



ONE MAN'S MEAT IS ANOTHER MAN'S FOREARM: CASE COMMENT ON STATE OF GUJARAT V. MIRZAPUR MOTI KURESHI KASSAB JAMAT, (2005) 8 SCC 534

*By Archit Mishra
From Symbiosis Law School, Pune*

ABSTRACT

India is a country of 1.324 billion population having numerous religious communities residing in it and is governed by one single sacrosanct text i.e. Indian Constitution. Our constitution is divided into different parts and each part deals with different issues in which some are enforceable in courts and some are not. From time to time we have witnessed that there have been different clashes between Fundamental Rights (enshrined in Part III) conferred to all citizens by our constitution and Directive Principle of State Policies (enshrined in Part IV) which lays down guidelines which will help in governance of the nation. India is a place where cow slaughter and man slaughter are considered to be the two sides of the same coin. The decision of Hon'ble Supreme Court in 2005 in State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat¹ is a welcome step in clearing jurisprudence related to cow slaughter in India. It revisits the case of Mohd. Hanif Quareshi v. State of Bihar² & Abdul Hakim Quraishi v. State of Bihar³ and laid down the law which will be deemed to be fit seeing the current standards of our society and also found the pitfalls which were existing in these judgments. This judgement

upholds the constitutional validity of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994, which had introduced amendments to Section 5 of the Bombay Animal Preservation Act, 1954 (as applicable to the State of Gujarat) as per which even the slaughter of bulls and bullocks of any age whatsoever was completely banned in addition to the complete ban on the slaughter of cows. In this article an attempt has been made to understand the background of this case and later issue wise analysis has also been done to understand the entire case in a holistic manner. The philosophy underlying these laws is explained, their main provisions are explored and future directions that could move the ethic forward and further rationalize the laws are sketched. This work increases our understanding of laws corresponding to slaughter of bulls and bullocks and one can easily comprehend them; and I hope this project will contribute to future research on similar topics also.

INTRODUCTION

This case arises from different form of appeals in a similar matter dealing with slaughter of cows, calves, bulls, and bullocks. In addition to this issue, this case revolves around different issues related to fundamental rights⁴ [Articles 14, 19(1)(g), 19(6), 37], fundamental duties (Articles 51A), directive principle of state policies⁵ (Articles 37, 48, 48A). Apart from these constitutional provisions, the real controversy arose by a legislation passed by Gujarat state assembly. The parent act Bombay Animal Preservation Act, 1954 as

¹ State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534.

² Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731.

³ Abdul Hakim Quraishi v. State of Bihar, (1961) 1 Cri LJ 573.

⁴ Part III, Indian Constitution.

⁵ Part IV, Indian Constitution.



amended by Section 2 of Bombay Animal Preservation (Gujarat Amendment) Act, 1994 amends subsections (1A) and (3) of Section 5 having the effect of slaughtering bulls and bullocks. The Hon'ble Supreme Court initially heard this case with three judge bench but later it was decided that a constitutional bench of at least five judges will hear this case and hence the bench of seven judges was constituted and this bench by a majority decision of 6-1, upheld the constitutional validity of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994, which had introduced the aforesaid amendments in Section 5 of the Bombay Animal Preservation Act, 1954 according to which even the slaughter of bulls and bullocks of any age whatsoever was completely banned in addition to the complete ban on the slaughter of cows.

BACKGROUND

The history of the impugned act is quite long and it dates back to 1954. With a view to conserve the cattle wealth of the State of Bombay, the state government enacted the Bombay Animal Preservation Act, 1954 and prohibited slaughter of animals which were useful for milching, breeding or agricultural purposes. This Act was substituted by the Bombay Animal Preservation Act of 1954. Later the State of Gujarat was formed in the year 1960. The state government of newly formed Gujarat enacted the Bombay Animal Preservation (Gujarat Extension and Amendment) Act, 1961 whereby the Bombay Act was extended to the State of Gujarat in order to achieve uniformity in law in different parts of the State with regard to this subject. The whole controversy came in front of the court when a writ petition was filed in the Gujarat High Court challenging the validity of the Bombay Animal Preservation (Gujarat

Amendment) Act, 1994. By this amendment the age of bulls and bullocks below the age of 16 years cannot be slaughtered was deleted. By this amendment, the age restriction was totally taken away and that means that no bull and bullock irrespective of age shall be slaughtered. This amendment was challenged before the Gujarat High Court. The Gujarat High Court after dealing with all aspects in detail held that amendment is ultra vires. Hence, the present petition along with the other petitions came up before this Court by Special Leave Petition.

The matter was listed before the three Judges' Bench and after this the Constitutional Bench realized the difficulty that there are already Constitution Bench judgments holding the field and having the effect right now, referred the matter to the seven Judges' Bench for reconsideration of all the earlier decisions of the Constitution Benches. Hence this case came before seven Judges' Bench.

ISSUES IN THE PRESENT CASE

This complete case deals with many different issues. All these issues are mentioned below:-

- Clash of Fundamental Rights and Directive Principles of State Policy i.e. Articles 14, 19 (1) (g), 19 (6), 37 & Articles 37, 48, 48A.
- Dominance of Fundamental Rights over Fundamental Duties and Directive Principles (Articles 37, 48, 48A, 51A).
- Meaning of "Milch" and "Draught Cattle" in Article 48.
- Are the statement of objects and reasons of parent act in consonance with the scheme of the Constitution?
- Does "Regulation" or "Restriction" includes Total Prohibition or Partial Restraint under Article 19(1)(g)?
- Does slaughter of cow progeny comes under the ambit of public interest?

**ANALYSIS:-**

This case deals with different issues and each issue has its own importance so I would prefer to do an analysis of all these issues one by one.

➤ **Clash of Fundamental Rights and Directive Principles of State Policy i.e. Articles 14, 19 (1) (g), 19 (6), 37 & Articles 37, 48, 48A:-**

Fundamental Rights are enshrined in Part III of our Constitution and Directive Principles of the State policy are mentioned in Part IV of our Constitution. Directive Principles are not enforceable in any court of law.⁶ Thus, it is inevitable that Fundamental Rights which are conferred to citizens through part III of the constitution clashes with the Directive Principles which are fundamental guidelines for the governance of the country. The entire credit of providing two types of rights in our Constitution goes to Sapru Committee which in 1945 suggested two categories of rights: one justiciable and the other in the form of directives to the State which should be regarded as the basic norm in the governance of the country.⁷

The real intention of the framers of the constitution while incorporating Directive Principles of the State policy as a part of the constitution is that the legislature and the executive both must pay regard to these directives while framing and implementing

any policy for the best result and output of that policy.⁸ For example, Article 37 states that Directive Principles of the State policy are not enforceable in the court of law, but those directives are very essential and basic for the better governance of the country. The important and operating part here is fundamental in the governance of the country and it should always be read with Fundamental Rights and they should be given more importance because they act as guidelines for government to make laws and rule. In the State of Madras v. Srimathi Champakam Dorairajan⁹, it was held that the Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. But this is also a fact that disobedience to Directive Principles cannot affect the legislative power of the State.

The Hon'ble Apex Court in I.C. Golak Nath and Ors.v. State of Punjab and Anr.¹⁰ held that there should be no conflict between fundamental rights and DPs and made a request to the legislature and the judiciary to maintain a balance between fundamental rights and the directive principles to achieve the holistic development of the society. On a bare perusal it is obvious to say that Article 19 (1) (g) which is a fundamental right and Article 48 which is a Directive Principle are contradictory to each other. But this is also an undoubted fact that no one can go to court and ask the court to direct the state to govern according to Article 48 as it is not enforceable in court as mandated by Article 37 of the

⁶ Minerva Mills Ltd. & Ors vs Union Of India & Ors, 1981 SCR (1) 206.

⁷ The Constitution of India, D.J. De, Second Edition, 2005, p. 1367.

⁸ Akhil Bharatiya Soshit Karamchari Sangh (Railway) V. Union Of India & Ors., 1981 SCR (2) 185.

⁹ State of Madras v. Srimathi Champakam Dorairajan, 1951 SCR 525.

¹⁰ I.C. Golak Nath and Ors.v. State of Punjab and Anr., 1967 SCR (2) 762.



constitution.¹¹ In each case, maximum effort is made to reconcile the overlapping interests of all groups and people in the society covered by different fundamental rights and DPs.

State shall certainly implement all the directive principles of state policy but it would again be very unfair and unreasonable if it violates the fundamental right of any citizen. The Hon'ble Apex court while dealing with the similar question in *Kesavananda Bharati and Ors. v. State of Kerala and Anr.*¹², held that the onus is on the legislature to maintain the balance since the legislature is in the best position to have the clear insight of the needs of requirements of its citizens. The Court will interfere in this process only when the statute is clearly violative of the right conferred on a citizen under Part III or when the Act is beyond the legislative competence of the legislature.¹³ Thus it is clear that the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles.¹⁴ Therefore, the restrictions which can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6); the provisions contained in the part IV on Directive Principles can also be pressed into service and relied on for the purpose of adjudicating the reasonability of restrictions placed on the Fundamental Rights.

➤ **Dominance of Fundamental Rights over Fundamental Duties and Directive Principles (Articles 37, 48, 48A, 51A).**

This is the appropriate time to discuss the case of *Mohd. Hanif Quareshi v. State of Bihar*¹⁵ which came in front of the Hon'ble Supreme Court in 1958 and that was the time when the socio-economic condition of our country was way different than it is today. In this case, the Hon'ble bench which adjudicated this issue faced difficulties while upholding a complete ban on the slaughter of she-buffaloes, bulls or bullocks (cattle or buffalo) after they are not naturally sound enough to yield milk or of breeding or performing their function as a draught animal. Moreover, the bench also concluded that the ban is completely unreasonable and clearly it is against the public interest. It is pertinent to mention that this case is one of its kind and when this matter came in front of the court then at that time Articles 48A and 51A were not present in the constitution as it happened later in 1976 through (Forty-second Amendment) Act, 1976¹⁶.

Article 48 has two parts and second part deals with “for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle” and if we read it with Article 51A (g) then the picture is more clear as it enjoins a fundamental duty of every citizen “to have compassion for living creatures”, which in its wider fold embraces the category of cattle spoken of specifically in Article 48. In

¹¹ V N Shukla's Constitution of India, Mahendra Pal Singh, 12th Edition.

¹² *Kesavananda Bharati and Ors. v. State of Kerala and Anr.*, (1973) 4 SCC 225.

¹³ *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1.

¹⁴ *Unni Krishnan, J.P. and Ors. vs. State of Andhra Pradesh and Ors.*, AIR 1993 SC 2178.

¹⁵ *Mohd. Hanif Quareshi v. State of Bihar*, 1959 SCR 629.

¹⁶ Forty Second Amendment Act, 1976 to the Constitution of India.



AIIMS Students' Union v. AIIMS and Ors.¹⁷, a three judge bench of the Hon'ble Apex court has explicitly held that fundamental duties though not enforceable in the court of law but carries a huge significance as it provides immense support while interpreting the constitution in its true sense and again in T.N. Godavarman Thirumalpad v. Union of India and Ors.¹⁸, Hon'ble court read these two aforesaid provisions together i.e., Article 48-A and 51-A together to expound the jurisprudence related to environmental law and held that

"Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures".

➤ **Meaning of "Milch" and "Draught Cattle" in Article 48.**

Article 48 of the constitution employs the expression "cows and calves and other milch and draught cattle". The question is whether when Article 48 precludes slaughter of cows and calves by description, the words "milch and draught cattle" are described as a like species which should not be slaughtered or whether such species are protected only till they are "milch or draught" and the protection ceases whenever, they cease to be "milch or draught", either temporarily or permanently? What meaning is to be assigned to the expression "milch and draught cattle"?

It is an undeniable fact that cow ceases to be "milch" after attaining a particular age. Yet, the cow has been held to be entitled to protection against slaughter without paying regard to the fact that it has ceased to be "milch". This constitutional position is well settled. So is the case with calves. Calves have been held entitled to protection against slaughter without regard to their age and though they are not yet fit to be employed as "draught cattle".

What court here did is something new as the Hon'ble bench constructively followed the same pattern here also and held that the words "calves and other milch and draught cattle" have also been used as a matter of description of a species and not with regard to age. This reasoning is further strengthened by Article 51A(g) of the Constitution. The State and every citizen of India must have compassion for living creatures.

In my opinion, a species of cattle which is milch or draught for a number of years during its span of life is to be included within the said expression. On ceasing to be milch or draught it is very indifferent on the part of humans to pull it out from the category of "other milch and draught cattle".

➤ **Are the statement of objects and reasons of parent act in consonance with the scheme of the Constitution?**

This particular question was specifically dealt by the Hon'ble bench to delve into the real intention of the legislators when they passed this impugned act. One strange thing which is also part of this case is that statement of objects of parents act were not kept in front

¹⁷ AIIMS Students' Union v. AIIMS and Ors., JT 2001 (8) SC 218.

¹⁸ T.N. Godavarman Thirumalpad v. Union of India and Ors., (2002)10SC606.



of the High court and the High court did not adjudicate upon this matter by analyzing it through this perspective. In *State of West Bengal v. Union of India*¹⁹, the Hon'ble Supreme Court approved the use of Statement of Objects and Reasons for the purpose of understanding the background and the antecedent state of affairs leading upto the legislation. As held in *Querashi's case*²⁰ by the Hon'ble Apex Court that

“it is accepted, and the courts must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.”

What I think is that though legislature understands the interests of the public by enacting laws²¹ but the ultimate responsibility for determining the validity of the laws must rest with the court.²² The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the Preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved. Thus after reading full judgment, it is also very clear that the object sought to be achieved by the Ordinance or any Legislation which is a

significant policy decision must be considered as a sole ambit of legislature to determine, and the propriety of that determination is not open to question in courts.

Does “Regulation” or “Restriction” includes Total Prohibition or Partial Restraint under Article 19(1)(g)?

The Hon'ble court while adjudicating this matter has faced the issue of interpreting the word “restriction” under Article 19. The real controversy is revolving around the meaning of the word “restriction”²³. The way is it interpreted is very significant. Three propositions of the law related to this are well settled and they are mentioned below:

- “restriction” includes cases of “prohibition”²⁴;
- the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate²⁵; and
- Whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right.²⁶

¹⁹ *State of West Bengal v. Union of India*, [1964] 1 SCR 371.

²⁰ *Mohd. Hanif Quareshi v. State of Bihar*, 1959 SCR 629.

²¹ *Raj Sahiban Shersingh vs. The State of Rajasthan*, AIR 1954 Raj 65.

²² *Supreme Court Advocates-on-Record Assn. v. Union of India*, (2016) 5 SCC 1.

²³ *Saghir Ahmad v. The State of U.P. and Ors.*, AIR 1954 SC 728.

²⁴ *Khoday Distilleries Ltd v State Of Karnataka*, 1995 SCC (1) 574.

²⁵ *Indian Hotel and Restaurant Association (AHAR) and Ors. v. The State of Maharashtra and Ors.*, 2019 (1) SCALE 433.

²⁶ *Ramlila Maidan Incident v. Home Secretary, Union of India (UOI) and Ors.*, (2012) 5 SCC 1.



In *Madhya Bharat Cotton Association Ltd. v. Union of India*²⁷ a large section of traders were completely prohibited from carrying on their normal trade in forwarding contacts. The restriction was held to be reasonable as cotton, being a commodity essential to the life of the community, and therefore such a total prohibition was held to be permissible. In the present case, what I think is that the issue is related to a total prohibition imposed on the slaughter of cow and her progeny. There is an absolute ban with regard to the slaughter of one particular class of cattle. The ban is not on the total activity of butchers or slaughterhouses; they are left free to slaughter cattle other than those specified in the Act. I think it is permissible to place a total ban amounting to the prohibition on any profession, occupation, trade or business subject to satisfying the test of being reasonable in the interest of the general public, yet, in the present case banning the slaughter of cow is not a prohibition but only a restriction.

Does slaughter of cow progeny comes under the ambit of public interest?

The cow is a very sensitive topic in India as the touch of religious personality is inextricably involved with it. As earlier held in *Quareshi's case*²⁸, that the restriction amounting to the total prohibition on the slaughter of bulls and bullocks was unreasonable and was not in public interest. Thus the only question left in this case is to examine the evidence available on record which would enable the court to answer questions with regard to the "reasonability" of the imposed restriction qua "public

interest". At the same time it is also true that cow and her progeny sustain the health of the nation. In our Indian society, we use cow dung for so many useful processes and the dung of the animal is cheaper than the artificial manures and extremely useful of production of biogas.

Agriculture is the backbone of Indian society and cow, bullocks, and their progeny are the binding system which helps in maintaining the balance between agricultural and economic system. The economy of our country is still predominantly agricultural. In a country like India which is majorly depending on agriculture use of animals in the form of milch, draught or other purposes is very important. The weakening of any cattle is inevitable with the passage of the time but at the same time a cattle still continues to provide us the dung, manure and biogas, and thus forms the significant part of our food chain.

Thus according to me, it is highly irrational to slaughter cows as they always help humans in all the aspects and also helps us in surviving. Moreover, in *State of West Bengal and Ors.v. Ashutosh Lahiri*²⁹, Hon'ble Court has noted that sacrifice of any animal by Muslims for the religious purpose on Bakr'd do not include slaughtering of the cow as the only way of carrying out that sacrifice. Slaughtering of cow on Bakr'd is neither essential nor necessarily required as part of the religious ceremony performed by the Muslims on Bakr'd.

Thus the views accepted by Supreme Court are contrary to the High Court. The Bombay

²⁷*Madhya Bharat Cotton Association Ltd. v. Union of India*, AIR1954SC634.

²⁸ *Mohd. Hanif Quareshi v. State of Bihar*, 1959 SCR 629.

²⁹ *State of West Bengal and Ors.v. Ashutosh Lahiri*, AIR 1995 SC 464.



Animal Preservation (Gujarat Amendment) Act, 1994 is held to be intra vires the Constitution by the Hon'ble Supreme Court of the India.

CONCLUSION

Thus, the aforesaid analysis of the provisions of the Constitution and judgment in this case pronounced by the Hon'ble Supreme Court of India unequivocally shows that a total ban on the slaughter of cows and its progeny is absolutely constitutional. The court clearly held that such a ban is not a prohibition but only a restriction, because the slaughter of certain other animals is still legal and hence there is no infringement of a fundamental right to occupation, trade or business. The court analysed the judgement with a different outlook also. The Hon'ble had observed that the preservation of cow is essential to fulfill the objectives of the economy of the nation. Moreover, in the present time, many States / UTs in India have already banned cow slaughter either totally or partially; and such ban has been upheld by the courts.

In this entire case comment, I have made an attempt to confine my analysis on the legal questions and issues which are raised and linked with this case and I have refrained myself from making any conclusion on the basis of religious issues. In this case the Hon'ble Apex court justified ban on cow slaughter on the basis of the constitutional provisions present under part III of the constitution which deals with the fundamental rights and also explicitly held that the legislature is competent to enact such issues. This case is the classical example which tells us that the harmonious interpretation of the constitution is must for the holistic development of the nation and the legislature must keep in mind that directive principles should always be considered as the

fundamental guidelines to govern the country but while doing so it should not abridge the fundamental rights of any citizen.

BIBLIOGRAPHY

BOOKS

- Constitution of India by V N Shukla.
- Indian Constitutional Law by M.P. Jain.
- Introduction to the Constitution of India Book by Durga Das Basu.
- The Constitution of India, D.J. De, Second Edition, 2005.

CASE LAWS

- Abdul Hakim Quraishi v. State of Bihar, (1961) 1 Cri LJ 573.
- AHM Students' Union v. AIIMS and Ors., JT 2001 (8) SC 218.
- Akhil Bharatiya Soshit Karamchhari Sangh (Railway) V. Union Of India & Ors., 1981 SCR (2) 185.
- I.C. Golak Nath and Ors.v. State of Punjab and Anr., 1967 SCR (2) 762.
- Indian Hotel and Restaurant Association (RAHAR) and Ors. v. The State of Maharashtra and Ors., 2019 (1) SCALE 433.
- Kesavananda Bharati and Ors. v. State of Kerala and Anr., (1973) 4 SCC 225.
- Khoday Distilleries Ltd v State Of Karnataka, 1995 SCC (1) 574.
- Madhya Bharat Cotton Association Ltd. v. Union of India, AIR1954SC634.
- Minerva Mills Ltd. & Ors vs Union Of India & Ors, 1981 SCR (1) 206.
- Mohd. Hanif Quareshi v. State of Bihar, 1959 SCR 629.
- Raj Sahiban Shersingh vs. The State of Rajasthan, AIR 1954 Raj 65.
- Ramlila Maidan Incident v. Home Secretary, Union of India (UOI) and Ors., (2012) 5 SCC 1.



-
- Saghir Ahmad v. The State of U.P. and Ors., AIR 1954 SC 728.
 - State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534.
 - State of Madras v. Srimathi Champakam Dorairajan, 1951 SCR 525.
 - State of West Bengal and Ors.v. Ashutosh Lahiri, AIR 1995 SC 464.
 - State of West Bengal v. Union of India, [1964] 1 SCR 371.
 - Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1.
 - T.N. Godavarman Thirumalpad v. Union of India and Ors., (2002)10SCC606.
 - Unni Krishnan, J.P. and Ors. vs. State of Andhra Pradesh and Ors., AIR 1993 SC 2178.

