

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+ CRIMINAL REVISION CASE No.517 OF 2017

% Dated 01-03-2017

Between:

Ramavath Hanuma @ Hanumanthu, S/o.Gopya
age 26 years, Occ: Agriculture,
R/o.Gorikeneni Thanda.

..Petitioner/ Accused No.2

And

\$ State of Telangana
Represented by Public Prosecutor,
High Court of Judicature at Hyderabad.

..Respondent/ Complainant

! Counsel for the petitioner : SRI M.A.K.Mukheed

^ Counsel for respondent : Public Prosecutor (T.G)

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? Cases referred:

1. SLP (Crl.Appeal Nos.283-287/2012)
2. 2014 (6) Scale-468
3. 1957 SCR 721
4. (2002) 8 SCC 106
5. AIR 1994 SC 1673 paras 12 and 13
6. AIR 1994 SC 1837
7. AIR 1958 SC 731
8. [1951] S.C.R.525
9. 1954] S.C.R.1055
10. [1952] S.C.R.597
- 11.(1960) 2 SCR 375
- 12.(1961) 2 SCR 610
- 13.(1969) 1 SCC 853
- 14.(1960) 2 SCR 375
- 15.(1986) 3 SCC 12
- 16.(1995) 1 SCC 189
- 17.(1996) 4 SCC 391
- 18.Appeal (civil) 4937-4940 of 1998-dt.26/10/2005
- 19.1951 SCR 525
- 20.1959 Supp. (2) SCR 8
- 21.1959 SCR 995
- 22.(1967) 2 SCR 762

- 23.(1973) 4 SCC 225
- 24.(1978) 2 SCC 1
- 25.(1976) 2 SCC 310
- 26.(1986) 3 SCC 20
- 27.(1992) 3 SCC 336
- 28.(1995) 1 SCC 501
- 29.(1951) SCR 682
- 30.(2002) 1 SCC 428
- 31.(1992) Supp (1) SCC 594
- 32.(1997) 4 SCC 7
- 33.1986 (Supp) SCC 517
- 34.(2002) 10 SCC 606
- 35.(2004) 4 SCC 129
- 36.1954 SCR 587
- 37.(1964) 1 SCR 371
- 38.1957 SCR 605
- 39.AIR 1954 SC 634
- 40.(1960) 2 SCR 375
- 41.(1969) 2 SCR 392
- 42.(1995) 5 SCC 615
- 43.(1997) 5 SCC 87
- 44.(2004) 1 SCC 712
- 45.2013 (2) U.D. 661 : 2013(23) R.C.R.(Criminal) 471



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.517 OF 2017

ORDER:

The issue involved in the Criminal revision is: -

whether a person under mere claim of owner or representing so called owner, either to kill or to sell for slaughter, entitled to interim custody of cows and bulls seized from him, when those are allegedly possessed for slaughter, from the national importance of cows, which are the substitute to mother and God and being the sacred national wealth?

2) It was against the order dated 03.02.2017 in CrI.M.P. No.160 of 2017 in Crime No.206 of 2016 of Nalgonda Rural Police Station, passed by the learned Judicial First Class Magistrate-cum-Special Mobile Magistrate, Nalgonda; dismissing the application for interim custody of 63 cows and 2 bulls that were seized under cover of panchanama while they were grazing in the outskirts of Kanchanapally Village, that were secured by the petitioner and other accused to offer them to be killed by slaughter for distribution of cow meat for the Muslim festival of Bakrid and with that aim the accused persons secured accused No.2 for purchasing cows and bulls from farmers for sale by suppressing the fact. It is pursuant to said disclosure statement leading to the seizure of the cattle as a fact discovered within the meaning of Section

27 of the Indian Evidence Act, the cattle were seized and the crime was registered.

3) The revision petitioner Ramavath Hanuma @ Hanumanthu is accused No.2 in said Crime registered against four accused for the offences punishable under Sections 5, 6 and 10 of the Prohibition of Cows Slaughter and Animal Preservation Act II of 1977 (for short 'Act II of 1977) and 11 (1) (b) of Prohibition of Cruelty to Animals Act, 1960. The petitioner herein for interim custody of those cows and bulls is claiming that he was grazing the cows and bulls at the time of said seizure and those are to be returned to the owners. Those cows and bulls after production and pursuant to the order of Court were handed over to Gowshala for their safety of life, preservation, feeding and custody.

4) Learned Magistrate in discussing the interim custody petition holding not entitled, also referred the expression of the Apex Court in ***State of Uttar Pradesh vs. Mustakeem and others***¹. It is impugning the same; present revision is maintained.

5) *Heard learned counsel for the petitioner-A2 and also learned Public Prosecutor representing the State. Perused the material on record.*

¹ SLP (Crl.Appeal Nos.283-287/2012)

6) It is one of the contentions of the learned counsel for the petitioner that the cows were grazing in open place and that there is no any cruelty to attract Section 11 of Act of 1960 and even Sections 5, 6 and 10 of the Act II of 1977 have no application and that the seizure and handing over of animals to Gowshala is illegal and it is not in accordance with the procedure established by law and the cows cannot be kept in illegal custody in any Gowshala but for to return to the petitioner. It is also the contention that sacrifices to god in the religious functions otherwise is no offence.

7) Whereas it is the submission of the learned Public Prosecutor representing the State that the order of the lower Court holds good and there is prima facie accusation under the Act II of 1977 supra and the procedure is established by law that on information that cows are being subjected to slaughter for sacrifice on the occasion of Muslim festival, the police are entitled on such information and from suspicion to seize and there is no wrong in entrusting their custody to the Gowshala for safe custody. Hence, prayed to dismiss the revision.

8) So far as Sections 5, 6 and 10 of the Act II of 1977 are concerned, the very wording of Sections 5 and 6 is clear in reference to the panchanama contents and the

punishment for the offence under the said Section is defined under Section 10 of the Act, leave about Prevention of Cow Slaughter Act, 1960, whether it applies or not to the case on hand, since the cows are grazing as per the panchanama, however, from the wording of Section 102 Cr.P.C. it is very clear that any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence and the cows and bulls in question are within the meaning of property which were alleged to have been found in the circumstances which create suspicion of the commission of an offence.

9) Once Section 5 read with Section 10 of the Act II of 1977 supra applies, apart from the offence of cheating under Section 420 IPC attracts in securing cows and bulls from farmers, without mention of for slaughter as also held by this Court in CrI.P.No. **11193 of 2014**, 26th September, 2014; seizure is permissible under Section 102 Cr.P.C. including for confiscation or entrustment to Gowshala for safe custody of the cows and bulls. In fact, the Apex Court, though on different facts, in the expression referred to in the impugned order of the lower Court of **Mustakeem** (supra) categorically held that once the offence is attracting, the High Court committed a grave

wrong in entrusting the custody of the cows which are allegedly intended to be used for slaughter and the entrustment to Gowshala for safe custody is the proper order by setting aside the order of the High Court. Thereby the order of the lower Court can be substantiated in not handing over interim custody and in observing to keep them with Gowshala pending disposal of the case.

10) It is not the end of the issue from above answer, but for to answer further on the contention raised on religious sacrifices.

11) In this Country-the Bharat, for those in belief who represent a majority of population, cow is a substitute to mother, who is a substitute to God. The cow in particular acquires a special sanctity and was called "Aghnya" (not to be slain). Thus, cow is a sacred national wealth and no one merely owned can claim, but for to rear, either to kill or to sell for slaughter.

12) It is apt to mention the quote by **Justice V.R.Krishna Iyer** that, "Nature is bleeding, amidst hi-tech glitter and profit-hungry adventurers while our future is flickering and our survival somber, what with Man's tortuous inhumanity to Nature, its creations and avaricious injury to culture".

13) Man is nature's best promise and worst enemy. The ancients have stated that God sleeps in the mineral,

awakens in the vegetable, walks in the animal and thinks in man. There is a spiritual connection between environmental and animal rights.

14) The advocacy of wild life preservation, animal rights, vegetarianism and environmental protection have their roots in a new ethic of universal compassion inscribed long ago in the rock pillars of Emperor Asoka.

15) In previous yugas the Vedic injunction was given - *jiyaite pare yadi tabe mare prani veda-purane ache hena ajna vane* - that means in the Vedic scriptures known as Puranas there are injunctions declaring that "one can take the life of a living being only if they are able to revive it back to life again by chanting Vedic mantras". But we find that this injunction has been terminated in today's age of kali yuga. The protection and preservation is not for human survival but also all species of nature. A holistic vision of Creation, which itself is in fact the manifestation of the Absolute is the spiritual legacy of ancient Indian vintage.

16) In Animal Welfare Board of India Vs A. Nagaraja & Ors.² - the Apex Court in dealing with an issue of seminal importance with regard to the Rights of Animals under our Constitution(Articles 51A-g &21), laws, culture,

² 2014(6)Scale-468

tradition, religion and ethology, in connection with the conduct of Jallikattu, Bullock-cart races etc., with particular reference to the provisions of the Prevention of Cruelty to Animals Act, 1960 (for short 'the PCA Act'), the Tamil Nadu Regulation of Jallikattu Act, 2009 (for short "TNRJ Act") and the notification dated 11.7.2011 issued by the Central Government under Section 22(ii) of the PCA Act; observed the Jallikattu inherently violate the provisions of the PCA Act, particularly, Section 3, Sections 11(1)(a) &(m) and Section 22 of the PCA Act, from para 9 onwards that, U/Section 11(1)(a) any act which inflicts unnecessary pain or suffering on an animal is prohibited unless it is specifically permitted under any of the provisions of PCA Act or the rules made thereunder and it is an offence with penal consequences. Studies indicate that rough or abusive handling of Bulls compromises welfare and for increasing Bulls fear, often, they are pushed, hit, prodded, abused, causing mental as well as physical harm. An injury involving muscles, bones, nerves and blood vessels causes an animal tremendous pain. A complete fracture of a lower joint in large animals takes time to heal and leads to a deformation of the leg that leaves the animal unfit for any kind of work. Bulls also suffer from chronic pain as well as mental trauma brought on by the injury and the handlers' and bull tamers' cruel treatment. Bulls were packed so

tightly into narrow waiting corridors that they were unable to take a step forwards or backwards. Forced to stand for more than eight hours in line at the waiting area for a health examination and in the vadi vassal, bulls had no protection from the blistering sun and the crowds of people, who shouted and hooted at them, harassed them and frightened them. Bull owners start lining up the night before the jallikattu event, and they are given serial numbers. Some were in line until the events ended at 2 pm the next day. Bulls were denied shade and were not allowed to lie down and rest. This causes exhaustion and extreme distress and discomfort. This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(f), which prohibits trying an animal for an unreasonable time with an unreasonably short rope. *Section 11(1)(d)*, which prohibits conveying any animal in such a manner or position as to cause unnecessary pain or suffering. Bulls not offered food, water or shelter from 8 am, when they were forced to line up, until the jallikattu events ended at 2.30pm. Though concrete water troughs were available at the registration area and collection yards, none of the animals were offered water. Several bulls became recumbent and were unable to stand up because

of dehydration and exhaustion. Many people kicked, beat and bit the bulls in order to force them back onto their feet. No intake of food and water and the absence of shade lead to dehydration and exhaustion. This often results in injuries or death. This is a violation of section 11(1)(a) of The Prevention of Cruelty to Animals Act, 1960, which prohibits treating any animal in a way that causes unnecessary pain or suffering, and section 11(1)(h), which states that failing to provide animals with sufficient food, drink or shelter is an act of cruelty. Bulls are prey animals. According to animal behavioural studies, bulls adopt a flight or fight response when they feel frightened or threatened. Physical abuse is not the only kind of injury that is illegal and hurtful. Mental abuse is also amongst the worst kind of abuse as it leaves a lifelong mark on the mind. It is a known fact that victims of accident, crime or disasters recover from their physical injuries in certain time but mental injuries remain etched for decades, play havoc in day to day life. Animals, irrespective of the fact whether they can express it or not, in this particular case were seen going through the same shock and terror as a person goes into in a hostage situation. Constant fear of death and continuous torture.

17) It was observed referring to the earlier expression in Lilavati Bai Vs State of Bombay³ that pain and suffering are biological traits. Pain, in particular, informs an animal which specific stimuli, it needs to avoid and an animal has pain receptors and a memory that allows it to remember what caused the pain. Professor of Animal Welfare, D.M.Broom of University of Cambridge in his articles appearing in Chapter fourteen of the Book "Animal Welfare and the Law" Cambridge University Press (1989) says: *"Behavioural responses to pain vary greatly from one species to another, but it is reasonable to suppose that the pain felt by all of these animals is similar to that felt by man"*.

18) Temple Grandin and Catherine Johnson, in their work on "Animals in Translation" say: *"The single worst thing you can do to an animal emotionally is to make it feel afraid. Fear is so bad for animals I think it is worse than pain. I always get surprised looks when I say this. If you gave most people a choice between intense pain and intense fear, they'd probably pick fear."*

It was quoted with approval the earlier expression in N. Adithayan v.Thravancore Dewaswom Board and Others⁴, while examining the scope of Articles 25(1), 2(a), 26(b), 17, 14 and 21, that: *"18.....No usage which is found to be pernicious and considered to be in derogation of the law of the land or*

³ 1957SCR 721

⁴ (2002) 8 SCC 106

opposed to public policy or social decency can be accepted or upheld by courts in the country.

It was observed at para-49 that based on eco-centric principles, rights of animals have been recognized in various countries. Protection of animals has been guaranteed by the Constitution of Germany by way of an amendment in 2002 when the words “and the animals” were added to the constitutional clauses that obliges ‘state’ to respect ‘animal dignity’. Therefore, the dignity of the animals is constitutionally recognized in that country. German Animal Welfare Law, especially Article 3 provides far-reaching protections to animals including inter alia from animals fight and other activities which may result in the pain, suffering and harm for the animals. Countries like Switzerland, Austria, and Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners’ fundamental rights to property and the animals’ interest in freedom from unnecessary suffering or pain, damage and fear.

It was observed at para-58 that Article 51A(h) of the Constitution says that it shall be the duty of every citizen to develop the scientific temper, **humanism** and the spirit of inquiry and reform. Both Articles 51A(g) and (h) have to be read into the PCA Act, especially into Section 3 and Section 11 of the PCA Act and be applied and enforced. Further, animals like Cows, Bulls etc. are all freely used for farming, transporting loads etc., that too, for the benefit of human beings, thereby subjecting them to some pain and suffering which is also unavoidable, but permitted by the Rules framed under the PCA Act.

It was observed at para-62 that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution. So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity. Animals' well-being and welfare have been statutorily recognized under Sections 3 and 11 of the Act and the rights framed under the Act. Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. Right, not to be beaten, kicked, over-rider, over-loading is also a right recognized by Section 11 read with Section 3 of the PCA Act. **Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in the Section 11(1) is not commensurate with the gravity of the**

offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act. Both the legislators trace their legislative power in Entry 17 List III-" Prevention of Cruelty to animals.

19) Coming to historical importance of cow and bull, besides milch cattle for human survival:

In Rigveda X 87.16, it speaks - one who partakes of human flesh, the flesh of a horse or of another animal and **deprives others from milk by slaughtering Cows; if such a friend does not desist, then even cut off their heads by your powers - Oh King.**

Srimad Bhagavata, at Canto-11, Chapter-5, Verse-14 says - those who are ignorant of the absolute truth and believe they are virtuous although wicked and arrogant who kill animals without any feeling of remorse or fear of punishment are devoured by those very same animals in their next birth.

High praise was bestowed on the cow as will appear from the following verses from **Rg.Veda, Book VI, Hymn XXVIII (Cows) attributed to the authorship of Sage Bhardavaja:**

"1 . The kine have come and brought good fortune; let them rest in the cow-pen and be happy near us.

Here let them stay prolific, many coloured, and yield through many morns their milk for Indra.

6. *O Cows, ye fatten e'n the worn and wasted,
and make the unlovely beautiful to look on.*

*Prosper my house, ye with auspicious voices, your
power is glorified in our assemblies.*

7. *Crop goodly pasturages and be prolific; drink
pure sweet water at good drinking places.*

*Never be thief or sinful man your master, and may
the dart of Rudra still avoid you." - (Translation by
Ralph Griffith).*

**Verse 29 of hymn 1 in Book X of Atharva
Veda forbids cow slaughter** in the following words:

*"29. The slaughter of an innocent, O Kritya, is an
awful deed, Slay not cow, horse, or man of ours."*

*Hyman 10 in the same book is a rapturous glorification
of the cow:*

*"30. The cow is Heaven, the cow is Earth, the cow is
Vishnu, Lord of life.*

*The Sadhyas and the Vasus have drunk the
outpourings of the cow.*

*34. Both Gods and mortal men depend for life and
being on the cow.*

*She hath become this universe; all that the sun
surveys is she."*

P.V. Kane argues that in the times of the Rg.Veda only barren cows, if at all, were killed for sacrifice or meat and cows yielding milk were held to be not fit for being killed. It is only in this way, according to him that one can explain and reconcile the apparent conflict between the custom of killing cows for food and the high praise bestowed on the cow in Rg.Vedic times. It would appear that the protest raised against the slaughter of cows greatly increased in volume till the custom was totally abolished in a later age. The change of climate perhaps also make the use of beef as food unnecessary and even injurious

to health. Gradually cows became indicative of the wealth of the owner.

The Neolithic Aryans not having been acquainted with metals, there were no coins in current use in the earlier stages of their civilization, but as they were eminently a pastoral people almost every family possessed a sufficient number of cattle and some of them exchanged them for the necessaries of their life. The value of cattle (Pasu) was, therefore, very great with the early Rg.Vedic Aryans.

The Mythology of India, the Bharat; speaks – Mother, Father, Guru(teacher-Guide), a Cow and a saint-Yogi all should never be killed.

Even the Bible - Chapter 66 Verse 3, speaks - He that killeth an OX is as if he slit a dogs neck, he that offereth it is as an oblation is as if he offered swines blood, he that burneth it is incense as if blessed an idol. Yet, they have chosen their way and their soul delighteth in their abominations.

As early as 1500-600 BC in Isha-Upanishads, it is professed as follows: "The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."

The Isha-Upanishad - speaks the moral duty of every human being in the society, not only not to encroach over the rights and privileges of other human beings but even other species and no one can abdicate his moral duty as part of justice to all species in well being of society.

The Latin maxim "*salus populi est suprema lex*" is to mean-regard for public welfare is the highest law.

As per **Cardozo** the final cause of law is "*welfare of the society*".

Dispensation of justice is being guided by the Rule - *Fiat Justitia ruat coelum* - to mean, **let justice be done though heavens should fall**. Needless to say, Law as it is may fall short of law as it ought to be for doing complete justice. The gap between the two may be described as the field covered by morality.

ABRAHAM LINCOLN once quoted "**Law floats on a sea of ethics, in a civilized society. Thus, both ethics and law are essential for a Judge**". It evokes a dual responsibility on every Judge not only to be well versed with law and case facts in its application, but also moral rectitude and disciplined life.

Justice AHARON BARAK of Israeli Supreme Court in his book "A Judge of Judging" expressed that "*There can be no democracy and no civilized society without an effective Justice Administration System*".

20) The Apex Court expressions in **Ramachandra Ganpat Shinde V. State of Maharashtra state⁵**, and **Satya Brata Biswal V. Kalyan Kumar Kisku⁶**, by referring to several expressions and famous quotes against the greedy and unworthy man laid as follows: -

"Respect for law is one of the cardinal principles for an effective operation of the Constitution, law and the popular

⁵ AIR 1994 SC 1673 paras 12 and 13

⁶ AIR 1994 SC 1837

Government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication-be it judicial, quasi judicial or administrative as hallmark, the faith of the people in the efficacy of these processes would be disillusioned, if one is permitted to abuse its process and allowed to go scot free."

21) **In Jennison Vs Baker** – 1972(1) All.E.R 997 it was held "The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection loose hope".

22) **Justice BRENNAN** in his reference to law and justice quoted that "**nothing rankles more in the human heart than a brooding sense of injustice-either from imperfect law or in its improper application.**"

23) It is thus not only the need to duly enforce the law, the existing lenient penal consequences un-pinching crime perpetrators, but also requires to rectify by suitable amendment with stringent penal consequences, more particularly in respect of those other than human species who cannot fight for their rights enshrined in the Constitution from the fundamental duties of citizens and duties of the State in making and enforcing effective legal

protection to those as part of the Directive principles of State policy, without which those species shall not fight and self-defend for their rights enshrined in the Constitution, against the defiant attitude of a human being, in order to protect those.

24) It is thus the time to amend the law with stringent penal consequences and with strict enforcement in Prevention of Cruelty against Animals by amending the Act,1960 and also in respect of the laws covering the Prohibition of Cow Slaughter.

25) No doubt, it was keeping in view the objects and commands of Article 48 of the Constitution of India, the Government of Andhra Pradesh has promulgated the A.P. Prohibition of Cow Slaughter and Animal Preservation Act, 1977 (for short "the Act") prohibiting slaughter of cows, calves and other milch and draught cattle and that the State Government have taken up restructuring of breeding programme, balanced feed supply, health coverage fodder development activities etc., for total welfare of cattle in the State. It has been enacted to provide for the prohibition of the slaughter of cows, calves of cows and calves of she-buffaloes and for preservation of certain other animals suitable for milch, breeding draught or agricultural

purposes in the then State of Andhra Pradesh (which include the present State of Telangana) and for matters connected therewith taking into consideration all the factors including economic welfare of animals and the State is taking every endeavour to protect and preserve the cattle. **It received the assent of the President on 30-4-1977.**

Section 2(i) of the Act, defines "**animal**" to mean bull, bullock, buffalo, male or female or calf, whether male or female, of a she-buffalo.

Section 2(ii) of the Act, defines "**cow**" to include heifer, or a calf, whether **male or female**, of a cow.

As per Section 4 of the Act, the Government may, by notification, appoint a person or a body of persons to perform the functions of a competent authority under the Act for such local area as may be specified in such notification.

Section 9 of the Act, empowers the competent authority or any person authorised by the competent authority to enter and inspect any premises where the competent authority or the authorised person has reason to believe that an offence under the Act has been or is likely to be committed.

Section 5 of the Act, provides for prohibition of slaughter of cow or calf of she-buffalo reads as follows: **Notwithstanding anything in any other law for the time being in force or any custom, or usage to the contrary, no person shall slaughter**

or cause to be slaughtered or offer or cause to be offered for slaughter or otherwise intentionally kill or offer or cause to be offered for killing any cow or calf, whether male or female, or a she buffalo.

Section 6 of the Act, deals with prohibition against slaughter of animals without certificate from competent authority. It reads thus:

(1) Notwithstanding anything in any other law for the time being in force or any custom or usage to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any animal other than a calf, whether male or female of a she-buffalo, unless he has obtained in respect of such animal a certificate in writing from the competent authority appointed for the area that the animal is fit for slaughter.

(2) No certificate shall be granted under Sub-section (1) if in the opinion of the competent authority the animal is or likely to become economical for the purpose of

- (a) breeding, or
- (b) draught or any kind of agricultural operations or
- (c) giving milk or bearing offspring.

Provided that no certificate under Sub-section (1) shall be refused to be granted unless the reasons for refusal recorded in writing.

(2) A certificate under this Section shall be granted in such form and on payment of such fee as may be prescribed.

Section 10 of the Act, provides that whoever contravenes any of the provisions of the Act on conviction shall be punished with imprisonment for a term, which may extend to six months or with fine, which may extend to one thousand rupees or with both.

Section 11 of the Act, says that offences under the Act shall be cognisable.

Section 15 of the Act, provides for exemptions reads as follows:

Exemptions:--Subject to such conditions as may be prescribed in this behalf, the provisions of this Act shall not apply to--

(a) any animal operated upon for vaccine, lymph, serum or any experimental or research purpose at an institution established, conducted or recognised by the Government;

(b) any cow or animal—

(i) slaughter of which is certified by a Veterinary Officer authorised by the Government to be necessary in the interests of the public health;

(ii) which is suffering from any disease which is certified by a Veterinary Officer authorised by the Government as being contagious and dangerous to other animals.

Section 17 of the Act, provides for establishment of institutions for taking care of cows or other animals.

Section 18 of the Act, empowers the Government to make rules for carrying out the purposes of the Act.

However, the law is insufficient with no enforcing machinery like Institutions to carry the purposes of the Act on practicality but for on paper to show if any and that too for gross violators with lenient penal consequences.

In 2003, the National Commission on Cattle headed by Hon`ble Justice G.M.Lodha submitted its recommendations to then-NDA government. **The report called for stringent laws to protect the cow and its progeny in the interest of the rural economy, a constitutional requirement under**

Directive Principles of State Policy. It is the need of the hour to resolve to implement.

Articles 19(1)(g), 31-C, 311, 48, 48A, 51(A)(g) of the Constitution are relevant to the issue.

Article 51(A)(g) of the Constitution stresses that every citizen of India should show compassion to living creatures.

Article 48 of the Constitution says: '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'.

The directive principles of State policy in Part IV of the Constitution are superior to fundamental rights for common good of society, in distinction to individual rights and the enactments which are to be made or to be amended to meet contingencies are in pursuance of the directions given by Article 48 are valid and constitutional even though they may infringe the qualified fundamental rights of any individual or section of society and thereby the Constitutional Courts as per the Spirit of the Constitution are upholding the legislations time and again.

Thus, the total ban on cow slaughter in the enactments impugned many a time are held justified and is in the interests of the general public. In this regard there are more than three

constitution Bench expressions of the Apex Court popularly known as **Qureshi-I, II, III & IV.**

Qureshi-I: The Constitution Bench of the Supreme Court in **Mohd. Hanif Quareshi Vs The State Of Bihar**⁷ held that, the Bihar Preservation and Improvement of Animals Act, 1955, put a **total ban on the slaughter of all categories of animal, of the species of bovine cattle;** the U.P. Prevention of Cow Slaughter Act, 1955, put a **total ban on the slaughter of cows and her progeny which included bulls, bullocks, heifers and calves;** the C.P. and Berar Animal Preservation Act, 1949, placed a **total ban on the slaughter of cows, male or female calves of cow, bulls, bullocks and heifers and slaughter of buffaloes (male or female, adults or calves)** was permitted only on certificate granted by the proper authorities. **No exception was made in any of these Acts permitting slaughter of cattle even for bona fide religious purposes.**

These three Acts were upheld as enacted in pursuance of the directive principles of State policy contained in **Article 48** of the Constitution.

The petitioners, who were engaged in the butcher's trade and its subsidiary undertakings, challenge to the constitutional validity of the three Acts on the grounds that they infringed their fundamental rights guaranteed under Arts. 14, 19(1)(g) and 25 of the Constitution. **Said challenge was negated, as it had not been established that the sacrifice of a cow on that day of slaughter-Bakrid was an obligatory overt act for a Mussalman to**

⁷ AIR 1958 SC 731

exhibit his religious belief and idea, besides the impugned Acts which affected only the butchers who slaughtered cattle and not the butchers who slaughtered sheep or goats, did not offend Article 14 of the Constitution.

It was concluded saying the directive principles of State policy set out in Part IV of the Constitution have to conform to and run as subsidiary to the fundamental rights in Part 111.

However, held the Bihar and the Madhya Pradesh Acts which affect inter-State trade in cattle and beef offend Article 301 and are void as the assent of the President was not taken before enacting them.

It was held there from (i) that a total ban on the slaughter of cows of all ages and calves of cows and of she-buffaloes, male and female, was quite reasonable and valid; ii) 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 were capable of being used as milch or draught cattle, was also reasonable and valid; and(iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks(cattle or buffalo)after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interests of the general public and was invalid.

For that conclusion the Constitution Bench also placed reliance upon several earlier expressions including State of Madras vs. Smt.Champakam Dorairajan⁸, Ratilal Panachand

⁸ [1951] S.C.R.525

Gandhi vs. The State of Bombay⁹ and State of Madras vs. I.G.Row¹⁰.

In the later expression in Narendra Kumar vs. The Union of India¹¹, it is further clarified by holding that the term "restriction" in Articles 19(5) &19(6) of the Constitution includes "prohibition" also.

Qureshi-II: In Abdul Hakim Quraishi & Ors. v. State of Bihar¹², (hereinafter referred to as Quraishi-II) once again certain amendments made by the Legislatures of the States of Bihar, Madhya Pradesh and Uttar Pradesh were put in issue. The total ban imposed by the impugned Act was once again made a ground of challenge as an unreasonable restriction and contrary to Article 19(1)(g) read with Article 19(6) of the Constitution. **The Constitution Bench, by and large, chose to follow the dictum of this Court in Quareshi-I supra.**

Later in Mohammed Faruk v. State of Madhya Pradesh & Ors.¹³, from the State Government issued a notification permitting the slaughter of bulls and bullocks along with other animals by recalled the earlier notification banning the same that was issued by the Jabalpur Municipality, which recall of the ban was thus made a challenge, it was held as apparently another attempt, though on a restricted scale, to circumvent the judgment of the Constitution Bench in Quareshi-I.

⁹ [1954] S.C.R.1055

¹⁰ [1952] S.C.R.597

¹¹ (1960) 2 SCR 375

¹² (1961) 2 SCR 610

¹³ (1969) 1 SCC 853

At para 9 of Mohammed Faruk supra, their Lordships also noticed the decision of the Court in Narendra Kumar & ors. Vs. The Union of India & ors.¹⁴, and upheld the view that the term "restriction" in Articles 19(5) and 19(6) of the Constitution includes cases of "prohibition" also.

Qureshi-III: In Haji Usmanbhai Hassanbhai Qureshi and Ors. v. State of Gujarat¹⁵, (hereinafter referred to as 'Qureshi-III') constitutional validity of the Bombay Act, as amended by Gujarat Act, 16 of 1961, banning and prohibiting slaughter of bulls and bullocks below the age of 16 years was upheld, negating the contentions that total ban offended their religion as qurbani (sacrifice) at the time of Bakri'd or Id festival as enjoined and sanctioned by Islam and also as unreasonable of such a restriction on their right to carry on the trade or business in beef and allied articles.

In State of West Bengal & ors v. Ashutosh Lahiri & ors¹⁶, the State legislation was originally made with a total ban on the slaughter of healthy cows and other animals under Section 2 of the Act, however the State later brought an amendment permitting slaughter of cows on the occasion of Bakri'd as an exemption in that regard, that was impugned and also the power of State to grant such an exemption. The High Court allowed the writ petition and struck down the power of the State Government to grant such an exemption. The State of West Bengal appealed. On a review of earlier decisions of the Apex Court, the three-Judge Bench, in

¹⁴ (1960) 2 SCR 375

¹⁵ (1986) 3 SCC 12

¹⁶ (1995) 1 SCC 189

Ashutosh Lahiri supra, concluded that it was a settled legal position that there was no fundamental right of Muslims to insist on slaughter of healthy cows on the occasion of Bakri'd. The contention that not only an essential religious practice under Article 25(1) of Constitution, but even optional religious practice could be permitted, was discarded.

The Court held "We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on Bakri'd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merit on Bakri'd."

In Hashmattullah v. State of M.P. & ors.¹⁷, vires of M.P. Krishik Pashu Parirakshan (Sanshodhan) Adhiniyam, 1991 imposing a total ban on the slaughter of bulls and bullocks in the State of Madhya Pradesh when challenged, the challenge was negated by upholding the validity of the total ban.

Qureshi-IV: Later in State of Gujarat vs Mirzapur Moti Kureshi Kassab¹⁸, the 7 Judges Constitution Bench of the Supreme Court was to sit against correctness of the above 5 Judges bench expression in Qureshi-I, besides other later expressions supra and finally upheld the expression in Qureshi-I supra.

It was held that it is permissible to place a total ban, though it is amounting to prohibition

¹⁷ (1996) 4 SCC 391

¹⁸ Appeal (civil) 4937-4940 of 1998-dt.26/10/2005

on any profession, occupation, trade or business as satisfying the test of being reasonable restriction in the interest of the general public, apart from the banning slaughter of cow progeny is not a prohibition but only a restriction.

The expression referred even past history from Vedic and later Moghal era where even the ban prevails. The relevant out of it are:

In the times of the Rig-Veda only barren cows, if at all, were killed for sacrifice or meat. -- -- It would appear that the protest rose against the slaughter of cows greatly increased in volume till the custom was totally abolished in a later age.

The change of climate perhaps also make the use of beef as food unnecessary and even injurious to health.

Gradually cows became indicative of the wealth of the owner.

The Neolithic Aryans not having been acquainted with metals, there were no coins in current use in the earlier stages of their civilization, but as they were eminently a pastoral people almost every family possessed a sufficient number of cattle and some of them exchanged them for the necessaries of their life.

The value of cattle (Pasu) was, therefore, very great with the early Rig-Vedic Aryans.

The ancient Romans also used the word pecus or pecu (pasu) in the sense of wealth or money.

The English words, "*pecuniary*" and "*impecunious*", are derived from the Latin root *pecus* or *pecu*, originally meaning cattle.

The possession of cattle in those days denoted wealth and a man was considered rich or poor according to the large or small number of cattle that he owned.

In the Ramayana king Janaka's wealth was described by reference to the large number of herds that he owned. It appears that the cow was gradually raised to the status of divinity.

Kautilya's Arthashastra has a special chapter (Ch.XXIX) dealing with the "superintendent of cows" and the duties of the owner of cows are also referred to in Ch.XI of Hindu Law in its sources by Ganga Nath Jha.

There can be no gainsaying the fact that the Hindus in general hold the cow in great reverence and the idea of the slaughter of cows for food is repugnant to their notions and this sentiment has in the past even led to communal riots.

It is also a fact that after the recent partition of the country this agitation against the slaughter of cows has been further intensified.

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."

Therefore it cannot be said that the Judges were not conscious about the usefulness and the sanctity with which the entire cow and its progeny has been held in our country.

Though **Article 48(A)** & **51(A)** were not there, but their Lordships were indirectly conscious of the implication. Articles 48(A) & 51(A) do not substantially change the ground realities which can persuade to change the views which have been held from 1958 to 1996.

Reference was also made that for protection of top soil, the cow dung will be useful in saying: No doubt the utility of the cow dung for protection of the top soil is necessary but one has to be pragmatic in its approach that whether the small yield of the cow dung and urine from aged bulls and bullocks can substantially change the top soil.

Tvam mata sarva devanam - means you are mother of all demigods as well. *Cow is mother of all 33 crore demigods as well. Cow nourishes all in this universe and that's why she is called mother. She is the mother of all demigods, sages, humans and all living entities on the ...*

The cow was elevated to divinity in the Rig Veda. In Book VI, Hymn XXVIII attributed to Rishi Bhardwaja extols the virtue of the cow.

In Atharva Veda (Book X, Hymn X), the cow is formally designated as Vishnu, and 'all that the Sun surveys'.

Indian society has addressed the cow as gow mata.

The Churning of the Sea episode brings to light the story of the creation of the cow.

Five divine Kamadhenus (wish cows), viz, Nanda, Subhadra, Surabhi, Sushila, Bahula emerged in the churning.

Lord Krishna states in Srimad Bhagavad-Gita: chapter 10, verse 28 - *dhenunam asmi kamadhuk=dhenunam-among cows, asmi-I am, kamadhuk-the wish fulfilling cow= Among cows I am the wish fulfilling cow.*

In this verse Lord Krishna reveals that among cows he is manifested as the *kamadhuk* meaning kamadhenu the original wish fulfilling cows known as the *surabhi cows*. Just who and what are the *surabhi cows* and how the *surabhi cows* attained such an elevated and exalted position that they are able to represent a portion of the energy of the supreme Lord Krishna will be revealed in the following information given in the *Anusasana Parva of the Mahabharata by Krishna Dvaipayana Vyasa.*

The *surabhi cow* descended from the spiritual worlds and manifested herself in the heavenly spheres from the aroma of celestial nectar for the benefit of all created beings.

The direct descendants of the *surabhi cows* are the sacred cows from the continent India which are uniquely distinguished the same as the *surabhi* by the beautiful hump on their backs and the wonderfully soft folds of skin under their necks. Since all cows in existence in the world today are factual descendants of the sacred cows

of India they are all holy as well and should always be lovingly cared for and protected with the highest esteem and greatest respect.

One should never cause harm to cows in any way even in a dream and one should never even think of eating the flesh of cows as there is no action more sinful in all of creation than cow killing.

Cows are the mothers of all creatures. Cows are verily the mothers of the 33 crores of demigods that administrate creation in the material existence throughout all the universes. Cows are the goddesses of the gods and the refuge of all auspiciousness. Cows bestow every kind of happiness and for these reason they always are worshippable.

Cows are the support of all the worlds for by their milk they nourish terrestrials beings and by their ghee offered in sacrifice they nourish the denizens of the celestial realms. Nothing superior to cows.

A cow should not be owned by one who is a killer of cows or a seller to killers of cows, by one who is unrighteous, by one who is sinful, by one who is untruthful in speech, and by one who is outside of the Vedic culture nor should cows ever be given to one such as these. Gifts of cows should be made after ascertaining and determining the qualification of the receiver. Cows should never be given unto those whose residence they are likely to suffer from fire or sun. Cows should always be given away

accompanied by their calves. Those cows who have been rescued from situations of distress or have been received from humble farmers unable to continue to take care of them properly are considered to be most auspicious.

One should never show disrespect for cows in any way nor should one feel any repugnance towards the urine and dung of a cow because these things are also pure. When cows are grazing or laying down relaxing one should never disturb or annoy them in any way.

Cows should never be killed in any type of sacrifice or slaughtered in any way for food as the killing of cows constitutes the most heinous of all sins in existence.

Cows are the foremost of all creatures in all the worlds. It is from cows that the means for sustaining the worlds has established. Cows are auspicious and sacred and the bequeathers of every blessing.

Cows benefit humans with milk, yogurt, cheese, butter and ghee. The Vedas have stated that the milk of a cow is equivalent to ambrosial nectar and that ghee derived from cows milk is the best of all libations poured onto the sacred fires.

Cows of various kinds and diverse colours are always worshippable. They are the foremost of all creatures existing in all of creation. Morning and evening one should bow ones head in reverence to cows. One should never show any disregard to cows in any way but should

always show them respect. When one awakes in the morning one should always remember cows. Before falling to sleep at night one should always remember cows. Cows are always auspicious. Cows are also fragrant. The wonderful scent of the *amytis agallochum* emanates from out of their sacred bodies.

Cows are the great refuge of all creatures. Cows constitute the greatest source of blessings for all creatures. Cows are the past. Cows are the future. Cows are the source of evolution and eternal growth. Cows are the root of prosperity.

Whatever is given to cows always produces good fortune and is never in vain. It is solely and exclusively from the ghee of cows that the sacred rituals prescribed and authorised in the Vedas are empowered and able to be performed. Without the presence of cows ghee there is no possibility of performing sacred rituals that will gratify the 33 million demigods who are responsible for universal management. Neither will the Supreme Personality of Godhead, Lord Krishna be pleased and satisfied. Ghee comes exclusively only from cows from whom flow offerings of milk and milk products. Thus cows verily establish the purity of all sacred rituals and constitute the very essence of performing all sacred activities being the very source of sacred activities.

Cows represent sacred acts themselves and without cows there can be no performance of any sacred act. This is the pure, sublime and

supremely exalted position and pre-eminence of cows above all creatures in all the worlds. One who knows the pre-eminence of cows and the selfless service cows render to all creatures and does not protect them affectionately is a sinner and offender and their destination is certainly hell.

Cows are equal to the rays of the sun that travel through the universe giving light, warmth and nourishment.

In the *Brahma-Vaivarta Purana* where it is stated that in the present age of *kali yuga* it is forbidden to kill cows under any circumstances.

Cows are equivalent to our mothers for when the mothers milk has dried up the cow gives her milk unselfishly to nourish and strengthen us. How can one who has ever drunk cows milk justify the killing and eating of such a mother as the sacred cow. One should never even in one's mind do injury to a cow or ever think of harming cows as well as bulls. One should show all respect and compassion for cows and sincere reverence should be offered unto them all without reservation.

In Sri Caitanya Caritamrita adi lila, chapter 17 verse 166 Caitanya Mahaprabhu confirms: *go-ange yata loma tata sahasra vatsara; go-vadhi raurava-madhye pace nirantar-* i.e. *Cow killers and cow eaters are condemned to rot in hell for as many thousands of years as there are for each hair on the body of every cow they eat from.*

In comparison to the contrary, sanctified living beings with purified souls that make gifts of cows to worthy twice born in the three higher ashrams established in the Vedas attain celestial realms for as many years as there are hairs upon the body of the cows given away in charity. There is no gift higher in merit than the gift of cows to a Vaisnava or duly initiated brahmana of the Vedic culture in one of the four authorised sampradayas.

Cows constitute the highest good. Cows are the root of great blessing for all living beings. Cows are the source of eternal growth. Evolution itself depends upon cows.

The mantras used for Vedic rituals such as *Swaha* and *Vashat* without which no Vedic rites are complete are eternally established in cows. Cows verily are the fruit of all Vedic rituals because all Vedic rituals are dependent upon the ghee from cows for the performance of sacred rituals which benefit all of creation.

Thus the protection of cows is the greatest dharma or eternal duty for all living beings.

There is no wealth that is equal to cows. To talk about cows, to hear others speak about cows, to offer gifts of cows to worthy people and to see cows are all auspicious activities. There is never any inauspiciousness in cows. **On Earth cows represent high energy and are endowed with the elements of strength and energetic exertion. There are also elements of great wisdom in cows**

and they are bestowers of great happiness upon all creatures. The country or nation where cows are protected and live without fear of slaughter becomes exalted and the sins of that country are evaporated. Cows constitute the stairs that lead to heaven. Cows are adored in heaven. Cows are goddesses competent to grant every righteous wish and desire. Verily there is nothing in the worlds more elevated or superior to cows.

Cows are superior to all yogis and ascetics and because of this liberated divine being perform their austerities in the company and presence of cows. Cows do not feel cold or heat nor can rain afflict. Cows are never to be sacrificed they are to be given as gifts to worthy. It is ordained in the eternal Vedas that ghee from the cow is the best of all ingredients offered as libations into the sacrificial fire. For this reason one who makes a gift of a cow to worthy, who will then use the ghee from this cow to perform Vedic ceremonies, that fortunate gifter is regarded as making a gift of a libation for sacrifice.

A bovine bull is considered to be the embodiment of heaven. One who offers a bovine bull to an accomplished has factually reserved themselves a place in heaven. Cows that have been rescued and protected and cared for in distress give even more merit as well as cows received from persons in distress due to an inability to properly take care of their cows.

A cow must never be given to a tiller of soil.
Only a bovine bull may be given to a tiller of soil
 but never a cow.

Neither a cow or a bull should ever be given
 unto one who will kill them.

The Vedas have stated that one who gives
 away cows or bulls to such sinful persons suffers
 interminably in a hellish condition.

Cows are the source of that immortality which Vedic sacrifices prescribe. They have within them the nature of both the sun and the moon. Cows verily constitute and determine the eternal destiny of creation. Cows are the life breath of all living creatures therefore one who makes a gift of a cow is said to be making a gift of life breath to all living creatures. Cows are also constituted as the great refuge of all living creatures thus one who makes a gift of a cow is said to be making a gift of that which is the great refuge of all living creatures.

When the surabhi cows first manifested from the aroma of ambrosial nectar they performed severe penance for 100,000 years for the purpose of acquiring the spiritual merit to be the foremost of all things needed for the performance of Vedic rituals and ceremonies; thus only from cow milk exclusively is sanctified ghee produced for the performance of Vedic rituals. Whatever is produced from any and all other types of milk is not authorised by Vedic scriptures and thus not being sanctioned by the

Vedas can never be used in any Vedic rituals or ceremonies.

At the conclusion of the *surabhi cows* austerities Brahma himself appeared before them and granted their wishes blessing them with the benediction that cows would eternally be the sustainers of all creatures. This is why cows are sacred and most holy and the foremost of all creatures in creation and verily the refuge of all the worlds.

The cow is extremely important regarding the destiny of the total human species in all the worlds and creation itself that her value is impossible to overestimate.

The name for cow in the Vedas is known as *aghyna* which means inviolable. Another name is *ahi* which means not to be killed and another is *aditi* which means never to be cut into pieces.

Some scholars and indologists in India as well as from western countries without having ever experienced the Vedic culture as a way of life have speculated that cows and other animals were sacrificed in Vedic ceremonies. They take unorthodox interpretations of obscure verses in the Vedas, out of context to postulate this point of view. Two examples of this we are giving as follows.

First in the **Satapatha Brahmana**, 3.1.2.21 there is a gross interpolation from western scholars echoed by indologists around the world that the great sage Yajnavalkya would eat the tender meat of cows and bulls. The word *dhenu* which they translated as cow factually refers to the milk products of the cow only

and not the cow herself and the sanskrit word *anaduh* factually refers to the grains produced by the bull from ploughing the fields. What exactly Yajnavalkya has stated in this verse is that he can eat what is *amsala*. The interpolators, some being ignorant and some not so ignorant of the rules of Panini have translated *amsala* as being tender flesh. Panini is the authority on all matters concerning the rules of Sanskrit grammar and according to sutra 5.2.8 of Panini the word *amsala* can only mean nourishing and strength bestowing. Also in the Amarakosa 2.6.44 it states that *amsala* is *mamsala* which never applies to flesh tender or otherwise. *Mamsala* specifically applies to cream and sweets made from milk products as well as fresh and dried fruits. So there is no basis according to sastra for translating *amsala* as flesh.

Secondly some scholars with an extremely limited fund of knowledge want to postulate that meat was an essential ingredient of *madhuparka* because of one verse in the Rig Veda VI.44.21 which equates Indra as having the strength of a bull and also mentions the sweet drink *madhupeya*. So they then interpolated the translation to say that bull meat was a part of *madhuparka*. In this way due to their academic status they are able to mislead the public. The root word *madhu* means sweet and is sometimes even referred to honey. In the Monier-Williams Sanskrit-English Dictionary page 780 the meaning of *madhuparka* is offerings of honey and milk also sometimes containing equal parts of curds and ghee to a respected guest. No where in the Vedas can be found any reference to meat being an ingredient of *madhuparka*.

So other examples like the previous two interpolators have found useful for their obscure translations; but the clear, direct, unequivocal statements found throughout the Vedas against cow killing they ignore. We will give a few relevant examples now.

In the Atharva Veda VIII.6.23 we find: Those who eat cooked or uncooked flesh, who eat eggs and embryos are following an evil addiction that must be put to an end.

In the Atharva Veda, cow is described as the mother of Adityas, daughter of Vasus, and the very soul of the people. She is the belly button of Amrut, and the Madhukasha that produces Havisya replete with golden colored ghee. A Yajna is performed with the sacrifice of the cow and it produces clouds and rains which produce grains which living beings live on.

There is a description of cow in a Mantra in the Rig-Veda, which says that a tame, innocent cow should not be killed, she is the mother of the Rudras, daughter of Vasus, and the sister of the Adityas. She is the belly button of Amrut, and the center of immortality.

The Yajur-Veda considers a cow as incomparable, meaning that she has unlimited qualities and virtues. Cow is considered to be the mother of all. There is no concept of eating a cow's meat in the Vedas.

In the Mahabharata, Anusasana-parva, 115.43 -116.45 we find: That wretch among men who pretending to follow the path of righteousness prescribed in the Vedas, would kill living creatures

from greed of flesh would certainly go to hellish regions.

In the Manu-samhita, chapter 4, verse 162 we find: A guru, a teacher, a father, a mother, a brahmana, a cow and a yogi all should never be killed.

In the Mahabharata, Anusasana-parva, 114.6, 115.6 it states: As the footprints of all moving, living beings are engulfed in those of the elephant, even thus all religions are to be understood by *ahimsa* which is non-violence to any living being by thought, words or actions.

So from these examples it can be clearly understood that cow killing and cow eating were definitely not sanctioned by the Vedic scriptures to the contrary they were condemned; and also according to the authority of the Bible cow killing is not sanctioned in the Christian religion either.

Even in the Testament of the Bible which applies to both Christians and Jews in Issaih, chapter 66 verse 3 we find: He that killeth an ox is as if he slew a man. He that sacrifices a lamb is as if he slit a dogs neck, he that offereth it as an oblation is as if he offered swines blood, he that burneth it as incense as if he blessed an idol. Yea they have chosen their way and their soul delighteth in their abominations.

It is in fact part of the known history of India that the Moghul Emperor Babar saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this example.

Similarly Emperors Akbar, Jehangir, and Ahmad Shah, it is said, prohibited cow slaughter.

During the First War of Independence in 1857, when Bahadur Shah `Zafar' was installed as emperor by the Hindus in Delhi for a brief period, his Hindu prime minister, on the emperor's proclamation, made cow killing a capital offence. In Maharaja Ranjit Singh's kingdom, the only crime that invited capital punishment was cow slaughter. Nawab Hyder Ali of Mysore made cow slaughter an offence punishable with the cutting of the hands of the offenders.

Three of the member of the Gosamvardhan Enquiry Committee set up by the Uttar Pradesh Government in 1953 were Muslims and concurred in the unanimous recommendation for total ban on slaughter of cows.

In fact, the Holy Koran says that eating cow meat brings many kinds of illnesses and diseases.

In the recent past, in the year 2000, the publication Scientific America reported a complete Cow Human Genome comparison had been completed. Among the 768 genes on the cattle RH map, 687 genes or 89.5% had putative human orthologs. Among the 687 mapped genes, 548 genes had human GB4 RH mapping information. 22 were mapped exclusively on the G3 panel and 68 had human cytogenetic assignments exclusively.

All cow chromosomes with the possible exception of BTA9 and BTA23 have centromere repositioning relative to human chromosomes.

Four cattle chromosomes show complete conservation of synteny with their human homologs. The four are: BTA12 and HSA13, BTA19 and HSA17, BTA24 and HSA18, BTAX and HSAX . For all of these chromosomes multiple rearrangements were observed. BTA3 was the only cow chromosome that showed no internal rearrangments when compared with the homologous segment on HSA1. Fifteen cattle chromosomes are seen to be comprised of genes found on only one human chromosome.

Cow milk is the most compatible with human mothers milk then any other species in existence. This is because the DNA of the cow was specifically constructed to be harmonious with mammalian human DNA. So it can be clearly understood that cow DNA was designed so humans could benefit from cows products being milk, cheese, butter, cream and yoghurt.

We will end our treatise now as we do not want this discourse to be too voluminous.

This knowledge is highly esoteric and confidential and incomprehensible to those outside the purview of the Vedic culture. It can only be known by that segment of society that is spiritually developed enough to completely abstain from all animal killing and flesh eating while understanding that the soul is eternal and exists in all living beings.

Swami Dayananda Saraswati, convenor of the Hindu Dharma Acharya Sabha, has argued that non-vegetarianism indirectly contributes heavily to greenhouse gases and other pollution.

He quotes a UN report from 2006 that says, "Raising animals for meat as food generates more greenhouse gases than all the cars and trucks in the world combined". Ten of billions of animals farmed for food release gases such as methane, nitrous oxide and carbon dioxide through their massive amounts of manure. "The released methane", the report says, "has 23 times the global warming potential of CO2". For these animals to graze, virgin forests are cleared. The livestock industry also needs vast stretches of land to raise mono-crops to feed the animals. The CO2 that the trees and plants store escapes into the air when they are destroyed.

Those who fail to give cows reverence and protection and choose to foolishly oppose and whimsically ignore the injunctions of the Vedic scriptures by selling a cow for slaughter, by killing a cow, by eating cows flesh and by permitting the slaughter of cows will all rot in the darkest regions of hell for as many thousands of years as there are hairs on the body of each cow slain. There is no atonement for the killing of a cow.

The Constitution Bench in Qureshi-IV, observed referring to **Ashutosh Lahiri & ors.** supra that it was a settled legal position that there was no fundamental right of Muslims to insist on slaughter of healthy cows on the occasion of Bakri'd. The contention that not only an essential religious practice under Article 25(1) of Constitution, but even optional religious practice could be permitted, was discarded. The Court held "We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on Bakri'd is not essential or required for religious

purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merit on Bakri'd."

In Qureshi-IV supra, the Constitution Bench in revisiting the earlier expression in Qureshi-I answered the six questions arisen for consideration as follows:

Question-1.Fundamental Rights & Directive Principles: "It was the Sapru Committee (1945) which initially suggested two categories of rights: one justiciable and the other in the form of directives to the State which should be regarded as fundamental in the governance of the country. Those directives are not merely pious declarations. It was the intention of the framers of the Constitution that in future both the Legislature and the Executive should not merely pay lip service to these principles but they should be made the basis of all legislative and executive actions that the future Government may be taking in matter of governance of the country. (Constituent Assembly Debates, Vol.7, at page 41)" (See: The Constitution of India, D.J. De, Second Edition, 2005, p.1367).

If we were to trace the history of conflict and irreconcilability between Fundamental Rights and Directive Principles, we will find that the development of law has passed through three distinct stages.

To begin with, Article 37 was given a literal meaning holding the provisions contained in Part IV of the Constitution to be unenforceable by any Court.

In The State of Madras v. Srimathi Champakam Dorairajan¹⁹, it was held that the Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. The view was reiterated in **Deep Chand & Anr. v. The State of Uttar Pradesh & ors.**²⁰. The Court went on to hold that disobedience to Directive Principles cannot affect the legislative power of the State. So was the view taken **in Re: The Kerala Education Bill, 1957**²¹. **With L.C. Golak Nath & ors. v. State of Punjab & Anr.**²², the Supreme Court departed from the rigid rule of subordinating Directive

¹⁹ 1951 SCR 525

²⁰ 1959 Supp. (2) SCR 8

²¹ 1959 SCR 995

²² (1967) 2 SCR 762

Principles and entered the era of harmonious construction. The need for avoiding a conflict between Fundamental Rights and Directive Principles was emphasized, appealing to the legislature and the courts to strike a balance between the two as far as possible. Having noticed **Champakam** (supra) even the Constitution Bench in Quareshi-I chose to make a head way and held that the Directive Principles nevertheless are fundamental in the governance of the country and it is the duty of the State to give effect to them. **"A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of Part III will be a 'mere rope of sand'."**

Thus, Quareshi-I did take note of the status of Directive Principles having been elevated from 'sub-ordinate' or 'sub-servient' to 'partner' of Fundamental Rights in guiding the nation.

His Holiness Kesavananda Bharati Sripadagalvaru & Anr. v. State of Kerala & Anr.²³, a thirteen-Judge Bench decision of this Court is a turning point in the history of Directive Principles Jurisprudence. **This decision clearly mandated the need for bearing in mind the Directive Principles of State Policy while judging the reasonableness of the restriction imposed on Fundamental Rights.** Several opinions were recorded in Kesavananda Bharati and quoting from them would significantly increase the length of this judgment.

For our purpose, it would suffice to refer to the seven-Judge Bench decision in **Pathumma & ors. v. State of Kerala & ors.**²⁴, wherein the learned Judges neatly summed up the ratio of Kesavananda Bharati and other decisions which are relevant for our purpose.

Pathumma (supra) holds:-(1) Courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people, which the legislature, in its wisdom, through beneficial legislation, seeks to solve. **The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather**

²³ (1973) 4 SCC 225

²⁴ (1978) 2 SCC 1

than rigid. This Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental rights and the larger and broader interests of society so that when such a right clashes with a larger interest of the country it must yield to the latter.(Para 5) (2) The Legislature is in the best position to understand and appreciate the needs of the people as enjoined in the Constitution. 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. The courts have recognised that there is always a presumption in favour of the constitutionality of the statutes and the onus to prove its invalidity lies on the party which assails it. (Para 6) (3) The right conferred by Article 19(1)(f) is conditioned by the various factors mentioned in clause (5). (Para 8) (4) The following tests have been laid down as guidelines to indicate in what particular circumstances a restriction can be regarded as reasonable:

(a) In judging the reasonableness of the restriction the court has to bear in mind the Directive Principles of State Policy. (Para 8)

(b) The restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirements of the interests of the general public. The legislature must take intelligent care and deliberation in choosing the course which is dictated by reason and good conscience so as to strike a just balance between the freedom in the article and the social control permitted by the restrictions under the article. (Para 14)

(c) No abstract or general pattern or fixed principle can be laid down so as to be of universal application. It will have to vary from case to case and having regard to the changing conditions, the values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances all of which must enter into the judicial verdict. (Para 15)

(d) The Court is to examine the nature and extent, the purport and content of the right, the nature of the evil sought to be remedied by the statute, the ratio of harm caused to the citizen and the benefit conferred on the person or the community for whose benefit the legislation is passed. (Para 18)

(e) There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. (Para 20)

(f) The needs of the prevailing social values must be satisfied by the restrictions meant to protect social welfare. (Para 22)

(g) The restriction has to be viewed not only from the point of view of the citizen but the problem before the legislature and the object which is sought to be achieved by the statute. In other words, the Court must see whether the social control envisaged by Article 19 (1) is being effectuated by the restrictions imposed on the fundamental right. However important the right of a citizen or an individual may be it has to yield to the larger interests of the country or the community. (Para 24)

(h) The Court is entitled to take into consideration matters of common report history of the times and matters of common knowledge and the circumstances existing at the time of the legislation for this purpose. (Para 25)"(underlining by us)

In **State of Kerala v. N.M. Thomas**²⁵, also a seven-Judge Bench of this Court culled out and summarized the ratio of this Court in Kesavananda Bharati. Fazal Ali, J extracted and set out the relevant extract from the opinion of several Judges in Kesavananda Bharati and then opined:

"In view of the principles adumbrated by this Court 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. The directives thus provide the policy, the guidelines and the end of socio-economic freedom and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the directive principles. So far as the courts are concerned where there is no apparent inconsistency between the directive principles contained in Part IV and the fundamental rights mentioned in Part III, which in fact supplement each other, there is no difficulty in putting a harmonious construction which advances the object of the Constitution. Once this basic fact is kept in mind, the interpretation of Articles 14 and 16 and their scope and ambit become as clear as day."

The message of Kesavananda Bharati is clear. 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. For judging the reasonability of restrictions imposed on Fundamental Rights the relevant considerations are not only those as stated in Article 19 itself or in Part-III of the Constitution; the Directive Principles stated in Part-IV

²⁵ (1976) 2 SCC 310

are also relevant. Changing factual conditions and State policy, including the one reflected in the impugned enactment, have to be considered and given weightage to by the courts while deciding the constitutional validity of legislative enactments.

A restriction placed on any Fundamental Right, aimed at securing Directive Principles will be held as reasonable and hence intra vires subject to two limitations: first, that it does not run in clear conflict with the fundamental right, and secondly, that it has been enacted within the legislative competence of the enacting legislature under Part XI Chapter I of the Constitution.

In Municipal Corporation of the City of Ahmedabad v. Jan Mohammed Usmanbhai²⁶, what was impugned before the High Court was a standing order issued by the Municipal Commissioner of the State of Ahmedabad, increasing the number of days on which slaughter houses should be kept closed to seven, in supersession of the earlier standing order which directed the closure for only four days. The writ petitioner, a beef dealer, challenged the constitutional validity of the impugned standing orders (both, the earlier and the subsequent one) as violative of Articles 14 and 19(1)(g) of the Constitution. The challenge based on Articles 14 of the Constitution was turned down both by the High Court and the Supreme Court. However, the High Court had struck down the seven days closure as not "in the interests of the general public" and hence not protected by Clause (6) of Article 19 of the Constitution. In appeal preferred by the Municipal Corporation, the Constitution Bench reversed the Judgment of the High Court and held that the objects sought to be achieved by the impugned standing orders were the preservation, protection and improvement of live-stock, which is one of the Directive Principles. Cows, bulls, bullocks and calves of cows are no doubt the most important cattle for our agricultural economy. They form a separate class and are entitled to be treated differently from other animals such as goats and sheep, which are slaughtered. The Constitution Bench ruled that the expression "in the interests of general public" is of a wide import covering public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.

In **Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.**²⁷, the Constitution Bench clearly ruled (vide para 27) "Ordinarily any restriction

²⁶ (1986) 3 SCC 20

²⁷ (1992) 3 SCC 336

so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest."

Similar view is taken in **Papnasam Labour Union v. Madura Coats Ltd.**²⁸.

In respect of Directive Principles Long back in **The State of Bombay v. F.N. Balsara**²⁹, a Constitution Bench had ruled that in judging the reasonableness of the restrictions imposed on the Fundamental Rights, one has to bear in mind the Directive Principles of State Policy set-forth in Part IV of the Constitution, while examining the challenge to the constitutional validity of law by reference to Article 19(1)(g) of the Constitution.

In a comparatively recent decision of this Court in M.R.F. Ltd. v. Inspector, Kerala Govt. and Ors., (1998) 8 SCC 227, this Court, on a conspectus of its various prior decisions summed up principles as 'clearly discernible', out of which three that are relevant for our purpose, are extracted and reproduced in its para-13 hereunder:

"(1) While considering the reasonableness of the restrictions, the court has to keep in mind the Directive Principles of State Policy.

xxx xxx xxx xxx

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

xxx xxx xxx xxx

(6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise. (See: Kavalappara Kottarathil Kochuni Vs. State of Madras and Kerala, (1960) 3 SCR 887 & O.K. Ghosh Vs. E.X. Joseph, 1963 Supp. (1) SCR 789)"

Very recently in Indian Handicrafts Emporium and Ors. v. Union of India and Ors., (2003) 7 SCC 589, this Court while dealing with the case of a total prohibition reiterated that 'regulation' includes 'prohibition' and in order to determine whether total

²⁸ (1995) 1 SCC 501

²⁹ (1951) SCR 682

prohibition would be reasonable, the Court has to balance the direct impact on the fundamental right of the citizens as against the greater public or social interest sought to be ensured. Implementation of the Directive Principles contained in Part IV is within the expression of 'restriction in the interests of the general public'.

Post Kesavananda Bharati so far as the determination of the position of Directive Principles, vis-a-vis Fundamental Rights are concerned, it has been an era of positivism and creativity. Article 37 of the Constitution which while declaring the Directive Principles to be unenforceable by any Court goes on to say "that they are nevertheless fundamental in the governance of the country." Several clauses of Article 37 themselves need to be harmoniously construed assigning equal weightage to all of them. The end part of Article 37 "It shall be the duty of the State to apply these principles in making laws" is not a pariah but a constitutional mandate. The series of decisions which we have referred to hereinabove and the series of decisions which formulate the 3-stages of development of the relationship between Directive Principles and Fundamental Rights undoubtedly hold that, while interpreting the interplay of rights and restrictions, Part-III (Fundamental Rights) and Part-IV (Directive Principles) have to be read together. The restriction 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 chapter on Directive Principles of State Policy can also be pressed into service and relied on for the purpose of adjudging the reasonability of restrictions placed on the Fundamental Rights.

Question 2: Fundamental Rights and Articles 48, 48-A and 51-A (g) of Constitution Articles 48, 48-A and 51-A(g) (relevant clause) of the Constitution read as under :-

48. Organisation of agriculture and animal husbandry. 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.

48-A. Protection and improvement of environment and safeguarding of forests and wild life. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51-A. Fundamental duties: It shall be the duty of every citizen of India

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

Articles 48-A and 51-A have been introduced into the body of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3.1.1977. These Articles were not a part of the Constitution, when Quareshi-I, Quraishi-II and Mohd. Faruk's cases were decided by this Court.

Further, Article 48 of the Constitution has also been assigned a higher weightage and wider expanse by the Supreme Court post Quareshi-I. Article 48 consists of two parts. The first part enjoins the State to "endeavour to organize agricultural and animal husbandry" and that too "on modern and scientific lines". The emphasis is not only on 'organization' but also on 'modern and scientific lines'. The subject is 'agricultural and animal husbandry'. India is an agriculture based economy.

According to 2001 census, 72.2% of the population still lives in villages (See- India Vision 2020, p.99) and survives for its livelihood on agriculture, animal husbandry and related occupations. The second part of Article 48 enjoins the State, de hors the generality of the mandate contained in its first part, to take steps, in particular, "for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle".

Article 48-A deals with "environment, forests and wild life". These three subjects have been dealt with in one Article for the simple reason that the three are inter-related. Protection and improvement of environment is necessary for safeguarding forests and wild life, which in turn protects and improves the environment. Forests and wild life are clearly inter-related and inter-dependent. They protect each other.

Cow progeny excreta is scientifically recognized as a source of rich organic manure. It enables the farmers avoiding the use of chemicals and inorganic manure. This helps in improving the quality of earth and the environment. The impugned enactment enables the State in its endeavour to protect and improve the environment within the meaning of Article 48-A of the Constitution.

By enacting clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the

Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as 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 **AIIMS Students' Union v. AIIMS**³⁰, a three-Judge Bench of this Court made it clear that fundamental duties, though not enforceable by writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51-A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The Court further held that the State is, in a sense, 'all the citizens placed together' and, therefore, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is, collectively speaking, the duty of the State.

In **Mohan Kumar Singhania v. Union of India**³¹, a governmental decision to give utmost importance to the training programme of the Indian Administrative Service selectees was upheld by deriving support from Article 51-A(j) of the Constitution, holding that the governmental decision was in consonance with one of the fundamental duties.

In **State of U.P. v. Yamuna Shanker Misra**³², this Court interpreted the object of writing the confidential reports and making entries in the character rolls by deriving support from Article 51-A(j) which enjoins upon every citizen the primary duty to constantly endeavour to strive towards excellence, individually and collectively.

In **Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh**³³, a complete ban and closing of mining operations carried on in the Mussoorie hills was held to be sustainable by deriving support from

³⁰ (2002) 1 SCC 428

³¹ (1992) Supp (1) SCC 594

³² (1997) 4 SCC 7

³³ 1986 (Supp) SCC 517

the fundamental duty as enshrined in Article 51-A(g) of the Constitution. The Court held that preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation of the State as well as of the individuals.

In **T.N. Godavarman Thirumalpad v. Union of India**³⁴, a three-Judge Bench of this Court read Article 48-A and Article 51-A together as laying down the foundation for a jurisprudence of environmental protection 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".

In **State of West Bengal v. Sujit Kumar Rana**³⁵, Articles 48 and 51-A(g) of the Constitution were read together and this Court expressed that these provisions have to be kept in mind while interpreting statutory provisions.

It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51-A of the Constitution play a significant role. The decision in Quareshi-I in which the relevant provisions of the three impugned legislations was struck down on the singular ground of lack of reasonability, would have decided otherwise if only Article 48 was assigned its full and correct meaning and due weightage was given thereto and Articles 48-A and 51-A(g) were available in the body of the Constitution.

Question 3: Milch and draught cattle, meaning of, in Article 48 Article 48 employs the expression 'cows and calves and other milch and draught cattle'. What meaning is to be assigned to the expression '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?

³⁴ (2002) 10 SCC 606

³⁵ (2004) 4 SCC 129

According to their inherent genetic qualities, cattle breeds are broadly divided into 3 categories (i) Milch breed (ii) Draught breed, and (iii) Dual purpose breed. Milch breeds include all cattle breeds which have an inherent potential for milk production whereas draught breeds have an inherent potential for draught purposes like pulling, traction of loads etc. The dual purpose breeds have the potential to perform both the above functions.

The term draught cattle indicates "the act of moving loads by drawing or pulling i.e. pull and traction etc. Chambers 20th Century Dictionary defines 'draught animal' as 'one used for drawing heavy loads'.

Cows are milch cattle. Calves become draught or milch cattle on attaining a particular age. Having specifically spoken of cows and calves, the latter being a cow progeny, the framers of the Constitution chose not to catalogue the list of other milch and draught cattle and felt satisfied by employing a general expression "other milch and draught cattle" which in their opinion any reader of the Constitution would understand in the context of the previous words "cows and calves".

"Milch and draught", the two words have been used as adjectives describing and determining the quality of the noun 'cattle'. The function of a descriptive or qualitative adjective is to describe the shape, colour, size, nature or merits or demerits of the noun which they precede and qualify. In a document like the Constitution, such an adjective cannot be said to have been employed by the framers of the Constitution for the purpose of describing only a passing feature, characteristic or quality of the cattle. The object of using these two adjectives is to enable classification of the noun 'cattle' which follows. Had it been intended otherwise, the framers of the Constitution would have chosen a different expression or setting of words.

No doubt, cow ceases to be 'milch' after attaining a particular age. Yet, cow has been held to be entitled to protection against slaughter without 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'. Following the same construction of the expression, it can be said 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. Thus, 'milch and draught' used as adjectives simply

enable the classification or description of cattle by their quality, whether they belong to that species. This classification is with respect to the inherent qualities of the cattle to perform a particular type of function and is not dependant on their remaining functional for those purposes by virtue of the age of the animal. "Milch and draught cattle" is an expression employed in Article 48 of the Constitution so as to distinguish such cattle from other cattle which are neither milch nor draught.

Any other meaning assigned to this expression is likely to result in absurdity. 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.

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. Compassion, according to Oxford Advanced Learners' Dictionary means "a strong feeling of sympathy for those who are suffering and a desire to help them". According to Chambers 20th Century Dictionary, compassion is "fellow feeling, or sorrow for the sufferings of another : pity". Compassion is suggestive of sentiments, a soft feeling, emotions arising out of sympathy, pity and kindness. 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 Mahatama Gandhi, Vinobha, Mahaveer, Budha, 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 taking away the little time from its natural life that it would have lived, forgetting its service for the major part of its life, for which it had remained milch or draught. We

have to remember : the weak and meek need more of protection and compassion.

In our opinion, the expression 'milch or draught cattle' as employed in Article 48 of the Constitution is a description of a classification or species of cattle as distinct from cattle which by their nature are not milch or draught and the said words do not include milch or draught cattle, which on account of age or disability, cease to be functional for those purposes either temporarily or permanently. The said words take colour from the preceding words "cows or calves". A specie 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 cannot be pulled out from the category of "other milch and draught cattle."

Question 4: Statement of Objects and Reasons - Significance and Role thereof Reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs in relation to the statute, and the evil which the statute was sought to remedy. (See-Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edition, 2004, at p.218).

In **State of West Bengal v. Subodh Gopal Bose**³⁶, the **Constitution Bench** was testing the constitutional validity of the legislation impugned therein. The Statement of Objects and Reasons was used by S.R. Das, J. for ascertaining the conditions prevalent at that time which led to the introduction of the Bill and the extent and urgency of the evil which was sought to be remedied, in addition to testing the reasonableness of the restrictions imposed by the impugned provision. In his opinion, it was indeed very unfortunate that the Statement of Objects and Reasons was not placed before the High Court which would have assisted the High Court in arriving at the right conclusion as to the reasonableness of the restriction imposed.

State of West Bengal v. Union of India³⁷, 431-32 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.

In Quareshi-I itself, which has been very strongly relied upon by the learned counsel for the respondents before us, Chief Justice S.R. Das has held: -

"Pronouncements of this Court further establish, amongst other things, that there is always a

³⁶ 1954 SCR 587

³⁷ (1964) 1 SCR 371

presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, 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. It must be borne in mind that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. (Para 15).

The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence....". This should be the proper approach for the court but the ultimate responsibility for determining the validity of the law must rest with the court." (Para 21, also see the several decisions referred to therein).

The facts stated in the Preamble and the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the Fundamental Rights of the individuals. 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.

In Sardar Inder Singh v. The State of Rajasthan³⁸, a Constitution Bench was testing the validity of certain provisions of the Ordinance impugned before and it found it to be repugnant to Article 14 of the Constitution and hence void. At page 620, Venkatarama Aiyar, J. speaking for the Constitution Bench referred to the recitals contained in the Preamble to the Ordinance and the object sought to be achieved by the Ordinance as flowing therefrom

³⁸ 1957 SCR 605

and held "that is a matter exclusively for the legislature to determine, and the propriety of that determination is not open to question in courts. We should add that the petitioners sought to dispute the correctness of the recitals in the Preamble. This they cannot clearly do".

Question 5: Article 19(1)(g): 'Regulation' or 'Restriction' includes Total Prohibition: Partial Restraint is not Total Prohibition Respondents rely on Article 19(1)(g) which deals with the fundamental right to 'practise any profession or to carry on any occupation, trade or business'. This right is subject to Article 19(6) which permits reasonable restrictions to be imposed on it in the interests of the general public.

This raises the question of what is the meaning of the word 'restriction'. Three propositions are well settled: - (i) 'restriction' includes cases of 'prohibition'; (ii) 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 inadequate; and (iii) 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. Reference may be made to **Madhya Bharat Cotton Association Ltd. v. Union of India (UOI)**³⁹, **Krishna Kumar v. Municipal Committee of Bhatapara, (Petition No.660 of 1954 decided on 21st February 1957** by Constitution Bench) (See- Compilation of Supreme Court Judgments, 1957 Jan-May page 33, available in Supreme Court Judges Library), **Narendra Kumar and Ors. v. Union of India (UOI)**⁴⁰, **The State of Maharashtra v. Himmatbhai Narbheram Rao**⁴¹, **Sushila Saw Mill v. State of Orissa**⁴², **Pratap Pharma (Pvt.) Ltd. v. Union of India**⁴³ and **Dharam Dutt v. Union of India**⁴⁴.

In Madhya Bharat Cotton Association Ltd. (supra) a large section of traders were completely prohibited from carrying on their normal trade in forward 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.

³⁹ AIR 1954 SC 634

⁴⁰ (1960) 2 SCR 375

⁴¹ (1969) 2 SCR 392

⁴² (1995) 5 SCC 615

⁴³ (1997) 5 SCC 87

⁴⁴ (2004) 1 SCC 712

In *Himmatbhai Narbheram Rao and Ors.* (supra) trade in hides was completely prohibited and the owners of dead animals were required to compulsorily deposit carcasses in an appointed place without selling it. **The constitutionality of such prohibition, though depriving the owner of his property, was upheld.** The court also held that while striking a balance between rights of individuals and rights of citizenry as a whole the financial loss caused to individuals becomes insignificant if it serves the larger public interest.

In *Sushila Saw Mill* (supra), the impugned enactment imposed a total ban on saw mill business or sawing operations within reserved or protected forests. The ban was held to be justified as it was in public interest to which the individual interest must yield. Similar view is taken in the other cases referred to hereinabove.

In *Krishna Kumar* (supra), the Constitution Bench held that when the prohibition is only with respect to the exercise of the right referable only in a particular area of activity or relating to a particular matter, there was no total prohibition. In that case, the Constitution Bench was dealing with the case of Adatiyas operating in a market area. A certain field of activity was taken away from them, but they were yet allowed to function as Adatiyas. It was held that this amounts to a restriction on the exercise of writ petitioners' occupation as an Adatiya or a seller of grain but does not amount to a total ban.

In the present case, we find the issue relates to a total prohibition imposed on the slaughter of cow and her progeny. The ban is total with regard to the slaughter of one particular class of cattle. The ban is not on the total activity of butchers(kasais); they are left free to slaughter cattle other than those specified in the Act. It is not that the writ petitioner-respondents survive only by slaughtering cow progeny. They can slaughter animals other than cow progeny and carry on their business activity. In so far as trade in hides, skins and other allied things (which are derived from the body of dead animal) are concerned, it is not necessary that the animal must be slaughtered to avail these things. The animal, whose slaughter has been prohibited, would die a natural death even otherwise and in that case their hides, skins and other parts of body would be available for trade and industrial activity based thereon.

We hold that though it is permissible to place a total ban amounting to 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 slaughter of cow progeny is not a prohibition but only a restriction.**

Question 6: Slaughter of cow progeny, if in public interest: As we have already indicated, the opinion formed by the Constitution Bench of this Court in **Quareshi-I** is that the restriction amounting to total prohibition on slaughter of bulls and bullocks was unreasonable and was not in public interest. We, therefore, proceed to examine the evidence available on record which would enable us to answer questions with regard to the 'reasonability' of the imposed restriction qua 'public interest'.

The facts contained in the Preamble and the Statement of Objects and Reasons in the impugned enactment highlight the following facts: -

(i) it is established that cow and her progeny sustain the health of the nation;

(ii) the working bullocks are indispensable for our agriculture for they supply power more than any other animal (the activities for which the bullocks are usefully employed are also set out);

(iii) the dung of the animal is cheaper than the artificial manures and extremely useful of production of biogas;

(iv) it is established that the backbone of Indian agriculture is the cow and her progeny and they have on their back the whole structure of the Indian agriculture and its economic system;

(v) the economy of the State of Gujarat is still predominantly agricultural. **In the agricultural sector use of animals for milch, draught, breeding or agricultural purposes has great importance. Preservation and protection of agricultural animals like bulls and bullocks needs emphasis. With the growing adoption of non-conventional energy sources like biogas plants, even waste material have come to assume considerable value. After the cattle cease to breed or are too old to work, they still continue to give dung for fuel, manure and biogas and, therefore, they cannot be said to be useless.**

Apart from the fact that we have to assume the above stated facts as to be correct, there is also voluminous evidence available on record to support the above said facts. We proceed to notice few such documents.

Affidavits- Shri J.S. Parikh, Deputy Secretary, Agriculture Cooperative and Rural Development, Department, State of Gujarat, filed three affidavits in the High Court of Gujarat in Special Civil Application No. 9991 of 1993. The first affidavit was filed on 20th October, 1993, wherein the following facts are discernible and mentioned as under:

(i) With the improved scientific animal husbandry services in the State, the average longevity of animals has considerably increased. In the year 1960, there were only 456 veterinary dispensaries and first aid veterinary centers etc, whereas in the year 1993, there are 946 veterinary dispensaries and first aid veterinary centers etc. There were no mobile veterinary dispensaries in 1960 while there are 31 mobile veterinary dispensaries in the State in 1993. In addition, there are around 467 centres for intensive cattle development where besides first aid veterinary treatment, other animal husbandry inputs of breeding, food or development etc. are also provided. In the year 1960, five lakh cattles were vaccinated whereas in the year 1992-93 around 200 lakh animals are vaccinated to provide life saving protection against various fatal diseases. There were no cattle food compounding units preparing cattle food in the year 1960, while in the year 1993 there are ten cattle food factory producing 1545 MT of cattle food per day. As a result of improved animal husbandry services, highly contagious and fatal disease of Rinder Pest is controlled in the state and that the deadly disease has not appeared in the last three years.

(ii) Because of various scientific technologies namely, proper cattle feeding, better medical and animal husbandry services, the longevity of the cattle in the State has considerably increased.

(iii) The population of bullock is 27.59 lakhs. Over and above agricultural work, bullocks are useful for other purposes also. They produce dung which is the best organic measure and is cheaper than chemical manure. It is also useful for production of bio-gas.

(iv) It is estimated that daily production of manure by bullocks is about 27,300 tonnes and bio-gas production daily is about 13.60 cubic metres. It is also estimated that the production of bio-gas from bullock dung fulfil the daily requirement of 54.78 lakh persons of the State if whole dung production is utilized. At present, 1,91,467 bio-gas plants are in function in the State and about 3-4 lakhs persons are using bio-gas in the State produced by these plants.

(v) The population of farmers in the State is 31.45 lakhs. Out of which 7.37 lakhs are small farmers, 8 lakhs are marginal farmers, 3.05 lakhs are agricultural labourers and 13.03 lakhs are other farmers. The total land of Gujarat State is 196 lakh hectares and land under cultivation is 104.5 lakh hectares. There are 47,800 tractors by which 19.12 lakh hectares land is cultivated and the remaining 85.38 lakh hectares land is cultivated by using bullocks. It may be mentioned here that all the agricultural operations are not done using tractors.

The bullocks are required for some of agricultural operations along with tractors. There are about 7,28,300 bullock carts and there are about 18,35,000 ploughs run by bullocks in the State.

(vi) The figure of slaughter of animals done in 38 recognized slaughter houses are as under:

Year	Bullock/Bull	Buffalo	Sheep	Goat
1990-91	9,558	41,088	1,82,269	2,22,507
1991-92	9,751	41,882	2,11,245	2,20,518
1992-93	8,324	40,034	1,13,868	1,72,791

The above figures show that the slaughter of bullocks above the age of 16 years is done in the State in very small number. The animals other than bullocks are slaughtered in large number. Hence, the ban on the slaughter of cow and cow progeny will not affect the business of meat production significantly. Therefore, the persons engaged in this profession will not be affected adversely.

Thereafter two further affidavits were filed by Shri J.S. Parikh, above said, on 17th March, 1998, wherein the following facts are mentioned:

(i) there are about 31.45 lakhs land holders in Gujarat. The detailed classifications of the land holders are as under:-

Sl.No.	Details of land holders	No. of land holders
1.	01 hectare	8.00 lakhs
2.	1-2 hectares	7.37 lakhs
3.	2 and above	16.08 lakhs

(ii) almost 50 per cent of the land holdings are less than 2 hectares; tractor keeping is not affordable to small farmers. For economic maintenance of tractors, one should have large holding of land. Such land holders are only around 10 per cent of the total land holders. Hence the farmers with small land holdings require bullocks as motive power for their agricultural operations and transport;

(iii) the total cultivable land area of Gujarat State is about 124 lakh hectares.

Considering that a pair of bullocks is required for ploughing 10 acres of land the bullock requirement for ploughing purpose alone is 5.481 million and approximately equal number is required for carting.

According to the livestock census 1988 of Gujarat State, the availability of indigenous bullocks is around 2.84 millions. Thus the availability of bullocks as a whole on percentage of requirement works out to be about 25 per cent. In this situation, the State has to preserve each single bull and bullock that is available to it;

(iv) it is estimated that bull or bullock at every stage of life supplies 3,500 kgs of dung and 2,000 litres of urine and whereas this quantity of dung can supply 5,000 cubic feet of biogas, 80 M.T. of organic fertilizer, the urine can supply 2,000 litres of pesticides and the use of these products in farming increases the yield very substantially. The value of above contribution can be placed at Rs.20,000/- per year to the owner;

(v) since production of various agricultural crops removes plant nutrients from the soil, they must be replenished with manures to maintain and improve fertility of soil. There are two types of manures which are (i) Organic manures, i.e. natural manures and (ii) Artificial or chemical fertilizer. Amongst the organic manures, farm yard manures is the most valuable organic manure applied to soil. It is the most commonly used organic manure in India. It consists of a mixture of cattle dung, the bedding used in the stable. Its crop increasing value has been recognized from time immemorial (Ref. Hand Book of Agriculture, 1987 by ICAR page 214);

(vi) the importance of organic manure as a source of humus and plant nutrients to increase the fertility level of soils has been well recognized. The organic matter content of cultivated soils of the tropics and sub-tropics is comparatively low due to high temperature and intense microbial activity. The crops remove annually large quantity of plant nutrients from soil.

Moreover, Indian soils are poor in organic matter and in major plant nutrients.

Therefore, soil humus has to be replenished through periodic addition of organic manure for maintaining soil productivity;

(vii) animals are the source of free availability of farmyard manure, which has all the three elements, i.e. Nitrogen, Phosphoric acid and Potash, needed in fertilizer and at the same time which preserve and enrich the fertility of the soil. In paucity of dung availability, the farmers have to depend upon chemical fertilizers. Investment in chemical fertilizers imposes heavy burden upon the economy. If there is availability of alternate source of organic manure from animals, it is required to be promoted;

(viii) the recent scenario of ultramodern technology of super ovulation, embryo transfer and cloning technique will be of very much use to propagate further even from the incapable or even old animals which are not capable of working or reproducing. These animals on a large scale can be used for research programmes as well as for production of non-conventional energy sources such as biogas and natural fertilizers. At present, there are 19,362 biogas plants installed in the State during 1995-97. On an average, each adult cattle produces 4.00 kg. of dung per day. Out of the total cattle strength of (1992 Census) 67,85,865, the estimated dung produced is 99,07,363 tons;

(ix) India has 74% of rural population, and in Gujarat out of 4.13 crores of human population, there are 1.40 crores of workers which comprises of 47,04,000 farmers and 32,31,000 workers are workers related to livestock and forestry. In Gujarat, there are 9.24 lakhs marginal farmers and 9.15 lakhs of small farmers, according to the 1991-92 census. Animals are reared in few numbers per family and the feed is obtained from the supplementary crop on fodder/agricultural by-products or from grazing in the gaucher land. In Gujarat 8.48 lakh hectares of land is available as permanent pasture and grazing land. An individual cattle-owner does not consider one or two bullocks as an extra burden for his family, even when it is incapable of work or production.

Sometimes the unproductive animals are sent to Panjarapoles and Gosadans. In Gujarat, there are 335 Gowshalas and 174 Panjarapoles which are run by non-governmental organizations and trusts.

Formerly farmers mostly kept few animals and, in fact, they are treated as part of their family and maintained till death. It cannot be treated to be a liability upon them or burden on the economy;

(x) butchers are doing their business since generations, but they are not doing only the slaughter of cow class of animals.

They slaughter and trade the meat of other animals like buffaloes, sheep, goats, pig and even poultry. In Gujarat there are only 38 registered slaughter houses functioning under various Municipalities/Nagar Panchayats. Beef (meat of cattle) contributes only 1.3% of the total meat groups. Proportion of demand for beef is less in the context of demand for pig, mutton and poultry meat.

Slaughtering of bulls and bullocks for the period between 1990-91 and 1993-94 was on an average 9,000;

(xi) number of bullocks have decreased in a decade from 30,70,339 to 28,93,227 as in 1992. A statement showing the amount of dung production for the year 1983-84 to 1996-97 and a statement showing the nature of economy of the State of Gujarat is annexed. The number of bullocks slaughtered per day is negligible compared to other animals, and the business and/or trade of slaughtering bullocks would not affect the business of butchers. By prohibiting slaughter of bullocks the economy is likely to be benefited.

The three affidavits are supported by documents, statements or tables setting out statistics which we have no reason to disbelieve. Neither the High Court has expressed any doubt on the contents of the affidavit nor has the veracity of the affidavits and correctness of the facts stated therein been challenged by the learned counsel for the respondents before us.

In this Court Shri D.P. Amin, Joint Director of Animal Husbandry, Gujarat State, has filed an affidavit. The salient facts stated therein are set out hereunder:

(i) The details of various categories of animals slaughtered since 1997-1998 shows that slaughter of various categories of animals in regulated slaughter houses of Gujarat State has shown a tremendous decline. During the year way back in 1982-83 to 1996-97 the average number of animals slaughtered in regulated slaughter houses was 4,39,141. As against that (previous figure) average number of slaughter of animals in recent 8 years i.e. from 1997-98 to 2004-05 has come down to only 2,88,084. This clearly indicates that there has been a vast change in the meat eating style of people of Gujarat State. It is because of the awareness created among the public due to the threats of dangerous diseases like Bovine Spongiform Encephalopathy commonly known as "Mad

Cow disease" B.S.E. which is a fatal disease of cattle meat origin not reported in India. Even at global level people have stopped eating the beef which is known as meat of cattle class animals. This has even affected the trade of meat particularly beef in the America & European countries since last 15 years. Therefore, there is international ban on export-import of beef from England, America & European countries;

(ii) there is reduction in slaughter of bulls & bullocks above the age of 16 years reported in the regulated slaughter houses of Gujarat State. As reported in the years from 1982-83 to 1996-97, the slaughter of bulls & bullocks above the age of 16 years was only 2.48% of the total animals of different categories slaughtered in the State. This percentage has gone down to the level of only 1.10% during last 8 years i.e. 1997-98 to 2004-05 which is very less significant to cause or affect the business of butcher communities;

(iii) India is predominantly agrarian society with nearly >th of her population living in seven lakh rural hamlets and villages, possesses small fragmentary holding (54.6% below 1 hectare 18% with 1-2 hectares). Draft/pack animal contributes more than 5 crores horse power (H.P.) or 33,000 megawatt electric power and shares for/in 68% of agricultural operations, transport & other draft operations. In addition to draft power, 100 million tons dung per year improves the soil health and also used as raw material for biogas plant;

(iv) the cattle population in Gujarat in relation to human population has declined from 315 per 1000 humans in 1961 to 146 per 1,000 humans in 2001 indicating decline in real terms;

(v) in Gujarat 3.28 million draft animal (bullocks 85%) have multifaceted utilities viz. agricultural operations like ploughing, sowing, hoeing, planking, carting, hauling, water lifting, grinding, etc.;

Gujarat State has a very rich cattle population of Kankrej & Gir breed, of which Kankrej bullocks are very well known for its draft power called "Savai Chal";

(vi) considering the utility of aged bullocks above 16 years as draft power a detailed combined study was carried out by Department of Animal Husbandry and Gujarat Agricultural University (Veterinary Colleges S.K. Nagar & Anand). The experiments were carried out within the age group of 16 to 25 years. The study covered different age groups of 156 (78 pairs) bullocks above the age of 16 years. The aged

bullocks i.e. above 16 years age generated 0.68 horse power draft output per bullock while the prime bullock generated 0.83 horse power per bullock during carting/hauling draft work in a summer with about more than 42°C temp. The study proves that 93% of aged bullock above 16 years of age are still useful to farmers to perform light & medium draft works. The detailed report is on record;

(vii) by the end of year 2004-05 under the Dept. of Animal Husbandry, there are 14 Veterinary Polyclinics, 515 Vety. Dispensaries, 552 First Aid Vety. Centres and 795 Intensive Cattle Development Project Sub Centers. In all, 1876 institutions were made functional to cater various health care activities to livestock population of State of Gujarat. About two crores of livestock and poultry were vaccinated against various diseases. As a result, the total reported out break of infectious diseases was brought down to around 106 as against 222 in 1992-1993. This shows that State has created a healthy livestock and specifically the longevity of animals has been increased. This has also resulted into the increased milk production of the state, draft power and source of non-conventional energy in terms of increased quantity of dung and urine;

(viii) the value of dung is much more than even the famous "Kohinoor" diamond. An old bullock gives 5 tons of dung and 343 pounds of urine in a year which can help in the manufacture of 20 carts load 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. (Ref. Report of National Commission on Cattle, Vol.III, Page 1063-1064);

(ix) the dung cake as well as meat of bullock are both commercial commodities. If one bullock is slaughtered for its meat (Slaughtering activity) can sustain the butchers trade for only a day. For the next day's trade another bullock is to be slaughtered. But if the bullock is not slaughtered, about 5000-6000 dung cakes can be made out of its dung per year, and by the sale of such dung cake one person can be sustained for the whole year. If a bullock survives even for five years after becoming otherwise useless it can provide employment to a person for five years whereas to a butcher, bullock can provide employment only for a day or two.

(x) Even utility of urine has a great role in the field of pharmaceuticals as well as in the manufacturing of pesticides. The Goseva Ayog, Govt. of Gujarat had commissioned study for "Testing insecticides properties of cow urine against various insect pests". The study was carried out by Dr. G.M. Patel, Principal Investigator, Department of Entomology, C.P. College of Agriculture, S.D. Agricultural University, Sardar Krishi Nagar, Gujarat. The study has established that insecticides formulations prepared using cow urine emerged as the most reliable treatment for their effectiveness against sucking pest of cotton. The conclusion of study is dung & urine of even aged bullocks are also useful and have proved major effect of role in the Indian economy;

(xi) it is stated that availability of fodder is not a problem in the State or anywhere. During drought period deficit is compensated by grass-bank, silo and purchase of fodder from other States as last resources. The sugarcane tops, leaves of banana, baggase, wheat bhoosa and industrial byproducts etc. are available in plenty. A copy of the letter dated 8.3.2004 indicting sufficient fodder for the year 2004, addressed to Deputy Commissioner, Animal Husbandry Government of India is annexed.

Report on draughtability of bullocks above 16 years of age On 20th June, 2001 the State of Gujarat filed I.A. No. 2/2001 in Civil Appeal Nos. 4937-4940 of 1998, duly supported by an affidavit sworn by Shri D.U. Parmar, Deputy Secretary (Animal Husbandry) Agriculture and Cooperation Department, Government of Gujarat, annexing therewith a report on draughtability of aged bullocks above 16 years of age under field conditions. The study was conducted by the Gujarat Agricultural University Veterinary College, Anand and the Department of Animal Husbandry, Gujarat State, Ahmedabad. The study was planned with two objectives:

(i) To study the draughtability and utility of aged bullocks above 16 years of age; and

(ii) To compare the draughtability of aged bullocks with bullocks of prime age.

Empirical research was carried out under field conditions in North Gujarat Region (described as Zone-I) and Saurashtra region (described as Zone-II). The average age of aged bullocks under the study was 18.75 years. The number of bullocks/pair used under the study were sufficient to draw sound conclusions

from the study. The gist of the findings arrived at, is summed up as under:

1. Farmer's persuasion The aged bullocks were utilized for different purposes like agricultural operations (ploughing, planking, harrowing, hoeing, threshing) and transport-hauling of agricultural produce, feeds and fodders of animals, drinking water, construction materials (bricks, stones, sand grits etc.) and for sugarcane crushing/ khandsari making. On an average the bullocks were yoked for 3 to 6 hours per working day and 100 to 150 working days per year. Under Indian conditions the reported values for working days per year ranges from 50 to 100 bullock paired days by small, medium and large farmers. Thus, the agricultural operations-draft output are still being taken up from the aged bullocks by the farmers. The farmers feed concentrates, green fodders and dry fodders to these aged bullocks and maintain the health of these animals considering them an important segment of their families. Farmers love their bullocks.

2. Age, body measurement and body weight. The biometric and body weight of aged bullocks were within the normal range.

3. Horsepower generation/Work output The aged bullocks on an average generated 0.68 hp/bullock, i.e.18.1% less than the prime/young bullocks (0.83 hp/bullock). The aged bullocks walked comfortably with an average stride length of 1.43 meter and at the average speed of 4.49 km/hr. showing little less than young bullocks. However, these values were normal for the aged bullocks performing light/medium work of carting. These values were slightly lower than those observed in case of prime or young bullocks. This clearly indicates that the aged bullocks above 16 years of age proved their work efficiency for both light as well as medium work in spite of the age bar. In addition to this, the experiment was conducted during the months of May-June, 2000 a stressful summer season. Therefore, these bullocks could definitely generate more work output during winter, being a comfortable season. The aged bullock above 16 years of age performed satisfactorily and disproved that they are unfit for any type of draft output i.e. either agricultural operations, carting or other works.

4. Physiological responses and haemoglobin concentration. These aged bullocks are fit to work for 6 hours (morning 3 hours and afternoon 3 hrs.) per day. Average Hb content (g%) at the start of work was observed to be 10.72 g% and after 3 hours of work 11.14g%, indicating the healthy state of bullocks. The increment in the haemoglobin content

after 3 to 4 hours of work was also within the normal range and in accordance with prime bullocks under study as well as the reported values for working bullocks.

5. Distress symptoms In the initial one hour of work, 6 bullocks (3.8%) showed panting, while 32.7% after one hour of work. After 2 hour of work, 28.2% of bullocks exhibited salivation. Only 6.4% of the bullocks sat down/lie down and were reluctant to work after completing 2 hours of the work. The results are indicative of the fact that majority of the aged bullocks (93%) worked normally. Summer being a stressful season, the aged bullocks exhibited distress symptoms earlier than the prime/young bullocks. However, they maintained their physiological responses within normal range and generated satisfactory draft power.

The study report submitted its conclusions as under:

"1. The aged bullocks above 16 years of age generated 0.68 horse power draft output per bullock while the prime bullocks generated 0.83 horsepower per bullock during carting-hauling draft work.

2. The aged bullocks worked satisfactorily for the light work for continuous 4 hours during morning session and total 6 hours per day (morning 3 hours and afternoon 3 hours) for medium work.

3. The physiological responses (Rectal temperature, Respiration rate and Pulse rate) and haemoglobin of aged bullocks were within the normal range and also maintained the incremental range during work. However, they exhibited the distress symptoms earlier as compared to prime bullocks.

4. Seven percent aged bullocks under study were reluctant to work and/or lie down after 2 hours of work.

5. The aged bullocks were utilized by the farmers to perform agricultural operations (ploughing, sowing, harrowing, planking, threshing), transport-hauling of agricultural product, feeds and fodders, construction materials and drinking water.

Finally, it proves that majority (93%) of the aged bullocks above 16 years of age are still useful to farmers to perform light and medium draft works."

With the report, the study group annexed album/photographs and cassettes prepared while carrying out the study. Several tables and statements

setting out relevant statistics formed part of the report. A list of 16 authentic references originating from eminent authors on the subject under study which were referred to by the study group was appended to the report.

This application (I.A. No. 2/2001) was allowed and the affidavit taken on record vide order dated 20.8.2001 passed by this Court. No response has been filed by any of the respondents controverting the facts stated in the affidavit and the accompanying report. We have no reason to doubt the correctness of the facts stated therein; more so, when it is supported by the affidavit of a responsible officer of the State Government.

Tenth Five Year Plan (2002-2007) Documents In the report of the Working Group on Animal Husbandry and Dairy Farming, the Tenth Five Year Plan (2002-2007) dealing with 'the draught breed relevance and improvement', published by the Government of India, Planning Commission in January, 2001, facts are stated in great detail pointing out the relevance of draught breeds and setting out options for improvement from the point of view of the Indian Economy. We extract and reproduce a few of the facts therefrom:

"3.6.12 Relevance of draught breeds and options for improvement 3.6.12.1 In India 83.4 million holdings (78%) are less than 2 ha, where tractors and tillers are uneconomical and the use of animal power becomes inevitable since tractors and tillers are viable only for holdings above 5 ha.. In slushy and water logged fields tractor tiller is not suitable. In narrow terraced fields and hilly regions tractors cannot function. Animal drawn vehicle are suitable for rural areas under certain circumstances/conditions viz., uneven terrain, small loads (less than 3 tons), short distances and where time of loading and unloading is more than travel time or time is not a critical factor and number of collection points/distribution points are large as in case of milk, vegetable, water, oil, etc. In India the energy for ploughing two-thirds of the cultivated area comes from animal power and animal drawn vehicles haul two-thirds of rural transport.

3.6.12.2 The role of cattle as the main source of motive power for agriculture and certain allied operations would continue to remain as important as meeting the requirement of milk in the country. It has been estimated that about 80 million bullocks will be needed. There is, therefore, a need for improving the

working efficiency of the bullocks through improved breeding and feeding practices.

3.6.13 Development of Draught Breeds Focused attention to draft breed will not be possible unless a new scheme is formulated for this purpose.

3.6.13.2 In tracts where there are specialized draught breeds of cattle like Nagori in Rajasthan, Amritmahal and Hallikar in Karnataka, Khillar in Maharashtra etc., selection for improvement in draughtability should be undertaken on a large scale as the cattle breeders in these areas derive a large income by sale of good quality bullocks.

Planned efforts should be made for improving the draught capacity and promoting greater uniformity in the type of the cattle population in the breeding tracts. There is need to intensify investigations to develop yardsticks for objective assessment of draught capacity of bullocks.

3.6.14 Supplementation of fund-flow for cattle and Buffalo development.

3.6.14.2 A number of organizations like NABARD, NDDDB, NCDC etc. are also likely to be interested in funding activities relating to cattle and buffalo development in the form of term as loan provided timely return is ensured. Time has now come for exploring such avenues seriously at least on pilot basis in selected areas, where better prospects of recovery of cost of breeding inputs and services exists."

Recognizing the fact that the cow and its progeny has a significant role to play in the agricultural and rural economy of the country, the Government felt that it was necessary to formulate measures for their development in all possible ways. In view of the persistent demands for action to be taken to prevent their slaughter, the Government also felt and expressed the need to review the relevant laws of the land relating to protection, preservation, development and well-being of cattle and to take measures to secure the cattle wealth of India.

Yet another document to which we are inclined to make a reference is Mid-Term Appraisal of 10th Five Year Plan (2002- 2007) released in June, 2005 by the Government of India (Planning Commission). Vide para 5.80 the report recommends that efforts should be made to increase the growth of bio- pesticides production from 2.5 to 5 per cent over the next five years.

According to the report, Organic farming is a way of farming which excludes the use of chemical fertilizers, insecticides, etc. and is primarily based on the principles of use of natural organic inputs and biological plant protection measures. Properly managed organic farming reduces or eliminates water pollution and helps conserve water and soil on the farm and thereby enhances sustainability and agrobiodiversity.

Organic farming has become popular in many western countries. There are two major driving forces behind this phenomenon; growing global market for organic agricultural produce due to increased health consciousness; and the premium price of organic produce fetched by the producers.

India has a comparative advantage over many other countries.

The Appraisal Report acknowledged the commencement of the biogas programme in India since 1981-82. Some 35,24,000 household plants have been installed against an assessed potential of 120,00,000 units.

Biogas has traditionally been produced in India from cow dung (gobar gas). However, dung is not adequately and equitably available in villages. Technologies have now been developed for using tree-based organic substrates such as leaf litter, seed starch, seed cakes, vegetable wastes, kitchen wastes etc. for production of biogas. Besides cooking, biogas can also be used to produce electricity in dual fired diesel engines or in hundred per cent gas engines. Ministry of Non-conventional Energy Sources (MNES) is taking initiatives to integrate biogas programme in its Village Energy Security Program (VESP).

Production of pesticides and biogas depend on the availability of cow-dung.

National Commission on Cattle Vide its Resolution dated 2nd August, 2001, the Government of India established a National Commission on Cattle, comprising of 17 members.

The Commission was given the follow terms of reference: -

a. To review the relevant laws of the land(Centre as well as States) which relate to protection, preservation, development and well being of cow and its progeny and suggest measures for their effective

implementation, b. To study the existing provisions for the maintenance of Goshalas, Gosadans, Pinjarapoles and other organisations working for protection and development of cattle and suggest measures for making them economically viable, c. To study the contribution of cattle towards the Indian economy and to suggest ways and means of organizing scientific research for maximum utilization of cattle products and draught animal power in the field of nutrition and health, agriculture and energy, and to submit a comprehensive scheme in this regard to the Central Government, d. To review and suggest measures to improve the availability of feed and fodder to support the cattle population.

The Committee after extensive research has given a list of recommendations. A few of them relevant in the present case are: -

" 1.The Prohibition for slaughter of cow and its progeny, which would include bull, bullocks, etc., should be included in Fundamental Rights or as a Constitutional Mandate anywhere else, as an Article of Constitution. It should not be kept only in the Directive Principles or/Fundamental duties as neither of these are enforceable by the courts.

2. The amendment of the Constitution should also be made for empowering the Parliament to make a Central Law for the prohibition of slaughter of cow and its progeny and further for prohibition of their transport from one State to another.

3. The Parliament should then make a Central law, applicable to all States, prohibiting slaughter of cow and its progeny. Violation of the Law should be made a non-bailable and cognizable offence.

xxx xxx xxx

14. The use and production of chemical fertilizers and chemical pesticides should be discouraged, subsidies on these items should be reduced or abolished altogether. The use of organic manure should be subsidized and promoted."

Thus the Commission is of the view that there should be a complete prohibition on slaughter of cow progeny.

Importance of Bovine Dung: The Report of the National Commission on Cattle, *ibid*, refers to an authority namely, Shri Vasu in several subparagraphs of para 12. Shri Vasu has highlighted the unique and essential role of bovine and bovine dung in our economy and has pleaded that slaughter of our

precious animals should be stopped. He has in extenso dealt with several uses of dung and its significance from the point of view of Indian society. Dung is a cheap and harmless fertilizer in absence whereof the farmers are forced to use costly and harmful chemical fertilizers. Dung also has medicinal value in Ayurved, the Indian system of medicines.

Continuing Utility of Cattle: Even if the utility argument of the Quareshi's judgment is accepted, it cannot be accepted that bulls and bullocks become useless after the age of 16. It has to be said that bulls and bullocks are not useless to the society because till the end of their lives they yield excreta in the form of urine and dung which are both extremely useful for production of bio-gas and manure. Even after their death, they supply hide and other accessories. Therefore, to call them 'useless' is totally devoid of reality. If the expenditure on their maintenance is compared to the return which they give, at the most, it can be said that they become 'less useful'. (Report of the National Commission on Cattle, July 2002, Volume I, p. 279.) The Report of the National Commission on Cattle has analyzed the economic viability of cows after they stopped yielding milk and it also came to the conclusion that it shall not be correct to call such cows 'useless cattle' as they still continue to have a great deal of utility. Similar is the case with other cattle as well".

"37. Economic aspects:

37.1 The cows are slaughtered in India because the owner of the cow finds it difficult to maintain her after she stops yielding milk. This is because it is generally believed that milk is the only commodity obtained from cows, which is useful and can be sold in exchange of cash. This notion is totally wrong. Cow yields products other than milk, which are valuable and saleable. Thus the dung as well as the urine of cow can be put to use by owner himself or sold to persons or organizations to process them. The Commission noticed that there are a good number of organizations (Gowshalas) which keep the cows rescued while being carried to slaughter houses. Very few of such cows are milk yielding. Such organizations use the urine and dung produced by these cows to prepare Vermi-compost or any other form of bio manure and urine for preparing pest repellents. The money collected by the sale of such products is normally sufficient to allow maintenance of the cows. In some cases, the urine and dung is used to prepare the medical formulations also. The organizations, which are engaged in such activities, are making profits also.

37.2 Commission examined the balance sheet of some such organizations. The expenditure and income of one such organization is displayed here. In order to make accounts simple the amounts are calculated as average per cow per day.

It is obvious that expenditure per cow is Rs.15-25 a day, while the income from sale is Rs.25-35 a day.

37.3 These averages make it clear that the belief that cows which do not yield milk are unprofitable and burden for the owner is totally false. In fact it can be said that products of cow are sufficient to maintain them even without milk. The milk in such cases is only a byproduct.

37.4 It is obvious that all cow owners do not engage in productions of fertilizers or insect repellents. It can also be understood that such activity may not be feasible for owners of a single or a few cows. In such cases, the cow's urine and dung may be supplied to such organizations, which utilize these materials for producing finished products required for agricultural or medicinal purpose. Commission has noticed that some organizations which are engaged in production of agricultural and medical products from cow dung and urine do purchase raw materials from nearby cow owner at a price which is sufficient to maintain the cow." (Report of National Commission on Cattle, July 2002, Vol. II, pp.68-69) A host of other documents have been filed originating from different sources such as Governmental or Semi-governmental, NGOs, individuals or group of individuals, who have carried out researches and concluded that world-over there is an awareness in favour of organic farming for which cattle are indispensable. However, we do not propose to refer to these documents as it would only add to the length of the judgment. We have, apart from the affidavits, mainly referred to the reports published by the Government of India, whose veracity cannot be doubted.

We do not find any material brought on record on behalf of the respondents which could rebut, much less successfully, the correctness of the deductions flowing from the documented facts and statistics stated hereinabove.

The utility of cow cannot be doubted at all. A total ban on cow slaughter has been upheld even in **Quareshi-I**. The controversy in the present case is confined to cow progeny. The important role that cow

and her progeny play in the Indian Economy was acknowledged in **Quareshi-I** in the following words:

"The discussion in the foregoing paragraphs clearly establishes the usefulness of the cow and her progeny. They sustain the health of the nation by giving them the life giving milk which is so essential an item in a scientifically balanced diet. The working bullocks are indispensable for our agriculture, for they supply power more than any other animal. Good breeding bulls are necessary to improve the breed so that the quality and stamina of the future cows and working bullocks may increase and the production of food and milk may improve and be in abundance. The dung of the animal is cheaper than the artificial manures and is extremely useful. In short, the back bone of Indian agriculture is in a manner of speaking the cow and her progeny.

Indeed Lord Linlithgow has truly said "The cow and the working bullock have on their patient back the whole structure of Indian agriculture." (Report on the Marketing of Cattle in India, p. 20). If, therefore, we are to attain sufficiency in the production of food, if we are to maintain the nation's health, the efficiency and breed of our cattle population must be considerably improved. To attain the above objectives, we must devote greater attention to the preservation, protection and improvement of the stock and organise our agriculture and animal husbandry on modern and scientific lines."

On the basis of the available material, we are fully satisfied to hold that the ban on slaughter of cow progeny as imposed by the impugned enactment is in the interests of the general public within the meaning of clause (6) of Article 19 of the Constitution".

"Part-III Stare Decisis: We have dealt with all the submissions and counter submissions made on behalf of the parties. What remains to be dealt with is the plea, forcefully urged, on behalf of the respondents that this Court should have regard to the principle of stare decisis and should not overturn the view taken in Quareshi-I which has held field ever since 1958 and has been followed in subsequent decisions, which we have already dealt with hereinabove.

Stare decisis is a Latin phrase which means "to stand by decided cases; to uphold precedents; to maintain former adjudication". This principle is expressed in the maxim "stare decisis et non quieta movere" which means to stand by decisions and not to disturb what is

settled. This was aptly put by Lord Coke in his classic English version as "Those things which have been so often adjudged ought to rest in peace". However, according to Justice Frankfurter, the doctrine of stare decisis is not "an imprisonment of reason" (Advanced Law Lexicon, P. Ramanatha Aiyer, 3rd Edition 2005, Volume 4, p. 4456). The underlying logic of the doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.

The trend of judicial opinion, in our view, is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience.

According to Professor Lloyd concepts are good servants but bad masters. Rules, which are originally designed to fit social needs, develop into concepts, which then proceed to take on a life of their own to the detriment of legal development. The resulting "jurisprudence of concepts" produces a slot-machine approach to law whereby new points posing questions of social policy are decided, not by reference to the underlying social situation, but by reference to the meaning and definition of the legal concepts involved. This formalistic a priori approach confines the law in a strait-jacket instead of permitting it to expand to meet the new needs and requirements of changing society (Salmond on Jurisprudence, Twelfth Edition, at p.187). In such cases Courts should examine not only the existing laws and legal concepts, but also the broader underlying issues of policy. In fact presently, judges are seen to be paying increasing attention to the possible effects of their decision one way or the other. Such an approach is to be welcomed, but it also warrants two comments. First, judicial inquiry into the general effects of a proposed decision tends itself to be of a fairly speculative nature. Secondly, too much regard for policy and too little for legal consistency may result in a confusing and illogical complex of contrary decisions. In such a situation it would be difficult to identify and respond to generalized and determinable social needs. While it is true that "the life of the law has not been logic, it has been experience" and that we should not wish it otherwise, nevertheless we should remember

that "no system of law can be workable if it has not got logic at the root of it" (Salmond, *ibid*, pp.187-188).

Consequently, cases involving novel points of law, have to be decided by reference to several factors. The judge must look at existing laws, the practical social results of any decision he makes, and the requirements of fairness and justice. Sometimes these will all point to the same conclusion. At other times each will pull in a different direction; and here the judge is required to weigh one factor against another and decide between them. The rationality of the judicial process in such cases consists of explicitly and consciously weighing the pros and cons in order to arrive at a conclusion. (Salmond, *ibid*, pp. 188).

In case of modern economic issues which are posed for resolution in advancing society or developing country, the court cannot afford to be static by simplistically taking shelter behind principles such as stare decisis, and refuse to examine the issues in the light of present facts and circumstances and thereby adopt the course of judicial "hands off". Novelty unsettles existing attitudes and arrangements leading to conflict situations which require judicial resolution. If necessary adjustments in social controls are not put in place then it could result in the collapse of social systems. Such novelty and consequent conflict resolution and "patterning" is necessary for full human development. (See - The Province and Function of Law, Julius Stone, at pp.588, 761 and 762). **Stare decisis is not an inexorable command of the Constitution or jurisprudence.** A careful study of our legal system will discern that any deviation from the straight path of stare decisis in our past history has occurred for articulable reasons, and only when the Supreme Court has felt obliged to bring its opinions in line with new ascertained fact, circumstances and experiences. **(Precedent in Indian Law, Prof. A. Laxminath, Second Edition 2005, p.8).**

Given the progressive orientation of the Supreme Court, its creative role under Article 141 and the creative elements implicit in the very process of determining ratio decidendi, it is not surprising that judicial process has not been crippled in the discharge of its duty to keep the law abreast of the times, by the traditionalist theory of stare decisis (*ibid*, p. 32). Times and conditions change with changing society, and, "every age should be mistress of its own law" and era should not be hampered by outdated law. "It is revolting", wrote Mr. Justice Holmes in characteristically forthright language, "to have no better reason for a rule of law than it was so laid down

in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past". *It is the readiness of the judges to discard that which does not serve the public, which has contributed to the growth and development of law. (ibid, p. 68) The doctrine of stare decisis is generally to be adhered to, because well settled principles of law founded on a series of authoritative pronouncements ought to be followed. Yet, the demands of the changed facts and circumstances dictated by forceful factors supported by logic, amply justify the need for a fresh look.*

Sir John Salmond, while dealing with precedents and illustrating instances of departure by the House of Lords from its own previous decisions, states it to be desirable as 'it would permit the House (of Lords) to abrogate previous decisions which were arrived at in different social conditions and which are no longer adequate in present circumstances. (See Salmond, *ibid*, at p.165). This view has been succinctly advocated by Dr. Goodhart who said: "There is an obvious antithesis between rigidity and growth, and if all the emphasis is placed on absolutely binding cases then the law loses the capacity to adapt itself to the changing spirit of the times which has been described as the life of the law". (*ibid*, p.161) This very principle has been well stated by William O' Douglas in the context of constitutional jurisprudence. He says: "So far as constitutional law is concerned, stare decisis must give way before the dynamic component of history. Once it does, the cycle starts again". (See *Essays on Jurisprudence from the Columbia Law Review*, 1964, at p.20) We have already indicated that in **Quareishi-I**, the challenge to the constitutional validity of the legislation impugned therein, was turned down on several grounds though forcefully urged, excepting for one ground of 'reasonableness'; which is no longer the position in the case before us in the altered factual situation and circumstances.

In **Quareishi-I** the reasonableness of the restriction pitted against the fundamental right to carry on any occupation, trade or business determined the final decision, having been influenced mainly by considerations of weighing the comparative inconvenience to the butchers and the advancement of public interest. As the detailed discussion contained in the judgment reveals, this determination is not purely one of law, rather, it is a mixed finding of fact and law. Once the strength of the factual component is shaken, the legal component of the finding in **Quareishi-I** loses much of its significance. Subsequent

decisions have merely followed **Quareshi-I**. In the case before us, we have material in abundance justifying the need to alter the flow of judicial opinion”.

“Part - IV Quareshi-I, re-visited: Having dealt with each of the findings recorded in **Quareshi-I**, which formed the basis of the ultimate decision therein, we revert to examine whether the view taken by the Constitution Bench in **Quareshi-I** can be upheld.

We have already pointed out that having tested the various submissions made on behalf of the writ petitioners on the constitutional anvil, the Constitution Bench in **Quareshi-I** upheld the constitutional validity, as reasonable and valid, of a total ban on the slaughter of : (i) cows of all ages, (ii) calves of cows and she-buffaloes, male or female, and (iii) she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are as milch or draught cattle. But the Constitution Bench found it difficult to uphold a total ban on the slaughter of she-buffaloes, bulls or bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding or working as draught animals, on the material made available to them, the ban failed to satisfy the test of being reasonable and "in the interests of the general public". It is clear that, in the opinion of the Constitution Bench, the test provided by clause (6) of Article 19 of the Constitution was not satisfied. The findings on which the above-said conclusion is based are to be found summarized on pp.684-687. Para-phrased, the findings are as follows:

(1) The country is in short supply of milch cattle, breeding bulls and working bullocks, essential to maintain the health and nourishment of the nation. The cattle population fit for breeding and work must be properly fed by making available to the useful cattle in presenti in futuro. The maintenance of useless cattle involves a wasteful drain on the nation's cattle feed.

(2) Total ban on the slaughter of cattle would bring a serious dislocation, though not a complete stoppage, of the business of a considerable section of the people who are by occupation Butchers (Kasai), hide merchant and so on.

(3) Such a ban will deprive a large section of the people of what may be their staple food or protein diet.

(4) Preservation of useful cattle by establishment of gosadan is not a practical proposition, as they are

like concentration camps where cattle are left to die a slow death.

(5) The breeding bulls and working bullocks (cattle and buffaloes) do not require as much protection as cows and calves do.

These findings were recorded in the judgment delivered on 23rd April, 1958. Independent India, having got rid of the shackles of foreign rule, was not even 11 years old then. Since then, the Indian economy has made much headway and gained a foothold internationally. Constitutional jurisprudence has indeed changed from what it was in 1958, as pointed out earlier. Our socio-economic scenario has progressed from being gloomy to a shining one, full of hopes and expectations and determinations for present and future. Our economy is steadily moving towards prosperity in a planned way through five year plans, nine of which have been accomplished and tenth is under way".

"We deal with the findings in Quareshi-I seriatim.

Finding 1: We do not dispute that the country is in short supply of milch cattle, breeding bulls and working bullocks and that they are essential to maintain the health and nourishment of the nation as held in **Quareshi-I**. Rather we rely on the said finding which stands reinforced by the several documents which we have referred to hereinbefore.

In the **Quareshi-I** era, there was a shortage of fodder in the country. Various plans were drawn up in the direction of exploring potential fodder areas for the future. Although, the planning was there; implementation was lacking. The Report of National Commission on Cattle, July 2002 (Vol. II) reveals that the existing fodder resources of the country can sustain and meet 51.92% of the total requirements to sustain its livestock population. But we have to take into consideration the fodder potential of the country. We have vast culturable waste land which with some efforts can be developed into good pasture land. Major part of the fallow land can be put under the plough for having fodder crops such as Jowar, Bajra and smaller millets. The combined area of several categories of land which can be developed as potential fodder area is 58.87 million hectares. If managed properly, there are areas in the country which can be developed into a "Grass Reservoir of India for use as pasture land". One very big potential area lies in Jaisalmer District of Rajasthan (spread over 22,16,527 hectares). The Commission has recommended 23 steps to be taken by the State Government and the Central Government

for development and conservation of food and fodder (See paras 37-41 of the report at pages 130-135).

So far as the State of Gujarat is concerned, we have already noticed, while dealing with the documentary evidence available on record, that fodder shortage is not a problem so far as this state is concerned and cow progeny, the slaughtering whereof has already shown a downward trend during the recent years, can very well be fed and maintained without causing any wasteful drain on the feed requisite for active milch, breeding and draught cattle.

Finding 2: The finding suffers from two infirmities. First, **Quareshi-I** has not felt the necessity of finding whether a 'total prohibition' is also included within 'restriction' as employed in Article 19(6). It is now well-settled that 'restriction' includes 'prohibition'. Second and the real fallacy in **Quareshi-I** is that the ban limited to slaughtering of cow progeny has been held at one place to be a 'total prohibition', while in our opinion, is not so. At another place, the effect of ban has been described as causing 'a serious dislocation, though not a complete stoppage of the business of a considerable section of the people'. If that is so, it is not a 'total prohibition'. The documentary evidence available on record shows that beef contributes only 1.3% of the total meat consumption pattern of the Indian society. Butchers are not prohibited from slaughtering animals other than the cattle belonging to cow progeny. Consequently, only a part of their activity has been prohibited. They can continue with their activity of slaughtering other animals. Even if it results in slight inconvenience, it is liable to be ignored if the prohibition is found to be in the interest of economy and social needs of the country.

Finding 3: In the first and second Five Year Plans (**Quareshi-I** era), there was scarcity of food which reflected India's panic. The concept of food security has since then undergone considerable change. **It is futile to think that meat originating from cow progeny can be the only staple food or protein diet for the poor population of the country.** 'India Vision 2020' (ibid, Chapter 3) deals with 'Food Security and Nutrition: Vision 2020'. We cull out a few relevant findings and observations therefrom and set out in brief in the succeeding paragraphs. Food availability and stability were considered good measures of food security till the Seventies and the achievement of self-sufficiency was accorded high priority in the food policies. Though India was successful in achieving self-sufficiency by increasing its food production, it could not solve the problem of chronic household food insecurity. This necessitated a

change in approach and as a result food energy intake at household level is now given prominence in assessing food security. India is one of the few countries which have experimented with a broad spectrum of programmes for improving food security. It has already made substantial progress in terms of overcoming transient food insecurity by giving priority to self-sufficiency in foodgrains, employment programmes, etc. The real problem, facing India, is not the availability of food, staple food and protein rich diet; the real problem is its unequal distribution. The real challenge comes from the slow growth of purchasing power of the people and lack of adequate employment opportunities. Another reason for lack of food and nutrient intake through cereal consumption is attributable to changes in consumer tastes and preferences towards superior food items as the incomes of the household increases. Empirical evidence tends to suggest a positive association between the calorie intake and nutritional status. The responsiveness is likely to be affected by the factors relating to health and environment. It is unclear as to how much of the malnutrition is due to an inadequate diet and how much due to the environment.

India achieved near self-sufficiency in the availability of foodgrains by the mid-Seventies. The trend rate of foodgrain production improved 2.3 per cent during the 1960s and 1970s to 2.9 per cent in the Eighties. The recent economic survey of 2005 has also pointed out that the per capita availability of the milk has doubled since independence from 124 gms/day in the year 1950-51 to 229 gms/day in the year 2001-02. (Report of National Commission on Cattle. Vol. II, p. 84.) A complete reading of the research paper on Food Security and Nutrition (Chapter 3 in India Vision 2020) is a clear pointer to the fact that desirable diet and nutrition are not necessarily associated with non-vegetarian diet and that too originating from slaughtering cow progeny. Beef contributes only 1.3% of the total meat consumption pattern of the Indian society. Consequently a prohibition on the slaughter of cattle would not substantially affect the food consumption of the people. To quote (ibid.p.209): "Even though the question of desirable diet from nutritional perspective is still controversial, we can make certain policy options to overcome the nutritional deficiencies. The most important problem to be attended is to increase the energy intake of the bottom 30 per cent of the expenditure class. The deficiency of energy intake of the bottom 30 per cent can be rectified by increasing agricultural productivity in rain fed areas, making available food at an affordable price through the Public

distribution system (PDS), and other poverty alleviation programmes. The micro-nutrient deficiency can be cost-effectively rectified by supplementary nutritional programmes to the children and the expectant and lactating mothers." The main source of staple food which is consumed both by vegetarians and non-vegetarians is supplied by vegetables. Synthetic staple food has also been made available by scientific researches. It will, therefore, not be correct to say that poor will suffer in availing staple food and nutritional diet only because slaughter of cow progeny was prohibited.

Finding 4: Quareshi-I itself reveals a very general opinion formed by the Court as to the failure of gosadans and their inability to preserve cattle. The statistics made available before us are a positive indicator to the contrary that gosadans and goshalas are being maintained and encouraged so as to take up both useful and so-called useless cattle, if the owner is not willing to continue to maintain them. **Quareshi-I** relied on a Report of an Expert Committee, which has certainly become an outdated document by the lapse of 47 years since then. Moreover, independent of all the evidence, we have in this judgment already noticed that cattle belonging to the category of cow progeny would not be rendered without shelter and feed by the owner to whom it had served throughout its life. We find support from the affidavits and reports filed on behalf of the State of Gujarat which state inter alia "farmers love their cattle". National Commission on Cattle in its Report (ibid) has incorporated as many as 17 recommendations for strengthening of Gowshalas (para 20 at pages 120-122) We have already noticed in the affidavits filed on behalf of the State of Gujarat that, in the State of Gujarat adequate provisions have been made for the maintenance of gosadans and Gowshalas. Adequate fodder is available for the entire cattle population. The interest exhibited by the NGOs seeking intervention in the High Court and filing appeals in this Court also indicates that the NGOs will be willing to take up the task of caring for aged bulls and bullocks.

Finding 5: In Quareshi-I, vide para 42, the Constitution Bench chose to draw a distinction between breeding bulls and working bullocks, on the one hand and cows and calves, on the other hand, by holding that the farmers would not easily part with the breeding bulls and working bullocks to the butchers as they are useful to the farmers. It would suffice to observe that the protection is needed by the bulls and bullocks at a point of time when their utility has been reduced or has become nil as they near the end of

their life. That is what Article 48, in fact, protects, as interpreted in this judgment.

India, as a nation and its population, its economy and its prosperity as of today are not suffering the conditions as were prevalent in 50s and 60s. The country has achieved self-sufficiency in food production. Some of the states such as State of Gujarat have achieved self-sufficiency in cattle-feed and fodder as well. Amongst the people there is an increasing awareness of the need for protein rich food and nutrient diet. Plenty of such food is available from sources other than cow/cow progeny meat. Advancements in the field of Science, including Veterinary Science, have strengthened the health and longevity of cattle (including cow progeny). But the country's economy continues to be based on agriculture. The majority of the agricultural holdings are small units. The country needs bulls and bullocks.

For multiple reasons which we have stated in very many details while dealing with Question-6 in Part II of the judgment, we have found that bulls and bullocks do not become useless merely by crossing a particular age. The Statement of Objects and Reasons, apart from other evidence available, clearly conveys that cow and her progeny constitute the backbone of Indian agriculture and economy. The increasing adoption of non-conventional energy sources like Bio-gas plants justify the need for bulls and bullocks to live their full life in spite of their having ceased to be useful for the purpose of breeding and draught. This Statement of Objects and Reasons tilts the balance in favour of the constitutional validity of the impugned enactment. In **Quareshi-I** the Constitution Bench chose to bear it in mind, while upholding the constitutionality of the legislations impugned therein, insofar as the challenge by reference to Article 14 was concerned, that "the legislature correctly appreciates the needs of its own people". Times have changed; so have changed the social and economic needs. The Legislature has correctly appreciated the needs of its own people and recorded the same in the Preamble of the impugned enactment and the Statement of Objects and Reasons appended to it. 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 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.

According to Shri M.S. Swaminathan, the eminent Farm Scientist, neglect of the farm sector would hit our economy hard. According to him "Today, global agriculture is witnessing two opposite trends. In many South Asian countries, farm size is becoming smaller and smaller and farmers suffer serious handicaps with reference to the cost-risk-return structure of agriculture. In contrast, the average farm size in most industrialized countries is over several hundred hectares and farmers are supported by heavy inputs of technology, capital and subsidy. The on-going Doha round of negotiations of the World Trade Organisation in the field of agriculture reflects the polarization that has taken place in the basic agrarian structure of industrialized and developing countries. Farming as a way of life is disappearing and is giving way to agribusiness." (K.R. Narayanan Oration delivered by Dr. Swaminathan at the Australian National University, Canberra, published in 'The Hindu', October 17, 2005, p.10) "In India, nearly 600 million individuals are engaged in farming and over 80 per cent of them belong to the small and marginal farmer categories. Due to imperfect adaptation to local environments, insufficient provision of nutrients and water, and incomplete control of pests, diseases and weeds, the present average yields of major farming systems in India is just 40 per cent of what can be achieved even with the technologies currently on the shelf. There is considerable scope for further investment in land improvement through drainage, terracing, and control of acidification, in areas where these have not already been introduced." (ibid) Thus, the eminent scientist is very clear that excepting the advanced countries which have resorted to large scale mechanized farming, most of the countries (India included) have average farms of small size. Majority of the population is engaged in farming within which, a substantial proportion belong to small and marginal farmers category. Protection of cow progeny will help them in carrying out their several agricultural operations and related activities smoothly and conveniently. Organic manure would help in controlling pests and acidification of land apart from resuscitating and stimulating the environment as a whole.

Having subjected the restrictions imposed by the impugned Gujarat enactment to the test laid down in the case of **N.M. Thomas** (supra) we are unhesitatingly of the opinion that there is no apparent inconsistency between the Directive Principles which persuaded the State to pass the law and the Fundamental Rights canvassed before the High Court by the writ petitioners.

Before we part, let it be placed on record that Dr. L.M. Singhvi, the learned senior counsel for one of the appellants, initially tried to build an argument by placing reliance on Article 31C of the Constitution. But at the end he did not press this submission. Similarly, on behalf of the respondents, the Judgment of the High Court has been supported only by placing reliance on Article 19(6) of the Constitution. The legislative competence of the State Legislature to enact the law was not disputed either in the High Court or before us.

Result: For the foregoing reasons, we cannot accept the view taken by the High Court. All the appeals are allowed. The impugned judgment of the High Court is set aside. The Bombay Animal Preservation (Gujarat Amendment) Act, 1994 (Gujarat Act No. 4 of 1994) is held to be intra-virus the Constitution. All the writ petitions filed in the High Court are directed to be dismissed".

26) The above expressions of the Apex Court, Constitution Benches and other relying the same, concluded that it was a settled legal position that there was no fundamental right of Muslims to insist on slaughter of healthy cows on the occasion of Bakrid. The contention that not only an essential religious practice under Article 25(1) of Constitution, but even optional religious practice could be permitted, was discarded. The Apex Court held that slaughtering of healthy cows on Bakrid is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merit on Bakrid.

27) In **Narad Joshi v. State of Uttarakhand**⁴⁵ the High Court of Uttarakhand-while dismissing the interim custody of the cattle to the owners, it was held relying upon the judgments of the High Courts of Andhra Pradesh and Madhya Pradesh and of the Apex Court observed as follows:

"The judgment rendered by Hon'ble Madhya Pradesh High Court in **Secretary, Gopal Goshala Jhonkar v. Ramesh and others reported in 2009 (4) MPHT182 decided on 28.11.2008** and the judgment rendered by Hon'ble Andhra Pradesh High Court in **Mohd. Moinuddin v. State of Andhra Pradesh delivered on 07.07.2010 in Criminal Revision Case no. 1181 of 2010** that were referred in the unreported judgment of the Hon'ble Apex Court in **State of Uttar Pradesh v. Mustakeem and others in Criminal Appeal no. 283-287 of 2002**, wherein the Hon'ble Apex Court held as follows:-

"The State of Uttar Pradesh is in appeal against the direction of the Court directing release of the animals in favour of the owner. It is alleged that while those animals were transported for the purpose of being slaughtered, an FIR was registered for alleged violation of the provisions of Prevention of Cruelty to Animals Act, 1960, and the specific allegation in the FIR was that the animals were transported for being slaughtered, and the animals were tied very tightly to each other. The criminal case is still pending. On an appeal for getting the custody of the animals being filed, the impugned order has been passed. We are shocked as to how such an order could be passed by the learned Judge of the High Court in view of the very allegations and in view of the charges, which the accused may face in the criminal trial. We, therefore, set aside the impugned order and direct that these animals be kept in the Gowshala and the State Government undertakes to take the entire responsibility of the preservation of those animals so long as the matter is under trial. The appeals stand disposed of accordingly."

The High Court observed therefrom that the facts of the instant case are identical to the case of Mustakeem's case (supra). The criminal

⁴⁵ 2013(2) U.D. 661 : 2013(23) R.C.R.(Criminal) 471

trial against the respondents (Saleem and Bilal) is pending adjudication before learned Magistrate. They have been charge-sheeted not only in respect of the Prevention of Cruelty to Animals Act, 1960, but also for violation of the Uttarakhand Protection of Cow Progeny Act, 2007, as also under Section 429 Indian Penal Code. Judging from the above yardstick, this Court is of the opinion that accused respondents are not entitled to the interim custody of seized cattle”.

28) Having regard to the above, the impugned order no way requires interference on any of the counts.

29) Hence, the revision is dismissed. Needless to say, since final report was filed and cognizance taken as per the submissions, the trial Court shall make every endeavor for early conducting of trial of the offences and to decide the case on its own merits.

As a sequel, miscellaneous petitions if any pending shall stand closed.

In fact this Court in its order in Crl.P.No. **11193 of 2014**, dt.26.09.2014 given directions as follows:

“The Registry is required by this order to communicate the order to the Chief Secretaries of the State of Telangana and the State of Andhra Pradesh for perusal and to take necessary steps to amend Section 429 I.P.C to make it non-bailable since the subject is in the concurrent list and also to amend the Sections 11 and 26 of the Prevention of Cruelty to Animals Act, 1960 to consider for enhancement of the punishment at par with Section 429 I.P.C if not more equally in Section 10 of A.P. Cow Slaughter Act, 1977 and to constitute or appoint the competent authority by notification under Sections 4 and 6 if not already

constituted and existing and functioning and also establishment of the institutions if not already done, existing and functioning; for taking care of Cow and other animals under section 17 since the subjects under Article 246(2) of the Constitution of India read with Schedule VII, List-3, Entry 17 equally I.P.C and Cr.P.C provisions in the list-3”.

There is nothing received in response to it.

It is also the need to amend for certificate if issued of a healthy cow or bull or calf as if not fit and to permit from such certificate to slaughter the veterinary doctor who issued such certificate is also liable for penal consequences by incorporating in Section 10 of A.P. Cow Slaughter Act, 1977 making it as cognizable and non-bailable offence, besides attracting of other penal provisions of mischief and cheating etc., under Indian Penal code.

Registry is while also communicating the copy of this order, call for written report of progress of any steps taken for said compliance and put up by listing the matter on 5th June, 2017.

Dr. B. SIVA SANKARA RAO, J

Dt.01.03.2017

Note: L.R.copy to be marked.

B/o.KNL/VVR