

COW PROTECTION IN INDIA: FROM SECULARISING TO LEGITIMATING DEBATES

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ABSTRACT: Cow protection, a potent tool in the hands of cow vigilantes for atrocities against Muslims and Dalits, has become a heavily politicised issue in contemporary India. Its roots, connecting the themes of caste-Hindu religious sentiment, communalism and economic reasoning, can be traced to the late nineteenth century, though basic problems over the intriguingly complex use of cattle are clearly much older. This article relates contemporary cow protection debates specifically to Arya Samaj arguments against cow slaughter in the late nineteenth century and publication of a special issue of the journal *Kalyan*, titled *Gau Ank*, in 1945. The discussion shows how cow protection debates in the Constituent Assembly of India and in subsequent post-independence judicial verdicts were heavily influenced by these two earlier discourses. Analysing two landmark judicial decisions on cow slaughter, the article argues further that recent judicial endorsement of cow protection legitimises Hindu majoritarian sentiments in the law, while depriving millions of Indians, not just Muslims, of fundamental rights to food and livelihood. The conclusion attempts to consider some possible solutions to the current impasse.

KEYWORDS: *Arya Samaj, beef, BJP, Constitution, cow slaughter, Dalits, Gau Ank, Hindutva, India, judiciary, Muslims, Supreme Court*

Introduction

On 28 September 2015, in western Uttar Pradesh's Dadri district, a Hindu right-wing mob brutally attacked Mohammad Akhlaq, accusing him and his family of slaughtering a cow and consuming beef.¹ More recently, dairy farmer Pehlu Khan, suspected of involvement in illegal cattle trade, was killed by cow vigilantes in Alwar (Rajasthan) in broad daylight.² The earlier stripping and beating by cow protectionists (*gau rakshaks*)

of four Dalit boys in Una in Gujarat,³ and then of two Dalit brothers for skinning a dead cow in Amalapuram (East Godavari district, Andhra Pradesh) demonstrate the rage of Hindu right-wing groups.⁴ These attacks on Muslims and Dalits are not just recent aberrations, nor isolated incidents, however. Such attacks were systematically carried out during the previous BJP-led NDA administration in 2002, when five Dalit men were dragged by an angry mob of *gau rakshaks* out of a police station, had their eyes gouged out, faces burnt and bodies mutilated and trampled upon in Dulina (Haryana). That gruesome attack on Dalits was subsequently justified by the Vishwa Hindu Parishad (VHP), local units of the Arya Samaj and Bajrang Dal, which stated that a cow's life was more valuable than that of humans (Puniyani, 2015).

The cow has been a symbol of political mobilisation, serving as an effective rallying point for Hindu conservatives, at least since colonial times and notably in various elections in post-independence India. Cow politics has featured prominently in the last four of BJP's electoral manifestos (1998, 2004, 2009 and 2014), which pledge to preserve India's culture through central laws on cow protection.⁵ Despite the hype around the slogan of development (*vikas*) during the 2014 Lok Sabha elections, the BJP campaign heavily promoted cow protection. Two widely distributed text message slogans were: 'Vote for Modi, give life to the cow' (*Modi ko matdan, gai ko jeevadan*) and 'BJP's message, the cow will be saved, the country will be saved' (*BJP ka sandesh, bachegi gai, bachega desh*) (Soumya, 2014). The BJP's position reiterates the caste-Hindu sentiment for sanctimony of the cow, an understanding rooted in very particular readings of Hinduism, Indian history and Indian culture.

Direct roots of current cow protection debates, connecting the dual themes of religious sentiment and economic reasoning, go back to the late nineteenth century, when the Arya Samaj, a Hindu religious reform organisation, sought to mobilise Hindus around cow protection. The Arya Samaj's secular language of agriculture and economic rationality helped to cloak upper-caste Hindu sentiments on cow protection not just in colonial India, but also in the subsequent Constituent Assembly Debates on this issue.

This study traces the contemporary debates on cow protection specifically to two significant episodes, the Arya Samaj's arguments on cow protection in the nineteenth century and the publication of a special issue titled *Gau Ank* by the Gita Press in 1945. Thereby, the article demonstrates how India's Constituent Assembly debates on cow protection and subsequent post-independence judicial verdicts on cow slaughter were heavily influenced by the earlier discourses. Analysis of two landmark Supreme Court verdicts on cow slaughter further shows that the Indian judiciary's arguments in favour of cow protection have legitimised popular Hindu majoritarian sentiments. We argue that this shows judicial lack of neutrality in the face of cow-protectionist Hindutva ideology that denies a legitimate space for diversity in postcolonial India and thereby infringes several fundamental rights of citizens. While concluding, this article explores the scope for a possible solution to the current impasse over cow slaughter.

Secularising the Sacred Cow: Arya Samaj and *Gau Ank* on Cow Protection

The current crisis and discourse on cow protection trace their origins to justifications against cow slaughter posited by Arya Samaj activism in the late nineteenth century. Swami Dayananda Saraswati, the Arya Samaj founder, believed in the infallibility of the Vedas and the existence of a Golden Age of Hinduism during ancient times, while denying that beef was consumed in ancient India. He argued that the fragmentation of Hindu society arose because of disparities in belief and worship among Hindus. He also felt that degenerative social practices, including child marriage, widow burning (*sati*), caste discrimination, as well as the invasion of India by foreign rulers, had contributed to weakening Hindu society. Therefore, reforming Hinduism and the consolidation of Hindu unity became two major objectives of the Arya Samaj. Cow protection was considered a fundamental way to achieve these goals.

Saraswati's main ideas on religious reform and his discourse on cow protection are found in a book (Saraswati, 1956 [1875]) and a pamphlet (Saraswati, 1881). In these texts, Saraswati attacked foreign rule in India for cow slaughter and beef consumption and ingeniously linked the agenda of cow protection to the animal's utility. For instance, Saraswati (1956 [1875]: 337–8) observed:

During the rule of the Aryans, no slaughter was allowed of cows or other serviceable animals. Then men and other creatures lived happily in the Aryavardha and other countries of the world. Milk, butter, oxen and other animals were in abundance and supply of food articles was up to the mark. From the time the flesh-eating foreigners have come to India and begun slaughtering cows, etc., and the rule has passed to wine-drinking officials, the miseries of the Aryans are gradually increasing.

Through this articulate critique Saraswati attempted to overlay Hindu religious and cultural tradition with a highly functional economic rationale for cow protection. As O'Toole (2003: 88) shows, citing Saraswati (1881), the key argument was a practical, economic calculation and imperative, based on his claims that the milk of one cow and her six female descendants over the course of their lives would provide sufficient food for a meal each for a total of 154,440 persons, at the rate of 25,740 persons per cow. That magic figure, as we shall see, still mesmerises current discourses.

While the utility of buffaloes is as important, especially since they yield more milk than cows, Saraswati did not seek protection for buffaloes. O'Toole (2003: 88) shows how he justified exclusive cow protection claims by reference to the value of cows' milk: 'Though a she-buffalo yields more milk than a cow but her milk is not so helpful for the happiness of mankind as that of a cow, for, cow's milk is congenial to intellectual life and healthy constitution of men'. Interestingly, despite criticising foreign rule and rulers for their meat-eating habits, Saraswati did not directly attack British rule, because 'an open attack on the British was not feasible' (Heimsath, 2015: 128). Instead he sought

British support for banning cow slaughter, building his appeal around an economic logic. He insisted that the slaughter of cows, allegedly related to the arrival of foreigners, had not just resulted in increased prices of cattle, milk and milk products, but had also contributed to the decline of agriculture which, in turn, brought increased prices for food grains. Therefore, he argued, banning cow slaughter would increase milk supply, reduce milk prices and thus encourage the poor to be drawn to milk and milk products, keeping them away from depending on food grains. Reduced dependency upon food grains, he further claimed, would decrease the 'amount of refuse voided by the human system' (O'Toole, 2003: 88). Such economic utility arguments reflect deliberate attempts by the Arya Samaj to secularise the cow protection debate (O'Toole, 2003: 89).

Saraswati toured across North India in the 1880s to garner public support for cow protection, urging Hindus to unite and create societies for cow protection. He established the first cattle sanctuary (*gaushala*) in Rewari (Rajasthan) in 1879 and the first *Gaurakshini Sabha* at Agra in 1881 (Mukul, 2015: 289; Robb, 1986: 293). Many caste-Hindus, cutting across caste, class and religious ideological orientations, inspired by Saraswati's speeches, joined his movement and thus transformed the animal into a 'rallying symbol' (Van der Veer, 1984: 86), a 'bridging symbol' (O'Toole, 2003: 90) for unifying the Hindu community in colonial North India. Providing an exhaustive analysis of cow protection movements in Bhojpuri-speaking districts of the eastern United Provinces and west Bihar during the late nineteenth century, Pandey (1983) explores various social, political and economic factors that contributed to the emergence and sustenance of this movement.

As noted by O'Toole (2003), the Arya Samaj's campaigns against cow slaughter resulted in the emergence of three specific themes associated with the cow. First, the cow was used as a metaphor for Hindu society and the Hindu nation. Thereby the idea of the Hindu community under threat was powerfully portrayed through the cow symbol. This actually helped Hindu reformists and nationalists to standardise and homogenise Hindu society. The second theme was confrontation by attacks on non-Hindus. As Saraswati linked cow slaughter and the decline of Hindu society to the arrival and subsequent rule of foreigners, the cow became a symbol of resistance not just to colonial interventions, but importantly also in demonising the Muslims on account of their beef-eating practices and cattle sacrifice during Baqr-Id. Indeed, by the early 1890s, cow protection societies had succeeded in spreading anti-Muslim sentiments throughout northern India.

A poster distributed in the Bombay Presidency in the early 1890s illustrates this theme of anti-Muslim sentiments. It depicts a cow, on which names of various Hindu deities are inscribed, being milked by a matronly woman in the dress of a Chitpavan Brahman. While a plump, milk-fed child stands by the woman, a reverential Brahman worshipping the cow is visible in the background. At the centre, however, one sees a Muslim butcher with a long knife and villainous expression, eyeing the cow with murderous intent. This representation of the brutal Muslim stalking god-fearing Brahmans and their gentle cows was repeated in numerous pictures throughout the

Presidency (Gupta, 2001: 4295–6), thereby identifying Muslims as a force to be ‘countered and resisted’ (Tejani, 2008: 48). Through such imagery, the cow protection movement had now created a common enemy, Muslims. Further, the Hindu public was exhorted by Arya Samajists to protect the cow and act against Muslims, leading to Hindu-Muslim riots in northern India almost annually throughout the late nineteenth and early twentieth centuries. Hindu–Muslim conflicts over cow slaughter during the colonial regime were exhaustively recorded in historical writings (see Fischer-Tiné, 2000; Pandey, 1983; Sarkar, 1989; Thursby, 1975) and were also reflected in early German Orientalist scholarship, when Hillebrandt (1899: 9) mentioned fanatic fatal assaults against butchers who killed cows, highlighting also communal conflict between Muslims who sacrifice cows and Hindus who establish cow protection societies in response (Hillebrandt, 1899: 28–9).

The third theme, as demonstrated by Gupta (2001: 4295–7), associated the sacred cow with the female body, through the image of the cow as Mother (*Gau Mata*). While the female imagery became focused around nationalist ideas of Mother India (*Bharat Mata*) and a mother tongue (*Matri Bhasha*), cow killing came to be equated with matricide (Gupta, 2001: 4296). Van der Veer (1984: 90) elaborately depicts the image of the cow as mother, decisively shaped by Hindu understandings of gendered roles. Arya Samaj’s ideas on cow protection, effectively propagated among the Hindu public by Cow Protection Societies, were further advanced by conservative Hindus throughout the early twentieth century. The following paragraphs examine specifically how the Gita Press in 1945, through a special issue on cow protection, strengthened this Arya Samaj discourse.

As the struggles for Independence gained momentum during the early 1940s, cow protection activists enhanced their campaigns by organising public meetings, publishing pamphlets and articles. In this context, the Gita Press, one of the most successful Hindi publishing houses known for its staunch conservative Hindu approach, brought out a 663-page special annual number, titled *Gau Ank*, through its journal *Kalyan* in 1945. This featured a wide range of contributors of varied ideological affiliations, from ultra-conservatives like the Shankaracharyas to Hindu nationalist politicians and Congress conservatives like Madan Mohan Malaviya and Rajendra Prasad.

Mukul (2015: 289–343) provides an excellent survey of the key points raised by various *Gau Ank* contributors. The three most important arguments, soon finding resonance in the Constituent Assembly and the Indian Supreme Court, are elaborated here. As Mukul (2015: 292–6) shows, the first argument relates to the cow as mother, with contributors attempting to link women and cows because in ancient times, wars were fought for both of them. Shanti Kumar’s poem ‘*Gau aur Nari*’ (Cow and Woman) claimed that non-violence, compassion and tolerance are essential attributes of an ideal Hindu woman as well as the cow. He argued: ‘The ideal Hindu woman sees success of her womanhood in being a wife and a mother. To achieve them she sacrifices her personal happiness. She is happy if others around her are happy. In the animal world, the cow displays similar characteristics’ (Mukul, 2015: 292). The poet

Maithilisharan Gupt, a staunch Hindu nationalist, in '*Gau Geet*' (Song of the Cow) compared cows with mothers as selfless givers who sustain life and agriculture. He also presented cows' dung and urine as a source of salvation. Prabhudatt Brahmachari, an ultra-Hindu conservative, claiming that anyone who considers the cow as mother is a Hindu, argued there was no crime more despicable than killing a cow and no charity greater than feeding cows. He even felt that in ancient times people would do anything, including sacrificing their own lives, to defend cows.

The second argument in the *Gau Ank* relates to cows' economic utility, with two noteworthy aspects. First, a direct relationship between the general well-being of cattle and the country's economic prosperity was claimed. Maulana Kabil Saheb's essay, '*Gauraksha kyon avashyak hai?*' (Why is Cow Protection Necessary?), highlighted the cow's economic utility as the backbone of agriculture (Mukul, 2015: 296). Linking prosperity with national pride, he argued that this pride, associated with economic prosperity, was shaped by the cow economy. Second, an extract from Saraswati (1881), already discussed in the present article, also found a place in *Gau Ank*, comparing the large number of people benefitting from a cow's lifelong milk production with consuming its meat, since a slaughtered cow could provide only a single meal for eighty people (Mukul, 2015: 296). Third, an important aspect in further secularising the debate on cow protection was to establish that beef-eating did not have Islamic sanction. Dharam Lal Singh, a votary of Hindu nationalism, in his essay '*Musalman Aur Gau Raksha*' (Muslims and Cow Protection) cited *Sur-e-Haj*, stating: 'Allah does not want animal blood and flesh in sacrifice; He wants your piety'. For this reason, according to Singh, cows were worshipped rather than sacrificed even in Saudi Arabia, Turkey and other Muslim states.

These three arguments were cleverly crafted to reflect three distinct yet interrelating themes: Hindu sentiment and religion, economic utility of the cow and cow sacrifice not enjoying Islamic sanction. The first argument sought to claim high moral values, but was clearly a political strategy to unify a deeply divided and hierarchically ordered Hindu community under the banner of cow protection and to demonise Muslims (Chandhoke, 2016). The second argument stressed the cow's importance in a predominantly agricultural society, seeking to push cow slaughter as a moral issue, arguing that cow killing would disrupt the sustenance of life for Hindus. The third argument clearly sought to weaken and reject Islamic grounds for beef consumption and put Muslims on the defensive.

Legalising the Sacred Cow: Debating Cow Slaughter Ban in the Constituent Assembly

Banning cow slaughter was debated as a matter of great importance in the Constituent Assembly of India, mainly by upper-caste Hindu members, concerning what was then Article 38-A.⁶ Notably, much of this necessarily time-limited discussion initially fussed over the use of Hindi in the Assembly, indicating North-South conflicts (p. 568).

Initially it had been demanded by members like Pandit Thakur Das Bhargava, Seth Govind Das and R.V. Dhulekar that provisions prohibiting cow slaughter should be included among the Fundamental Rights. Apparently, this had earlier been dismissed by Dr B.R. Ambedkar, Chairperson of the Drafting Committee of the Constitution, stating that Fundamental Rights dealt only with human beings and not animals (p. 568; Smith, 1963: 484–5). Thus, Ambedkar ‘is mostly credited for saving India the blushes of becoming the only country in the world to extend the fundamental right to an animal’ (Ashraf, 2015).

Bhargava, yielding to Ambedkar’s position, agreed to propose his amendment on cow protection merely as a Directive Principle, but not before terming it ‘a sort of sacrifice’ by the Hindu community and an approach to solve the problem ‘without using any sort of coercion’ (p. 568). Noorani (2016) calls Bhargava’s strategy ‘double speak’ and ‘deployment of the forked tongue’. The amendment sought by Bhargava to what was then Article 38-A read (p. 568):

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 of cattle and prohibit the slaughter of cow and other useful cattle, specially milch and draught cattle and their young stock.

Building his justifications for this amendment upon the idea of the cow’s economic utility, rather than religion, Bhargava’s lengthy submission (pp. 568–70) made two claims related to agriculture. First, to sustain human health and to grow enough food to alleviate the food problems of India, one had to increase agricultural production, which depended heavily on the improvement of cows and their breed. Bhargava’s second justification was specifically around utility of the cow’s manure. Terming her ‘a moving manure factory’ (p. 570), he argued that a cow can therefore never be a useless animal.

Reiterating earlier arguments in *Gau Ank* regarding the cow’s religious position in Hindu society, some upper-caste members of the Constituent Assembly portrayed the cow as a holy animal and a motherly figure. This is particularly striking when Seth Govind Das, rejecting all pretence of secularising the debate, expressed surprise as to why religious sentiment could not be the basis of cow protection law and remarked: ‘The protection of cow is a question of long standing in this country. Great importance has been attached to this question from the time of Lord Krishna’ (p. 571). Dr Raghu Vira elaborately emphasised the notion of the cow as mother, arguing that ‘not a single cow shall be slaughtered in this land’, basically because ‘the killing of a learned man ... and the killing of a cow are on a par’ (p. 575). As noted, another important claim of cow protectionists was that cow slaughter was not an integral part of Islam, on which Seth Govind Das argued (p. 572):

The Muslims should come forward to make it clear that their religion does not compulsorily enjoin on them the slaughter of the cow... I have read the life of Prophet Mohammad Sahib. The Prophet never took beef in his life. This is an historic fact.

Such arguments are highly significant for two reasons. First, Dharam Lal Singh in *Gau Ank* had argued that Islam neither sanctions beef consumption nor cow slaughter, a claim later contested in the Constituent Assembly. Further, many academics have shown that beef eating practices did not arise due to Islamic or Christian traditions, but existed in early India itself. Like various pertinent Supreme Court decisions, including the two discussed later, Jha (2009: 21–2) draws attention to Vedic and early Dharmashastric works that mention cow slaughter, bull sacrifice and beef eating in early India. Following guidance from Jainism and Buddhism, coinciding with changed agricultural practices, animal sacrifices were decried and cows came to be revered, particularly by certain upper castes. In this context, the arguments of Seth Govind Das reflect persistent attempts by Hindu nationalists to hide past Hindu evidence and to fashion Islam in an unpalatable form to suit their argumentation, rather than to accept Islam and Hinduism as internally diverse also when it comes to dietary practices. Second, portraying the beef consumption practices of Islam, as Seth Govind Das attempted to do, would later provide the basis for the ‘essential practices doctrine’, practices fundamental to any religion, a doctrine that has become entrenched in important cases of the Indian Supreme Court (Baxi, 2007; Sen, 2007, 2010), also related to the so-called Hindutva cases (Cossman & Kapur, 1999).

Despite the economic logic provided by members of the Constituent Assembly, cow protection was pushed for because of religious sentiments. With such motives clearly evident, emphasis on agriculture and economics were ‘predicated on a fundamental constitutive elision of the religious aspects of cow slaughter’ (Chigateri, 2011: 138). This served to mask a prioritising of dominant caste-Hindu identity in the regulation of cow slaughter, while importantly ‘glossing over religious differences over the sacredness of the cow’ (Chigateri, 2011: 138). Since the protagonists of cow protection managed to render Muslims as outsiders, this forced upon Muslims a litmus test of acquiescence in cow protection as a measure of national loyalty, reducing the idea of India to only non-beef eating Hindus (Garg, 2016). This irony was not lost on Muslim members such as Mr Lari (United Provinces), who pointed out the inherently paradoxical nature of the proposed law, which claimed to modernise agriculture while retaining useless and unproductive cattle (p. 577). Furthermore, while conceding the majoritarian position of cow protectionists, he expressed concern about lack of clarity in the law, arguing for a definite wording, even if it meant legitimising majoritarian sentiments. Syed Muhammad Saiadulla (Assam) argued that not all Muslims consume beef, and useful cattle were a capital asset for Muslim agriculturalists just like for Hindus. He critiqued the emphasis on economic verbiage as dubious and logically flawed, going on to observe that the Hindu religious sentiment for the cow was being ‘satisfied by the backdoor’ (p. 578).

Despite rational arguments by Muslim members against the claims of cow protection protagonists, Article 38-A was adopted by the Constituent Assembly with minor changes of wording, to become Article 48 of the Constitution of India, providing:

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.

Austin (1966: 82) commented that the prohibition of cow slaughter in the name of modernisation of agriculture was an unmistakable imposition of the religious preference and powers of the dominant upper caste over the powerless and marginalised sections of India. Article 48, however, clearly enforced only a partial rather than a complete ban on cow slaughter, still making a distinction between useful milch and draught cattle and useless animals, which could be slaughtered. Overall, despite the prevalent caste-Hindu sentiments they reflected, the Constituent Assembly cow slaughter debates did not become acrimonious, though they were the culmination of cow protection arguments, largely based on earlier Arya Samaj positions. Yet the decision to legalise the popular majoritarian sentiment, albeit cloaked in secular language, was to have profound consequences soon after Independence.

Legitimising Popular Majoritarian Sentiments

This section now discusses two important verdicts on cow slaughter in Independent India, *Mohammed Hanif Quareshi and others v. State of Bihar* in 1958 (henceforth *Hanif Quareshi*),⁷ and *Mirzapur Moti Kureshi Kassab Jamat and others v. State of Gujarat* of 2005 (henceforth *Mirzapur Moti Kureshi*).⁸ Analysing both verdicts, we argue that the Indian Supreme Court has legitimised majoritarian sentiments in the law by conceding valuable ground to cow protectors.

Before discussing *Hanif Quareshi*, it is useful to remember that the arguments for a total ban on cow slaughter in the Supreme Court bear striking resemblances to the proposals for cow protection in the Constituent Assembly, which in turn drew from earlier Arya Samaj arguments and the 1945 *Gau Ank*. *Hanif Quareshi* arose in opposition to the imposition of a total ban on cow slaughter by three large Indian states, Bihar, Madhya Pradesh and Uttar Pradesh. Twelve petitions (eleven in 1956, one in 1957) were filed in the Supreme Court, which decided to deliver one common verdict. The petitioners, Muslim butchers, challenged the total ban on cow slaughter under three Fundamental Rights, respectively Article 14 (right to equality), 19(1)(g) (right to practise any profession and carry on any occupation) and 25 (right to freedom of religion). They argued that the total ban imposed by the three states placed Article 48 as a Directive Principle of State Policy above the Fundamental Rights. Numerous cow protection organisations and others wished to intervene in the proceedings. Though the Court, following formal rules and norms, did not allow any of them to intervene, it appointed a leading proponent of cow slaughter prohibition, Pandit Bhargava, as *amicus curiae*, ‘in view of the importance of the questions involved in these proceedings’ (p. 739).

The Court first took up the petitioners' contention that the impugned Acts violated their right to religious freedom under Article 25(1). It then expressed its vexation over the 'extremely meagre' (p. 739) material submitted on claims that the sacrifice of a cow is sanctioned by Islam. Taking it upon itself to seek clarity on Islam's position on cow sacrifice, instead of consulting a Maulana or an expert of Islam, the Court relied on Hamilton's old translation of *Hedaya*, Book XLIII (p. 740), taking the view that sacrifice of a cow was not an 'obligatory duty' in Islam, as there was an option of sacrificing a 'goat for one person or a cow or a camel for seven persons' (p. 740). The thrust of the Court's efforts here aimed at identifying the 'essential practices' of Islam, arguing that it did not mandate cow slaughter or sacrifice. Therefore the total ban by the three states did not violate the Fundamental Rights of religious freedom and expression of the Muslim petitioners. Notably, this is precisely the earlier argument of Pandit Bhargava to support his cow protection bill in the Constituent Assembly. Now amicus curiae in *Hanif Quareshi*, he again argued that Islam did not mandate cow slaughter. Dismissing the petitioners' claims of religious freedom, the Court simply followed the advice of the Pandit.

The Court next turned to the petitioners' contention regarding Article 14, the right to equality. They argued that an odious discrimination was created by the Acts between those who butchered bovine cattle and those who butchered goats and sheep. Singling out the former for prohibition violated Article 14. In response, the Court dismissed the petitioners' arguments, justifying the classification on the grounds of usefulness of the cow (p. 741):

Cows, bulls, bullocks and calves of cows are no doubt the most important cattle for the agricultural economy of this country. Female buffaloes yield a large quantity of milk and are, therefore, well looked after and do not need as much protection as cows yielding a small quantity of milk require. As draught cattle male buffaloes are not half as useful as bullocks. Sheep and goat give very little milk compared to the cows and the female buffaloes and have practically no utility as draught animals.

Even if one were to sympathise with the Court's claim that cows and their progeny are important to the agricultural economy, the argument that cows yield less milk than female buffaloes and hence require protection is beyond logical comprehension. If one were to take less milk-yielding capacity as the main criterion for protection, sheep and goats, which give very little milk, would require maximum protection. The Court's favouring of cows, probably based on the Chief Justice's sentiments, did not rely on rational legal reasoning, though this is claimed by the assertion that 'the classification of different kinds of animals is made on a sound and intelligible basis' (p. 741).

The final argument revolved around the petitioners' right to practise any profession or carry on any occupation under Article 19(1)(g). Assessing this claim, the Court subjected each of the impugned Acts to a test of reasonableness through the prism of 'the interests of the general public' (p. 744). The Court agreed that Muslim butchers (*kasais*) and those involved in ancillary occupations were seriously affected, if not

completely thrown out of occupation, by the impugned Acts. It also concurred with the proposition that a large number of useless and inefficient cattle would deprive useful cattle of much-required fodder. The Court was even critical of cow protection schemes, particularly Gosadans (p. 751) which treat animals with cruelty, and also deplored the economic costs of such schemes to the nation (p. 750). Additionally, the Court acknowledged that for a large section of India's poor, not just Muslims, but also Christians and members of Scheduled Castes and Tribes, beef or buffalo meat was mostly the only affordable source of protein and nourishment, so a total ban would certainly deprive these populations of necessary nutrition.

Yet, the Court chose to ignore these facts in the final verdict, making three conclusions: (a) that a total ban on the slaughter of cows of all ages, calves of cows and calves of she-buffaloes, male and female, is quite reasonable and valid and is consonant with the Directive Principles of Article 48; (b) that a total ban on the slaughter of she-buffaloes, or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are milch or draught cattle is also reasonable and valid; and (c) 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 (p. 755).

Discussing *Hanif Quareshi*, Baxi (1967: 349) noted that the Court went to great lengths to dismiss the petitioners' claims on religious freedom, while simultaneously not being as rigorous in its search for substantiation of claims that the cow had the alleged reverential position in the Indian religion (read Indian as Hindu), thereby conceding to popular majoritarian sentiment regarding the cow's sanctity. His scrutiny of the judgment highlights the Court's explicit recognition of what could be termed as 'popular sentiment'. The judgment itself reads (p. 745):

While we agree that the constitutional question before us cannot be decided on grounds of mere sentiment, however passionate it may be, we, nevertheless, think that it has to be taken into consideration, though only as one of many elements, in arriving at a judicial verdict as to the reasonableness of the restrictions.

This statement, while recognising the role of the legislature as the repository of people's sentiments, through adult suffrage, to frame laws in the best interests of society, was remarkable in that the Court abstained from possible communal sentiments while discussing the law. Following the precedent set in the Constituent Assembly debates, which manifestly allowed a majoritarian bias in India's secular Constitution, the Court likewise legitimised Hindu sentiments in *Hanif Quareshi*, taking 'popular sentiment', really caste-Hindu sentiment, into account. The Court would retain this specific Hindu bias in subsequent cases involving cow slaughter, veiling religious sentiments in the scientific language of protecting the interests of the nation's agriculture, while maintaining that cow sacrifice was not obligatory for Muslims. Jaffrelot (1996: 204–10) perceptively discusses the aftermath of the Supreme Court's verdict and the anti-cow slaughter agitation. As subsequent verdicts demonstrate, there have been no effective

challenges to the total official ban on cow slaughter on the grounds of religious freedom by Muslims. Several reasons may explain this avoidance of conflict, but pursuing those here goes beyond the ambit of this article.

The 2005 Judgment: ‘The Value of Dung is Much More than the *Kobinoor*’

The Supreme Court position in *Hanif Quareshi* (1958) endured for more than four decades but saw a marked shift in the 2005 case of *Mirzapur Moti Kureshi*.⁹ The State Legislature of Gujarat had introduced the Bombay Animal Preservation (Gujarat Amendment) Act of 1994, enlarging the prohibition of slaughtering bulls and bullocks below the age of 16 years to a total ban on slaughter of cows and their progeny. As the Gujarat Act infringed the long-held Supreme Court position, its constitutional validity was challenged before the Gujarat High Court, which promptly struck down the impugned legislation, arguing that the 1994 Act imposed an unreasonable restriction on Fundamental Rights and was *ultra vires* the Constitution. This was probably a strategic refusal, allowing the state of Gujarat to appeal to the Supreme Court by a Special Leave Petition.

A Supreme Court Bench of seven judges, led by Chief Justice Lahoti, reexamined the issue and in the final verdict, six judges upheld the validity of the impugned amendment. The Court eschewed not just established principles of constitutional interpretation but overruled the earlier settled jurisprudence on the slaughter of bulls and bullocks in *Hanif Quareshi*. Unmistakably, this judgment was pro-Hindu, and against Dalits, Adivasis, Muslim and Christian minorities. Examining how the Court arrived at this biased verdict, Jaising, Chakravorty and Dev (2016) see two aspects at its heart, namely misinterpretation of the role of the Directive Principles in India’s constitutional framework and support of Hindutva forces through reliance on a 2002 report by the National Commission of Cattle.

The Chief Justice’s verdict elevated the status of Article 48, a Directive Principle of State Policy, to that of a Fundamental Right when he argued that the Court as guardian of the fundamental rights of the citizens has a responsibility to strike a just balance between the fundamental rights and the larger and broader interests of society. This, according to the Chief Justice, translated to the position that 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. Public interest, this indicates, prevails over private interest. Thus, in the name of protecting ‘the public interest’, without explaining what exactly this was supposed to involve, the Chief Justice attempted not just to make ‘the country’ enter into a hostile relationship with some of its own people. He also rendered the Fundamental Rights subservient to the Directive Principles, an interpretation, as Jaising et al. (2016) argue, that was ‘both disingenuous and dangerous and precisely what the constitution-makers wanted to guard against’.

In order to justify the impugned amendment, the court relied heavily on Articles 48, 48(A), which pertains to protection of the environment, and 51-A(g), a part of the Fundamental Duties that directs India's citizens to have compassion for living creatures. While referring to 'milch and draught cattle' in Article 48, the Chief Justice notes that this expression was employed by the Constitution to distinguish useful cattle from other cattle, which are neither milch nor draught animals. Subjecting these terms to intense scrutiny, the Chief Justice formulated his own set of questions about whether explicit protection for cattle stops whenever they cease to be 'milch or draught', either temporarily or permanently. Providing answers to his own questions, the Chief Justice held in effect (at paragraph 66, page 570 SCC) that the protection given to a cow, whatever its age, a constitutionally settled position since *Hanif Quareshi*, was now extended to all its progeny:

A milch cattle goes through a life cycle during which it is sometimes milch and sometimes it becomes dry. This does not mean that as soon as a milch cattle ceases to produce milk, for a short period as a part of its life cycle, it goes out of the purview of Article 48, and can be slaughtered. A draught cattle may lose its utility on account of injury or sickness and may be rendered useless as a draught cattle during that period. This would not mean that if a draught cattle ceases to be of utility for a short period on account of sickness or injury, it is excluded from the definition of 'draught cattle' and deprived of the benefit of Article 48.

Further, the Court invoked Article 51-A(g) to strengthen the case for protection of useless bulls and bullocks, expressly on the grounds of compassion, holding (in paragraph 67, pp. 570–1 of SCC):

The concept of compassion for living creatures enshrined in Article 51A(g) is based on the background of the rich cultural heritage of India the land of Mahatma Gandhi, Vinobha, Mahaveer, Buddha, Nanak and others. No religion or holy book in any part of the world teaches or encourages cruelty. Indian society is a pluralistic society. It has unity in diversity. The religions, cultures and people may be diverse, yet all speak in one voice that cruelty to any living creature must be curbed and ceased. A cattle which has served human beings is entitled to compassion in its old age when it has ceased to be milch or draught and becomes so-called 'useless'. It will be an act of reprehensible ingratitude to condemn a cattle in its old age as useless and send it to a slaughter house [...] We have to remember: the weak and meek need more of protection and compassion.

The Court's appeal and high ideas of compassion for cattle, phrased in such universal terms, may be read as invocation of high values and ethics, even an endorsement of animal rights. While this goes against the advice of Dr Ambedkar in the Constituent Assembly, as noted previously, this emphasis on compassion merely demonstrates another instance of sectarian interests, cloaked now in the universal terminology of animal rights. As Chigateri (2011: 115) argues, by speaking of compassion the Court 'excluded the possibility of any discord and debate on the issue of whether

compassion towards living creatures *always* meant prohibitions from slaughter' (italics in the original). Despite mentioning diversity and the pluralistic nature of Indian society, the Court did not even bother to consider cow slaughter from non-Hindu perspectives. Further, the Court refused to extend the protection and compassion given to animals as 'meek' and 'weak' to the whole category of Muslim butchers, whose right to livelihood was shattered by the impugned Act. Astonishingly, the Court justified ruining the butchers' livelihoods in the name of interest of the general public and observed (paragraph 78, page 574 of SCC) that '[t]he ban is not on the total activity of butchers (kasais); they are left free to slaughter cattle other than those specified in the Act'. However, the Chief Justice went further (at paragraph 137):

In the light of the material available in abundance before us, there is no escape from the conclusion that the protection conferred by impugned enactment on cow progeny is needed in the interest of the nation's economy. Merely because it may cause 'inconvenience' or some 'dislocation' to the butchers, restriction imposed by the impugned enactment does not cease to be in the interest of the general public. The former must yield to the latter.

The reference to 'the nation's economy' here is intriguing but is not explored. The fact that beef is consumed as an item of food in India, openly recognised in *Hanif Quareshi*, also did not merit the Court's consideration in 2005. The Chief Justice argued that while in earlier decades, food security was a significant concern, India's socioeconomic scenario has now progressed. We are not told here in what ways, while Puniyani (2015) spots that 'India is also a major exporter of beef'. In continuation of this argument, the Court further states that desirable diet and nutrition are not necessarily associated with non-vegetarian diet, let alone dietary items originating from slaughtering cows and their progeny. Beef, it is argued, contributes only about 1.3 per cent of the total meat consumption of India. Consequently, it is argued, a prohibition on the slaughter of cattle would not substantially affect the food consumption of the people.

Two aspects become clear from the aforementioned chain of arguments. First, stating that there is no necessary association between desirable diet and non-vegetarian food, the Chief Justice was unequivocal in privileging his own preference for vegetarian food. Second, he was unwilling to respect the food choices of any particular population group, however marginal, or the whole class of 'beef-eating Indians', ignoring arguments that the right to life under Article 21 may include the right to eat the food of your choice (Jaising et al., 2016). Instead beseeched Muslims and other marginalised sections may simply be forced by the state's law to give up their specific choice of food, since their choice is not approved by the majority, echoing the Arya Samaj's arguments against beef consumption as an unacceptable, degenerative practice.

Jaising et al. (2016) note that various other Directive Principles and Fundamental Duties were conveniently ignored by the Court. For instance, Article 38 enjoins the State to secure a social order for the promotion of welfare of all people, adding further in a 1978 amendment that the State shall strive to provide facilities and opportunities to individuals and groups of people residing in different areas or engaged in different

vocations. Similarly, Article 46 directs that the State ‘shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation’. These Directive Principles were blatantly ignored when the Supreme Court in 2005 deprived millions of poor people from Dalit, Adivasi and minority backgrounds of their right to cheap protein in the form of beef, as well as denying Muslim butchers and other traders their right to earn a dignified livelihood.

Regarding Hindutva alliance and the utility of cows, we learn further details from this judgment. *Hanif Quareshi* in 1958 held total prohibition on the slaughter of bulls and bullocks to be unreasonable and not in the public interest. The 2005 Supreme Court, however, did not concur with this view. Justifying the total ban in the interest of the general public, it seems that heavy reliance was placed on the report of the National Commission of Cattle, set up by the BJP-led NDA government in 2002.¹⁰ This Commission, set up in response to the NDA’s failure to legislate a total ban on cow slaughter in Parliament, provides multiple indications of allegiance to Hindu right-wing forces, particularly the RSS. In the preface, addressed to the former Prime Minister, Atal Bihari Vajpayee, the Acting Chairman of this National Commission acknowledges the contribution of ‘dedicated cow-worshippers’ to the Report, bemoans the non-availability of a previous report compiled by RSS Chief Golwalkar, among others, and also retains the Hindutva version of history by mentioning only that cows were massacred during Muslim invasions. The Chairman urges the then Prime Minister to secure his legacy by ensuring the protection of the cow (*gomata*). That Chief Justice Lahoti in 2005 relied on such an ideologically motivated report speaks volumes of the Supreme Court’s acquiescence to popular and/or majoritarian sentiments. In this context, discussing the utility factors of the cow’s progeny, the Chief Justice came up with an extraordinary argument around cow dung, taken straight from the National Commission of Cattle Report, stating (in paragraph 83, page 580 of SCC):

[T]he value of dung is much more than even the famous ‘Kohinoor’ diamond. An old bullock gives 5 tonnes of dung and 343 pounds of urine in a year which can help in the manufacture of 20 cartloads of composed manure. This would be sufficient for manure need of 4 acres of land for crop production. The right to life is a fundamental right and it can be basically protected only with proper food and feeding and cheap and nutritious food grains required for feeding can be grown with the help of dung. Thus the most fundamental thing to the fundamental right of living for the human being is bovine dung.

Further bizarre, economy-related arguments around the utility of dung were offered by the Court to estimate that a bull or bullock at every stage of life supplies 3500 kg of dung and 2000 litres of urine. The value of these contributions to the owner can be placed at ₹20,000 per year, so that even the most aged bovine is still economically useful. Such data, evidently taken from an earlier article written by Panna Lal Mundhra, chairman of the Animal Welfare Board of India, which was established in 1962

by Rukmini Devi Arundale, were published in the 2002 National Commission of Cattle Report. Incidentally, the same data had earlier been rejected by the Supreme Court in the 1996 case of *Hasmattullah*,¹¹ on the ground that this statement was not verified and did not refer to accurate sources. It is quite significant that data and documents rejected by the Supreme Court in an earlier judgment were endorsed in 2005 (Jaising et al., 2016). Recent Supreme Court verdicts on the status of Article 48 thus provide stark reminders that the judiciary does not hold an apolitical status in Indian democracy (Sen, 2007: 29–34). The Supreme Court's heavy reliance on the 2002 National Commission of Cattle Report is particularly striking and pertinent in the wake of the subsequent rise to political power of the BJP.

Conclusion: A Way Forward?

In early March 2015, the Maharashtra Animal Preservation (Amendment) Act, in addition to the existing prohibition (since 1995) on the slaughter of cows, prohibited also the slaughter of bulls and bullocks in that state. In a number of writ petitions, the amendment was challenged in the High Court of Bombay on the basis of Articles 19(1)(g), 21, 25 and 29. These Articles deal with the right to practise any profession, protection of life and personal liberty, freedom of religion and the interests of minorities, respectively. These petitions were disposed together by a two-judge Bench, Justices A.S. Oka and S.C. Gupta. The court largely agreed with the respondents and upheld the constitutional validity of the impugned Act. Most recently, the BJP-led government in Gujarat passed an amendment to the Gujarat Animal Preservation (Amendment) Bill on 31 March 2017 that prescribed life imprisonment for those found guilty of slaughtering cows. This law has also a provision for a 10-year imprisonment for transportation, storage or sale of beef.¹²

It is thus increasingly clear that the cow protection debate in contemporary India has been hijacked by Hindu right-wing organisations, taking it now upon themselves to use violence against other humans, while claiming to protect cows and their progeny. The often blatantly criminal activities of cow vigilantes have created an atmosphere of fear and insecurity among minority communities, particularly Muslims engaged as butchers or meat traders, and lower caste Dalits engaged in leather and tannery industries. In this context, the judicial verdicts analysed here present a bleak picture, as they legitimise such majoritarian sentiments and implicitly endorse cow vigilante violence. Given such dangerous constellations, which also impact on freedom of speech and expression, it is worth asking if any viable solution to the issue of cow protection amenable to all sections of the population exists. Is there a middle way which remains sensitive to religious feelings and economic rationality and which works simultaneously towards mitigating the current atmosphere of fear among minorities and to restore faith in constitutional principles for all citizens?

We can think of five ways through which to approach the issue. First, treating the cow on par with other domestic animals and leaving responsibility for it to the owner.

Owners of cows, who in India are often women (Ohlan, 2016: 242), would then be at complete liberty to do whatever they wanted to do with the animal. This basic economic and contract-based approach would, however, be unacceptable in principle to conservative Hindus. The second approach is to maintain the constitutional position prior to the Supreme Court's reinterpretation of Article 48 in its 2005 cow slaughter verdict. This would mean that only cattle, including cows and their progeny and buffaloes past the age of about 17 years, unusable either for reproduction, agriculture, draught or transport purposes in the present or future, could be slaughtered. As the cow is included in this list, this will also be unacceptable to conservative Hindus. The third approach would be to concur with the arguments of conservative Hindus, ban the slaughter of all cows and their progeny, and also prohibit the consumption of beef. However, in a country with more than 300 million cows (Ohlan, 2016), it could be argued that this would be economic suicide. Hence, except for a small percentage of conservative Hindus, this radical approach would also not be agreeable to most Indians, mainly because it would hit the pockets of all owners of bovines. Not only Muslims, Christians, Dalits, Adivasis and other marginalised castes and communities oppose this approach both on account of their occupations, agriculture and leather-related work, where both living and dead cattle play an important role, but also those in relation to dietary practices, whether or not beef has been a major or occasional food item. Especially, caste-Hindus involved in agricultural work would probably also oppose this total ban, denying them the freedom to dispose even of surplus or uneconomical animals.

The fourth possible way could be to leave the enforcement of a ban on cow slaughter to respective state governments in India. This solution would allow the states to decide upon a partial or total ban in accordance with cultural traditions and practices of the people in that state. Although this appears to be a viable suggestion, this could not result in a permanent solution nationally, as Hindu right-wing forces would continue to use cow protection for political gains even in states that wanted to implement more liberal/secular/rational approaches. However, since India is a democracy and people's votes do count (see Kumar, 2017; Rai, 2017), there may need to be some subtle balancing of competing positions. It appears that the BJP is increasingly aware of this, too, fearing electoral backlash of cow-related violence.

The fifth and final approach would be to ban the slaughter of cows throughout the country, but allow slaughter of bulls and oxen past a certain age. This approach, going back to the *Hanif Quraishi* position, except by compromising on the cows and their progeny, should actually be agreeable to all contending parties. Not subjecting the holy cow or its female progeny to any risk of slaughter would respect the sentiments of conservative Hindus. However, making economically justifiable allowances for slaughtering other cattle would continue to respect the occupations and food traditions of minorities, marginalised castes and people who simply wanted to include beef in their diet, for whatever reason. This solution, we suggest, would also make more economic sense than a complete ban for ideological reasons. This compromise strategy

would be suitable for mitigating the sense of fear and insecurity among minorities, particularly those involved in butchering or tanning occupations. Conversely, it is only reasonable that Hindu right-wing forces should accept this approach and help maintain a sense of law and order, despite much current evidence to the contrary. Having said that, India's cow protection debate is really no longer about any perceived hurt to religious sentiment, but has become a tool in stoking fear. The best way forward might therefore actually be to go back to the position originally agreed in the Constituent Assembly, to the effect that the State has a deep responsibility to ensure that a balanced rationality in the management of animal husbandry is cultivated and applied, but also that the law of the land is followed, which would imply a check on cow vigilantism as witnessed at present. Such a position would clearly be in the public interest of all Indian citizens.

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Notes

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7. This case is reported by the All India Reporter at 1958 AIR SC 731. See also URL (consulted 13 March 2016), from <http://indiankanoon.org/doc/93885/>. All quotations and references for this case are from the AIR report.
8. This case, decided on 26 October 2005, is reported in the Supreme Court Cases at (2005) 8 SCC 534 and at AIR 2006 SC 212. See also URL (consulted 12 May 2015), from <http://indiankanoon.org/doc/101278772/>
9. For the case details, see note 8. References to this case are taken from the SCC report, giving its paragraph and page numbers.
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