

LEGALFOXES LAW TIMES**TAKING THE BULL BY THE HORN, AND NOT MILKING THE COW
ANYMORE****By Miriam Solomon****ABSTRACT**

When did India's fight for the ban of beef begin? According to some historians it dates all the way back to when the Mughals invaded India, and others say that it began when the British came and continued their eating habits (of beef). Either way, one thing is evident; Indians have had an opinion about this issue for a while now. Not a silent opinion, but a vociferous one which has become so violent and controversial over the past decade, that it seems one has become unsure of who or what is more important: the man or the cow?

This article will thus cover certain aspects and issues from the landmark judgment of the Supreme Court in the *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*¹. This article elaborates and discusses the judgment in detail explaining why it is accurate to the author while substantiating each issue raised. Furthermore, the author concludes the article by her views on the topic. Due to constraints, the author will limit this article to the only the controversial issues (in her opinion) with similar ones being combined, out of the eleven issues presented by the Court since this is a landmark judgment having the most precedence and relevance in this subject matter.

FACTS:

A writ petition filed in the Gujarat High Court challenging the validity of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 (the "**Amendment**"), by which the bar of 16 years for bulls and bullocks which existed at that time, which allowed for their slaughter after attaining

¹(2005) 8 SCC 534.

the age, was completely done away with. What this essentially entailed was that irrespective of the age, no bull or bullock could be slaughtered.²

ISSUES:

Note: Throughout this article, the case of *Mohd. Hanif Quareshi v. State of Bihar* (“**Quareshi-I**”)³ will be discussed; therefore it would be apt to understand what transpired, before moving onto the issues.

Quareshi-I was a judgement in which 3000 Muslim butchers challenged the validity of multiple acts that prevented them from slaughtering cattle on the grounds that it violates the fundamental freedom of occupation and that it was violative of the religious custom of killing cattle during *Bakr I'd*.

It was held by a five-bench Coram, that the State was allowed to restrict fundamental freedom to uphold Directive Principles of State Policy, as long as it was reasonable. Therefore since a complete ban was unreasonable and it was also an infringement of their fundamental right/freedom of occupation, it was not allowed. The grounds of religion however were discarded since it was proved in an earlier judgment as well that the sacrifice was not a religious duty and was optional, and hence would not be covered under the law⁴.

a. Whether a complete ban on the slaughter of cows, their progeny, bulls and bullocks, instead of a mere restriction constitutes as being made in public interest?

As per the majority, who overruled the ratio in Quareshi- I, the total ban was in public interest. According to them, the mere dislocation or inconvenience caused to butchers would not constitute enough to be against public interest. This in turn implied that the Amendment would be *intra vires* the Constitution.

²*State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534.

³1959 SCR 629.

⁴*State of West Bengal v. Ashutosh Lahiri*, (1995) 1 SCC 189.

The dissenting judge in this case, A.K.Mathur, contradicts this beautifully. He clearly pointed out that when less than 1.10% of the slaughters are above 16 years, it would not affect the community as much as to absolutely require a ban on all the slaughters. He felt that Quareshi-I still holds ground in this case.

Going along the lines of the A.K.Mathur, the reasoning given by the majority is best questioned with a rhetorical question: If walking over another's fundamental right to livelihood of butchering animals does not affect the community so much, since it is a very small per cent of the society, then how does less than 1.10% of the cattle being slaughtered affects the community so much? Are you saying that that 1.10% of the cattle is more important than a person's means to a livelihood?

b. What is the test of reasonability on the restrictions placed on fundamental rights? Was the restriction placed reasonable or not?

An accepted notion to judge the reasonability of a restriction is based on facts, the law and other factors. The judges herein have also gone along the same premises of judging its reasonability.

It is observed here that the majority was swayed by skewed, one-sided information that only shows one side of the coin. Therefore, they quoted in their judgement that the circumstances of the current scenario were very different from the situation in Quareshi-I, hence a requirement to stray from it.

They went on to say that during this evolution we have managed to:

- Attain self-sufficiency.
- Understand the importance of a protein rich diet, and from other sources other than cow and its progeny.
- Improve the health of cattle.
- India is still majorly agricultural in essence, and with small units, which require bulls and bullocks for their labour.
- Organic manure from the cattle.

Further they said that just because cattle crosses the age of 16 years, it does not imply that they are useless; their excreta and urine which are used as manure and biogas, provides them with

more income than butchering them would. Further maintaining the cattle would be easily covered, with surplus, as compared to butchering them. They finally concluded that cattle became 'less useful' as they age, but not completely useless, as they could still perform light to medium labour.

As per A.K Mathur, Quareshi-I has not outlived its ratio, because of minor changes in the society. According to him, all the given data was generic in nature and could not be relied upon. This is also substantiated when he took down their arguments by stating following points:

- Chemical fertilizers are used more than manure as it yields more produce than organic manure. Since these are small farmers, they look for ways to increase their produce, which isn't something that manure does. This had also been stated by a Standing Committee of the Parliament that suggested that bio-pesticides only make up 16% of all the pesticide use.⁵
- In terms of maintenance, only healthy cattle are used for breeding, because otherwise the progeny would be weak and unhealthy. This means that 1.10% allowance, above the age group, is in fact not as harmful as they thought.
- Biogas is being highly substituted by LPG.
- Old aged cattle cannot produce large quantities of urine and dung to alter the situation significantly enough.

What seem to be taken in complete frivolity by the majority opinion are those people who are dependent on such animals for their food and livelihood and this has a major impact of the economy. They seem to be more cattle centric than human centric. This is evident when they bring out points that are so very shallow and futile.

Issues that they haven't addressed well enough include:

- Nutrition for the poor- It is a known fact that poor people more often than not, cannot afford to buy necessary food items (fruits, vegetables, etc.) for themselves or their families, with increasing prices. This in turn implies that they turn to other sources for their nutrition, i.e. meat. Meat is much cheaper and does a decent job at providing basic nutrition as well. With millions of Indians, including Dalits, Muslims and Christians, consuming beef since time

⁵RaghaviViswanath&Surbhi Sharma, The beefed up ban in Maharashtra, Indian Law Journal, Volume 8, Issue 1, Article 8 (January-June 2015).

immemorial, a ban leaves them with no other alternative and they are forced to starve with the lack of resources to feed themselves.⁶

- Marginalization and effects on employment- Muslims, who make up 14% of India's population, and who are employed in the beef and leather industries, generate more than \$16 billion in annual sales. The ban, as claimed by various Muslim citizens, has made them feel marginalized. This can be seen as the path leading towards discrimination; one that we have been fighting against for years and claim its eradication. Apart from Muslims, the leather industry also employs lower caste Hindus, mostly in menial jobs in tanneries.⁷

The hardship that would be caused to them was recognized even by the Supreme Court in July 2017, when they lifted the ban on the sale of slaughter cattle that was imposed by the State.⁸ In the words of the Chief Justice Jagdish Singh Khehar⁹ :

"The livelihood of people should not be affected by this."

- Impact on economy- The Indian leather industry is among the top five in the world's leather market and earns \$12 billion for the nation. This was one of the most significant elements that made to the list of programmes that succeeded in "Make in India" campaign. However, it was observed that India's export of leather products for the financial year 2015-16 recorded a negative growth of 9.86% touching \$5.85 billion, whereas in the financial year of 2014-15 it touched \$6.49 billion. This clearly indicates the ill effects of the ban on the slaughterhouses to the economy.¹⁰

⁶Leeza Mangaldas, India's Got Beef With Beef: What You Need To Know About The Country's Controversial 'Beef Ban', Forbes, June 5, 2017, <https://www.forbes.com/sites/leezamangaldas/2017/06/05/indias-got-beef-with-beef-what-you-need-to-know-about-the-countrys-controversial-beef-ban/#6339e3d053c2>.

⁷Reuters, India's Supreme Court Suspends Ban On Sale Of Cows For Slaughter, New York Times, July 11, 2017, <https://www.nytimes.com/2017/07/11/world/asia/india-cows-slaughter-beef-leather-hindu-supreme-court-ban.html>.

⁸Bhadra Sinha, Cattle trade for slaughter: Supreme Court suspends ban across India, Hindustan Times, July 12, 2017, https://www.hindustantimes.com/india-news/supreme-court-puts-on-hold-ban-on-cattle-trade-for-slaughter-govt-says-new-rules-by-august-end/story-WypElt9CMgFZP1wxPsLdgJ_amp.html.

⁹Mayank Bhardwaj & Suchitra Mohanty, India's top court suspends ban on trade in cattle for slaughter, Reuters, July 11, 2017, <http://ca.reuters.com/article/topNews/idCAKBN19W0IH-OCATP>.

¹⁰Ians, Slaughterhouse ban to hit leather goods industry, impact Make in India, Business Standard, April 1, 2017, http://www.business-standard.com/article/current-affairs/slaughterhouse-ban-to-hit-leather-goods-industry-impact-make-in-india-117040100264_1.html.

- Strain on resources- If the ban is effectively implemented all over the country, the number of cattle heads by 2027 will be around 360-400 million (taking the base as 180 million heads in 2012), which will put an enormous strain on the resources of the country.

How? This is best illustrated with an example. A woman has a cow for the mere purpose of extracting milk from it. Once it becomes unproductive, she has no option but to feed it till it dies, as she cannot get rid of it. This means that the unproductive cows will be as many as productive ones, which in turn implies that the amount and cost of fodder will double, which will then lead to an increase in the price of milk.

In fact, the price of milk will keep increasing and land that was previously devoted to other agricultural purposes will now have to be utilised to meet the ever-increasing demand for fodder. Hence it is quite clear that this is a domino effect that can make the entire economy collapse.¹¹

We, therefore, from all the above points can conclude that the gravity of such a ban and its impact has not been properly assessed.

c. Whether the inter-relationship between Articles 48, 48(A) and 51-A(g) has been appreciated well, and the scope of enacting Article 51-A(g)?

Article 48 deals with the organization of agriculture and animal husbandry by the State. Article 48(A) deals with the protection and improvement of environment and safeguarding of the forests and wildlife.

Article 51-A(g) deals with the protection and improvement of the natural environment as well as to have compassion for living creatures.

According to the majoritarian view, had Articles 48(A) and 51-A(g)¹² been in existence during Quareshi-I, then we could have had an alternative verdict. In their opinion, the full extent of protection had not been applied since it was non-existent then. However, although we see that these laws did not exist that time, the same has been analysed by the judges at that point of time and gave their decision accordingly. One does not require to point out that the above Articles are inherent. Compassion has been extended by restricting such trade. Anything more would imply we work towards better quality of life only for animals and not humans.

¹¹Kirit Parikh, Why an effective ban on cow slaughter may soon banish the cow itself, The Economic Times, April 10, 2017, http://economictimes.indiatimes.com/articleshow/58103569.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

¹²Introduced with the 44th Amendment in 1976.

Further, the majority also proclaimed that Article 51-A(g) included caring for cattle, when read with Article 48(A). However, we see that this same analysis given by them has the ability to be a double edged sword. This is visible when we look at this from another angle. They say that this protection is specially meant for cattle, but then why only cows, their progeny, bulls and bullocks? Why not the other cattle? It doesn't specify cattle, it says animals. So shouldn't it cover other animals as well? Why aren't chickens or ducks extended with the same generous hand? Why must there be cases only for cows? If religious sentiment is the sole reason behind this, then why do we not eliminate the consumption of pork or alcohol for the Muslims? If it is for scientific reasons then why not perform Halal for all meat everywhere? After all, it is much easier to cook, lasts longer and is much better health wise.

The reiteration of cow progeny excreta, leading to a lesser usage of chemical manure, which would further lead to an improvement in the quality of the earth and environment, was given by the majority as a reason for the total ban. Although there is no doubt that is true, how does a complete ban justify it? How does such a small amount of dung from only 1.10% or less cattle, which are old, make the topsoil significantly better? (The argument was brought forward by the dissenting judge as well).

d. Would the *Stare Decisis* of precedents relating to the matter be applied?

Stare decisis is the doctrine of precedents and in Latin means "to stand by things decided".¹³ While there is no argument on the meaning and importance of this principle, the difference in opinion arises in whether the previous judgements are to be applied or whether to stray from them.

The majority were of the opinion that since the circumstances have changed; the need of the hour is to evolve a principle more appropriate for the scenario. However, a close look at the facts of the case shows us that there isn't any major change which might require us to stray away from the main principles laid in the cases of **Quareshi-I, Abdul Hakim Quareshi And Others v.**

¹³Timothy Oyen, *Stare decisis*, Cornell Law School, URL Link: https://www.law.cornell.edu/wex/stare_decisis#:~:text=Stare%20decisis%20is%20Latin%20for,and%20a%20ruling%20already%20issued.&text=A%20court%20engages%20in%20vertical,precedent%20from%20a%20higher%20court.

*State of Bihar*¹⁴, *Mohd. Farukv. State of Madhya Pradesh And Others*¹⁵, *Haji UsmanbhaiHasanbhaiQureshiv.State Of Gujarat And Ors.*¹⁶, *ChintamanRaov. State of Madhya Pradeshram*¹⁷, *Messrs.Dwarka Prasad LaxmiNarainv. State of Uttar Pradesh And Ors.*¹⁸, etc.

We saw that the judgement overruled all these cases and plenty more by allowing a complete ban, which all of the above knew was against the fundamental rights of their citizens.

CONCLUSION:

From the arguments discussed above, backed up by facts, it becomes evident that the judgment was erroneous in its very basis. Well, the major reason is that since India is a secular country (at least theoretically), there are many factors to take into consideration before one makes laws. Favouring one sector over another will be detrimental, as we have already seen. We do not wish to live in a nation where when a policeman if given a choice of saving either a cow or a human, hesitates to kill the cow but kills the human. Man is an intellectual being and therefore should use his intellect wisely. All being said and done, in the end, the purpose of this law was essentially to protect the beliefs held by the Hindus. The author in no way tries to demean it, but rather tries to get the society to accept the other beliefs held by various other communities in our secular country. Meaning thereby that a reasonable restriction is acceptable and it will be tolerated by the other sector, if one learns to tolerate and respect their beliefs as well.

Just because of the extremist behaviors that are on a rise these days, many who didn't eat beef before have now started consuming the same just to prove a point. This is against the India's history and religion of Hinduism which is believed to be most tolerant.¹⁹

We mustn't allow the cow to be our most polarizing and political animal, that separates us; that is not what the Father of our nation wished for. We should not let such a judgments stand and dictate our future.

¹⁴1961 AIR 448.

¹⁵1970 AIR 93.

¹⁶(1981) 22 GLR 349.

¹⁷1951 AIR 118.

¹⁸1954 AIR 224.

¹⁹LeezaMangaldas, *India's Got Beef With Beef: What You Need To Know About The Country's Controversial 'Beef Ban'*, Forbes, June 5, 2017, <https://www.forbes.com/sites/leezamangaldas/2017/06/05/indias-got-beef-with-beef-what-you-need-to-know-about-the-countrys-controversial-beef-ban/#6339e3d053c2>.

Finally, quoting none other than the father of the nation, Gandhi²⁰:

*“We have been shouting from the house-tops that there will be no coercion in the matter of religion. How can anyone force another not to slaughter cows unless he is himself so disposed? It is not as if there were only Hindus in the Indian Union. There are Muslims, Parsis, Christians and other religious groups here. The assumption of the Hindus that India now has become the land of the Hindus is erroneous. India belongs to all who live here. We really do not stop to think what true religion is and merely go about shouting that cow-slaughter should be banned by law. In villages Hindus make bullocks carry huge burdens which almost crush the animals. **Is it not cow-slaughter, albeit slowly carried out?**”*



²⁰Speech at Prayer Meeting, The Collected Works of Mahatma Gandhi, (Vol. 88: 25-May-1947: 31-July-1947, pg 424-425), https://www.gandhiheritageportal.org/cwmg_volume_thumbview/ODg=#page/462/mode/2up.