COW SLAUGHTER - NEW SIGHT AND PLIGHT

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Cow slaughter and the consumption of beef are highly volatile, emotive and politicised subjects in India. Hindus, who comprise 80% of India's 1.2bn population, revere cows and the sale and consumption of beef is banned or restricted in many states.

In 1923, Mahatma Gandhi has first talked about -Gau vansh bandhi- (ban on cow slaughter) to promote the village economy. The architect of Indian constitution Dr. B.R. Ambedkar has made the provision to facilitate the State government to take the decisions.

Article 48 of the Constitution of India, a Directive of State Policy, provides the basis for legislative efforts at regulating and prohibiting cow slaughter in India. 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 other milch and draught cattle.

The parliament and state legislatures derive their power to legislate under Article 246 of the Constitution of India, read with Schedule 7, which divides subject matters in terms of a union, state and concurrent list. The regulation of cow slaughter is understood to be a state subject-entry 15 of List II to the seventh schedule (which enumerates the state list) reads - 'Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice'. This is the source of authority of states to legislate on the matter.

Drawing their legitimacy from this article, most states in India have varying prohibitions and restrictions on the slaughter of cattle, on the transport of cattle for the purpose of slaughter, and even on the sale, usage and possession of beef. These prohibitions and restrictions are tempered by differing conceptions of the ‘use value’ of the cow and other bovine animals. For instance, older cows maybe slaughtered in West Bengal

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and Assam upon licence, whereas in Gujarat, the so-called 'total' ban on 'cow slaughter' in fact translates into a prohibition on the slaughter of cows, bulls and bullocks of any age. The state of Karnataka currently provides something of a halfway house between Gujarat and West Bengal - the slaughter of cows, and the calves of cows and buffaloes is prohibited, whilst the slaughter of bulls, bullocks, and buffaloes is permitted upon the issuance of a certificate that either the animal is over 12 years old or permanently incapacitated from providing milk or being used as draught cattle. However, the law in Karnataka is all set to change with the recent enactment of the Karnataka Prevention of Slaughter and Preservation of Cattle Bill, 2010, which extends the prohibitions on slaughter to any cow, calf, bull, bullock or buffalo, thereby promulgating a total ban on the slaughter of cattle, a wide-ranging and stringent prohibition indeed.

Under section 3 of the Uttarakhand protection of Cow Progeny Act, 2007, there is stict prohibition of cow slaughter. Even under section 5 possession of beef or its sale is prohibited. As per section 11 of the Act, whoever contravenes above section, punishment may be extended up to 10 years and fine up to Rs. 10,000.

Beef lovers in Maharashtra will now have to do without the red meat as President Pranab Mukherjee has given his assent to the maharashtra Animal Preservation (Amendment) Bill, 1995, nearly 19 years after the Maharashtra Assembly passed the bill during the BJP-Shiv Sena rule in 1995 in February, 2015.

The slaughter of cows was previously prohibited in the state under the Maharashtra Animal Preservation Act of 1976. However, the passage of the new act will ban the slaughter of bulls as well as bullocks, which was previously allowed based on a fit-for-slaughter certificate.

On March 8, 2015 as per reports of National daily "Indian Express" The Prime Minister's office has sought law ministry's opinion on whether the centre could circulate the laws on cow slaughter as enacted by some States, including Gujrat, as model bill among other states for their consideration for similar lagislations there.

In a letter to the legal arm of the government, the PM has referred to a similar provision in the Constitution that provides prohibition of slaughter of cows and milch animals.

The letter, sent recently, asked the Law Ministry to "examine and advice" whether the Acts enacted by few states can be circulated as model bill to other states so that they can "exercise their choice of consideration to introduce similar enactments".

The PM letter also mention that in 2005 the Supreme Court had upheld the validity of a law enacted by the Gujrat government prohibiting cow slaughter.

The Bombay High Court was hearing a petition filed by the Bharatiya Gouvansh Rakshan Sanrakshan Parishad, observing that the issue relating to beef ban should not be made into a religious or prestige issue, the Bombay High Court (HC) on 09-3-2015, said that its earlier orders "to deal with animals in accordance with law" was self-explanatory and no further orders needed to be passed in this matter.

"The Legistlative Assembly has passed orders relating to beef ban and the rule of court is to interpret this", said Justices V.M. Kanade and A.R.Joshi in their oral observations, adding that the police can take action according to the law relating to the bulls which had been handed over to the butchers.

The Supreme Court in Mohd Hanif Quareshi and others v State of Bihar and connected petition, had the first opportunity in post-independent India to adjudicate on the constitutionality of laws banning cow slaughter. In this case, petitions which challenged the constitutional validity of three enactments banning the slaughter of 'cows' passed by the States of Bihar, Uttar Pradesh and Madhya Pradesh (traditionally considered to be the cow belt of India, given their historical involvement in the cow protection movement) were heard together by the court. The constitutionality of these acts was challenged by Muslim butchers, cattle dealers and meat vendors from the three states on the grounds that the Acts infringed their right to equality, their right to practice any profession, or carry on any occupation, and their right to freedom of religion which were all guaranteed as Fundamental Rights in the Constitution.

The petitioners' argument in relation to the right to equality was that the impugned Acts unfairly discriminated between those who butchered goats and sheep and those who butchered bovine cattle. This argument was given short shrift by the Supreme Court which reasoned that the

basis of the classification between the two groups was a valid one. In establishing the basis of this validity the court reprised the argument about the usefulness of cows (and female buffaloes) as opposed to sheep and goats, to conclude that the butchers who kill each category could be placed in distinct classes as well.

However, this long-held position of the Supreme Court was to see a marked shift in 2005, when a seven-judge bench presided over the case of State of Gujarat vs Mirzapur Moti Kureshi Kassab Jamat and Ors. In this case, the constitutionality of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 was challenged as it provided for a total ban on cow slaughter, viz., it called for a complete ban on all cows and her progeny, viz., cows, bulls, bullocks, heifers and calves. As will be recalled, in Hanif Quareshi, the court argued that it was only useful cattle (apart from the cow itself and calves) that could be protected from slaughter. Bulls and bullocks, as per the later decisions of the Supreme Court, became useless past the age of 15. The impugned amendments to the Act in this case sought to once again change what could constitutionally be prohibited from slaughter.

By a majority of six, the Supreme Court upheld the validity of the impugned amendment. The reasoning that the court used in order to distinguish the present case from Hanif Quareshi was as follows. Since the time of Hanif Quareshi, there were several changes in India - firstly, a holistic environmental policy had been inserted into the constitution, of which the judges in Hanif Quareshi did not have the benefit. Further, according to the court, food security was a significant concern then, whereas now, 'our socio-economic scenario has progressed from being gloomy to a shining one'. This reasoning of the court was critical of both the understanding that useless cattle were a drain on the resources, and that beef and buff contributed to food security by providing sustenance to a diverse range of communities.

At the heart of the debates on cow slaughter and the consumption of beef is the avowed sacredness of the cow in Hindu India. In an apparent paradox, however, 'bovine' meat, according to statistics published by the Food and Agricultural Organisation, is the most highly produced and consumed meat product in the country (FAO 2005).1 Moreover, it is the ethic against cow slaughter that finds legal expression in the prohibitions

and restrictions on the slaughter of cows across several states of the country. Whilst the cow is not granted 'constitutional immunity' from slaughter, cow slaughter is the subject of legal prohibitions and restrictions in several states in India. These prohibitions and restrictions on cow slaughter are variously tempered by the 'use value' of the cow and by varying definitions of what cannot be slaughtered. The legal justifications for the prohibitions are to be found in Article 48 of the Constitution of India, which is framed in terms of a scientific organisation of animal husbandry, rather than a religious belief in the sacredness of the cow. Whilst the language of the protection of cattle within a 'scientific-agrarian development' frame elides the question of 'religious/cultural difference' in the regulation of cow slaughter, this has not gone unchallenged either by case law brought by Muslim butchers, tanners and cattle dealers, or even by the numerous calls over the decades by Hindu groups of various hues for a total ban on cow slaughter.

There are several moves that the Supreme Court makes in arriving at its decision that the cow and her progeny are inviolable in India, whether or not they were useful; that it is an Indian ethic to show compassion to useful animals, or animals which have once been useful through non-slaughter (evincing a particular conception of ecological harmony); that beef conception was not high 39 and neither was it necessarily desirable; that prohibition of cow slaughter was the means with which to protect the national economy, reliant as it was on agriculture; and further that for the greater national economic good, some people (Muslim butchers) would have to be 'inconvenienced' or 'dislocated'.

Cow is a highly revered animal in the Indian Culture. In Rigveda, cow slaughter has been declared a heinous crime equivalent to human murder and it has been said that those who commit such crime should be punished (rigveda 7.56.17).

Hence, in the light of above references, protection of cow is the demand of the day and we must stopoliticising and negotiating the sacred cow.

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