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Case Comment: Javed vs State of Uttar Pradesh

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INTRODUCTION

The purpose of this paper is to critically analyse and look into the recent Allahabad High Court's Judgment in the case *Javed vs State of Uttar Pradesh*. As said by Dr. Rajendra Prasad, "Cow protection is the eternal dharma of India" the question of cow welfare and protection has been in the Indian political discourse since time immemorial, and now, it has also penetrated the judicial circle. There have been continued interpretations of cow slaughter even after independence, owing to the various social, economic, and religious connotations it holds in India. Legislators have been long struggling to determine whether the state has any authority to prescribe and make provisions for cow protection. *Even before Independence, some legislators and advocates of cow protection wanted to bring a legal ban on cow slaughter. But their proposals and petitions remained unmet due to the purported policy of the colonial government of remaining neutral in religious affairs.*¹

¹ Komal Deol, 'Cow protection was a sensitive subject in India even when the Constitution was being framed' (*Scroll.in*, 07 July 2021) <<https://scroll.in/article/998735/cow-protection-was-a-sensitive-subject-in-india-even-when-the-constitution-was-being-framed>> accessed 26 November 2021

Considering various religious and caste angles, Cow slaughter has always remained a sensitive topic, since, across history, a cow has been regarded as cardinal by many Indians. Cow in India is not only worshipped for its mention in various sacred and holy Hindu scriptures but it is also revered for being an important source of livelihood for millions of Indians. In recent times, the judiciary too has started acknowledging the idea of the protection of cows, and it is gradually gaining ground through various laws and judgments that impose bans on cow slaughter. The recent verdict of the Allahabad High Court stating that “*cow should be declared the national animal and that Gau Raksha (cow protection) should be included as a fundamental right of the Hindus*”² has rekindled the debate on cow welfare in India. There is a need to tackle this sensitive issue by forging a balance between cow slaughter for consumption and its protection.

FACTS OF THE CASE

The Allahabad HC had been hearing the bail plea of a man, Javed, who had been charged under sections 3, 5, and 8 of the UP Prevention of Cow Slaughter Act, 1955, for allegedly slaughtering a cow and consuming its meat with his associates.³ The single-judge bench of Justice Shekhar Kumar Yadav while denying bail to Javed, the judge observed that “*cow protection should be made fundamental right of Hindus and cow should be declared as the national animal*” while also pronouncing that “*When the culture and faith of a nation face injury, the nation gets weaker*” The reasoning behind the denial of bail, as given by Justice Shekhar Kumar Yadav was that, it might ‘disturb’ the harmony of the society at large. The court also observed, that in India the slaughter of cows is partially or fully banned by law in 20 states, for example, states like Gujarat, Maharashtra, Uttar Pradesh, Delhi, and Lakshadweep Islands have imposed a blanket ban on cow slaughter while some states like West Bengal have trod a middle path, and

² Omar Rashid, ‘Declare cow the national animal, says Allahabad HC’ (*The Hindu*, 02 September 2021) <<https://www.thehindu.com/news/national/declare-cow-the-national-animal-says-allahabad-hc/article36239391.ece>> accessed 26 November 2021

³ Komal Deol, ‘Cow protection was a sensitive subject in India even when the Constitution was being framed’ (*Scroll.in*, 07 July 2021) <<https://scroll.in/article/998735/cow-protection-was-a-sensitive-subject-in-india-even-when-the-constitution-was-being-framed>> accessed 26 November 2021

states like Arunachal Pradesh, Meghalaya, Kerala, Sikkim, Tripura, Manipur, and Mizoram have no laws prohibiting cow slaughter.⁴

Additionally, the judge also emphasised the mention of cows in Vedas and advocated that more strict laws be formulated by the Parliament to discourage people from harming cows, while also highlighting the paucity of laws prohibiting cow slaughter in some states. Further, the court quoted *“The cow is useful even when she is old and sick, and her dung and urine are very useful for agriculture, making of medicines, and most of all, the one who is worshipped as a mother even if she gets old or sick. No one can be given the right to kill her”*⁵ Justice Yadav based his argument on Article 48 of the Indian Constitution cattle and said that the right to life took precedence over the right to kill. While scrutinizing the miserable condition of cows, the judgment tacitly condemned beef consumption by stating, *“It is very painful to see that sometimes, those who talk about cow protection and prosperity, become cow eaters”*. The judgment reiterated that only when there is the welfare of cows, will there be the welfare of this country. The onus of giving assent to such judgments is now on Centre, and to seriously consider the issue and take a final call on it.

BACKGROUND

During the establishment of the Indian constitution, provisions pertaining to the prohibition of cow slaughter or cow protection were not included and several proposals made by legislators, who wanted to bring a legal ban on cow slaughter, remained unmet. The idea of cow protection was rejected during the making of the constitution, taking into account the widespread communal violence post-partition. Nevertheless, the question of whether the state has the authority to make such provisions for cow welfare has been sought through several debates and deliberations, which ultimately led to an amendment in the Directive Principles of State Policy. This amendment was regarded as Article 38A which was introduced by Pandit

⁴ Komal Deol, ‘Cow protection was a sensitive subject in India even when the Constitution was being framed’, (Scroll.in, 07 July 2021) <<https://scroll.in/article/998735/cow-protection-was-a-sensitive-subject-in-india-even-when-the-constitution-was-being-framed>> accessed 26 November 2021

⁵ ‘Declare cow national animal, make its protection a fundamental right of Hindus: Allahabad HC’ (India TV, 01 September 2021) <<https://www.indiatvnews.com/news/india/allahabad-high-court-cows-big-remark-national-animal-cow-protection-fundamental-rights-hindus-full-verdict-730842>> accessed 26 November 2021

Thakur Dass Bhargava. The amendment states that *“The state shall endeavor 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.”*⁶

The advocates of anti-cow slaughter provisions (mostly Hindu) had propounded the cow as a source of economic and religious stability while the dissenters (mostly Muslim) called it anti-secular majoritarianism. Nevertheless, Thakur’s interpretation was accepted and Article 48 incorporated with a scientific tone. The Article in its present form exists as Article 48 of the Constitution, as one of the Directive Principles of State Policy and it was the first time that a provision recognizing cow slaughter was mentioned in a legal document in India. Although Article 48 was incorporated with much furor, it definitely is at a lower pedestal to fundamental rights guaranteed to the citizens in Part III, since the Directive Principles under Part IV of the Constitution are mere guidelines and are not enforceable in a court of law.

RELEVANT JUDGMENTS

Article 21 of the Indian constitution incorporates a plethora of rights under the fundamental right to life and personal liberty. In this is ingrained the right to food. In 2016, the Bombay High court gave a judgment upholding consumption or possession of beef as legal under Article 21. The divisional bench of the Bombay High court struck down two provisions of the Maharashtra Animal Preservation Act, 1976, *which prohibited the import of beef and criminalise its possession, saying they violate the right to privacy and the right to choice of food that is guaranteed under Article 21 of Constitution.*⁷ The State cannot impose arbitrary restrictions on the choice of food of its citizens under any circumstances.

Moreover, as noted above, Directive Principles of State Policy are not superior to the sacrosanct Fundamental Rights. It is important to note, that in the case of **Hinsa Virodhak Sangh v Mirzapur Moti Kuresh Jamat**, the Supreme Court established that *“Also if we see this*

⁶ "The Constitution of India – Part IV" Ministry of Law and Justice p. 21

⁷ 'Bombay HC says eating beef legal, upholds ban on cow slaughter' (*The Hindustan Times*, 06 May 2016) <<https://www.hindustantimes.com/india+/cow-slaughter-not-allowed-but-beef-lovers-can-eat-meat-in-maharashtra/story-K5v2Cggb25sHSJATE6R4gN.html>> accessed 27 November 2021

*on a legal front it can very well be argued that the State is seeking to impose a ban on consumption of beef, which violates the right of a citizen to eat the food of his choice, which is a part of his right to privacy, and right to life as envisaged under Article 21. A large number of people are non-vegetarian and they cannot be compelled to become vegetarian for a long period as what one eats is one's personal affair and it is a part of his right to privacy, which is included in Art. 21 of our Constitution."*⁸

In several cases, such as *Mohd. Hanif Qureshi v the State of Bihar*, *Hashumatullah v State of Madhya Pradesh*, *Abdul Hakim and others v State of Bihar* and *Mohd. In Faruk v State of Madhya Pradesh*, the Supreme Court had held that *"A total ban [on cattle slaughter] was not permissible if, under economic conditions, keeping useless bull or bullock be a burden on the society and therefore not in the public interest."* As affirmed by the Supreme Court in *S.R. Bommai vs Union of India*, the nine-judge bench, consisting of a Muslim origin judge reiterated that *"In the matters of state, religion has no place. No political party can simultaneously be a religious party. Politics and religion can't be mixed."*⁹ It is important to acknowledge that laws regulating such secular affairs should be inclusive and fair, and the state must ensure the rationality behind formulating legislations. Therefore, formulating laws that only consider the ideologies of a particular religious sect is not justified.

ISSUES

Cow in India is revered for many reasons, which include, the endeared, respected, and sacred status of cow in the Indian culture, its economic significance, various mythological stories around cows, and its beneficial properties. Nevertheless, imposing certain legislations over millions of people, while taking into account the needs and faiths of only a certain community are unfair. It is necessary, that the state in its full capacity avoids making such provisions that would widen the gap between the people of different faiths. The challenge pertaining to cow welfare in India is that uniform legislation governing such bans over cow slaughter is absent. Explicit and unambiguous mention of the regulation and consumption of beef in various state laws also adds to the issue.

⁸ *Hinsa Virodhak Sangh v Mirzapur Moti Kuresh Jamaat* AIR 2008, SCC 33

⁹ *S.R. Bommai v Union of India* 1994 AIR 1918, SCC (3) 1

The separation of religion from the State is not only important but is also today's necessity. As opposed to what the court stated in *Javedvs State of Uttar Pradesh*, a ban on cow slaughter and cow protection gives precedence to only a certain religious sect. Recognizing a certain community in the name of "Indian culture", while disregarding the faiths and ideologies of other communities and religious sects is wrong. The court in the judgment also said that every citizen must save the Indian culture, which although is necessary, does not impliedly say that the faith and customs of only certain groups should be upheld and recognized.

Banning cow slaughter, on religious lines is not justified as it goes fundamentally against the scheme of fundamental right to trade under 19(1)(g)17 of the Constitution, and such blanket ban only fosters resentment and tension between citizens having varied faiths. Similarly, the laws that prohibit cow slaughter under the garb of environment and religion cause great harm to the diverse fabric of the nation. Additionally, cow vigilante violence also poses a great challenge to the existing situation regarding cow slaughter. Enraged and empowered cow vigilante groups, claiming to be protecting cattle, have been using physical force over people merely possessing or transporting cows. In *Tahseen Poonawalla v UOI*, the Supreme Court adjudged that "*Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror. Extrajudicial elements and non-state actors cannot be allowed to take the place of law or the law enforcing agency.*"¹⁰

CONCLUSION

Religion has attained increased prominence and role in politics and such integration is not consistent with the idea of secularism. To attain narrow vested interests of the politically motivated leaders, religion is often used by the state to impose authority and power over such matters. Under the tag of public health, religion, and economy, the State has often imposed legislation that dictates and mandates food habits of many Indians which not only fosters "food fascism", but also infringes the individual's choice of food, protected under article 21 of the Indian constitution. Justice Yadav invoked mythology references at several points in the

¹⁰ *Tehseen Poonawalla v UOI* 2018 SCC 501

12-page order, giving due consideration only to “Indian ethos and culture”, while disregarding logical or scientific backing behind the judgment.

The judgment in the present case was predominantly given in the light of the essentiality it holds in Hinduism and therefore is irrational and unjustified. “*Bail is the rule and jail is the exception*” While refusing bail to the accused, the court fails to take account of important factors like prima facie evidence, the seriousness of the offense, punishment, and genuineness of the prosecution. The court also needs to take cognizance of the unlawful and unjustified mob attacks by the overzealous “cow protectors” and acknowledge the fact that the victims of cow vigilantism, mainly from the economically weaker and marginalized sections of the society, are deprived of any legal discourse against it.

Therefore, it is crucial to not involve religious sentiments while giving such judicial pronouncements and ensuring that there is no abrogation of the constitutional equality conferred upon citizens. Religion has always been a part and parcel of India, but such inclusion of culture and faith into political activities and judicial pronouncements defeats the idea of a secular state. The recognition of cow as a ‘national animal’ would mandate the non-Hindu’s to accept it against their will and it would be irrational and arbitrary for a representative government to promulgate such draconian anti cow slaughter laws, which disregards the needs of a considerable population, depending upon cow for livelihood. Prioritizing the peaceful coexistence of all faiths and avoiding majoritarianism is the need of the hour.