CHAPTER TWELVE

BAN ON COW-SLAUGHTER

The Directive Principle relating to the prohibition on Cow-Slaughter has often been discussed in relation with the Indian Secularism. The reason is that the Directive Principle given in the Article 48 of the Constitution has raised a controversy since its inclusion in the Constitution of India.

Constitutional Provision :-

The text of the Article 48 reads as follows:

"The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle". And Article 48(A)¹ says "the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country".

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¹ Inserted by the 42nd Constitution Amendment Act, 1976.
It is clear from the text of the Article that the directive for taking steps to prevent the slaughter of animals is quite explicit. It clearly explains that, there shall be a ban on the slaughter of cows, and calves and other milk and drought cattle. The protection does not extend to the cattle which at one time were milk or drought cattle but which have ceased to be such. This has been held by the court in M.H. Qureshi V. State of Bihar².

Controversial Issue :-

Though the Directive Principle in the Article 48 is quite explicit, it has raised a controversy since its adoption in the Constituent Assembly and later in the Legislatures of the States as well as in the Parliament. It has also invoked some cases in the court, when some of the States enacted laws prohibiting the cow-slaughter in accordance with this Directive Principles of State policy. The question of ban on Cow-slaughter also created threat to Secularism and national integration in India.

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The slaughter of cow, particularly by the Muslims has long been a source of communal tension and conflict. Similarly, on this issue, we find, there were mass agitations and 'fast un to death', by persons like Vinoba Bhave and Shankaracharyā of Puri. It is on the demand for All India legal Ban on Cow-slaughter, Nehru was prepared to stake his Prime Ministership.

Here, it would not be out of place if a brief reference to Gandhiji's view on this issue is made. In a letter to Nehru in 1925, Gandhiji wrote 'Cow protection to me,--- means protection to the weak, the helpless, the dumb and the deaf'. At another occasion, he described himself as 'a worshiper of the cow whom I regard with the same veneration as I regard to my mother'. But he accepted the right of Muslims for slaughtering cow for it was essential to maintain communal harmony'.³ Gandhiji suggested to the Hindu that, 'the best and only way to save the cow is to save the Khilafat'.⁴

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3. Quoted by Dr. (Miss) Neeraj, Nehru and Democracy in India, Metropolitan Book Co., Pvt.Ltd. (1972), P.201.
On the issue of a total legal ban on the cow-slaughter Gandhiji said 'the Hindu Religion prohibits cow-slaughter for the Hindus not for the world. The religious prohibition comes from within. Any imposition from without means compulsion. Such compulsion is repugnant to religion. India is the Land not only of the Hindus, but also the Muslalmans, the Sikhs, the Parsis, the Christians and Jews and all who claim to be Indian and are loyal to the Indian Union, if they can prohibit cow-slaughter in India on the religious grounds, why not the Pakistan Government prohibits, say idol worship in Pakistan on similar grounds? Just as Shariat can not be imposed on the Non-Muslims, the Hindu Law can not be imposed on Non-Hindus'.

It is clear from the above views that, Gandhiji was for the protection of the cow, but he was against the legal ban on cow slaughter, as it would be injustice to the non-Hindu Community.

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In the Constituent Assembly:—

The debate in the Constituent Assembly on the issue of ban on cow slaughter shows that, it was a subject of much controversy. Some orthodox Hindu Member in the Constituent Assembly insisted on the separate provision for banning cow slaughter, because, cow is regarded as 'Gomata' and 'KamDhenu' by the Hindus, who constitute majority in the country.

Pandit Thakurdas Bhargava (East Punjab), stated that, 'She (cow) was associated with Lord Krishna (a Hindu God) and was regarded by the Hindu sages and 'rishis' as very sacred'. It was also pointed out that 'even during the Muslim Rule, Babar, Humayun, Akbar, Jahangir and even in the reign of Aurangzeb, Cow-slaughter was not practiced in India'.

Seth Govindas stated that 'Cow protection is not only a matter of religion with us, it is also a cultural and economic question. He further asked that 'the Muslims should come forward to make it clear that, their religion does not'}

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compulsarily enjoin on them the slaughter of the cow. The Prophet never took beef in his life. This is an historic fact.  

But some of the Members of the Constituent Assembly belonging to the minority communities criticised this Constitutional Provision. They argued that, this Article had a religious significance and a concession to the religious sentiments of the majority would be provided by this Article. The Members belonging to the minority asked the Hindu Members in the Constituent Assembly to state their intention in clear terms, which they have disguised in other forms, such as Organization of Agriculture, economic benefits etc.

Syed Muhammad Saiadulla (Assam), in the Constituent Assembly said 'there ought to be no compulsion in the name of religion. 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. I do not also want to obstruct the framers of the Constitution, I mean

the Constituent Assembly if they come out in the open and say directly "This is part of our religion. The cow should be protected from the slaughter and therefore, we want its provision either in the Fundamental Rights or in the Directive Principles. But, those who want to put it on the economic front,--- do create a suspicion in the minds of many that the ingrained Hindu feeling against cow slaughter is being satisfied by the backdoor".8

But another Muslim Member Mr. Z.H. Lari (United Province), said 'I for one can say that this is a matter on which, we will not stand in the way of the majority if the majority wants to proceed in a certain ways, whatever may be our inclinations. We feel- we know that our religion does not necessarily say that, you must sacrifice cow--- I would not class it as interference with my religion'.9

On the discussion in the Constituent Assembly, Sinha remarked that 'apparently, the Orthodox too did not want to be charged as Non-Secular'. They lacked the courage of

9. Ibid., P. 577.
their convictions and were afraid to avow openly their religious principles. It is also argued that 'the Constituent Assembly adopted this ill-conceived Article in order to respect the sentiments of the Hindu Members who constituted a majority — and this in spite of the fact that, Gandhi had clearly stated his opposition to a legal ban on cow-slaughter.

Government's Policy:

Since the Constitution of India came into force, the question of Ban on cow-slaughter by Legislation has been raised on a number of occasions. The Hindu Communal Parties like Jana Sangh, Hindu Mahasabha, Ram Rajya Parishad, and a few Congress Members attempted for Legislation prohibiting cow-slaughter. Mr. Seth Govind Das, a Member of the Congress Party introduced the Indian Cattle Prevention Bill in the Lok Sabha in 1952. It was discussed

at length and on several times. The views expressed in the Parliament were similar to that of in the Constituent Assembly.

It makes clear that the Union Government was not prepared to enact such Legislation. On the contrary, Nehru declared that, he was prepared to stake his Prime Ministership on this issue. Finally, at the time of voting on the Bill, 95 Members voted against and only 12 for the motion.

On the issue of Legislation for putting ban on the Cow-slaughter, Nehru argued that, it was a matter of State Governments to deal with, not the Centre, because the matter falls within the jurisdiction of the State Governments. He also stated that, this issue should be considered from practical and economic point of view and there should not be religious or sentimental approach. He regarded it as misapplication of religion with regard to cow. He criticised the opposition parties for exploiting the religious sentiments.

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of the masses. Nehru held that, any such concession to the majority community would constitute a grave danger to the Secular basis of the State.

Legislation to Ban Cow-Slaughter:

In pursuance of this Directive Principle, states like Uttar Pradesh, Bihar, Madya Pradesh, enacted laws prohibiting the slaughter of cows and all categories of bovine cattle including buffaloes. The validity of these laws was challenged before the Supreme Court in M.H. Qureshi V. State of Bihar. The Petitioner claimed that the said Acts violated their Fundamental Rights guaranteed in Articles 19(1) (g) and 25 of the Constitution.

The Supreme Court analysed the evidences and took into account several other facts and recognised that there was religious element involved in these enactments putting Ban on Cow Slaughter, but held that it did not deprive the Petitioner from pursuing their occupation. It was observed by the court that, the Fundamental Right must prevail over the Directive Principles. As regards the violation of the

Fundamental Rights guaranteed under Article 25 and the claim of the Petitioners about the religious practice of cow-slaughter on the occasion of the Bakri Id Day; the court pointed out that, the Muslim religious texts did not make it obligatory to sacrifice a cow on their religious days such as Bakri Id day and that it is optional for a Muslim to sacrifice a goat for one person or a cow or camel for seven persons. The court also pointed out, the policy of the Mughal Emperors prohibiting the slaughter of cows. The court maintained that the total ban on the slaughter of cows of all ages is quite reasonable and valid and it is in consonance with the Directive Principles laid down in Article 48. Since the Act passed by the Bihar Legislature prohibited the slaughter of all bovine cattle, the court struck down the part of its provision as invalid. Similarly, the court in its judgement has criticised the policy with regard to the maintenance of useless cattle by establishment of 'Gosadans'.

Objections:-

Among the writers on this issue, Prof. A.B. Shah, opposed

15. For details, see Dr. Luthera V.P., Op. cit., P. 142.
the total ban on cow slaughter on three grounds. Firstly, democracy does not give the majority even if it were ninety nine percent strong, the right to act in a manner that would either undermine democracy or interfere with the right of other groups to live in their own way --- a total Ban on the slaughter of cows would be undemocratic even if there were only one beef eater in the country. Secondly, there is no evidence that, a majority of Hindus themselves really want cow slaughter to be banned. The demand of a few high caste members of the intelligentsia can not, in the absence of other evidence, be taken as a demand of the majority of Hindus. Indeed, the evidence, if anything is to the contrary --- The Indian peasant has been selling dry cows to the butcher for the simple reason that, he can not afford to maintain them. Thirdly, even if a majority of Hindus were to support this demand, how would it justify them in imposing their own religious belief on other? 16.

To conclude the discussion of this point, it can be

said that, though the Constitutional Provision for prohibiting the slaughter of Cow and other cattle is clear, it has created a problem as special emphasis has been laid on 'Cow' which has some religious reference and significance in the religion of Hindus. It would not have created problem either Constitutional or Political if the word 'Cow' was not mentioned in the Article. In fact, there is no need of it, because the 'milch cattle' includes the cow, and the intention of this Directive Principle was to organise agriculture and animal husbandry on modern and scientific lines.

Similarly, it is, but difficult to understand why the Supreme Court has treated 'Cow' different from other animals. It may be argued that, the provision for directing the State for making Legislation to ban the cow-slaughter is inconsistent with the Secularism and Secular character of State in India. Therefore, this provision (Article 48) needs reconsideration.