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# **FUNDAMENTAL RIGHT TO FOOD AND BEEF BAN: CONSTITUTIONAL PERSPECTIVE AT THE CAUSE OR LOSS OF OTHERS**

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## **Abstract:**

The Constitution of India, 1949, under part III, provides for several basic fundamental rights, inclusive of Right to food, concurring and inherent with article 21, right to life and personal liberty, which subsequently advocates for life with dignity. The National Human Rights Commission has explicitly stated that Right to food should be read along with several directives of the state, as enshrined in part IV of the constitution, to foreshorten malnutrition and to also boost public health. However, The Ministry of Environment, through its infamous prevention of cruelty to animals' law, passed a resolution under the Modi-headed government in 2017, upholding the ban of beef consumption, not in a particular state, but the whole territory of India as specified in article 1 of the Constitution of India, 1949, which is exclusively elaborated in Schedule I. After the said law came into force on May 26, 2017, several slaughterhouses underwent immediate shutdown, as contrary to other meat stores that sell chicken and goat meat. This paves way to a serious question- Whether beef ban is against eating choices, which directly affects one's fundamental right to food?

**Keywords:** Cruelty against Animals, Beef, Fundamental Rights, right to food, Cow Slaughtering

# 1. INTRODUCTION

Meat from dairy cattle, particularly skeletal muscle, is referred to as "beef". Beef has been consumed by humans from the dawn of time. Beef has large amounts of both protein and carbohydrates. India consumes the third-most meat worldwide and produces 25% of the world's meat. The top three beef-eating nations worldwide are China, Brazil, and the United States.

Despite India holding the third spot in overall Meat consumption, the Ministry of Environment has upheld the resolution of beef-ban. Soon after the resolution was passed in the parliament, and after its enactment as a valid law, several arguments have been raised by critics as to the in-depth notion of cultivating the law. Most people argue that it's a tactic of the Modi government to suppress Muslims, adding to their long-list of crimes against Muslims. Contrary to it, several people uphold and enthusiastically support the ban as Cows are considered to be Holy animals of the Hindu religion with several depictions of the same in the archaic Hindu Mythology.

Only 5 million stray cattle were reported to be roaming Indian streets in 2012, but current estimates place the number of unproductive cattle at risk of being abandoned at 40 million or more. Cows are regarded as sacrosanct by the Hindu population of India, who opposes their killing.

## 2. CATTLE PROTECTION UNDER THE CONSTITUTION AND STATE LAWS

### **2.1. ARTICLE 48- CONSTITUTION OF INDIA, 1949, "ORGANISATION OF AGRICULTURE AND ANIMAL HUSBANDRY"**

Article 48 of the constitution aims to safeguard Bos Indicus, a breed or subspecies of domestic cattle that originated in the Indian subcontinent. In response to recurring calls from affiliated religions for measures to be made to avoid cattle slaughter, the government adopted Article 48 for the welfare of cattle and to take steps to secure the cattle riches of India.

Article 48 of the constitution of India states that "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”

## **2.2. 14TH AND 15TH ENTRY OF STATE LIST**

There is a provision in the State List for the “Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice” and the “Ponds and the prevention of cattle trespass” in the 15th and 16th entries, respectively, for cattle preservation in the state list of the Constitution of India.

In light of the abovementioned view, the second-most populous state in the country, Maharashtra, which contains Mumbai, outlawed the consumption of meat and extended its ban on animal slaughter. A punishment of Rs 10,000 and up to five years in prison could be imposed on anyone who engage in the practise. The state of Haryana likewise enacted a similar piece of legislation. Additionally, there are currently only 7 States and UTs without laws governing the butchering of cattle.

West Bengal, Kerala, and the north eastern states of Arunachal Pradesh, Mizoram, Meghalaya, Nagaland, Tripura, and Sikkim do not have a state prohibition on beef. The majority of states have made the practise of butchering cows illegal; for instance, in Tamil Nadu, butchering cows is forbidden and punishable by up to three years in prison and a fine of Rs. 1000. Similar sentences of six months in prison and a \$1,000 fine are imposed on offenders in Telangana and Andhra Pradesh. Gujarat forbids the slaughter of cows, calves, bulls, and bullocks; offenders face fines of Rs. 50,000 and sentences of 7 years in prison, among other penalties.

The state statute mentioned above demonstrates that no state law specifically forbids the consumption of beef. There is a lack of consistency in the state legislation governing cattle slaughter. Delhi, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, and Uttarakhand have the strictest regulations prohibiting the slaughter of cows and their offspring, including bulls and bullocks of all ages. Some states forbid the complete slaughter of cattle in any way, but animals are also slaughtered illegally across the border. Because of the country's diverse population, strong religious beliefs, and realistic economic considerations, there has not yet been an explicit law that wholly bans beef slaughter throughout the territories of the nation as specified in Article 1 of the constitution.

### 3. CONSTITUTIONAL DEBATES

The abecedarian right of right to life in the Indian constitution appears to be getting violated on the put of beef ban or cow slaughtering in the certain states of the country. The law of the land says that no person in the country should be deprived of their life unless subordinated to any procedural emendations of the law made by the courts of India. The conception of " living" is way farther than just merely existing. The right to live includes the right to life inclusive of the absolute musts of life, like sufficient nutrition, apparel and sanctum, and the right to live with and live- in mortal quality, as held in the case of *Francis Corralie Mullin v. Union Territory Delhi Aministrator*.<sup>1</sup>

As a result, in the landmark case of *Shantisar Builders v. Administrator of Union Territory Delhi*<sup>2</sup>, it was determined that the fundamental right to life includes not only the right to live but also the right to nourishment. In *Rajagopal v. Tamil Nadu*<sup>3</sup>, another precedent-setting case, it was determined that the right to privacy and the right to life are intertwined. In this sense, one cannot challenge the other person's dietary preferences or demand that he eats what he can for his survival because it is his right to pick what he can eat for his survival.

#### **3.1. MALNUTRITION IN CHILDREN**

Serious worries about child malnutrition have also been sparked by the beef ban. One of the least expensive sources of protein for India's most socially disadvantaged youngsters is cow flesh. As a result, more kids than ever are struggling with inadequate nutrient intake. A new World Bank report states that India currently has the most malnourished children worldwide. Children underweight by 44% are 5 years old.<sup>4</sup> Children who are malnourished are more susceptible to infectious infections, which cause more than half of the mortality in children under the age of five.

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<sup>1</sup> AIR 1981 SC 746

<sup>2</sup> 1990 1 SCC 520

<sup>3</sup> AIR 1995 SC 264

<sup>4</sup> Save the Children India. Save the Children India: Malnutrition in India Statistics State Wise. 2017. Available at: <https://www.savethechildren.in/articles/malnutrition-in-india-statistics-state-wise>

## 4. MODI GOVERNMENT'S APPROACH AND PERSPECTIVE

All forms of cow slaughter were outlawed countrywide, with the exception of Jammu and Kashmir, by the Environment Ministry's "Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017" notice, which was released in May 2017. It comprises all varieties of cattle, such as bulls and camels.

“The environmental ministry released the Press Information Bureau on ‘Rules on prevention of cruelty to Animals (Regulation of Livestock Market) to ensure the welfare of Animals & Protect Animals from Cruelty.’<sup>5</sup>

The Rule's primary goal is to protect the welfare of animals in cattle markets by providing enough housing, feeding, processing of feed, water supply, water troughs, ramps, ill animal cages, veterinary care, and other amenities like proper drainage. Two committees are established to advance this, namely the Animal Market Committee for market administration at the local government level and the District Animal Market Monitoring Committee for animal market registration. The fundamental goal of the rule is to protect animals from suffering, not to control the current cow traffic in slaughterhouses. It is planned to assure bovine protection on the market and sell only healthy animals to farmers.

Farmers will be required to purchase cattle for slaughter during this phase, which will transform the livestock markets into major centres for the sale of farm animals. The announced restrictions will end the unlawful sale and trafficking of animals, which is a significant problem. Only animals that are purchased and sold in the designated livestock markets and animals that are seized as case properties are subject to the specified regulations. Other areas are not covered by these rules<sup>6</sup>.

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<sup>5</sup> Ministry of environment

<sup>6</sup> ‘Rules on Prevention of Cruelty to Animals (Regulation of Livestock Market) to Ensure Welfare of Animals & Protect Animals from Cruelty: Environment Ministry’

[https://pib.gov.in/newsite/PrintRelease.aspx?relid=162195&utm\\_source=dlvr.it&utm\\_medium=twitter](https://pib.gov.in/newsite/PrintRelease.aspx?relid=162195&utm_source=dlvr.it&utm_medium=twitter)

accessed 9 October 2019

In India, where only 30% of the cattle that are killed are consumed for human consumption and the other 70% are traded for industrial purposes, this prohibition is absolutely unprecedented.

There was a massive nationwide protest. Similar to how people in Kerala organised meat fests in several regions of the state to protest the recent ban on beef imposed by the centre, which was organised by activists and students. A special resolution was issued by the state legislature requesting the centre to lift the ban because it violated peoples' rights to eat what they want; the slaughter ban should be lifted. The center's statewide ban on cow slaughter sparked a protest in Tamil Nadu, and the meat fest was held at IIT Madras as a show of opposition.

## 5. CONSTITUTIONALITY OF PRESENT GOVERNMENT ORDER

The Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017, were challenged by the petitioners in the case of *Mohammed Abdul Faheem Qureshi v. Union of India*, 2017<sup>7</sup>. In the case, the petitioner asserted in his appeal that the Constitution's protections for a citizen's right to freedom of religion, conscience, security, and personal freedom were violated by putting a restriction on the slaughter of animals for food. This notice was against the freedom of religious practise to sacrifice animals.

When Pandit Jawaharlal Nehru was the prime minister of India in 1960, the Prevention of Cruelty to Animals Act was approved by Parliament. In 1982, while Indira Gandhi was the prime minister of India, she revised this law. This Act has not changed since the Indira Gandhi administration revised it 37 years ago. Only the Centre has the authority to enact rules governing animal care, as stated in Section 38 of the Prevention of Cruelty to Animals Act. The Environment Ministry's announcement is supported by Section 38 of the Act. Rule 22 of the notification, which aims to ensure that the selling and buying of bovine animals on authorised animal markets can only be done for agricultural reasons and not for slaughter, proved to be the most problematic.

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<sup>7</sup> Mohammed Abdul Faheem Qureshi v. Union of India [2017] MANU 25572 (SCOR)

The government has challenged the regulation of cow slaughter in several cases, either directly or indirectly, before the petitioner in the issue now before the Court. *Hanif Qureshi v. State of Bihar*<sup>8</sup>, a case involving the identical issue, was determined by a five-judge Supreme Court panel in 1958. The slaughter of all animals from the bovine cattle species was outlawed completely by the Bihar Preservation and Improvement of Animals Act of 1956.

The petitioner opposed the law on the grounds that it violated the right to freedom of religion, of speech, and of association, and that the complete ban was bad for the general populace.

In this case, the Supreme Court held that the complete ban on the slaughter of cattle was just, legitimate, and in line with the Directive's guiding principles as outlined in Article 48. But the supreme court ruled that a blanket ban on keeping unprofitable cattle within its purview was unjustified and violated the butcher's right to freedom of trade and occupation. In the case of *Mirzapur Moti Kureshi v. State of Gujarat*<sup>9</sup>, the Supreme Court overturned its almost 50-year-old holding that a bovine cattle's inability to provide milk, breed, or serve as a drought animal did not render it useless, revisiting its own judgement from 1958.

In the present case, the Supreme Court upheld the stay on Centre's ban on cow slaughtering and said that the direction of the Madurai bench of Madras High Court in the case of *S. Selvagomathy v. Union of India*<sup>10</sup> of suspending centre ban on sale and purchase of beef in India will be applicable to rest of India.' 'It also said to the government that the law itself allows cattle slaughtering. It also said that the ban on cattle slaughtering is under the state list which implies that state governments are authorized to make law on the issue and it also infringes the right to carry out free trade.'

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<sup>8</sup> Mohd. Hanif Quareshi & Others vs The State of Bihar [1959] SCR 629

<sup>9</sup> Mirzapur Moti Kureshi v. State of Gujarat [2005] 8 SCC 534

<sup>10</sup> S. Selvagomathy v. Union of India [2017] SCC 23867

## 6. CONCLUSION

Although it is understandable that the Indian government would not support cow slaughter due to religious concerns, neither the burden placed on farmers nor the harm done to Indian children should be disregarded. The problem of unproductive cattle overpopulation and the malnutrition problem affecting India's young population require a solution.

Given the diversity of opinions and ideologies held by people, as well as historical experiences, there are some discussions in a democracy where everyone is free to express themselves that no one can provide a convincing response to the general public. It is not surprising that the Constituent Assembly chose not to pursue a national statute on the subject, upholding the sanctity of the country's cultural variety. Even now, calling for national legislation is foolish and absurd, and the implementation which, in all likelihood, will result in increased acts of violence across the nation.

Experience suggests that the best course of action up to this point has been to leave the decision to the individual states' better judgement. There is no denying that on some cases, when vote bank politics were in play, states' judgement was not used in a legitimate way.

For instance, while beef consumption is outlawed completely in Maharashtra, the neighbouring state of Goa—which is governed by the same party—does not share this restriction for the simple reason that it has a sizable Christian population. This might be viewed as one of the drawbacks of granting state autonomy over legislation governing animal killing.

However, this flaw does not by itself have sufficient gravity to warrant the creation of a national law on the subject. The Supreme Court has argued that the scope of judicial investigation is limited to inquiries into whether the government has ordered the courts to refrain from interfering with its policy decisions because it opposes all statutory provisions, violates citizens' fundamental rights, or opposes the Constitution's clauses.

In a country like ours, it is practically impossible for a law to satisfy the aspirations of each individual, and this is where the concept of welfare state creeps in. Every law formulated has a particular objective, and unless this objective frustrates the constitutional fabric itself, it must be understood to

be for the welfare of the people. Thus, the formulation of laws banning the slaughter of cattle in multiple states by our very own representatives, and its confirmation by the judicial system is imperative to give essence to the ideal of socialism enshrined in our preamble. Criticism and scrutinization of executive action and judicial decisions, leading to a healthy public debate, is a unique and welcomed feature of a democracy. However, caution must be exercised so that such debates and discussions are not used as a forum to create a sense of insecurity and mistrust towards constitutional institutions, which may prove to be a hindrance to the growth and development of democracy in the long run, and to further ensure that our faith in the pillars of our democracy is not easily misplaced.

