



Preservation of Cattle Wealth in India Vis-A-Vis Hindu Ideals of Cow Protection

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ABSTRACT: The Hindu's reverence towards cow, though religious aspect of cow protection cannot be ignored, but protection of milk cattle in a country which is suffering from acute shortage of milk, is an imperative need. Article 48 OF THE Indian Constitution enjoins on the State to organize agriculture and animal husbandry on modern and scientific lines and in particular, to take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milk and draught cattle. Article 48 has accorded recognition in somewhat "guarded and hesitant form" to the Hindu sentiments regarding cows. The paper intends to know the scope of Article 48 and judicial parameters in preserving the cattle wealth and maintaining the Hindu's reverence towards cow.

Keywords: Cow Protection, Cattle Wealth, Secular, Judiciary, Preservation.

Introduction: In a predominantly agricultural Hindu society of the ancient times emphasis on the protection of cow and other cattle connected with agriculture was natural. In the modern India, too, a national policy against slaughter of certain categories of cattle is needed. The question is not merely of the Hindu's reverence towards cow, though religious aspect of cow protection cannot be ignored, but protection of milk cattle in a country which is suffering from acute shortage of milk, is an imperative need. Article 48 deals with this and allied matters. It enjoins on the State to organize agriculture and animal husbandry on modern and scientific lines and in particular, to take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milk and draught cattle. This is a salutary provision for improving the nation's wealth. Cattle wealth and the produce wealth are the twin treasures of India. Animal husbandry on scientific lines has yet to make a big headway in India. Improvement of breeds and the prohibition of slaughter of cattle – cows, calves and other milch

and draught cattle are also of paramount importance.

The Supreme Court has emphasized in *M.H. Quareshi V. State of Bihar*¹ that:

In Article 48, the directive for taking steps for preventing slaughter of certain specified categories of animals is quite explicit and positive. It is an aspect of organizing animal husbandry on scientific lines. The Court has opined that the directive in Article 48 contemplates protection only to cows and calves and other animals which are presently and potentially capable of yielding milk or doing work as draught cattle but not of cattle which, though once milch or draught, ceased to be so in course of time.

Article 48² has accorded recognition in somewhat “guarded and hesitant form” to the Hindu sentiments regarding cows.³ Under the above Article, total ban on cow slaughter is possible and this position has been accepted by the Supreme Court in *Quareshi’s*⁴ case. While the test of usefulness has to be applied in extending protection to other animals, it is not so applied to cows. This is criticized by many as anti-secular and uneconomic.⁵ A number of States have enacted laws to preserve, protect and improve live stock.⁶ The Courts have also been quite cautious about the role of the directive contained in Article 48, which *inter alia*, prohibits the slaughter of cows and calves and other milch and draught cattle.

2. SCOPE OF ARTICLE 48 AND ITS DIMENSION

The dimension of the said directive has been defined in a number of judicial

¹ AIR 1958 SC 731.

² Article 48 makes it obligatory on the State to endeavor to organize agriculture and animal husbandry on modern and scientific lines and, in particular, to take steps for preserving and improving the breeds, and prohibiting slaughter of cows and calves and other milk and draught cattle.

³ P.B. Gajendragadkar, *Secularism and the Constitution of India* 117-143 (Bombay University Press, Bombay, 1971).

⁴ VII *Constituent Assembly Debates* at 41.

⁵ *Ibid.*

⁶ For example, Hyderabad Slaughter of Animals Act, 1950; Rajasthan Prevention of certain Animals Act, 1950; Coorg Live Stock Improvement Act, 1950; Mysore Livestock Improvement Act, 1951; Assam Cattle Improvement Act, 1953; Pepsu Livestock Improvement Act, 1954; Travancore Cochin Livestock Act, 1954; Himachal Pradesh Livestock Improvement Act, 1955; Orissa Livestock Improvement Act, 1957; Rajasthan Livestock Improvement Act, 1958; Punjab Prohibition of Cow Slaughter Act, 1956; Rajasthan Gaushala Act, 1960; Madhya Pradesh Livestock Improvement Act, 1950; Madhya Pradesh Animal Preservation (Amendment) Act, 1951; Bombay Animal Preservation Act, 1954; and The West Bengal Livestock Improvement Act, 1954.

pronouncements. Defining the scope of the directive contained in Article 48, the High Court in *Dulla v. State of Uttar Pradesh*⁷ held that the object of the said Article was economic rather than religious. Similar view was expressed by the Supreme Court in *M.H. Quareshi v. State of Bihar*,⁸ wherein the petitioners who were engaged in the butcher's business had challenged the Constitutionality of certain enacted passed by legislature of Bihar, Uttar Pradesh and Madhya Pradesh banning the slaughter of certain animals including cows. The Court observed that Article 48 contained two general directives - first, preservation and improvement of breeds and secondly, the prohibition of slaughter of certain specified animals. The protection accorded by the Article extends only to cows, calves and to those animals which are potentially capable of yielding milk or doing work as draught cattle and does not extend to those which were at one time milch or draught cattle but which have ceased to be so. The Court held that the ban imposed on slaughter of such animals was reasonable and in the interest of general public.⁹

In *Waman Bhai Hasan Bhai v. State of Gujrat*,¹⁰ Section 5(14) and (3) of Bombay Animal Preservation Act of 1954 was challenged on the ground of violating the provisions of Articles 19(1) (g) of the Constitution. The Gujarat High Court very pertinently observed:¹¹

By virtue of the provisions of Article 48 of the Constitution any legislation prohibiting slaughter of cows and calves would be considered to be reasonable by Courts so far as challenge on the ground of Article 19(1) (g) is concerned.

Again in *State of Gujarat v. Mirazpur Moti Kureshi Kassab Jamat*,¹² the petitioners, who were butchers, had challenged the Constitutional validity of the Bombay Animal (Preservation of Gujarat Amendment) Act, 1994 on the ground that, it was violative of their Fundamental Right to carry on trade and business under Article 19(1) (g) of the Constitution. Under the above legislation the Gujarat State had imposed a total ban on the slaughter of cows and calves and its progeny. The Seven Judge Constitutional Bench of the Supreme Court by 6:1 majority,

⁷ AIR 1958 All 198.

⁸ AIR 1958 SC 731; *A.H. Quareshi v. State of Bihar*, AIR 1961 SC 448.

⁹ In view of this ruling of the Supreme Court, Seervai submits that the decision in *Bandhu v. Municipal Board*, AIR 1952 All 753 is no longer good law, to the extent that it held that Articles 47 & 48 justified Municipal Board in framing bye-law imposing a total ban on the slaughter of bulls, bullocks, and ealyes.

¹⁰ AIR 1981 Guj 40.

¹¹ *Id.* at 47; *Darpan Kumar Sharma v. State of Tamil Nadu* (2003) 2 SCC 313.

¹² AIR 2006 SC 847; *Arif Usman Kapadia v. State of Maharashtra*, Writ Petition no. 777 of 2015.

following its number of earlier decisions held that Directive Principles are relevant in considering the reasonability of restrictions imposed on Fundamental Rights. It is a Constitutional mandate under Article 37 of the Constitution which provides that in making laws the State shall apply the Directive Principles. A restriction placed on Fundamental Rights will be held to be reasonable and hence valid subject only to two limitations: (1) it does not conflict with the Fundamental rights, and (2) the concerned legislature is competent to enact it. The Court held that the prohibition on slaughter of cow and her progeny does not amount to a total ban on business activity of butchers. They are left free to slaughter cattle other than those specified in the Act. They can slaughter animals other than cow progeny and carry on their business activity. The banning on slaughter of cow progeny is not a prohibition but only a restriction. Only a part of their activity has been prohibited. The cow and her progeny constituted the backbone of Indian agriculture and rural economy as the cattle products and draught animal power in the field of nutrition and health, agriculture and energy (bio-pesticides, bio-gas plants and organic farming). In view of this the Government felt that it is necessary to formulate measures for their development in all possible way as to prevent their slaughter. The ban on slaughter of cow progeny imposed by the Act is, therefore, in the interest of general public within the meaning of clause (6) of the Article 19 of the Constitution. In *State of Haryana v. Rajmal and Another*,¹³ the Supreme Court speaking on importance of directive, Article 48 held that it is clear that the person contravening Section 3¹⁴ of Punjab Prohibition of Cow Slaughter Act 1956 cannot put up a defense that the act of slaughter was being done in a place, of which he is not owner or in respect of which he does not have the conscious possession. Slaughter of Cows, subject to exceptions under Section 4,¹⁵ in any place, is prohibited under Section 3 and penalty for doing so

¹³ AIR 2012 SC 779.

¹⁴ “3. Prohibition of cow slaughter - Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any cow in any place in Punjab:

Provided that killing of a cow by accident or in self defense will not be considered as slaughter under the Act.”

¹⁵ “4. Exceptions – (1) Nothing in section 3 shall apply to the slaughter of a cow –

(a) whose suffering is such as to render its destruction desirable according to the certificate of the Veterinary Officer of the area or such other Officer of the Animal Husbandry Department as may be prescribed; or

(b) which is suffering from any contagious or infectious disease notified as such by the Government; or

(c) which is subject to experimentation in the interest of medical and public health research by a certified medical practitioner of the Animal Husbandry Department.



is provided under Section 8. The Court further said that the said Act, which has been acted to give effect to the provisions of Article 48 of Directive Principles of State Policy and which is still in force, prohibits cow slaughter in Section 3 of the Act.

3. CONCLUSION

A review of the foregoing cases makes it clear that the Courts have shown their concern for preventing the slaughter of cows, calves and other milch and draught cattle. They have vehemently upheld legislation passed by various States to implement the directive contained in Article 48. From judicial point of view, such laws are reasonable restrictions on the Fundamental Rights and have always to be presumed in public interest. Since Animal Husbandry is a State subject,¹⁶ the protection to cattle against slaughter is sought to be achieved through adequate State legislation.¹⁷ Slaughter of milch and draught cattle is strictly prohibited. This restriction, however, has no application to cattle which have become useless either for yielding milk or doing work as draught cattle. This shows that the prohibition imposed on the slaughter of certain cattle has no religious background but has an economic justification.

(2) Where it is intended to slaughter a cow for the reasons specified in clause (a) or clause (b) of sub-section (1) it shall be incumbent for a person doing so to obtain a prior permission in writing of the Veterinary Officer of the area or such other Officer of the Animal Husbandry Department as may be prescribed.”

¹⁶ Entry 15, List II, *the Constitution of India*.

¹⁷ See, for example, The Hyderabad Slaughter of Animal Act, 1950; Rajasthan Preservation of Certain Animals Act, 1950; Assam Cattle Preservation Act, 1951; Punjab Preservation of Cow Slaughter Act, 1956; U.P. Prevention of Cow slaughter Act, 1956; Madhya Pradesh Animal Preservation (Amendment) Act, 1961; Bombay Animal Preservation Act, 1954 and Himachal Pradesh Prohibition of Cow Slaughter Act, 1977 etc.