

# “WHY BAN ON BEEF, WHEN WE CAN BANQUET WITH BEEF?”

- TOWARDS AN AMICABLE SOLUTION

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## ABSTRACT

*This paper throws light on the government's decision to ban the consumption and slaughter of Beef in India and its interference in the rights of the citizens of India. The Leitmotif of the paper is to analyse the Ban on beef, conduct a test for reasonableness and check the constitutional validity of the direction of Ban. Also to determine the intention of the legislation while drafting the relevant provisions regarding the safeguarding the breed as well as permitting the citizens to consume beef.*

*Keywords : Beef Ban, Constitutional provisions, BJP's Misdirection, Moral Policing, Vote-bank Politics, Death Toll due to Ban.*

## INTRODUCTION

The practise of cow-slaughter and consumption of their meat dates back to the Pre-history. Man is a carnivorous animal which is also substantiated by the very nature which is evident that man possess canine teeth. To the record, India is the 2<sup>nd</sup> largest exporter of Beef and the 8<sup>th</sup> largest consumer of beef in the world. The modern India has decided to ban beef in the name of hindutuva. This initiation of beef ban became a priority in the minds of people after the BJP's rule under the leadership of Shiv Sena. But it is complete violation of right conferred on a common Indian citizen. There is a practical complication in enforcing and tracking beef-consumers on a country whose constitution believes and holds the words such as “Secularism, socialist and democracy”. The enforcing agents cannot put their magnifying glasses in the plates of Beef-consumers under the surveillance of the administration of Justice. The move or the agenda by the government is only gives a catastrophic blow to the Indian Economy. The leitmotif of the paper is to analyse the test for reasonableness and constitutional validity of Beef Ban.

## CONSTITUTIONAL ANALYSIS OF BEEF BAN

*Article 48* – The state shall endeavour to organise agricultural and animal husbandary on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and other milch and draught cattle.

This is under Part IV of the Indian Constitution of Directive Principles of State Policy which stays steadfast due to the non-enforceable capacity. The Article also covers working cows, other milch and calf.

The intention of the legislation or the drafting committee should be brought under spotlight. There was a direction to add the Article 48 of Indian Constitution to be a part of Fundamental rights

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by the overpopulated Hindu in the committee. But the chairman of the Constitution Dr. B.R. Ambedkar opposed to add the said Article which is a religious construction. He said this has to be added to be a part of DPSP and not a part of fundamental rights. There were two Muslim committee Members in the drafting committee who tolerated the proposal that Article 48 had to be added in the Fundamental Rights But gave their valuable opinion to the committee.

Sir Syed Muhammed Sadulla – Who said “LA IKRABA FID-DEEN” which means there shall be no compulsion in the name of religion. He stated the above point and related it to the discussions of the debate. Sir Lahir quoted “When there is greater ambiguity let it stay in the DPSP or if the contradictions are crystal clear let them hop into the fundamental rights”

*Article 25<sup>3</sup>* gives freedom of practice and propagation of religion. But by which the Hindus shall hold their right from not consuming beef or any one forcing them to consume them.

*Article 21<sup>4</sup>* under the ambit of the “Protection of life and personal liberty” provides right to eat to the citizen which entitles non- consumers of beef to avoid beef on their plate and non- Hindu to consume beef and practise their right.

*Article 19<sup>5</sup>* grants any citizen of India to practise any profession, or to carry on any occupation, trade or business which obviously protects slaughter houses which possess a proper licence for the functions from carrying on their business.

*Article 14<sup>6</sup>* bestows through the Indian constitution, “equality before the law and equal protection” within the territory of India and prohibits discrimination on the grounds religion. This provision acts as a armour to the people who wish to perform their right by consuming beef.

### **MOTIVE FOR BAN OF BEEF OR FOR THE LIFT OF BAN**

If the motive behind the ban is to protect agriculture or improve breed quality or to protect animal husbandry then they are answered by the “fit for slaughter certificate” which will be explained below.

If the motive is to protect the larger community or religion and their sentiment then, instead of imposing a ban on beef they must exercise their right not to consume them.

### **FIT FOR SLAUGHTER CERTIFICATE.**

<sup>3</sup> **Article 25** in The Constitution Of India 1949, Freedom of conscience and free profession, practice and propagation of religion, (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice

<sup>4</sup> **Article 21** in The Constitution Of India 1949, Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>5</sup> **Article 19** in The Constitution Of India 1949, Protection of certain rights regarding freedom of speech etc - (1) All citizens shall have the right - (g) to practise any profession, or to carry on any occupation, trade or business

<sup>6</sup> **Article 14** in The Constitution Of India 1949, Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

The states which does not have any ban of beef are Kerala, West Bengal, Arunachal, Mizoram, Meghalaya, Nagaland, Tripura, Sikkim and Manipur. The States like Haryana, Arunachal, Madhya Pradesh, Jammu and Kashmir have stringent punishment for consumption of beef which is cow or calf or animal which does not have fit for slaughter certificate. But majority of states have allowed consumption of beef if licensed slaughter houses have obtained fit for slaughter certificate before slaughtering the cow, buffalo, etc.,

The fit for slaughter certificate is issued to cow after due observation of any deformity or incapable of progeny (i.e.) incapable of reproduction.

Two cases which stand as guidelines for quasi-ban in India.

- Mohammed Hanif Qureshi Vs. State of Bihar<sup>7</sup>

This case was decided by 5 judges bench. The petition challenged slaughter of certain cattle in three states – Uttar pradesh, Madhya Pradesh and Bihar. They were challenged on the following grounds-

- That the ban offended Muslims as the sacrifice of cows was sanctioned on a certain day.
- That such a ban violated the rights guaranteed to butchers under Article 19 (1) (g) of the constitution
- That the ban was not in interest of total public

The Supreme Court held that,

- The total ban on the slaughter of cattle is valid and in consonance with the Directive Principles laid down under Article 48.
- A total ban on she-buffaloes as long as they are capable of being used as milch or drought cattle was also reasonable and valid.

However, it must be noted that the court left the question of whether, “total ban” was within the scope of the restriction placed by Article 19 (6).

- State of Gujarat V. Mirzapur Moti Kureshi Kassab Jamat<sup>8</sup>

The case was about amending the *Section 5* of Bombay Animal Preservation, also Applicable to Gujarat. The court held that the state is in great dependence on cow for agricultural and economic development. Also the non-conventional energy sources like Bio-gas plants, even waste material has come to assume considerable value. Therefore, it cannot be said that they are useless. In order to give effect to the policy of the state towards securing the principles laid down in *Article 47, 48 a clause (b) and (c) of the Article 39* of the constitution, it was considered necessary also to impose total prohibition against slaughter of progeny of cow”.

The contention laid under *Article 14 and 19 (1)(g)* was set aside by the court saying, “upliftment of cow progeny is needed in the nation’s interest which may cause some ‘inconvenience’ or ‘Dislocation’ to butchers, The former must yield to the latter”.

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• <sup>7</sup> Mohammed Hanif Qureshi Vs. State of Bihar 1959 SCR 629: AIR 1958 SC 731

• <sup>8</sup> State of Gujarat V. Mirzapur Moti Kureshi Kassab Jamat (2005) 8 SCC 534

## **DEATH TOLL DUE TO BAN OF BEEF**

The ban on beef has gone to a next level destroying the social tranquillity and they might be for reasons for greater riots and protests in the future. The enforcement of the Ban of Beef is out of the hands of enforcing agencies in the present matters

- JUNE 24, 2017 - For three and a half hours, they were abused, humiliated and assaulted by a mob of 15-20 people that passed communal remarks and accused them of carrying beef in a bag. Finally, a 19-year-old was stabbed to death and another received stab injuries. The GRP at Ballabgarh railway station failed to intervene and stop the assault. The GRP claimed on Friday to have arrested a man and detained a suspect allegedly involved in the attack. Haryana DGP B S Sandhu, however, denied that the incident was the outcome of an argument over beef.<sup>9</sup>
- APRIL 7, 2017 - A 50-year-old man, Mohammad Akhlaq, was beaten to death and his 22-year-old son severely injured on Monday night in UP's Dadri, allegedly by residents of Bisara village, after rumours spread in the area about the family storing and consuming beef.<sup>10</sup>
- DECEMBER 25, 2017 - Pehlu Khan, 55, had died in hospital two days after a group attacked his cattle truck on a road in Alwar in the desert state of Rajasthan. Gangs of "cow protectors" have been implicated in killing at least 10 people in the past two years as the welfare of the animal has become an increasingly charged issue in Indian politics.<sup>11</sup>

## **POLITICAL MISDIRECTION**

The first month of 2017 had a news that the president Pranab Mukherjee has given his assent to Maharashtra Animal Prevention (Amendment) Bill<sup>12</sup>, 1995 nearly 19 years after Maharashtra Assembly passed the Bill during the BJP Shiv Sena rule in 1995. This was the time Beef Ban was initiated. The slaughter of cows was previously prohibited in the state under the Maharashtra Animal Preservation Act, 1976. However the passage of New Act will ban the slaughter of bulls as well as bullocks, which was previously allowed based on a fit for slaughter certificate. This move by the BJP which is a Hindu Majority Party puts it in much controversies. The BJP under their regime are just trying to create a rift between Hindus and Muslim which may further lead to communal and religious riot. They are gaining attention of the majority population (i.e.) Hindus by creating a false impression in the minds of the community which is probably for the next election but they can never stop a common citizen from performing his right guaranteed to him by the Constitution of India. After going through the provisions and the acts of the party under their regime it is very clear that it is a practise of Vote-Bank politics. They masquerade pretending to be the guardians of India's culture and tradition. They crack their whips hard on people coercing anyone who are messing around with India's Perceived morality. They fail to realize that by employing violence as a means to ensure the preservation of their culture, they are tarnishing it beyond repair. So,

<sup>9</sup> <http://timesofindia.indiatimes.com/city/gurgaon/accused-of-carrying-beef-teen-killed-on-train/articleshow/59293024.cms> 05.30 Am 1/06/2017.

<sup>10</sup> <http://indianexpress.com/article/india/india-others/next-door-to-delhi-mob-kills-50-year-old-injures-son-over-rumours-they-ate-beef/> 07.30 Am 29/06/2017.

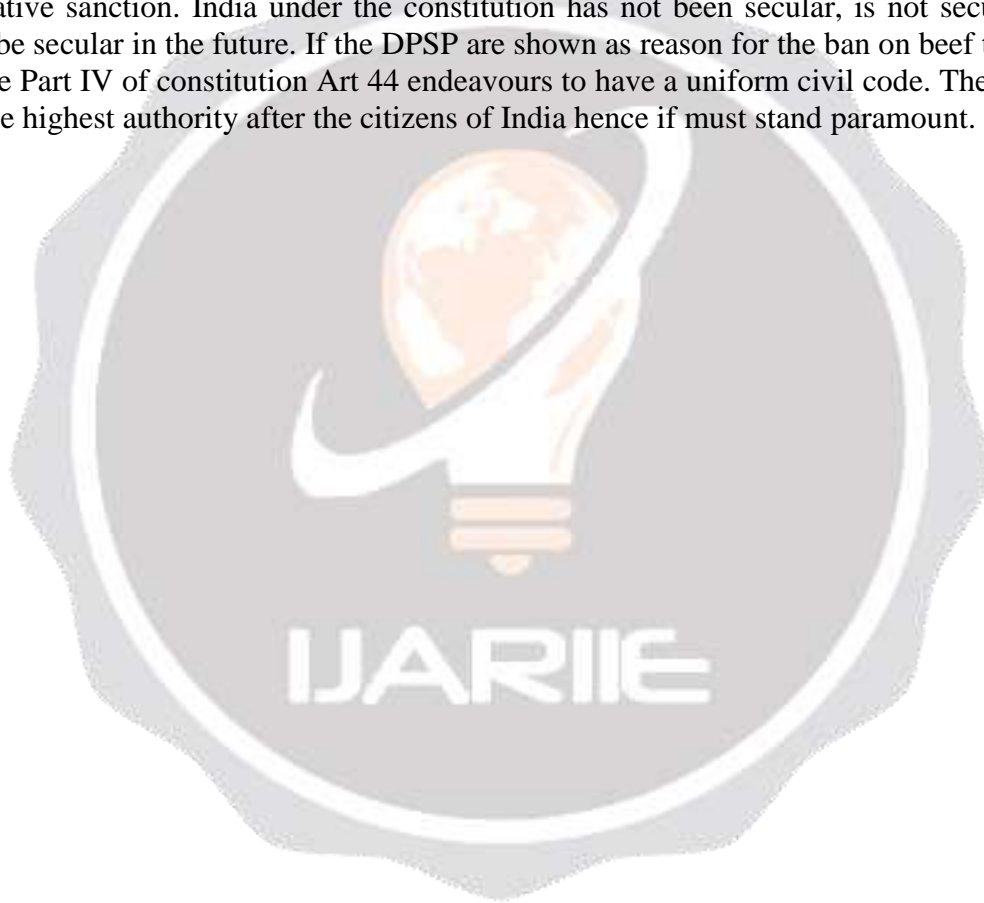
<sup>11</sup> <https://www.theguardian.com/world/2017/apr/05/muslim-man-dies-in-india-after-attack-by-hindu-cow-protectors> 07.30 Pm 12/06/2017.

<sup>12</sup> <http://indianexpress.com/article/india/india-others/beef-banned-in-maharashtra-5-yrs-jail-rs10000-fine-for-possession-or-sale/> 09.55 Am 29/06/2017.

these kind of moral policing will not help the people in exercising their right which is providing the Constitution of India.

### **CONCLUSION**

This paper would come to a definite assertion that India is a secular country if denied, the judgment of S.R. Bommai V. Union of India<sup>13</sup> AIR 1994 SC 1918 which consist of 9 Judge Bench challenging the section 356 of the Indian Constitution. The judgement cited that secularism is a basic feature of the Indian Constitution and cannot be subjected to amendment. When there is a word called “secular” standing at the preamble itself. The political Agenda like Beef Ban is just a dream. The Constriction or limitation imposed for Ban of Beef is completely violating the fundamental rights and liberty of the people. Such a move of Ban of Beef will only make India economically weak in a sector. Slaughter of Cows which were issued. Fit for slaughter should at least be allowed for slaughter without any negative sanction. India under the constitution has not been secular, is not secular and will not be secular in the future. If the DPSP are shown as reason for the ban on beef then the very same Part IV of constitution Art 44 endeavours to have a uniform civil code. The constitution is the highest authority after the citizens of India hence it must stand paramount.



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<sup>13</sup> S.R. Bommai V. Union of India AIR 1994 SC 1918