *Om Prakash & Ors v. State of UP & Ors*, AIR 2004 SC 1896.

⁶¹ Moushmi Das Gupta, "These are the 3 Lakshadweep draft laws that have triggered controversy", *The Print*, May 28, 2021.

*“Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy.”*⁶²

The Proportionality Test laid down in *K.S Puttaswamy v. UOI* mentioned that a restriction on personal liberty must stand the test of threefold requirements of legality, legitimate State aim and proportionality. The legislative intent behind cow protection laws stems from the fact that the Cow has been considered holy by Hindus. The insertion of Article 48A was a backdoor legislation furthering majoritarian views. The objective of the law may appear reasonable on grounds of compassion towards living creatures, however, it tends to interfere with other Fundamental Rights. The rights of humans explicitly recognized under Articles 14, 19 & 21 will prevail over animal rights in case of conflict.

The reasonableness must be both: substantive and procedural. While determining the restriction placed, one must analyse the manner in which the restriction is being placed or the procedure that the statute specifies. Relying on *Anuradha Bhasin v Union of India*⁶³, the State must weigh down the implications of the restriction imposed and apply only those restriction that least interferes with the fundamental rights. The issue herein is that enforcing a beef ban does not withstand the powerful notion of an individual's right to enjoy their choice of food within the confines of their own home and their right to livelihood. The effect of law is for an indefinite period of time and placing the restriction on an individual's freedom indefinitely is clearly disproportionate.

Article 48A clearly mentions its objective to prevent the slaughter of cattle. However, the state legislation has gone on to criminalize the transportation and even the possession of beef. Haryana has passed a bill on cow slaughter ban laws which seek to impose from Rs 30,000 to Rs 1,00,000.⁶⁴ More than 50% of the arrest in Uttar Pradesh under the National Security Act is made on the pretext of cow slaughter. This means that individuals arrested under the NSA Act have been jailed without trial. It doesn't satisfy the requirement of nexus between object and means adopted to achieve it. These draconian measures in no way pass the test of reasonability imbibed in Articles 14, 19 and 21.

⁶² *K.S. Puttaswamy v. UOI*, (2017) 10 SCC 1.

⁶³ *Anuradha Bhasin v. Union of India*, W.P 1164 of 2019.

⁶⁴ Vrinder Bhatia, “10-yr jail, 1 lakh fine: What Haryana's tough cow protection law says”, *The Indian Express*, Oct. 19, 2020.

In the *K.S Puttaswamy case*, the concurring opinion was given by Justice Kaul which mentions the term ‘procedural guarantees.’⁶⁵ It is imperative for the State to introduce procedural safeguards which prevent the misuse of governmental interference. Upon analyzing the State laws, there is no judicial oversight to curb the arbitrary use of power under such laws. In fact, the burden of proof lies upon the accused in such matters. This is the deviation from the norm of ‘innocent until proven guilty.’ Thus, there is no procedural guarantee by the State laws and unfettered power lies in the hands of the State which can easily be misused. For example, in the Assam Cattle Preservation Bill 2021, there are no procedural safeguards in matters of seizure.⁶⁶ Such a seizure can be conducted if the officer believes that the offence is ‘likely’ to be committed. The Officers can easily give any vague reasons justifying their actions and get away with it.

The Conclusion

Reasonable accommodation spirit is expected out of people to keep up the spirit of diversity in this country. The very identity of India is its diverse nature whether in terms of culture, traditions, language or even food. To preserve this plurality among people, one is expected to be tolerant and ‘reasonably accommodate’ other people’s choices. This has been very well-explained in the Supreme Court judgement on the Hijab case⁶⁷ where Justice Dhulia made a noteworthy observation on “Reasonable Accommodation” as a sign of mature society. He elaborated on the rich diversity of this country in terms of language, culture, religion, food and clothes and the need to imbibe and celebrate these differences in constitutional values of tolerance. It is only then that a person will learn to live and adjust to the difference slowly adapt itself to constitutional values of tolerance and realizing the strength of diversity.

The issue of cow slaughter has been there since the time of Independence. The issue was vigorously debated then in the Constituent Assembly and after all these years it is still being debated nationwide. Even after the insertion of Article 48A, issues keep cropping up and the laws related to slaughter are still called into question. However, a balanced approach can be adopted giving due regard to Hindu sentiments along with fundamental rights of other communities.

Firstly, the intent behind Article 48A is being misunderstood by many as people perceive it as the imposition of Hindu beliefs upon them. However, the usefulness and the need for cattle

⁶⁵ Supra note 75.

⁶⁶ *The Assam Cattle Preservation Bill, 2021*, PRS Legislative Research.

⁶⁷ *Fathima Bushra v. State of Karnataka*, WP(c) 95/2022.

cannot be ignored in today's time. Laws placing bans on useful cattle must be continued as it is for the betterment of the agriculture industry. However, a blanket ban on the slaughter of all kinds of cattle is uncalled for as it will unnecessarily burden farmers and caretakers financially to maintain the cattle that are no longer useful to them.

Secondly, the States must make sure that they have a common definition of cattle, cow, bull etc as the same leads to a lot of confusion among the people. The punishment stipulated must be proportional to the crime committed and must not be arbitrary. Also, the burden of proof which is upon the accused right now must be reversed and restored back to "innocent until proven guilty." The State must refrain from giving any unnecessary religious colour to the provision as it would lead to polarization among the people.

Lastly, the Centre and State must collaborate and work out common guidelines to regulate the livestock market. It must adopt a regulatory approach and refrain from being too restrictive on grounds of religious sentiments getting hurt. Beef is cheaper than most non-vegetarian food items like chicken and fish and forms the dietary habits of a major chunk of the population. It is an industry upon which the livelihood of a lot of people depends especially in the rural economy where people's source of income depends on agricultural and livestock-related work. Hence, the legislature must avoid interfering with basic rights as it would disrupt the daily life of people.
