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*Cows and Constitutionalism**

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Abstract

Cows have been the subject of political petitioning in South Asia for over a hundred years. This article examines the changing relationship between communities and the state in India through the transformation of petitioning practices—from 'monster' petitions, to postcard campaigns and constitutional writs—by the proponents and opponents of the cow protection movement from the late nineteenth century through to the first decades of independence. The article shows that, instead of disciplining and formalizing popular politics, petitioning provides channels for mobilization and disruption. As Hindus and Muslims engaged in competitive petitioning to rally a public, persuade the executive, or litigate through the courts, the question of cow slaughter was recast from one of community representation to religious belief, to property rights, to federalism, and, finally, questions of national economic development. In the absence of representative government in colonial India, Hindus for cow protection generated massive petitions which argued that they represented popular democratic will. Despite the lack of a constitution, Muslim petitioners sought to establish a judicially enforceable framework to protect their right to cow slaughter. Independence, which brought both democracy and a written constitution, caused a fundamental break with older claims and forms of petitioning, and led to both Hindus and Muslims seeking to settle the debate through writ petitions before constitutional courts.

Introduction

The history of public life in modern India is inextricably entangled with that of the cow (i.e. the female of the species of native cattle in South Asia). The last decade has seen new laws regulating the slaughter of cows enacted in Maharashtra, Karnataka, Haryana, and Rajasthan. There have been writ petitions before the high courts of Delhi, Madras,

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and Bombay as well as the Supreme Court of India either asserting or challenging the bans on cow slaughter.[1] Armed gangs prowl the countryside lynching and attacking Muslims and Dalits on the pretext of cow protection. Progressive and Dalit groups counter-campaign with mass rallies and public demonstrations in support of beef eating. The Border Security Forces were reported to have been engaged in rescuing cows being smuggled across the border to Bangladesh.[2] The politics around the cow cuts across legislative and judicial spheres as well as international relations. Less commented upon, but ubiquitous, are the emergence of internet and WhatsApp petitions demanding a national ban on cow slaughter.[3]

While the media visibility and the extent of accompanying violence and impunity correlates to the Bharatiya Janata Party (BJP) having an electoral majority in the central government, the cow has long been a site for political tension in India. It is evident that by the twelfth century the cow was emerging as a political symbol of considerable significance. Mughal emperors like Babur and Akbar attempted to reach out to their Hindu subjects and allies by imposing prohibitions on cow slaughter. Conversely, Hindu rulers like Shivaji who sought to challenge Mughal authority attempted to define their opposition by placing cow protection on their agendas. There are also documented

[1] 'The Fine Print in the Beef Ban Judgment', 10 May 2016: http://www.livemint.com/Politics/EReAgu6J8Ad5CSGWqTAGUJ/The-fine-print-in-the-beef-ban-judgement.html, [accessed 10 September, 2018]; 'Delhi High Court Dismisses Plea to Ban Cow Slaughter, Sale of Beef', 8 November 2015: http://www.hindustantimes.com/delhi/delhi-high-court-dismisses-plea-to-ban-cow-slaughter-sale-of-beef/story-Q7RdfDoGLAzj8ImoF2Q3JL.html, [accessed 10 September 2018]; 'Delhi HC to Hear PIL on Ban on Possession of Beef', 5 May 2016: http://indianexpress.com/article/cities/delhi/delhi-hc-to-hear-pil-against-ban-on-possession-of-beef-2785061/, [accessed 10 September 2018]; 'Madras High Court Rejects PIL Seeking Ban on Beef Consumption Near a Temple', 26 May 2016: http://twocircles.net/2016mar26/1459006741.html#.WA4egSRyxX8, [accessed 10 September 2018].

[2] 'BSF Attacked by Smugglers, 6 Personnel Injured', 2 August 2016: http://www.business-standard.com/article/pti-stories/bsf-attacked-by-cattle-smugglers-6-personnel-injured-116080200639_1.html, [accessed on 10 September 2018].

[3] There have been close to 4,000 petitions on change.org in the last five years demanding a cow slaughter ban in India, gaining between 40 to 9,000 signatures. See, for instance, 'Stop Cattle Smuggling from West Bengal to Bangladesh across Indo-Bangla Border', with 8,898 signatures: https://www.change.org/p/cattle-smuggling-from-west-bengal-to-bangladesh-across-indo-bangla-border-is-taking-new-routes-and-stop-cattle-smuggling-from-west-bengal-to-bangladesh-across-indo-bangla-border, [accessed 10 September 2018]; 'Protect Cows and Their Sacrifice be Ban in India', with 3,264 signatures: https://www.change.org/p/protect-cows-and-their-sacrifice-be-ban-in-india-naresh-kadyan, [accessed 10 September 2018].

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cases of urban communal strife in North India in the eighteenth and early nineteenth centuries in which the cow played a symbolic role.[4] These conflicts often took place around the Muslim festival of Eid-ul-adha, during which Muslims practised *qurbani* or the sacrifice of an animal, in memory of Abraham's sacrifice of his son. The cow, being cheaper and providing more meat than most other domesticated animals, was most commonly selected to be sacrificed and Eid-ul-Adha came to be known locally as Bakr-Eid ('Bakr' being the Arabic for 'cow').

Since the eighteenth century, cow protection and cow slaughter have been the subject of petitioning to a diverse set of authorities and jurisdictions, which has generated reams of paper, bureaucratic correspondence, scientific and technical reports, parliamentary debates, and litigation. This article engages with this archive of 'cow petitions' from the late nineteenth to the mid-twentieth centuries in order to trace the transformation of the state and people's expectations of it. It will seek to substantiate three major claims by focusing on petitioning on this issue over a period of a hundred years. The first is that petitioning, instead of disciplining popular politics, provided channels for mobilization and disruption. Secondly, petitioning to executive authorities coexisted with, and was formed by, petitioning to judicial and constitutional bodies. Finally, independence marked a significant break in terms of both the language and strategies of petitioning around the cow.

This article maps the genealogy of how the 'problem' of cow slaughter was cast and recast over a century. The problem itself is an ideological construction based on conditions defined by 'social constructions that reflect and reinforce beliefs about the self, the other and the social setting'.[5] The question of cow slaughter is often presented as an issue of competing religious interests. It can also be framed under the right to property (i.e. the extent of the right to enjoy one's own property) in the case of the owner of a cow. Alternatively, it can be determined as a question of the hierarchy that exists between national law (including the rights to property or to practise one's profession) and local customs (i.e. the status of a long-standing local custom in the case of prohibiting cow slaughter). Or this could be

[4] C. A. Bayly, 'The Pre-History of "Communalism"? Religious Conflict in India, 1700–1860', *Modern Asian Studies* 19.2 (1985), pp. 177–203.

[5] Murray Edelman, 'The Construction of Social Problems as the Buttress of Inequality', *University of Miami Law Review* 42.7 (1987–1988), pp. 7–39.

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framed as a problem of economic development (i.e. cows are necessary to strengthen the agrarian economy).

There is considerable scholarship that has focused on public agitation over cow protection in the colonial period, linking it to the emergence of a certain form of popular politics and the construction of a Hindu political identity.[6] However, looking at petitioning in both the colonial and post-colonial state, this article is able to demonstrate, first, a fundamental shift in both the public conception of the state as a democratic one and a shift in the vocabulary of politics. Secondly, while much of the scholarship has focused on the claims made by Hindu groups to the executive, this article reveals a parallel process of claims-making by Muslims to the judiciary.

'Rumours of a monster petition': cows, community, and sovereignty

By 1882, reports had begun trickling in from various government officials that there was a plan by the Gorakshini Sabha (Cow Protection Society) to prepare a 'monster petition' for submission to the government, demanding that 'kine killing' be stopped.[7] (The term 'monster petition' was in currency among British colonial officials, having first emerged in 1891 to describe a petition with over 30,000 signatures by Australian women to parliament demanding the franchise. And in 1894 Gandhi initiated a 'monster petition' from South Africa with 10,000 signatures to be sent to the viceroy Lord Ripon protesting against the proposed disenfranchisement of Natal Indians.)

Memorials were circulated in the urban centres of Bombay and Calcutta, in the rural hinterland as well as the small princely protectorates. The number of signatories to this 'monster petition' was unprecedented: for instance, reports from Rajasthan suggested

[6] John R. McLane, *Indian Nationalism and the Early Congress* (Princeton, NJ: Princeton University Press, 1977); Francis Robinson, *Separatism Among Indian Muslims: The Politics of the United Provinces' Muslims, 1860–1923* (Cambridge: Cambridge University Press, 2007); Sandria Freitag, *Collective Action and Community: Public Arenas and the Emergence of Communalism in North India* (Berkeley: University of California Press, 1989); Christopher Pinney, *'Photos of the Gods': The Printed Image and Political Struggle in India* (London: Reaktion Books, 2004), p. 108; Gyan Pandey, 'Rallying Around the Cow: Sectarian Strife in the Bhojpuri Region c. 1888–1917', in *Subaltern Studies Vol. II*, Ranajit Guha (ed.), (New Delhi: Oxford University Press, 1986).

[7] D. F. McCracken, 'Note on the Anti-Kine Killing Agitation', India Office Records, British Library (hereafter IOR) L/P&J/254/1894.

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that a particular memorial had gathered 350,000 signatures, while other cities like Shimla reported gatherings of 200 people where everyone committed to sign the petition.[8] There was also a successful subscription of funds to support this petition, with Indian merchants and ruling princes contributing generously. In some towns the petitioners were successful in getting the local authorities to place a ban on cow slaughter; in others they persuaded or coerced Muslims to give up the practice of sacrificing cows. The Department of Thuggee and Dacoity, effectively a department that monitored criminal activity across state borders, also closely followed this petition, which begs the question, why?

To understand the anxieties the petition generated, we have to turn to the origins of the Gorakshini Sabha. In 1881, the Arya Samaj, a popular Hindu reform movement based in Punjab, set up the first Gorakshini Sabha with the aim of bringing an end to cow slaughter in India. Its founder, Swami Dayanand Saraswati, authored a pamphlet titled '*Gaukarunanidhi*' which made the case for cow protection and presented an action plan for establishing local societies for the 'protection of cow and agriculture'.[9] These societies, which were also called Gorakshini Sabhas, like the original, began to emerge in Punjab and the Gangetic plain. Their stated aim was to prevent cattle from 'passing under any circumstances into the hands of those who will either sacrifice them or slaughter them for food'.[10]

Central to the Gorakshini Sabha's claims was that the colonial state, which it clearly identified as a foreign one, was unwilling to meet its demands to protect cattle. In a society where food operated as a powerful semiotic device, condensing relations of production and exchange as well as regulating social contact, the fact that the British were a beef-eating race was very visible.[11] The British Indian Army,

[8] Office of the Assistant to the IG Police, Punjab, Special Branch, 'Note on Agitation Regarding the Cow Question', IOR/L/P&J/298/1884.

[9] Mitra Dayananda Sarasvati, *Gokaruṇānidhi* (Tenāli: Satya Mitra Ārya, 1938); *[Gokaruṇānidhi] The Ocean of Mercy. An English Translation of Maharshi Swami Dayanand Saraswati's 'Gocaruna Nidhi' by Durga Prasad* (Lahore: Virajanand Press, 1889). For a deeper engagement with both English and vernacular pamphlet literature on cow protection in the nineteenth and early twentieth centuries, see Cassie Adcock, 'Sacred Cows and Secular History: Cow Protection Debates in Colonial North India', *Comparative Studies of South Asia, Africa and the Middle East* 30.2 (2010), pp. 297–311.

[10] Office of the Assistant to the IG Police, Punjab, Special Branch, 'Note on Agitation Regarding the Cow Question', IOR/L/P&J/298/1884.

[11] Arjun Appadurai, 'Gastro-Politics in Hindu South Asia', *American Ethnologist* 8.3 (1981), pp. 494–511.

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for example, was the largest single consumer of beef in colonial India. The colonial state had long been resistant to the idea of banning cow slaughter. Requests by Indian rulers, who allied with the British and allowed them to station troops in their states, that horned cattle should not be slaughtered on their territories were rejected as an 'impossible requirement'.[12] For instance, when the police in Saran, Bihar, stepped in to protect the cattle being sold to the district army commissariat, the protesting crowd chanted anti-British slogans. As Yang notes in his study of the Saran violence, the cow question divided not only communities that had long experience of one another (Hindu from Muslim) but also communities that were relative strangers (Hindu from British).[13]

Faced with the state's reluctance to protect cattle, the cow protection movement sought to create institutions that would. They required that every local household contribute the equivalent of the cost of a *chutki* (pinch) of their daily food. These contributions were used to build and maintain cow refuges, where rescued cows could be kept. There was a strong element of moral compulsion requiring people to participate, for instance, the rules issued by the cow protection committees stated that not contributing the *chutki* was a sin equivalent to that of eating the flesh of the cow.[14] Their pamphlets detailed a list of offences, which included setting a cow loose, taking a cow to the government pound, non-subscription to the local Sabha, castration of an ox, and selling a female buffalo (Asian domestic water buffalo or *Bubalus bubalis*) or any cow to an unknown person. The sale of cows to butchers or to low-caste groups like the Nats, Dosabhs, Chamars, and Banjaras who were engaged in the leather trade was expressly forbidden. By effectively drawing up private legislation that was clearly modelled on the colonial legal codes, the movement therefore sought to project a caste-Hindu identity that was framed in opposition to the practices of the British, Muslims, and Dalits.

[12] Letter from Charles Metcalfe, Resident at Delhi to J. Adam, Secretary to Governor General, 18 January 1818, reproduced in T. Dharampal and T. M. Mukundan, *The British Origin of Cow-Slaughter in India: With Some British Documents on the Anti-Kine-Killing Movement, 1880–1894* (Mussoorie: Society for Integrated Development of Himalayas, 2002), p. 85.

[13] A. A. Yang, 'Sacred Symbol and Sacred Space in Rural India: Community Mobilization in the "Anti-Cow Killing" Riot of 1893', *Comparative Studies in Society and History* 22.4 (1980), p. 583.

[14] 'Case for Notice of the Attorney General', IOR/L/P&J/6/257/1889.

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The movement's success was noted with alarm by the colonial government who saw this as a challenge to its authority. The meetings of the Gorakshini Sabhas were attended by thousands and through collective action they were able to discipline the local communities. As a district magistrate from the North West Frontier Province described it,

> The whole of the Hindu population is driven into its arms by the tyranny of caste, and when once the league is established in any place, its grasp is so powerful that every man, women and child must openly or secretly contribute to its funds or cease to be a Hindu.[15]

People who breached the cow protection rules were subjected to social boycott, no services were performed for their families, their daughters were sent back from their matrimonial homes, and they faced economic ruin. There were cases of physical coercion as well, especially in the case of Muslims, who often found themselves surrounded by a mob until they made an oath that they would no longer engage in cow sacrifice. Coercion could soon translate into violence. In 1893 alone, a hundred people were killed in communal violence over cow slaughter in towns as far apart as Junagadh, Oudh, and Rangoon.

This mobilization has been located within the teleology of early nationalism and communalism.[16] While the Indian National Congress in this period never made cow protection an official goal, John McLane suggests that its demand for representative government, at the time when the cow protection movement was demanding a legislative ban on cow slaughter, appeared to blur the distinction between the two groups.[17] A further blurring and contradiction arose from the fact that several Congress members also belonged to cow protection societies. Gorakshini Sabha meetings often doubled up as a forum for Congress propaganda and vice versa. For instance, the Nagpur Gorakshini Sabha was allowed to hold its meeting in the Congress pavilion, and government informants in Punjab reported that signatures were being collected for Congress petitions for legislative reform on the 'pretext' that it would end cow slaughter.[18] The viceroy Lord Lansdowne noted

[15] D. F. McCracken, Officiating General Superintendent, Thagi and Dacoity Department, 'Note', IOR/L/P&J/254/1894.
[16] McLane, *Indian Nationalism*; Robinson, *Separatism Among Indian Muslims*.
[17] McLane, *Indian Nationalism*, p. 273.
[18] D. F. McCracken, Officiating General Superintendent, Thagi and Dacoity Department, 'Note', IOR/L/P&J/254/1894.

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that this involvement could turn the Congress from 'a foolish debating society to a real power'.[19]

Why did cow protection become such a powerful political platform? The colonial state's ostensible religious neutrality underscored the impossibility of getting it to protect the cow for religious reasons. Conversely, attempts made by the state to regulate cow slaughter, by permitting it on the occasion of Eid, for example, made it more visible and resulted in violence.[20] The state's refusal to protect the sacred cow both highlighted its failure to represent the interests of the community/nation and created a political role for the community, either through petitions or through direct action. The cow came to stand in for the community, as can be seen from the various images and pamphlets that were circulated. Popular lithographic images depicting the 84 major Hindu gods inside the cow being threatened by a dark man with a sword were widely distributed. The cow thus began representing the greater Hindu community, and the demon that threatened it could be represented as either Muslims or even the British.[21] These images did not circulate in isolation. As Sandria Freitag has shown, cow protection meetings would see the circulation of the cow protection rules, the signing of public petitions, and the public display of images that drew a connection between the mother cow and the imagined nation (i.e. those who drink her milk).

The Sabhas constituted tribunals, which took cognizance of offences against cows and stepped in to create a parallel regulatory order. For instance, Sita Ram Ahir was found guilty of selling a cow to a low-caste butcher. The tribunal first ordered that he buy back the cow at a loss, which he did, and then found him guilty and fined him. His refusal to pay the fine was punished with 24 days of 'outcasting' (being expelled from his caste/community).[22] Mimicking the conventions of state trials, which reported criminal cases as offences against the Queen Empress, the cases before the Gorakshini Sabhas were recorded as offences against the 'Gau Maharani' or the 'Cow Empress'.[23] The

[19] Lord Lansdowne's Minutes on the Anti-Kine Killing Movement, 28 December 1893, IOR/L/P&J/257/1894.

[20] Sandria Freitag, *Collective Action and Community: Public Arenas and the Emergence of Communalism in North India* (Berkeley: University of California Press, 1989), p. 150.

[21] Pinney, *'Photos of the Gods'*, p. 108; Pandey, 'Rallying Around the Cow'.

[22] Confidential Letter to Advocate General from D. J. Lyall, Secretary, Home Department, Govt. of India, IOR/L/P&J/6/376/1894, file 298.

[23] In place of *Regina* v. *x*, the records of these trials were published as *Gau Maharani* v. *Sita Ram Ahir*, *Gau Maharani* v. *Sheo Lochan* and so on. See ibid.

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figure of imperial authority of the Great White Queen was replaced with that of the sacred cow.

The late colonial state received hundreds of individual petitions asking for the ban or the regulation of cow slaughter, but it is not clear whether they were ever presented with the rumoured 'monster petition'. Although the state remained largely dismissive of the particular claims made in the petitions, the *process of petitioning itself* generated considerable anxieties. This was not just a matter of cow protection, but about creating an entire regulatory order outside the framework of the colonial state.

The term 'monster petition' remained prevalent in nationalist politics until the end of the First World War and was continually deployed by Gandhi. The object of these petitions was partly to make a claim about representation to the colonial state in the absence of the franchise, but also, primarily, to initiate a process of gathering signatures which led to the mobilization of communities.[24]

Imperial constitutionalism and bovine litigation

This move towards petitioning and the creating of parallel enforcement structures was not inevitable, as early anti-cow slaughter activists had attempted to solve the problem through the mechanisms of the colonial state. They had tried to lay charges under s.295 of the Indian Penal Code (hereafter IPC) against those accused of cow slaughter. This particular section came under the chapter 'Offences Against Religion and Caste' and was part of the colonial government's attempt to manage disputes between communities. Section 295 reads,

> Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, or with the knowledge that any class of persons are likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to seven years and must not be less than one year, and shall also be liable to a fine.[25]

In 1881, Iman Ali and Amiruddin, two Muslim residents of the Tilhar municipality of the United Provinces, were convicted by a magistrate under s.295 of the IPC for the offence of killing a cow on a public

[24] Gandhi's writings are rife with references to 'monster petitions'.
[25] S.295, Indian Penal Code, 1860.

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highway. The magistrate held that the accused were aware that killing a cow would be considered an insult by their Hindu fellow subjects and fined them Rs 25 each. The case came before the High Court in revision over the question of whether the cow could be held to be a 'sacred object'. There was considerable confusion over whether the IPC protected the cow. The majority judgment, authored by Chief Justice Edge and joined by the three other British judges, struck a cautious note, holding that 'sacred object' had to be read *ejusdem generis* with the 'place of worship' and could not have been intended to apply to an animate object like the cow. Justice Brodhurst clarified that the word 'destroyed' clearly applied to an inanimate object, for if the intention had been to include animals, the legislature would have used terms like 'kill' or 'maim'.[26] The Allahabad High Court ruling was widely criticized by the press, and on 22 January 1888 a large meeting was held at the Allahabad Town Hall which resulted in a resolution to petition the government to incorporate the cow within the category of 'sacred objects' in s.295.[27] While the historians of the cow protection movement all recognize that the movement grew in strength after the failure of the Allahabad High Court to protect the cow as a 'sacred object', they undervalue the importance of the 'failure'.[28] The Allahabad decision is seen as a turning point in the turn from the politics of petitioning to the politics of the street.

However, this impression is a result of the literature's almost-exclusive focus on attempts by Hindus to protect the cow. Archival sources show that from the late nineteenth century there was an increase in litigation before colonial courts by Muslims asserting their right to slaughter the cow. As Hindu cow protection societies sought to make their claims in the sphere beyond the state, Muslims who sought

[26] *Queen Empress* v. *Iman Ali and Another*, (1888) ILR 10 All 150.

[27] See selections from newspapers in Northwest Provinces (and United Provinces) Newspapers Reports, IOR/L/R/5/65/1888.

[28] The literature on this case also shows the opacity of the legal archive to historians. For instance, Mathew Grove castigates Frances Robinson and Gyan Pandey for providing the incorrect date of 1886 for the Allahabad High Court judgment when, in fact, the judgment was delivered in December 1887. Although this is the date Grove cites, the judgment was published and began to circulate only in 1888. In his review of this literature, Grove is particularly scathing about a number of factual errors and incorrect emphases in historians' accounts of the court decisions. This is partly because scholars of the cow protection movement work with state archives, which hold executive and legislative records, and tend not to examine judicial sources, organized in the high courts or through legal publishing. See Matthew Grove, 'Law, Religion and Public Order in Colonial India: Contextualising the 1887 Allahabad High Court Case on "Sacred" Cows', *South Asia: Journal of South Asian Studies* 33.1 (2010), p. 92.

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to conserve their right to sacrifice the cow re-engaged with colonial institutions. This litigation came from a heightened awareness of the rights to religion that Muslims enjoyed under the British Crown. The claim to a 'right' to slaughter cows was not one graciously acknowledged by the administration; bureaucrats often expressed their exasperation at the insistence on 'rights' when a compromise ending the local practice of cow slaughter seemed a likely solution to a law and order problem. As Dennis Fitzpatrick, the lieutenant-governor of Punjab complained, 'I have had one single Mussulman after me for months, who quotes constitutional principles at me and wants to know why I won't upset an order of the District Magistrate refusing him leave to kill cows in a place where no one else wants them to be killed.'[29] Muslim voices began questioning the decisions by local magistrates, which they interpreted as giving in to the demands of the cow protection movement.

Muharram Ali Chisti, editor of the Urdu daily *Rafiq-i-Hind*, attempted to analyse why cattle slaughter, which had been practised in India for 1,300 years, was suddenly causing riots.[30] In Chisti's view, before the Raj, native Hindu rulers had put down the practice with a strong hand while native Muslim rulers had allowed it, thus the weaker party always obeyed the stronger and no riots ever occurred. Why then was there agitation when the regime was under 'a people who were neutral in regard to religious and race prejudices towards the people of India'? Chisti argued that the cause lay in the increase in the Hindus' power and the change in their behaviour arising from this consciousness of their strength. The Hindus began with expressing their feelings in harmless ways, such as purchasing cows, building cow shelters, and delivering speeches, but when these failed to have an effect, they started riots, hoping that violence would compel the government to end cow slaughter. Chisti highlighted the ambiguity the British had created over the situation. The Muslims in British India believed that the British constitution accorded them full liberty in religious matters, while the Hindus were coming to believe that the government could be compelled to frame new laws if pressure was brought to bear on them. Chisti pointed out an attempt by a Hindu member of the Legislative Council to ban the sale of beef in India, which had been rejected as absurd but might, 'owing to the altered

[29] Office of the Assistant to the IG Police, Punjab, Special Branch, 'Note on Agitation Regarding the Cow Question', IOR/L/P&J/298/1884.
[30] Ibid.

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condition of the present age', be regarded as reasonable. Chisti was remarkably prescient in his analysis.

A vocal group of Muslims believed that they had a right to practise their religion, which included the rite of cow sacrifice, in British India. The assertion of that right remained a challenge, given the obvious reluctance of the government to enforce such a right and the absence of an enforceable constitution. The civil litigation process became the natural venue for attempts to establish such rights. As an intelligence officer noted, 'People are asking themselves why should we not do this and why should our neighbors be allowed to do that, and they always find the *pettifogging legal practitioners* and professional agitators at their elbow to help them think out the question and some party newspaper available for discussing it.'[31]

So what options were available to a Muslim who wanted legal recognition of a right that he believed he had by virtue of being a British imperial subject? First, he could argue the common law right which guaranteed a man enjoyment of his property, provided he caused no nuisance to his neighbour. Secondly, he could argue that cow killing was a customary practice protected by the promises of the British Crown. Finally, he could rely on the newly enacted Civil Procedure Code and get the court to declare his particular right and thus protect it from encroachment.

It is important to note that these rights, including the right to enjoy one's property, were no different from the rights enshrined in classical liberal thought. Yet the right being urged under these categories by Muslim litigants—to practise cow slaughter—appeared not to be shared equally by all subjects. Instead, it was confirmed due to a particular set of circumstances and had to be proven in every individual case. For instance, one man's success in obtaining recognition for a customary right to cow sacrifice did not guarantee the rights of Muslims in the next village.

In the early cases of this sort, the Muslim plaintiffs had to rely on the recognition of a customary right. For instance, the Allahabad High Court recognized the right of a widow to offer a cow in sacrifice in the interior of her house, notwithstanding an order from the local magistrate prohibiting sacrifice in the locality, provided it took place within the inner quadrangle of her house and the outer doors of the

[31] Ibid.

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house were kept closed for the duration of the sacrifice.[32] Even when the courts recognized a more general right to slaughter cows, they held that no right could be claimed if it prompted riotous demonstrations or created animosities, ruling that even if the slaughter took place on one's own land, it could not be done in an exposed way.[33]

The reliance on custom had its own pitfalls. In 1903, some Hindus from Behta Goshain village in the United Provinces petitioned the district magistrate to pass an order prohibiting the slaughter of cattle in the village. In his order, the magistrate noted that Hindus outnumbered Muslims in the village and that cow slaughter was not a practice common to the area. Several Muslims 'feeling aggrieved at the prohibition of the exercise of what they conceived to be their legal rights' instituted a civil suit. The lower court initially admitted the suit, recognizing that there was a right of a substantial nature that was denied (as opposed to a right that affected mere dignity or privilege), but dismissed the suit on the grounds that the Muslims had failed to establish that there was a custom of cow sacrifice in the village. In the appeal to the Allahabad High Court, the Muslim plaintiffs argued that, irrespective of custom, every subject had a right to perform all lawful acts upon his own property, and therefore the killing by Muhammadan subjects of their own cows on their own land could not be unlawful.[34]

The Allahabad High Court in the *Shahbaz Khan* case held that it was indisputable that, within certain limitations, the slaughtering of cattle by Muslims was not illegal. They located this view in the legal right of every person to make use of their own property, provided that they did not cause injury to others or break the law. One could not limit this right because it hurt the 'susceptibilities of others'. The court rejected the assumption that the burden of proof lay upon Muslims to prove the existence of a custom that allowed them to slaughter cattle. The Allahabad High Court decreed that the plaintiffs had the right to slaughter cows for daily consumption, for festivals, and as sacrifice, provided that in the exercise of this right they did not commit a nuisance. They also passed an injunction restraining the Hindu defendants from interfering with these rights.

[32] *Raghubar Dayal* v. *Ameeran Jahan*, Second Appeal No. 1023 of 1881, Allahabad High Court, 4 May 1882 (Justices Brodhurst and Tyrell).
[33] *Nanbahar Singh* v. *Kabir Bux*, AIR 1930 All 753.
[34] *Shahbaz Khan and Others* v. *Umrao Puri and Others*, (1908) ILR 30 All 81.

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This decision became a valuable precedent that was used to check attempts by local officials to arrest Muslims for cow slaughter under s.107 of the IPC on the grounds that permitting the act to proceed would occasion a breach of peace or public tranquillity. The courts held that for this provision to apply, it would have to be proved before the magistrate that a wrongful act was being committed. They rejected the contention of government advocates that a 'wrongful act' would include acts that were legal but believed to be immoral.[35] The courts explained that it would be very difficult to distinguish right and wrong from a moral standpoint, especially when dealing with communities who had different moralities.

The possibility of litigation disrupted other forms of political mobilization. The compromise agreement emerged as the political solution to keeping order between communities in a locality and was often endorsed by the local administration. In Ghazipur in 1908, representatives of some of the local Hindus and Muslims signed a pact whereby Hindus undertook to stop playing musical instruments or blowing conches during festivals to avoid giving offence to Muslims, while Muslims declared that there would be no dispute regarding the slaughter of cows. Several Muslims were persuaded to make their thumb impressions on a document which stated that they would not create any quarrel, disturbance, or *litigation* (emphasis mine) in connection with the sacrifice of cows.[36] Although the Hindu district magistrate held that this document restrained their right to litigate, the High Court was to rule that this was mere *nudum pactum* with no legal force. This case of *Sheikh Muhammad Yakub* arose, in fact, from several Muslims from the same locality, identified as 'Jolahas', implicitly repudiating the 'pact' by initiating a suit, under proper advice, declaring their right to kill cows. The court, while demurring from pronouncing their right to slaughter cows, stated that the district magistrate could not show due cause to prevent them from carrying out the act.[37] Plaintiffs often contended that the compromise document was not a representative agreement.[38] As a result, attempts by prominent men in the locality to resolve the issue, or coerce community leaders into a compromise, could be disrupted through the litigation

[35] *Pir Ali Kasab and Others* v. *King Emperor*, 56 Ind Cas 437.
[36] *Sheikh Muhammad Yakub* v. *Mangru Rai and Others*, 7 Ind Cas 318.
[37] *Sheikh Muhammad Yakub* v. *King Emperor*, 6 Ind Cas 454.
[38] *Subhan Mochi* v. *Babu Ram Singh and Others*, AIR 1930 All 121.

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process. Most protagonists were well aware of this and attempted to get people to surrender their right to litigate on the question.

It is worth considering whether civil litigation can be considered a form of petitioning. Classically, a civil suit seeks to enforce the right of one private party against another, which is defined in law. However, the cow slaughter litigation rarely relied on statutory law but sought to formalize and recognize rights rooted in 'custom' or the British 'constitution'. The forms of litigation mirrored that of petitioner, with the litigant identified as the petitioner who 'humbly prayed' for relief. While the 'monster petition' was about generating numbers, civil litigation in response could be initiated by single parties.

In the heightened communal atmosphere of the 1920s and 1930s, litigation itself emerged as a form of political mobilization. In the absence of legislation or a constitutional right, groups of both Hindus and Muslims sought declaratory decrees from high courts, particularly when petitioning the local administration failed. In 1914 the petitioners in one such case had made a previous application to the deputy commissioner for permission to sacrifice the cow. When Hindu residents filed objections, they withdrew the petition and filed a civil suit asking for a declaration of an injunction under s.42 of the Specific Relief Act.[39] The court, while acknowledging the right of the plaintiffs, refused them relief, stating that there had been no actual violation of the right, since the commissioner had not denied them permission.[40]

Hindus and Muslims both began to engage in a form of competitive litigation. This often took the form of representative suits under Order I, Rule 8 of the Civil Procedure Code whereby a large body of persons who were interested in a matter could bring an action as a group. In 1931, the Hindus of Rathaura village in the United Provinces brought a successful representative suit for a declaration that their community was entitled to worship and blow conches and ring bells.[41] The following year, seven Muslims from the same village brought a representative suit for a declaration of the right of the Muslim community to slaughter cows and sell beef in the village.[42] This competitive litigation caused 'disturbances in the village' and several of the litigants were arrested and jailed. The administration attempted

[39] S.42, Specific Relief Act, 1877.

[40] *Ori Lal* v. *Muhammad Yakub*, [1914] 17 O.C. 354.

[41] Suit No. 262 of 1931, cited in *Kande and Others* v. *Jhanjhan Lal and Others*, AIR 1936 All 1.

[42] Suit No. 443 of 1933 (registered on 30 August 1932), cited in *Kande and Others* v. *Jhanjhan Lal and Others*, AIR 1936 All 1.

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to effect a compromise whereby the Hindus would undertake to abstain from music and the Muslims would promise that, according to custom, cows would not be slaughtered in the village. The local *munsif* refused to record this compromise as a civil suit under Order 23, Rule 3 of the Civil Procedure Code since it was not one which adjusted the rights of all parties who signed. He argued that it could not affect the rights of the parties who did not sign. In subsequent litigation the majority of the High Court held that since all the parties to the suit had not signed it, the compromise agreement could not be accepted. In a concurring opinion, Chief Justice Shah Suleiman, the most senior Indian judge at the time, warned that the court was not prepared to admit 'that a few individuals either posing as leaders or recognized by the executive authorities as leaders of a community can by their agreement bind the whole community to which they are members'.[43] Thus ways of resolving the cow protection question outside of the state framework, through intimidation or consensus, could be broken by appeals to the court. The representative suit under the Civil Procedure Code mimicked a petition by gathering signatures and indexing claims.

An alternative rights framework was articulated through the process of civil litigation, whereby groups of Muslim litigants were able to establish and reinforce a specific right to religious practice rooted in common law, property rights, and imperial citizenship. However, this right would stay secure for only as long as the executive chose not to occupy the field. With independence, partition, and the electoral dominance of the Congress, matters would change.

Constitutionalizing the cow

There is no mention of cow protection in the original draft of the Indian constitution. The drafting committee considered, and rejected, the proposed clause on the subject, on the grounds that it dealt with a matter of policy and not constitutional principle.[44] Indeed, the slogan of cow protection gained little traction with the modernist impulses of leaders like Nehru and Ambedkar. However, on the eve of independence, with partition impending, there was a vast popular outcry for a law on cow slaughter. Referring to the 'emotional

[43] *Kande and Others* v. *Jhanjhan Lal and Others*, AIR 1936 All 1.

[44] B. Shiva Rao, *Framing the Indian Constitution, Vol. IV* (New Delhi: The Indian Institute of Public Administration, 1968), p. 56.

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wave sweeping the country', Gandhi told a prayer gathering that he was being flooded with telegrams demanding that cow slaughter be stopped. He was urged to persuade Jawaharlal Nehru and Sardar Patel to enact cow protection laws.[45] Rajendra Prasad, the chairman of the Constituent Assembly, reported that he had received some 50,000 postcards, between 25,000 and 30,000 letters, and many thousands of telegrams demanding a ban on cow slaughter.[46]

These petitions and postcards ranged in form and content, from an intermediate agriculture student in Agra campaigning against the mechanization of agriculture, to lengthy petitions in flowery Hindi from an association of cloth merchants in the Central Provinces, to staccato telegrams that read 'On unique auspicious occasion of our Indian freedom we pray cow slaughter ought to be strictly prohibited forever, Regulate gomata convey blessings for your long life'.[47] A typical petition by 30 concerned citizens began by stating the importance of cows for the agrarian economy, laid down the sort of penal regime that would be required to stop cow slaughter, and concluded with the claim that the British had allowed cow slaughter so as to keep Indians weak and that the Indian government must reverse this.[48]

Both the scale and the language of the petitions indicate that this was a product of a concerted campaign to exert pressure from below upon the new national government to regulate cow slaughter. To those who had been involved in the cow protection movement for years, it seemed that their moment had come: Independence would finally enable Indians to use the mechanisms of government to protect *Gaumata* (cow mother). An important marker of Independence would be the protection of the cow, something that the British colonial regime had failed to do and which the Muslim-majority republic of Pakistan was not going to do.

It is worth noting that while these letters were classified as petitions, they often read as demands. For instance, in a letter to the Constituent Assembly titled 'Mahatma Gandhi ke Naam Khula Patra' ('An open letter to Mahatma Gandhi'), the writers praised Gandhi's contribution

[45] M. K Gandhi, *Prarthana Pravachan*, 19 July 1947 (New Delhi: Sasta Sahitya Mandal, 1948), pp. 260–263.

[46] M. K Gandhi, Speech at Prayer Meeting, 25 July 1947, ibid., pp. 277–280.

[47] File 2-B/50, Rajendra Prasad Papers (Collection 1), National Archives of India (hereafter NAI).

[48] Petition titled 'Bharat Main Gobadh Turant Hata Deni ki Janata Ki Maang' ('The Public's Demand to Immediately End Cow Killing in India'), File 3-M/47, ibid.

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to making the values of Hinduism apparent to the world and then noted that the constitution being written was 'a game of madmen, and there is not one who knows the difference between truth and lies'.[49] Others, while not insulting the Constituent Assembly, were peremptory, along the lines of 'End cow slaughter upon the declaration of the republic'. The volumes of correspondence received by the Constituent Assembly from the ordinary public remains to be studied, but even a cursory glance reveals a strong sense of entitlement.[50] While many retained the obsequious opening and closing sentences that marked colonial petitions, their requests were directly put, reasons sparsely given, and there was a clear expectation of being heard. While the Constituent Assembly debates discussed below elucidate why the cow was important, either for affective, religious, or economic reasons, for many of the petitioners this was entirely self-evident. They were talking to a state that knew them and thus they did not need reiterate the reasons for protecting the cow.

Gandhi, a long-time votary of cow protection, had resisted the demand for enactment of a law. He stressed the pluralist nature of India and the need to take constructive action to protect the cow, for instance by feeding it better, making it carry lighter loads, and donating to cow shelters. However, the popular sentiment in favour of legislation emboldened several Constituent Assembly members from North India to critique the draft constitution. The cow protection lobby initially attempted to move an amendment which would have made cow protection a fundamental right that could be judicially enforced through the courts. To critics who argued that fundamental rights could only be enjoyed by human beings, R. V. Dhulekar forcefully replied,

> Is the protection of the cow a fundamental right of a human being? Or is it the fundamental right of the cow? I replied to them and tell them suppose it is a question of saving your mother or protecting your mother. Whose fundamental right is it? Is it the fundamental right of the mother? No. It is my fundamental right to protect my mother, to protect my wife, my children and my country. In the Fundamental Rights you have said that you will give justice, equity and all these things. Why? Because you say 'it is your fundamental right to have justice'. What does that justice mean? It means that we shall be protected, our families shall be protected. And our Hindu society, or our Indian society, has included the cow in our fold. It is just

[49] 'Mahatma Gandhiji Ke Naam Khula Patra', Hindu dharma Pracharak Vibhaag, Srikrishna Bhandar, Gaurakshak Pakta, Jaipur, ibid.

[50] Ornit Shanhi, *How India Became Democratic: Citizenship and the Making of the Universal Franchise* (Cambridge: Cambridge University Press, 2017).

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like our mother. In fact it is more than our mother. I can declare from this platform that there are thousands of persons who will not run at a man to kill that man for their mother or wife or children, but they will run at a man if that man does not want to protect the cow or wants to kill her.[51]

Ambedkar persuaded the group to offer the amendment as a directive principle of state policy instead. Unlike the earlier amendments, which declared an absolute ban on cow slaughter, the amendment moved by Thakur Das Bhargava on 24 November 1948 justified the ban in terms of economic interests. It was proposed that the amendment would be added to Article 38 which, in the draft constitution, provided that 'the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as its primary duties'. To this Bhargava proposed adding:

Article 38-A: The State shall endeavor to organize agriculture and animal husbandry on modern scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle, specially milch and draught cattle and their young stock.' Bhargava argued that without this amendment, Article 38, which dealt with nutrition, standards of living, and public health, would be meaningless or, in his words, 'a body without a soul.[52]

The amendment consisted of three parts: the advancement of agriculture on scientific and modern lines, the improvement of cattle breeds, and the ban on cow slaughter. The reference to the economic value of the cow to justify the ban on cow slaughter was not new. Even in the late nineteenth century pamphlets by the cow protection movement had emphasized the centrality of the cow to Indian agriculture and of milk to the human diet.[53] This economic argument grew more prominent in the 1930s, as economists, scientists, and planners waxed eloquent on the economic benefits of milk and milk products, cow dung, and cow urine, and stressed the need to protect cattle wealth as a national resource.[54] By Independence, there was a shift in the location or scale of such economic arguments to that of the

[51] R. V. Dhulekar, United Provinces, *Constituent Assembly Debates* (hereafter CAD), Vol. VIII, Wednesday, 24 November 1948 (Delhi: Lok Sabha Secretariat, 1949).

[52] Thakur Das Bhargava, East Punjab, ibid.

[53] Koh-I-Nur, Lahore, 11 November 1882, cited in *Selections from the Vernacular Newspapers Published in the Panjab, North-Western Provinces, Oudh, Central India, and Rajputana*, pp. 771–772, IOR, Asian and African Studies Collection.

[54] Benjamin Zachariah, 'Uses of Scientific Argument: The Case of "Development" in India, c. 1930–1950', *Economic and Political Weekly* 36.39 (2001), pp. 3689–3702.

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national economy. It was a shame, Bhargava declaimed, that India had to import food from abroad when the country could be self-sufficient. Bhargava portrayed cattle as a national resource that was being mismanaged due to indiscriminate slaughter. He drew an analogy between cattle slaughter and the other great project of Nehruvian modernity, the building of dams. To utilize water properly, the state had to construct dams and change the course of rivers. Similarly, to improve the health of humans and cattle, it was essential to check cow slaughter.[55] Thus, the establishment of a self-reliant modern republic was placed on the bowed shoulders of cattle. Several members noted with alarm a fall in the numbers of India's cattle population during the Second World War, making the ban on slaughter a question that needed to be dealt with urgently.[56]

Majoritarianism and appeals to cultural homogeneity went hand in hand with the economic arguments. Professor Shibban Lal Saxena asserted that the Constituent Assembly should not leave out something 'that thirty crores of the population' wanted merely because it also had a religious aspect.[57] Seth Govind Das reminded the Muslim members,

> I would like to see my country culturally unified even though we may follow different religions. ... The Muslims should come forward to make it clear that their religion does not compulsorily enjoin on them the slaughter of the cow.[58]

Perhaps most powerfully, the cow's claim to legislative protection was made in the name of a national culture that would separate the Indian republic from the colonial state. Govind Das linked cow protection with

[55] Thakur Das Bhargava, East Punjab, CAD.

[56] In 1940, there were 11,56,00,960 oxen in India and by 1945 only 11,19,00,000 were left. That is to say, during those five years, there was a decrease of 37 lakhs in the number of oxen. Similarly, in 1940 the number of buffaloes was 3,28,91,300 and by 1945, this figure was reduced to 3,25,44,400. According to these figures, their number was reduced by four lakhs in these five years. Taken together, there was a total decrease of 41 lakhs. Thakur Das Bhargava, East Punjab, CAD.

[57] Shibban Lal Saxena, United Provinces, CAD, 24 November 1948.

[58] Seth Govind Das was an influential 'Marwari' businessman and served as a legislator for 32 years. His two main priorities were the adoption of Hindi as the national language and cow protection. He raised the issue of cow protection in the Council of State as early as 1927, served several terms as president of the All India Cow Protection Society, and was appointed a member of the Cattle Preservation Development Committee by the Ministry of Agriculture in 1947. He introduced a number of private member bills for a national ban on cow slaughter in the 1950s. See Bhupendra Hooja, *A Life Dedicated: Biography of Govind Das* (Delhi: Seth Govind Das Diamond Jubilee Celebrations Committee, 1956).

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the question of the name of the country, the national language and script, and the national anthem. 'Unless the Constituent Assembly decides these questions according to the wishes of the people of the country, Swarajya would have no meaning to them,' he asserted.[59] Bhargava refused requests from South Indian members to address the house in English, insisting that he wanted to 'speak in Hindi, which is his own language about the cow'.[60] For a vocal group of Hindus, Independence meant the protection of national wealth, the righting of historical injuries, the embracing of a unique civilizational ethos, and a break from a foreign regime that aided or was, at best, indifferent to cow slaughter.

Where did that leave the Muslim members of the House? The economic reasoning had proven powerful and led the Assembly to prefer Thakur Das Bhargava's amendment which protected useful cattle—'milch cattle, cattle of child bearing age, young stocks and draught cattle'—to Seth Govind Das's broader definition which included 'all cows, bulls, bullocks and young stock of the genus cow'. However, the 'national economy' angle changed the debate. As long as cow protection was demanded as a religious right of Hindus, it could be countered by the assertion of the equal religious right of Muslims to sacrifice the cow. These rights could then be negotiated in the local context through the courts, as they had been throughout the colonial period. However, once the question of cow protection was incorporated into the constitution by way of amendment, it was linked to the question of the national economy and, accordingly, had to be decided at the national level. Therefore the entire arena for the debate changed and the old system of locally won rights could now be transformed.

The position of Muslim representatives in a post-partition Constituent Assembly was fraught and they were under considerable pressure to assimilate. Muslims made up 8 per cent of the Assembly, and the Congress's chief opposition comprised 28 members of the Muslim League who had not migrated to Pakistan. The loyalties of the Muslim members were constantly questioned.[61] Despite this, the

[59] Seth Govind Das, ibid.

[60] The request was made by S. Nagappa, who was also one of the few Backward Caste members of the assembly.

[61] Rochana Bajpai, 'Constituent Assembly Debates and Minority Rights', *Economic and Political Weekly* 35.22 (2000), p. 1837; Aditya Nigam, 'A Text without Author: Locating Constituent Assembly as Event', *Economic and Political Weekly* 39.21 (2004), p. 2107.

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Muslim League members challenged the ambiguous rationale behind the ban on cow slaughter.[62] Mohd. Saadullah, the erstwhile premier of Assam, noted that he had every sympathy for those people who wanted cow killing stopped for religious reasons, stating 'I therefore do not like to use my veto when my Hindu brethren want to place this matter in our Constitution from the religious point of view.' Saadullah, however, protested the economic rationale, noting that uneconomic cattle with low milk yields were actually a burden on the land and pointed out the various professions, such as tanners and hide merchants (also practised by many lower-caste Hindus), that were dependent on processing dead cattle. Allowing unproductive cattle to live would actually weaken the breed. Saadullah also protested against the attempt to position Muslims as beef-eaters, stating that thousands of Indian Muslims did not eat beef and that the cow was as important to Muslim agriculturists as it was to Hindu ones. By pointing to Hindus who ate beef and Muslims who did not, Saadullah argued that this was an economic question, not a cultural one. Just as many Hindus lived off the trade of dead cows and found beef a cheaper food option, Muslims often desisted from cow slaughter due to the economic value of their cows.[63]

Scholars are divided on whether to read the use of economic arguments as merely strategic, utilized to elide Hindu majoritarian impulses.[64] While some argue for such a reading of the economic rationale as a 'cover', others have challenged the compartmentalization of 'religion' and 'economy'. Cassie Adcock stresses the difficulty of defining the boundaries between religion and economy, and argues that economic concerns were inextricably linked to the concept of dharma on which cow protection arguments were based.[65] The discursive *intent* behind the arguments is important, of course, but this article focuses on the impact these had on the people who now had to live under the regulatory regimes such arguments legitimized.

[62] It is surprising that none of the Congress members, like Nehru, who were otherwise opposed to or contemptuous of cow protection, spoke during the debate. They were possibly involved in back room negotiations that had taken place to get the cow protection amendment moved from fundamental rights to directive principles.

[63] Syed Mohammad Saadullah, Assam: Muslim, CAD, 24 November 1948.

[64] Shraddha Chigateri, 'Negotiating the Sacred Cow: Cow Slaughter and the Regulation of Difference in India', in *Democracy, Religious Pluralism and the Liberal Dilemma of Accommodation*, Monica Mookherjee (ed.), (Dordrecht, New York: Springer, 2011), pp. 137–159.

[65] Adcock, 'Sacred Cows and Secular History'.

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Irrespective of whether the economic argument was strategic or inextricable, it would have serious consequences.

Framing the cow slaughter ban in economic terms caused significant confusion for Muslims. Prior to Independence, the understanding was that Queen Victoria's Proclamation of 1858 guaranteed them the right to religious freedom, that 'none be in anywise favoured, none molested or disquieted by reason of their religious faith and observances'. In a petition to the viceroy, protesting against a proposed ban on cow slaughter by the Mysore State Legislation, a delegation of Muslims had relied on this understanding to argue that such a legislation 'would be a direct violation of the religious rights and traditions of the Muslim community, and opposed to the Magna Carta issued by Queen Victoria'.[66] Post-Independence, this firm reliability of a known order vanished. Thus, Zairul Hasan Lari insisted the Constituent Assembly make the cow protection provision clearer and remove 'all ambiguity or doubt', and said that if the constitution would absolutely ban cow slaughter, then 'let it be prohibited in clear, definite and unambiguous words'. He appealed to the Assembly to 'let there not linger an idea in the mind of the Muslim public that they can do one thing, though in fact they are not expected to do that'.

The arguments of the Muslim League members were ignored and Article 48 was incorporated into the final constitution. It provided that 'the State shall endeavour to organize 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'.

A constitution for butchers: writ petitions and destabilizing regulations

Nehru and the central government resisted demands for an all-India ban on cow slaughter, often sheltering behind the defence that this should be done by the states as agriculture fell under state jurisdiction in the new constitution. However, local municipalities and state legislature across northern and central India felt empowered under Article 48 to enact new laws and regulations that brought about an

[66] 'Protest of Mahomedans against Legislation for the Prevention of Cow Slaughter in Mysore', FN 216/1930, NAI.

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absolute ban on cow slaughter and, in some cases, criminalized the sale of cows or possession of beef. Between 1949 and 1955, nine out of 14 Indian states enacted strict laws banning cow slaughter.

In early 1956, 12 writ petitions were filed before the Supreme Court of India challenging the constitutionality of the Uttar Pradesh Cow Protection Act of 1955, the Bihar Preservation and Improvement of Animals Act of 1955, and the C. P. and Berar Animal Preservation Act of 1949. The petitioners were 2,500 Muslim men belonging to over a hundred villages across the states of Bombay, Madhya Pradesh (both contained territories of the former Central Provinces), Uttar Pradesh, and Bihar. In doing so the petitioners were exercising newly granted remedies under Articles 32 and 226 of the Indian constitution, which allowed them to challenge any law or administrative order before the courts that were believed to violate fundamental rights. Judicial review was expressly included in the constitutional text not just to provide remedies for the breach of fundamental rights but also to open up the actions of the entire executive to scrutiny. The original draft of the constitution had revoked the immunity of the government for writs only to the extent that they violated the fundamental rights provisions. Dr Ambedkar introduced what he described as a 'small but consequential amendment' which provided that nothing in the clause revoking governmental immunity could be construed as restricting the right of any person to bring action against the Government of India.[67] As I describe elsewhere, the inclusion of constitutional remedies led to thousands of citizens disaffected by the policies of the new state—ranging from municipal sweepers to maharajahs—to approach the courts under the writ jurisdiction.[68] The popularity of the courts arose both from the nature of the remedies available as well as the speedier hearings accorded to writ petitions in a system rife with endemic delays.[69] Charged at a flat fee, the writ petition was also a much cheaper remedy than most forms of civil litigation where the court fee was proportionate to the value of the property under dispute.

The petitioners in the *Hanif Qureshi* case made four constitutional claims challenging the validity of the three acts. They alleged that this legislation, particularly the clauses that placed an absolute ban on cow slaughter, infringed their fundamental rights under Article 19(1)(g)

[67] Dr B. R. Ambedkar, Bombay: General, CAD, 8 September 1949.

[68] Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton: Princeton University Press, 2018).

[69] *Reform of Judicial Administration* (New Delhi: Law Commission of India, 1958).

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of the constitution to carry out their respective trades as butchers, hide curers, bone and gut dealers, and exporters of cattle. A total prohibition on their trades could not be a reasonable restriction in the interests of the public as contemplated under the constitution. They argued that the law violated the right to equality guaranteed under Article 14, as it discriminated between butchers who slaughtered cows and those who slaughtered other animals. They argued that it forbade them from carrying out their legitimate trade or business, thus depriving them of their property without compensation and violating Article 31 of the constitution. Finally, they argued that the total ban also violated the fundamental rights guaranteed to the petitioners under Article 25 of the constitution, which promised 'freedom of belief', by not permitting the sacrifice of a cow on the occasion of Eid-ul-Fitr.[70]

The *Hanif Qureshi* decision has been interpreted through the traditional lens of Hindu–Muslim conflict, which deems that Muslims lost a significant right which they had enjoyed in colonial India. Empirically, this may well be true, but what is often missed is that the 2,500 petitioners in the case were not invested in making and winning the argument on the freedom of religion, nor were they particularly interested in securing the right to *qurbani* (sacrifice) during Eid. This difference between the 'religious conflict' framing and the reality of the petitioners' aims and interests is prominent if we compare the petitioners' presentation of themselves in the writ petition with the Supreme Court's way of recognizing—'reading'—such presentation and the petitioners themselves.

In the petition submitted to the court, the petitioners 'respectfully sheweth' that they are 'members of the Qureshi community and they are also citizens of India'. They identify the Qureshi community as numerous and 'an important section of the Muslims of this country'. The petition then goes on to list the various professions in which members of this community are engaged, such as the butcher's trade and subsidiary undertakings like the supply of hide and skin, tanning, curing hides, glue making, gut merchants, blood dehydrating, and so on.[71] The Supreme Court, in its judgment, on the other hand, identifies the petitions as 'citizens of India, and Muslims by religion, [who] mostly belong to the Qureshi community and are generally engaged in

[70] Writ Petitions Nos 136 of 1956, 128 of 1956, 144 of 1956, and 129 of 1957, Supreme Court Record Rood (hereafter SCRR).

[71] Writ Petition No. 144 of 1956, ibid.

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the butcher's trade'. The *reversal of the order of phrases* is crucial, since the court sees the petitioners as Muslims first and Qureshis incidentally, whereas it is their Qureshi identity and their professions that are most significant for the petitioners. The reference to their faith is only present to emphasize their dominant role among Indian Muslims.

It is significant that the legal challenge to the cow slaughter laws came from the Qureshis and no other Muslim groups. Although applications to intervene in the case were put forward by Hindu groups, no petitions were filed by other Muslim groups. The absence of religious scholars and Muslim politicians was telling. The ban on cow slaughter during Eid was inconvenient for poor Muslims, and humiliating to Muslims in general, but, given the changed political dynamics in North India, traditional Muslim representatives were inclined to be accommodating. The Qureshis, however, could not afford the luxury of such accommodation. The ban on cow slaughter hit them hardest. When cow slaughter was banned in the Central Provinces, over 200 butchers were left without jobs. One butcher facing economic ruin reportedly killed himself by jumping into a well; others demanded alternative employment from the government.[72] There was a great diversity among the litigants who went to court to challenge cow slaughter bans in colonial India. In almost every case filed after Independence, the petitioners self-identified as butchers, were marked by their names as Qureshis, were found slaughtering the cow for food,[73] or were in possession of beef.[74]

The Qureshis are a sub-caste of Muslims in North India involved in the meat trade. They are indexed as socially and economically 'backward' in most surveys, but they are an incredibly well-organized caste, with a formal organizational structure dating back to the 1920s. The All India Jamiat-ul-Quresh was founded in 1926 by Qureshis from Meerut and Delhi to improve the position of the community, and it is similar to other community-based organizations that were set up at that time. Unlike other caste-based or communal organizations, for the Qureshis the linkages between caste identity and livelihood were very strong, making the community active interveners in questions about the meat industry. The twelve petitions in *Hanif Qureshi* were clearly influenced by the Jamiat-ul-Quresh; indeed, the organization is

[72] 'Cow Slaughter Banned', *Daily Boston Globe*, 9 January 1953.

[73] *Nafees Qureshi* v. *Union of India*, 24 May 2017; *Writ for Habeas Corpus 58469 of 2016*, High Court of Allahabad.

[74] *Ayub and Others* v. *State of UP*, AIR 1962 All 141.

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referred to in the first paragraph of the petition as one that looks after the interests and welfare of the community. Several office bearers of the state's Jamiat appear as individual petitioners. A year before the filing of the petition, during the course of the debates over the U.P. Cow Protection Act, the 29th All India Jamiat-ul-Quresh conference was held in Bombay. The lead speaker was M. N. Lakhanpaul, the president of the All India Guts Manufacturers Association, who addressed the 700-odd delegates on the need to redress their grievances through persuasion and a 'spirit of understanding and friendliness'.[75]

Clearly, the desire to 'redress their grievances through persuasion', coupled with their extraordinarily effective organization, was instrumental in getting 3,000 petitioners to file before the Supreme Court. The petitions were submitted within months of a national meeting and had a wide geographic representation. They were filed before the Supreme Court in Delhi, invoking its jurisdiction under Article 32, rather than before the respective high courts of each state, clearly marking this as a national campaign. Writ petitions are filed by individuals to register their individual grievances. Therefore, to make a case for the harm caused to the community by the ban on cow slaughter, the Qureshis had to appear in substantial numbers before the Supreme Court.

The Qureshis' economic woes were centre stage and the first half of the petitions were devoted to their business positions and role in the economy. They asserted that they were a very important part of the country's economic and social life, and played a crucial role in the people's food supply and in meeting other essential requirements. As the petition from Rampur noted, the butchers among the petitioners used to slaughter around 150 cattle per month prior to the Act coming into force. These, they emphasized, were buffaloes, bullocks (castrated male bulls), and old bulls and heifers. The average price of these animals ranged from Rs 30 to Rs 50. It was rare for a fertile milch cow to be slaughtered as it was worth between Rs 300 and Rs 500. They outlined the interconnectedness of transactions by noting that meat was sold to Muslims and the guts and hides were sold to gut and hide merchants respectively. Haji Amjad Ali, a hide merchant, explained that after buying the hides from butchers and curing them with salt, he would export them to the cities of Bombay and Madras where they would be tanned. The Qureshis submitted that the impugned cow

[75] 'Conference of Butchers: Seeking Redress by Persuasion', *The Times of India*, 15 April 1955.

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protection acts, in particular the provisions that banned cow slaughter absolutely, was a 'hostile and discriminatory piece of legislation' directed against the Muslim community, in particular the Qureshis.

The above argument, emphasizing economic hardship, practical concerns for the national economy, and the freedom of trade and profession, was not successful in court, as the judges were unable to understand who the Qureshis were. The judges argued that the dictionary meaning of a butcher was the 'slaughterer of animals, dealer in meat'. It was a familiar occupation, they reminded the public, memorably included in the 'homely phrase, the butcher, the baker and the candlestick maker'. The profession of the butcher, they opined, could not be linked to a particular animal. The court found in all cases that the petitioners could slaughter some variety of animal, therefore they held that there was no total prohibition of the rights of butchers to carry on their trade and occupation.

Misreading Muslims

The *Qureshi* case is frequently cited in discussions of freedom of religion, thus effacing the caste and professional identity of the butchers and only highlighting their religious identity. The fixation of the final reported text of the judgment makes it easy to ignore the number of petitioners and the geographical range they represented, aspects that are hard to miss if you look at the actual petitions in addition to the judgment.[76] The argument rooted in religious freedom was possibly the most successful strategy up until this time and dated back almost a century. Litigation on the eve of Independence made it clear that Muslims believed that they enjoyed freedom of religion under the British Crown and that this included the right to sacrifice the cow during Eid. Article 25(1) of the Indian constitution is that 'subject

[76] For contemporary commentary on the same, see Rafiq Zakaria, 'Legal Notes: Reasonable Classes in Good Faith', *The Times of India*, 4 October 1958; Upendra Baxi, '"The Little Done, the Vast Undone". Some Reflections on Reading Granville Austin's The Indian Constitution', *Journal of the Indian Law Institute* 9 (1967), p. 348. The *Hanif Qureshi* judgment entered canonical status in textbooks in Indian and comparative constitutional law as a freedom of religion case. See, for instance, Arun Kumar Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Bloomsbury: New Delhi, 2018), p. 201; Donald P. Kommers, John E. Finn and Gary J. Jacobsohn (eds), *American Constitutional Law, Vol.* 2, 2nd edn (Oxford: Rowan and Littlefield, 2009), p. 547; Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford: Oxford University Press, 2014), p. 95.

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to public order, morality and health, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion'.[77] It was always expected that a challenge to cow slaughter would come from Muslims, because it affected their religious practices.

The Supreme Court famously held, through a close reading of Quranic and other sources, that the obligation to sacrifice a cow during Eid was not an 'essential religious practice under Islam'.[78] The court noted that the Hadiths held that it was the duty of every free adult Muslim to sacrifice during Eid. The sacrifice could be a goat per person or alternatively a cow or a camel for a group of seven. The court interpreted this to mean that Muslims had the option of sacrificing seven goats or a camel instead of a cow. Since there was an option, the sacrifice of the cow could not be said to be obligatory. The UP state government, represented by Harish Chandra Agrawal, the assistant superintendent of the Animal Husbandry Department, countered this by stating that many Muslims sacrificed other four-legged animals such as sheep, goats, and rams.[79] The court accepted that there was wide divergence in practices of sacrifice, and noted that several Muslim rulers, like the Mughal emperors Akbar and Jahangir, the Bahmani sultan Ahmad Shah, and Nawab Hyder Ali of Mysore, had all prohibited cow slaughter in their realms. The court recognized that whereas a household of seven members could afford to sacrifice a cow, they might not be able to afford a sacrifice of seven goats; however, this would be an economic issue and not a religious one, and therefore was not protected by the constitution.

The decision was framed around the question of denying that Muslims were required to sacrifice the cow during Eid while recognizing Hindu sentiments against such sacrificial, or any other, slaughter of cattle. This dominant theme was emphasized in contemporary commentaries in both the legal sphere and in the general media. Bombay lawyer Rafiq Zakaria wrote in his legal column in the English daily *The Times of India* that the Supreme Court, in 'one of the bulkiest judgments' ever delivered, had 'said that the sacrifice of the cow is not an obligatory overt act for a Mussalman

[77] Art. 25(1) Constitution of India, 1950.

[78] S. P. Sathe, 'Cow Slaughter: The Legal Aspect', in *Cow-Slaughter: Horns of a Dilemma*, Amritlal Shah (ed.), (Bombay: Lalvani Publishing House, 1967), pp. 69–82.

[79] 'Counter Affidavit on Behalf of the State of U.P.', Writ Petition No. 144 of 1956, SCRR.

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to exhibit his religious belief and idea' and that the ban on cow slaughter was not a denial of Muslims' rights to 'freely profess, practice and propagate religion'.[80] Much of the progressive critique of the judgment has also centred on this theme, arguing that the judgment cloaked majoritarian impulses and did not accommodate minority religious identity.[81]

However, the petitioners in *Hanif Qureshi* gave this argument comparatively little importance. The Article 25 (freedom of religion) challenge was the last of the four challenges in their petition and took up just a single paragraph (para. 24). There was little attempt made by the petitioners to substantiate this claim in the petition or before the court. The Qureshis were uninterested in getting permission to sacrifice the cow once a year on the occasion of Eid; what they wanted instead was to ensure the continuation of their livelihoods. However, it appears that this was not obvious to contemporary actors, nor has it struck later commentators. Chief Justice S. R. Das expressed his exasperation at the absence of material before the court to substantiate the claim that it was the religious practice of the petitioners' community to sacrifice the cow:[82]

> No affidavit has been filed by any person specially competent to expound the relevant tenets of Islam. No reference is made in the petition to any particular Surah of the Holy Quran which, in terms, requires the sacrifice of a cow. All that was placed before us during the argument were Surah XXII, Verses 28 and 33, and Surah XXII. What the Holy book enjoins is that people should pray unto the Lord and make sacrifice. We have no affidavit before us by any Maulana explaining the implications of those Verses or throwing any light on this problem.

The political economy of the cow

What did succeed before the court was not an argument about fundamental rights to religion or profession, but one of policy, which was technically not within the court's jurisdiction. The Qureshis turned to the wording of Article 48 of the constitution and argued that it consisted of three different directives. The directive that sought to

[80] Rafiq Zakaria, 'Legal Notes: Reasonable Classes in Good Faith', *The Times of India*, 4 October 1958.

[81] Baxi, '"The Little Done"', p. 348.

[82] *Mohd. Hanif Qureshi and Others* v. *State of Bihar (and Connected Petitions)*, AIR 1958 SC 731.

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prohibit the 'slaughter of cows, calves and milch and draught cattle' was subordinate and ancillary to the provisions that came before it, namely, 'organizing agriculture and animal husbandry on modern and scientific lines' and 'preserving and improving the breeds of cattle'. The Qureshis argued that a complete ban on cow slaughter would be wasteful. To substantiate their argument, they referred to a circular issued by the central government that stated,

> [A] compulsory ban on cow slaughter would lead to a lower standard of cattle life in the country. Nearly 40 million cattle in the country do not give milk and are a drain on available fodder and other cattle food. Their maintenance entails enormous expenditure making it impossible to provide the care and nourishment to productive cattle which is required to improve their milk capacity and traction power. The result is that even productive cattle gradually deteriorate and cease to be productive.[83]

In order to demonstrate that the restriction of their rights that would result from the impugned laws would not be in the interests of the general public, the Qureshis pointed out that it deprived a large section of people of a cheap source of food (i.e. beef) and that these people had 'suffered loss and hardship' as a consequence of the disappearance of this source. They argued that the measure was uneconomic, given that a considerable number of cattle served no economic purpose and were a drain on the food supply. Attacking arguments that linked cattle to milk supply, they pointed out that an increase in cattle between 1945 and 1951 due to a reduction in cow slaughter had not led to a significant increase in milk supply. The number of cows had increased from 136,739,000 to 155,099,000 but the average yield of milk remained around 413 lb per annum. In fact, buffaloes accounted for 54 per cent of the milk supply and were not protected under the Uttar Pradesh and Bihar Acts. Milk supply depended on quality of cattle and not numbers, and in addition, cows were not the main source of milk in India.

The modernization of agriculture and the introduction of tractors—both goals pursued by the government and, as such, a part of many development policies—were reducing the usefulness of cattle in agriculture. A total ban on cow slaughter would also damage the leather trade, given that the hide obtained from dead animals was not suitable for high-quality leather goods. Further, the ban would effectively end several industries, such as gut making, glue making,

[83] Written Reply in Union Minister for Food and Agriculture placed before the Lok Sabha, 5 December 1953, SCRR.

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and blood dehydrating which were dependent on the by-products of the cow.

Finally, Mohd. Siddiq of Rampur, who identified himself as a cultivator, alleged that he was experiencing considerable difficulty in protecting his crops from the ravages of hoards of uneconomic and abandoned cattle that were roaming the countryside, 'unclaimed by any one and which could be destroyed by no one'. He complained that he had to now make arrangements to keep a watch, day and night, over his fields and pointed to several crops that had been damaged by rampaging cattle.

The Supreme Court was placed in a quandary over how to evaluate these claims. Unlike a trial court, or even the high courts, the Supreme Court was not a court of first instance. It did not have the powers to take evidence, listen to witnesses, or allow cross examination.

The economic analysis of the problem brought up two other uncomfortable facts. The court had been able to reconcile its position with the fact that the bans would in practice 'cause considerable inconvenience and expense' to the Qureshis as there were already precedents for the state blocking avenues of livelihood for hundreds of citizens without any compensation, as in the case of the nationalization of the bus transport system.[84]

However, the court could not ignore that beef or buffalo meat was a food item for a large number of people. The *Report on the Marketing of Cattle in India* showed, contrary to the government's claims that beef was not popularly consumed, that the annual demand for cattle for the purposes of food included 1,893,000 cows and 6,90,000 buffaloes.[85] The court noted that beef was a common part of the diet of poorer Muslims, Christians, and members of the Scheduled Castes and Tribes. Here, the cow scored higher over the buffalo, as buffalo flesh is comparatively coarser and tougher than beef. The prices of beef were also considerably lower than goat and mutton: in 1950, for instance, the price for beef in Bombay was Rs 00.12 a pound compared to Rs 1.30 for mutton and goat. The counsel for the Qureshis pointed out that in the case of several boarding schools, beef was the only meat the school authorities could afford to supply to meet the needs of growing children. If the Acts were to be enforced, it would preclude such children from having 'even this little bit of nourishment and

[84] *Saghir Ahmad* v. *The State of U.P.*, [1955] 1 S.C.R. 707.

[85] Directorate of Marketing and Inspection, *Report on the Marketing of Cattle in India* (Delhi: Manager of Publications, 1956), p. 24.

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amenity'. The court noted that the Memorandum of Human Nutrition recommended meat as a necessity rather than a luxury, particularly for people who were too poor to afford fruit or clarified butter.

Secondly, the court confirmed the Qureshis' claim that the survival of a large population of non-productive cattle would place a burden on the scarce fodder and feed resources of the nation.[86] The court relied extensively on the report of the Gosamvardhan (Cow Development/Increase) Enquiry Committee which had been appointed by the government of Uttar Pradesh to look into improving the number and quality of cattle in India.[87] They even noted that the then-current estimates of available fodder, which showed shortfalls of between 13 per cent and 70 per cent, were made on the assumption that forest resources would be fully utilized, an achievement that was administratively difficult and monsoon-dependent. The court took seriously Mohd. Nasim's complaint about rampaging hordes of wild cattle. Given the shortfall in feed, and lack of economic benefits from old cows, it was unsurprising that many cows were abandoned by their owners. The court noted that 'these old and useless animals roaming about at pleasure are a nuisance, a source of danger to the countryside ... and a menace to crop production'. The government's proposed solutions were deemed unsatisfactory. The Supreme Court pointed out that the proposed costs for setting up and running camps for old and uneconomic cows had been estimated at around Rs 45,000 a year in 1949, while the camp could only hope to recoup around Rs 5,000 through the sale of cow products.[88] Recent studies suggest that, taking into account the land required to produce the fodder (i.e. 4,000 acres of land for every 2,000 cattle), the cost to the state exchequer of maintaining one head of uneconomic cattle would be Rs 12.50. These studies noted with alarm that setting up the 91 *gosadans* (cattle shelters) that the state of UP required would cost the state Rs 19 per head of cattle. The Supreme Court declared that it would be shocking to spend Rs 19 a head to preserve useless cattle when the

[86] The Gosamvardhan Committee noted that in the state of UP, there was a deficiency of 60,000,000 tons of straw; 104,000,000 tons of green fodder, and 26,520,000 tons of concentrates such as oil cakes, bran, oil seeds, etc. The court devoted considerable time to attempting to estimate the actual gap in available feed.

[87] The Committee's report was unanimously adopted by both legislatures in UP in 1955 and laid the basis for the total ban on cow slaughter. 'Cow Slaughter Ban in UP', *The Times of India*, 11 February 1955, p. 8.

[88] *Report of the Cattle Preservation and Development Committee* (Delhi: Ministry of Agriculture, 1949), p. 47.

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total national expenditure on education was Rs 4 per child. The lack of finances and fodder would mean that sending cattle to a *gosadan* would leave them to 'a fate of slow death'.

Moreover, the court sarcastically noted, the schemes for *gosadans* relied on cattle owners voluntarily donating their cows. For unwanted and uneconomic cows to be effectively saved from slaughter, 'the responsibility had to be shared by the individual, and the local community, and not merely within the exclusive means and competence of the state'. Such an expectation was 'wishful thinking', according to the court, at a time when farmers, irrespective of religion, were guided by profit.

The court noted that the absolute ban on cow slaughter recommended by the Gosamvardhan Committee relied on several conditions to succeed, including public enthusiasm and support, and the ability of the state to allocate more resources to this cause. Hindu milkmen had no compunction in selling a cow for Rs 30 when she was no longer productive, irrespective of her age. Often, to meet the criteria for permissible slaughter, Hindus would maim or injure the cow. Additionally, the Second Five-Year Plan stated that a total ban on cow slaughter would encourage the surplus cattle to multiply, thus defeating the purpose of improving the breed of cattle, as set out in Article 48. The Supreme Court noted approvingly that the states of Assam, Bombay, West Bengal, Hyderabad, and Travancore-Cochin had placed only a partial ban on cattle slaughter.[89]

The court was categorical in stating that maintaining useless cattle deprived useful cattle of nourishment, led to the deterioration of the breed of cattle, and provided a 'wasteful drain on the nation's cattle feed'. Further, as secondary points, they noted that such a ban would cause a serious dislocation of *kasais* (butcher communities) and hide merchants, and deprive a larger section of people of their staple food and source of cheap protein. On this basis, they proceeded to strike out portions of the state legislations that could create an absolute ban.

[89] The court quoted from the Assam Cattle Protection Act, 1950; the Bombay Animal Preservation Act, 1948; the West Bengal Animal Slaughter Control Act, 1950; the Hyderabad Slaughter of Animals Act, 1950; and the Tranvancore and Cochin Notification, 1951.

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The productive value of the cow: from popular petitioning to experts

Although the *Qureshi* judgment was seen as a victory for Hindu majoritarianism and a blow for Muslim rights, most cow protectionists viewed the judgment with horror. Lala Hardev Sahai, president of the Gohatya Nirodh Samiti, fulminated against both the Supreme Court and 'western educated animal experts' for acceding only to a partial ban.[90] He made a two-pronged attack on the idea that unproductive cows could be killed. First, he challenged the credentials of the animal husbandry experts who claimed cows became unproductive after a particular age, pointing again to the benefits of dung. Secondly, he argued that to sell cattle, which had worked tirelessly 'to fill our stomachs', to 'any Musla' (a derogatory slang term for Muslims) was against Indian tradition and sense of obligation. Dubbing the partial ban a betrayal that would ensure that healthy cows continued to be killed, he appealed to those who cared for the national interest not to rely on the Supreme Court decision but to agitate against the ruling.[91] Nevertheless, successive attempts to prosecute butchers for cow slaughter failed because it could not be established that the cow that had been killed came from a prohibited category.[92] To certify a cow for slaughter, all that was needed was a certificate of unproductivity from a local vet. The 1960s witnessed mass agitations on the question of cow slaughter, leading, in 1966, to the Shankaracharya of Puri, a leading Hindu religious figure, undertaking a fast unto death unless the demand for a total ban on cow slaughter was implemented. Contemporary news reports suggest that 7,000 people across the country fasted for a day in support of the Shankaracharya.[93] The response to the agitations was the setting up of a national technical committee to consider the question of a total ban on cow slaughter. Both the proceedings of this committee and subsequent litigation by cow protectionist groups centred on the question of the age at which

[90] Lala Hardev Sahai, 'Sarvocha Nyayalaya ka nirnay godhan ko katal se naheen bacha sakta: Pashu visheshagyon ka safal shadyantra' ('Supreme Court Decision Could not Save Cows from Slaughter: Animal Experts' Successful Conspiracy'), File 277, Purushottam Das Tandon Papers, NAI.

[91] Ibid.

[92] *Dulla and Others* v. *State of Uttar Pradesh*, AIR 1958 All 198; *Ayub* v. *The State of Uttar Pradesh*, AIR 1962 All 141.

[93] 'Puri Math Chief on Fast, Cow Slaughter Ban Demanded', *The Times of India*, 21 November 1966.

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a cow becomes uneconomic. Finally, in 2005, the Supreme Court, in a contentious decision, upheld an absolute ban on cow slaughter on the grounds that even after the cow stopped giving milk, it continued to produce dung and urine which were 'as valuable as the Kohinoor diamond'.[94] The court relied on a number of reports commissioned by BJP-run governments on the economic value of the cow. This marked the end of an almost three decades-long campaign by cow protection groups, which instigated court cases and scientific studies to establish the continuing economic value of cows. The wording of Article 48, the developmentalist goals of the Indian state, and the professional anxieties of the Qureshis reworked the cow protection question from one of national identity to one of economic value.

Conclusion

How does one read a century of constitutional developments through the debates over cow protection? The cow protection movement in the nineteenth century was central to the construction of a 'national community', albeit one that excluded Muslims, Dalits, and other beef-eaters. The process of creating the 'monster petition' went alongside the spreading of mass awareness, building communities, and creating alternate regulatory frameworks, which would act in the absence of the state. The failure of the colonial state to respond to the cow protectionists either through petitioning or through the court system made it clear that the response would have to come from the community and popular representation, voiced through the 'monster petition'. The creation of 'monster petitions' became an active part of the Gandhian repertoire, refashioning the petition from the act of pleading to the act of providing moral force.

Muslims seeking to protect their religious and customary rights countered public petitioning by cow protectionists with litigation. While petitioning focused on massive numbers, litigation remained individual and local. However, both processes were highly public, used similar language, and held the state accountable for its promises to protect property, religious sentiments, and customs. Both these processes existed together and often disrupted each other, as local compromises came undone by litigation or rights gained through

[94] *Mirzapur Moti Kureshi Kassab Jamat* v. *State of Gujarat*, AIR 2006 SC 212.

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litigation were challenged by coercive violence. The problem was seen as one of balance between two equal but competing communities: the Muslim right to sacrifice and the sacredness of the cow to Hindus.

Independence and partition queered the pitch, with cow protectionists seeing this issue as the essence of the new state which would differentiate it from both the colonial state and from Pakistan. There was tremendous pressure generated from below to force the nationalist leadership to address the emotive question of cow slaughter. In the absence of elections, mass letter writing became a channel for public demands which was reflected in the peremptory language of the petitions. In some ways, framing the question of cow slaughter as an economic one helped to address modernist sensibilities but also silenced Muslim religious objections. While Hindu and Muslim religious beliefs could compete equally, the ritualistic requirements of one community could not delay the process of national development.

Post-independence, while Muslim political leadership made peace with the question of cow slaughter, effective challenges came from the Qureshi community. The post-colonial state drew its legitimacy from its democratic mandate and development agenda, making it particularly hard for electoral minorities to challenge it publicly. However, the writ petition mechanism offered a channel through which questions of national consensus could be reworked. Interestingly, while the Indian courts were able to harmonize the question of liberal economic rights (property, trade, and business) with the cow slaughter ban, they were unable to harmonize it with economic policy. While many of the proponents of the ban would have seen the economic reasoning as merely an excuse to secure an emotional goal, they were now forced to work within the limits of constitutional language, in this case, the economic value of cow slaughter.

Successive attempts at street agitations and petitions largely failed, leading to a technical turn, whereby cow protectionists sought to draw upon economic and scientific evidence to prove the continuing value of the cow. The judicial victory gained in 2005 helped bring in a new spate of cow slaughter bans and gave a veneer of legitimacy to the cow protection vigilantes who intimidate and lynch people, alleging that the victim is breaking the law by consuming meat. The newest challenge to these politics attempts to reframe the question of cow slaughter from one of economic productivity to the right to consumption. Reflecting the changing patterns of Indian politics, at its forefront are Dalit, tribal and women's activists as well as the new

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breed of human rights lawyers. The petition opens with 'One man's meat is another man's poison' and goes on to argue the right to have a 'desirable diet' is a fundamental one and that it should be a part of Article 21 in the constitution.[95] This has been accompanied by public demonstrations of beef-eating and beef festivals held in various university campuses, highlighting an alternative set of lifestyles and values. As the Supreme Court begins hearing the argument, the questions of the cow and Indian constitutionalism continue to be entwined.

[95] Indira Jaisingh, Amritananda Chakravorty and Meher Dev, 'It's Time the Supreme Court Untangled its Contradictory Rulings on Cow Protection': http://thewire.in/59924/untangling-the-supreme-courts-contradictory-rulings-on-cow-protection/, [accessed 10 September 2018].

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