

IN THE HIGH COURT OF KARNATAKA, AT BENGALURU
(Original Jurisdiction)

W.P No. _____/ 2020 (PIL)

BETWEEN :

Mohamed Arif Jameel,

...PETITIONER

And

1. State of Karnataka

Represented by its Principal Secretary,
Vidhana Soudha,
Bangalore- 560001.

2. State of Karnataka

Represented by its Secretary,
Department of Parliamentary Affairs
and Legislation,
Vidhan Soudha,
Bangalore- 560001.

3. State of Karnataka

Represented by its Secretary
Department of Animal Husbandry
and Veterinary Services
Vikasa Soudha,
Bangalore-560001

....RESPONDENTS

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE
226 AND 227 OF THE CONSTITUTION OF INDIA, 1950**

The Petitioner most respectfully begs to submit as follows:

1. The name and addresses of the parties shown in the cause title is true and correct for the purpose of court notice, summons, etc. The Address of the Petitioner is also that of

2. That the Petitioner herein seeks the present Writ Petition under Article 226 of the Constitution of India in the nature of a Public Interest Litigation to have a writ in the nature of Certiorari by quashing the Prevention of Slaughter and Preservation of Cattle Ordinance 2021 and declare it as unconstitutional.

3. That the Petitioner is a Citizen of India and a permanent Resident of above-mentioned address in cause title. The Petitioner is a social worker and Actively involved in empowerment of socially and economically backward class of society.

4. That the Petitioner does not have any personal interest or any person again or private motive or any other oblique reason in filing this Writ Petitioner in Public Interest. The Petitioner has not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.

5. The Respondent No. 1 is the State of Karnataka, represented by the Principal Secretary, which is the appropriate ministry dealing with the contested Ordinance. The Respondent No.2 is the State Authority which has passed the impugned Ordinance. The Respondent No. 3 is Animal Husbandry and Veterinary Services, State of Karnataka, represented by its Secretary which is the appropriate ministry dealing with the passage of this Ordinance. A copy of the impugned Ordinance is attached herewith and is marked as **Annexure-B**

FACTS OF THE CASE

6. The brief facts that give rise to the present Writ Petition are as follows:

That the present petition is being filed by way of public Interest litigation and the petitioner does not have any personal interest in the matter. The petition is being filed in the interest of general public.

7. That the issue of prohibition on slaughter of cattle has been going on even before Indian got independence and continues till date. The issue was extensively discussed in

the Constitutional debate. The cows are considered holy animal according to Hindu religion. The Hindus were offended by the fact the cows were consumed and sacrificed by Muslims. The framers of the Constitution finally decided to have in under Directive Principles of State Policy.

Article 48 of the Constitution of India, 1950 states 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.

8. That the framers of the Constitution were very particular that Article 48 of the Constitution of India remained secular. After Independence several State Governments enacted laws to give effect to Article 48 of the Constitution of India. These were challenged before the Courts for violating the fundamental rights.

In 1958, a five-judge bench of the Supreme Court decided a case-Hanif Qureshi v. State of Bihar^{1958 AIR 731} on the same subject. The Bihar Preservation and Improvement of Animals Act, 1956 placed a total ban on the slaughter of all animal classes belonging to bovine cattle species. The petitioner challenged the legislation on the grounds that the right to freedom of worship, freedom of trade and occupation was violated and that the total ban was not good for the general public. Here, the Supreme Court ruled that the total ban on the slaughter of bovine animals was fair, legal and in accordance with the principles of the Directive laid down in Article 48. However, it said these laws were "void in so far as they totally prohibit the slaughter of breeding bulls and

working bullocks without prescribing any test or requirement as to their age or usefulness". It said a law enacted to honor a Directive Principle provision could not violate fundamental rights. The court held that a general ban on keeping uneconomic cattle under its jurisdiction was unjustified and violated the right of the butcher to freedom of trade and occupation.

9. That nearly half a century later seven-judge bench of the SC re-evaluated the 1958 judgment and held that the legislature would be well within its right to impose a complete ban on slaughter of cow and its progeny. Revisiting its own decision of 1958, the Supreme Court, in the case of *Mirzapur Moti Kureshi v. State of Gujarat*, (2005) 8 SCC 534 overruled its almost 50-year-old reasoning that ceasing to produce milk, breed or be used as a drought animal did not make bovine cattle useless.

In *Mirzapur Moti Kureshi Kassab* (2005) 8 SCC 534 judgment on October 26, 2005, the seven-judge bench by six to one majority said, "The ban is total with regard to the slaughter of one particular class of cattle. The ban is not on the total Activity of butchers (kasais); they are left free to slaughter cattle other than those specified in the Gujarat Act".

"They can slaughter animals other than cow progeny and carry on their business Activity ... It is not necessary that the animal must be slaughtered to avail these things (hides, skins, etc). The animal, whose slaughter has been prohibited, would die a natural death even otherwise and in that case their hides, skins and other parts of body would be available for trade and industrial Activity."

It said, "Merely because it (ban on slaughter of cow and progeny) may cause inconvenience or some dislocation to the butchers, restriction imposed by the impugned enactment does not cease to be in the interest of the general public. The former must yield to the latter."

10. Fundamental Rights and Directive principles of State Policy

That in *The State of Madras v. Srimathi Champakam Dorairajan*, 1951 SCR 525, held that the Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. The court observed that, "The directive principles of the State policy, which by Article 37 are expressly made unenforceable by a Court, cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate Writs, Orders or directions under Article 32. The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or order, except to the extent provided in the appropriate article in Part III. The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. In our opinion, that is the correct way in which the provisions found in Parts III and IV have to be understood. However, so long as there is no infringement of any Fundamental Right, to the extent conferred by the provisions in Part III, there can be no objection to the State Acting in accordance with the directive principles set out in Part IV, but subject again to the Legislative and Executive powers and limitations conferred on the State under different provisions of the Constitution."

In *I.C. Golak Nath and Ors. v. State of Punjab and Anr.*, [1967]2SCR762, the Supreme Court clearly held that the fundamental rights cannot be violated for giving effect to directive principles. The court observed that, "It is wrong to invoke the Directive Principles as if there is some antinomy between them and the Fundamental Rights. The Directive Principles lay down the routes of State Action but such Action must avoid the restrictions stated in the Fundamental Rights. It cannot be conceived that in following the Directive Principles the Fundamental Rights can be ignored."

The court in *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225 observed that "While the Constitution makers envisaged development in the social, economic and political fields, they did not desire that it should be a society where a citizen will not have the dignity of the individual. Part III of the Constitution shows that the founding fathers were equally anxious that it should be a society where the citizen will enjoy the various freedoms and such rights as are the basic elements of those freedoms without which there can be no dignity of individual. Our Constitution makers did not contemplate any disharmony between the fundamental rights and the directive principles. They were meant to supplement one another. It can well be said that the directive principles prescribed the goal to be attained and the fundamental rights laid down the means by which that goal was to be achieved."

"At an earlier stage in the development of our Constitutional law a view was taken that the Directive Principles of State Policy had to conform and run subsidiary to the Chapter on Fundamental Rights, but Das C.J. in Kerala Education Bill, 1957, laid down the rule of harmonious construction and

observed that an attempt should be made to give effect to both the fundamental rights and the directive principles.”

Thus, the courts departed from the rigid rule of subordinating Directive Principles and entered the era of harmonious construction. The need for avoiding a conflict between Fundamental Rights and Directive Principles was emphasised, appealing to the legislature and the courts to strike a balance between the two as far as possible.

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L.C. Golak Nath and Ors. v. State of Punjab and Anr., [1967]2SCR762, the Supreme Court departed from the rigid rule of subordinating Directive Principles and entered the era of harmonious construction. The need for avoiding a conflict between Fundamental Rights and Directive Principles was emphasized, appealing to the legislature and the courts to strike a balance between the two as far as possible.

Having noticed ***The State of Madras v. Srimathi Champakam Dorairajan***, 1951 SCR 525 even the Constitution Bench in ***Hanif Qureshi v. State of Bihar*** 1958 AIR 731 chose to make a headway and held that the Directive Principles nevertheless are fundamental in the governance of the country and it is the duty of the State to give effect to them. “A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for

otherwise the protecting provisions of Part III will be a 'mere rope of sand'." Thus, ***Hanif Qureshi v. State of Bihar*** 1958 AIR 731 did take note of the status of Directive Principles having been elevated from 'sub-ordinate' or 'sub-servient' to 'partner' of Fundamental Rights in guiding the nation. It is submitted that Constitutional scheme provides for primacy of the fundamental rights of citizens over the directive principles and the fine balance between the two is by itself a facade of the identity of the Constitution and has been declared by the Hon'ble Supreme Court to be a basic structure of the Constitution.

Sir Alladi Krishnaswami Ayyar, in note dated March 14, 1947, observed: "A distinction has necessarily to be drawn between rights which are justifiable and rights which are merely intended as a guide and directive objectives to state policy.

It is impossible to equate the directive principles with fundamental rights though it cannot be denied that they are very important. But to say that the directive principles give a directive to take away fundamental rights in order to achieve what is directed by the directive principles seems to me a contradiction in terms."

From the series of cases, it is clear that Fundamental Rights have to be read in harmony with the Directive Principles of State Policy. However, in case of conflict between the two, the fundamental rights prevail over the Directive Principles of State Policy.

Therefore, by the Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020, the respondent had sought to give primacy to the directive principles over the fundamental rights of citizens and thus has breached the Constitutional identity and therefore void.

11. Right to Carry on Trade or Business

That the Constitution of India by Article 19 (1) (g) guarantees to the Indian citizen the right to carry on trade or business subject to such reasonable restrictions as are mentioned in clause 6 of that Article. A constitutional guarantee of the right to take up the profession, calling, trade or business of one's choice is indeed a significant aid to the building up of a dynamic and democratic society. The framers of the Constitution have done well to incorporate these rights in the chapter on Fundamental Rights and have thereby helped the evolution of a truly democratic society.

The complete ban of sale or purchase or resale of animals, would cast a huge economic burden on the farmers, cattle traders who find it difficult to feed their children today but would be required to feed the cattle as it is an offence under the Prevention of Cruelty to Animal Act of 1960 to starve an animal or failure to maintain it and would also give way for Cow Vigilantes to harass farmers and cattle traders under the blessing of the impugned regulations. Therefore, The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance, the provisions are in violation of the right to livelihood under Article 21 of the Constitution of India and in violation of the right to carry on trade or business and amount to an infringement of the fundamental right guaranteed by Article 19 (g) of the Constitution of India.

The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 are imposing an absolute ban on slaughtering of animals in the country directly effecting the employment of the butchers and their trade depriving the citizens to have the food of their choice and in violation of the right to livelihood under Article 21 of the Constitution of India.

The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 deprives a citizen of his right to sell or purchase any animal for sale or slaughter the same as a part of meat vending business is a burdensome interference into the freedom of trade and business guaranteed under Article 19(i)(g) of the Constitution of India and the impugned provisions also do not qualify to be a reasonable restriction as by the Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 deprives, complete ban on the sale or purchase or slaughter of animals irrespective of their economic utility thereby even prohibiting sale and slaughter of animals which have ceased to milk, and thus is an excessive restriction on the right to free trade and business.

Article 19 (1) (g) of the Constitution of India guarantee right to trade or business. Art. 19 (6) states that the restriction on the right guaranteed under Art. 19 (1) (g) can be a reasonable restriction in the interest of the general public.

In the case of **Abdul Hakim v. State of Bihar** reported in MANU/SC/0038/1960 : 1961CriLJ573 the ban was imposed by the States of Bihar, Madhya Pradesh and U.P. which

came up for consideration before the Supreme Court and in this context it was observed as under:

"The test of reasonableness should be applied to each individual statute impugned and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

In ***Narendra Kumar and Ors. v. The Union of India*** and Ors., MANU/SC/0013/1959 : [1960]2SCR375, which upholds the view that the term "restriction" in Articles 19(5) and 19(6) of the Constitution includes cases of "prohibition" also. Their Lordships drew a distinction between cases of "control" and "prohibition" and held that when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone would ensure the maintenance of the general public interest lies heavily upon the State. As the State failed in discharging that burden, the notification was held liable to be struck down as imposing an unreasonable restriction on the fundamental right of the petitioners.

The restriction on Article 19 (1) (g) should be a reasonable restriction in the interest of the general public. What constitutes reasonable restriction in the interest of general public must be decided in light of social, economic and cultural circumstances of a state. It is pertinent to mention that it is Hardship for Farmers Nearly 55 percent of India's

population is engaged in agriculture and associated Activities, contributing 17 percent of the country's Gross Value Added. Farmers often supplement their incomes and food requirements by maintaining and trading livestock and selling dairy products. India has about 190 million cattle and 108 million buffaloes. India is also the largest milk producer in the world.

However, with increasing mechanization of agriculture the demand for draught cattle such as bulls and oxen has declined, and male calves are often sold. Farmers also sell unproductive and aged cattle. It is costly for farmers to feed unproductive animals.

Any trade or business is carried out for a profit. Forcing the farmers to incur losses in order to maintain cattle that are unproductive is imposing an unreasonable restriction on the farmers thereby violating their right under Article 19 (1) (g).

It is common experience that aged bulls are not used for purposes of covering the cows for better quality of the breed. Only well-built young bulls are used for the purpose of improving the breeding and not the aged bulls. If the aged and weak bulls are allowed for mating purposes, the offspring will be of poor health and that will not be in the interest of the country. This will be directly contradictory to Article 48 of the Constitution of India.

Farmers, including Hindus, earlier sold their unproductive cattle but now they are forced to care for them even when they cannot afford to feed them. Most farmers simply abandon them, which has caused yet another problem for farmers with stray cattle destroying their crops. As more and

more farmers are forced to abandon their cattle, there has been a significant rise in numbers of stray cattle, resulting in anger among farmers whose crops are at risk.

12. Expenses to the Government

That in 2016, the Haryana state government allotted 200 million rupees (\$2.8 million) to the GauSeva Aayog for the protection and welfare of cows. In 2018, the budget rose to 300 million rupees (\$4.1 million).²⁰⁸ There are 513 gaushalas housing 380,000 cows, bulls, and bullocks, most of them unproductive, but there are still about 150,000 stray cattle in the state and the numbers may continue to rise.

Rajasthan has a separate cow ministry. In 2016, there were 550,000 cows and bulls in government-funded gaushalas. By 2018, this number had grown to 900,000. The government budget for this dedicated ministry has grown exponentially—from 130 million rupees (\$1.9 million) in 2015-16 to 2.56 billion rupees (\$36 million) in 2017-18.²¹¹ To generate funds to care for unproductive cows and bulls, the government levied a 10 percent surcharge on stamp duties for property transactions and a 20 percent surcharge on liquor sales.

Madhya Pradesh opened its first cow sanctuary in September 2017, costing 320 million rupees (\$6.2 million). However, on opening day, it was overwhelmed by farmers from nearby villages who showed up with 2,000 cows.²¹³ Five months later, the sanctuary had to stop admitting any more cows due to lack of manpower and funds.

Jharkhand doubled its monetary support to gaushalas to 100 million rupees (\$1.4 million) in 2016.²¹⁵ In 2017, the

Maharashtra government said it would spend 340 million rupees (\$6.7 million) to set up cow shelters.

In a Developing country like India where the resources of the state are very limited, expenditure on unproductive cattle is unacceptable. Every State Action must be informed by reason and it follows that an Act uninformed by reason, is arbitrary. The expenditure of the state on gaushalas is unreasonable and arbitrary thereby violating Article 14 of the Constitution of India.

13. Fodder Availability in Karnataka

The cattle require to be fed daily and this will incur significant expenses to the farmers. Apart from the expenses the farmers incur, the availability of fodder is also difficult. The fodder that is available in a limited quantity must be used for feeding productive cattle instead of using them for feeding unproductive cattle.

Additionally, over exploitation of the land for fodder will cause significant impact on the environment in the long run. It will lead to non-availability of fodder in the which will eventually lead to the destruction of cattle resources of the country.

Further for maintaining the ecological balance the cattle should be maintained only till they are useful. Wasting resources of the government and the environment on unproductive cows are detrimental to the interest of the nation.

The restriction of fundamental right should be in general public interest. However, by the enactment of The Karnataka

Prevention of Slaughter and Preservation of Cattle Ordinance 2020, the farmers, butchers and other citizens of Karnataka will have severe hardship. The restriction imposed on the fundamental rights is not in the interests of the general public. Hence the Ordinance violates Article 19 (1) (g) of the Constitution of India.

14. Right to choose food

That the right from the times of Indus Valley Civilization, the people from the Indian Sub-continent have consumed beef. In Karnataka many consume beef on a regular basis. It is the staple food of Dalits, Muslims, Mangaloreans, Keralites and people from North Eastern Part of India who are residing in Karnataka. Beef also forms an important part of the Mangalorean cuisine. The Bombay High Court in ***Sheik Zahid Mukthar Vs State of Maharashtra*** 2016 SCC OnLineBom 2600 has held that depriving the people the right to choice to food to be unconstitutional. The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 violate the fundamental right of many citizens to consume the food of their choice.

The right to choose food (Non-Vegetarian or Vegetarian) is a part of the right to personal liberty, conscience and privacy. By imposing a ban on slaughter of animals for food, the citizens with a choice to eat the flesh of such animals would be deprived of such food, which violates the right to food, privacy and personal liberty, guaranteed under Article 21 of the Constitution of India.

The court observed that "As far as the choice of eating food of the citizens is concerned, the citizens are required to be let alone especially when the food of their choice is not injurious

to health. As observed earlier, even a right to sleep is held as a part of right to privacy which is guaranteed under Article 21 of the Constitution of India. In fact the State cannot control what a citizen does in his house which is his own castle, provided he is not doing something which is contrary to law. The State cannot make an intrusion into his home and prevent a citizen from possessing and eating food of his choice. A citizen has a right to lead a meaningful life within the four corners of his house as well as outside his house. This intrusion on the personal life of an individual is prohibited by the right to privacy which is part of personal liberty guaranteed by Article 21. The State cannot prevent a citizen from possessing and consuming a particular type of food which is not injurious to health (or obnoxious). The Apex Court has specifically held that what one eats is one's personal affair and it is a part of privacy included in Article 21 of the Constitution of India. Thus, if the State tells the citizens not to eat a particular type of food or prevents the citizens from possessing and consuming a particular type of food, it will certainly be an infringement of a right to privacy as it violates the right to be let alone." The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 violates the fundamental right of many citizens to consume the food of their choice.

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15. **Beef and Culture**

That the Article 29 of the Constitution guarantees citizens the right to protect their culture. It deals with protection of interests of minorities. Article 29 states that:

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them,

Food for most people is not just nutritional but it is an important part of their culture. Each community has their distinct cuisine, taste and style of cooking. It is their constitutional right to protect this culture. In Mangalore beef is an integral part of their cuisine. The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020, prevents them from consuming beef, which is an integral part of their culture. This violates Article 29 of the Constitution of India.

A survey conducted in 2015- Protein Consumption in Diet of Adult Indians: A General Consumer Survey (PRODIGY) indicate that 9 out of 10 Indians consume inadequate amount of protein and over 73% of Indians are proteins deficient. Beef is an excellent source of proteins. Beef is the cheapest source of India. The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 denies the poor and the marginalised the cheapest and the best source of protein. Thereby, violating the right to life guaranteed under Article 21 of the Constitution of India.

Karnataka has dismal indicators when it comes to nutrition. According to the National Family Health Survey (NFHS) 4th round (2015), 39 percent children, especially those from the Scheduled Caste (SC) and Scheduled Tribe (ST) communities, are stunted (less height for age) while 40 percent are undernourished (less weight for age). Anemia is found in 56 percent of the children before starting their school life at six years. 15 percent (or 180 million) Indians consume beef. This includes Dalits, Muslims, Christians, Other Backward castes (OBCs) and Adivasis. Beef is one of the cheapest sources of animal foods, and a kilogram costs about Rs 250 compared to mutton which is about Rs 800/kg.

Organ meat is even cheaper. It is also nutritionally dense. In fact, the grass-fed Indian beef is a much sought-after in other countries because it is lean, unlike the stall-fed cattle.

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percent are undernourished (less weight for age). Anaemia is found in 56 percent of the children before starting their school life at six years. Slaughter Ordinance should be viewed. 15 percent (or 180 million) Indians consume beef. This includes Dalits, Muslims, Christians, Other Backward castes (OBCs) and Adivasis. Beef is one of the cheapest sources of animal foods, and a kilogram costs about Rs 250 compared to mutton which is about Rs 800/kg.

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16. **Nutritional Benefits of Beef**

That the beef contains all the nine essential amino acids that is of particular importance to children, adolescents, pregnant and women, in post-surgery patients, the elderly, as well as those who are engaged in hard labour.

Low levels of Vitamin D can cause rickets in children and osteomalacia /osteoporosis in adults. Deficiency of Vitamin D due to quarantine/self-isolation during the COVID-19 pandemic has been known to aggravate complications.

Iron Deficiency Anaemia (IDA) during pregnancy leads to increased maternal haemorrhage and premature birth and in children, serious consequences for cognitive, psychomotor, physical and mental development. Beef contains heme iron, which is better absorbed than non-heme iron from plant foods – which has inhibitors like phytates, polyphenols, calcium and phosphates, etc.

Zinc is an essential trace element in the body required for growth, fertility, immune function, taste, smell and wound healing. Animal foods are the most abundant sources of zinc

and lean red meat can give approximately 40 mg zinc/kg. Green leafy vegetables and fruits are the poorest sources of zinc with a concentration of <10 mg/kg.

Vitamin A is required for immune function, vision and reproduction. Preformed Vitamin A has better bioavailability and are found in food from animal sources. Subclinical VAD in preschool children in India is 62 percent and inadequate dietary intake is the most important cause.

Vitamin B12 (cobalamin) is found only in animal foods, particularly organ meats. It is important for mood, cognition, brain/neural regeneration, sleep, skin, sleep, etc. In low quantities, it can cause depression, sleep disturbances, mental health issues and neurological manifestations.

Beef has many nutritional benefits at a significantly lower cost thereby providing the required nutrition. The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020, prevents them from consuming beef, thereby violating their right to healthy life.

17. Quantum of Punishment

That among the other things controversial Ordinance provides for a rigorous punishment for those held guilty of slaughtering, smuggling, or illegally transporting cattle with 3-7 years of imprisonment along with steep fines ranging from Rs 50,000 to 5 lakh or both.

18. Free Hand to Police

That the one more aspect flagged here is that the powers given to the police to raid and seize any property on mere "suspicion" could lead to harassment. It is pertinent to mention that that the law completely invades the right to

privacy as it allows for search and seizure by a Police Officer, a Tahsildar or a Veterinary Officer with the history of vigilantism it is obvious the basic right to privacy is violated by such provision.

19. Aiding Vigilantism

That the one of the biggest concerns is that the ordinance will increase incidents of cow vigilantism in the State especially in the coastal region. It is pertinent to mention that there has been a marked rise in cases of cow vigilantism over mere suspicion of beef consumption and illegal cattle transportation

20. The Petitioner submits that he has not filed any other Writ Petition or any other cases before this Hon'ble Court or before any other Court / Tribunal / Authorities on the same cause of Action.

GROUND

21. It is submitted that Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 which was enacted to give effect to Directive Principles of State Policy, Article 48 violates the Fundamental Rights and it is unconstitutional.

22. Because in ***Hanif Qureshi v. State of Bihar*** AIR 1958 SC 731 held that the Directive Principles of State Policy must be read in harmony with the Fundamental Right and that the Directive Principles of State Policy cannot be implemented at the cost of Fundamental Rights.

23. It is submitted that Constitutional scheme provides for primacy of the fundamental rights of citizens over the directive principles and the fine balance between the two is by itself a facade of the identity of the Constitution and is a basic structure of the Constitution.

24. It is submitted that Constitution of India by Article 19 (1) (g) guarantees to the Indian citizen the right to carry on trade or business subject to such reasonable restrictions as are mentioned in clause 6 of that Article. A constitutional guarantee of the right to take up the profession, calling, trade or business of one's choice is indeed a significant aid to the building up of a dynamic and democratic society.

25. It is submitted that complete ban of sale or purchase or resale of animals, would cast a huge economic burden on the farmers, cattle traders who find it difficult to feed their children today but would be required to feed the cattle as it is an offence under the Prevention of Cruelty to Animal Act of 1960 to starve an animal or failure to maintain it and would also give way for Cow Vigilantes to harass farmers and cattle traders under the blessing of the impugned regulations. Therefore, The Karnataka Prevention of Slaughter and Preservation of Cattle the provisions are in violation of the right to livelihood under Article 21 of the Constitution of India and in violation of the right to carry on trade or business and amount to an infringement of the fundamental right guaranteed by Article 19 (g) of the Constitution of India.

26. It is submitted that Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 imposing an

absolute ban on slaughtering of animals in the country directly effecting the employment of the butchers and their trade depriving the citizens to have the food of their choice and in violation of the right to livelihood under Article 21 of the Constitution of India.

27. It is submitted that Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 deprives a citizen of his right to sell or purchase any animal for sale or slaughter the same as a part of meat vending business is a burdensome interference into the freedom of trade and business guaranteed under Article 19(i)(g) of the Constitution of India and the impugned provisions also do not qualify to be a reasonable restriction as by the Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 deprives, complete ban on the sale or purchase or slaughter of animals irrespective of their economic utility thereby even prohibiting sale and slaughter of animals which have ceased to milk, and thus is an excessive restriction on the right to free trade and business.

28. It is submitted that of ***Abdul Hakim v. State of Bihar*** the ban was imposed by the States of Bihar, Madhya Pradesh and U.P. which came up for consideration before the Supreme Court and in this context it was observed as under: "The test of reasonableness should be applied to each individual statute impugned and no abstrAct standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the

imposition, the prevailing conditions at the time, should all enter into the judicial verdict." Thus, the ban or prohibition must be tested in light of the social, economic and cultural circumstances of a State.

29. It is submitted that resources of the state are very limited, expenditure on unproductive cattle is unacceptable. Every State Action must be informed by reason and it follows that an Act uninformed by reason, is arbitrary. The expenditure of the state on gaushalas is unreasonable and arbitrary thereby violating Article 14 of the Constitution of India.

30. It is submitted that Supreme Court in **Narendra Kumar and Ors. v. The Union of India** and Ors., when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone would ensure the maintenance of the general public interest lies heavily upon the State.

31. It is submitted that State failed in discharging that burden, The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 was held liable to be struck down as imposing an unreasonable restriction on the fundamental right of the petitioners.

32. It is submitted that restriction on Article 19 (1) (g) should be a reasonable restriction in the interests of the general public.

33. It is submitted that increasing mechanization of agriculture the demand for draught cattle such as bulls and

oxen has declined, and male calves are often sold. Farmers also sell unproductive and aged cattle. It is costly for farmers to feed unproductive animals.

34. It is submitted that trade or business is carried out for a profit. Forcing the farmers to incur losses in order to maintain cattle that are unproductive is imposing an unreasonable restriction on the farmers thereby violating their right under Article 19 (1) (g).

35. It is submitted that it is common experience that aged bulls are not used for purposes of covering the cows for better quality of the breed. Only well-built young bulls are used for the purpose of improving the breeding and not the aged bulls. If the aged and weak bulls are allowed for mating purposes, the off- spring will be of poor health and that will not be in the interest of the country.

36. It is submitted that farmers are forced to care for them even when they cannot afford to feed them. Most farmers simply abandon them, which has caused yet another problem for farmers with stray cattle destroying their crops. As more and more farmers are forced to abandon their cattle, there has been a significant rise in numbers of stray cattle. It is pertinent to mention that the cattle require to be fed daily and this will incur significant expenses to the farmers. Apart from the expenses the farmers incur, the availability of fodder is also difficult. The fodder that is available in a limited quantity must be used for feeding productive cattle instead of using them for feeding unproductive cattle.

37. It is submitted that over exploitation of the land for fodder will cause significant impact on the environment in the long run. It will lead to non-availability of fodder which will eventually lead to the destruction of cattle resources of the country.

38. It is submitted that for maintaining the ecological balance the cattle should be maintained only till, they are useful. Wasting resources of the government and the environment on unproductive cows are detrimental to the interests of the nation.

39. It is submitted that the restriction imposed on the fundamental rights is not in the interests of the general. In the Bombay High Court in ***Sheik Zahid Mukthar Vs State of Maharashtra*** has held that depriving the people the right to choose food to be unconstitutional. The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020 violate the fundamental right of many citizens to consume the food of their choice.

40. It is submitted that the right to choose food (Non-Vegetarian or Vegetarian) is a part of the right to personal liberty, conscience and privacy. By imposing a ban on slaughter of animals for food, the citizens with a choice to eat the flesh of such animals would be deprived of such food, which violates the right to food, privacy and personal liberty, guaranteed under Article 21 of the Constitution of India.

41. It is submitted that the Article 29 of the Constitution guarantees the citizen the right to protect their culture. Food for most people is not just nutritional but it is an important

part of their culture. For instance, beef is an integral part of the Mangalorean cuisine beef is an integral part of their cuisine. The Karnataka Prevention of Slaughter and Preservation of Cattle Ordinance 2020, prevents them from consuming beef, which is an integral part of their culture. This violates Article 29 of the Constitution of India.

GROUND FOR INTERIM PRAYER

42. Since 1964 there is already a Cow Protection Act in the State, so what is the need of bringing such Ordinance now, secondly the Hon'ble Supreme Court has made it clear in cases related to Bihar and Gujarat, cows and bulls that are more than 15 years old not useful for agriculture or milking can be sold by farmers to slaughterhouses.

43. It is submitted that Article 19 of the constitution ensures citizens of India the choice of profession and means of livelihood (Animal Husbandry) and with this Ordinance passed these rights are snatched away from them. It is pertinent to mention that the search and seizure provisions of the aforesaid Ordinance gives arbitrary power to anybody higher than the rank of sub-inspector the right to search based on suspicion which is draconian and a means to criminalize Muslims, Dalits and other Minorities for their choice of food. It is very clear the afore said Ordinance is against the basic principles of Indian Constitution, beside it effect socio-economic life of majority of backward classes and communities including Muslims, Christians, Buddhists, Pinjaras, Nadaf, Chapparbands, Jatagaras, and others listed under category III-B of the Backward classes it is also very clear the law takes away their access to essential protein at

affordable prices. According to data analytics site Indian Spend , 45 people were killed in 120 cases of cow-related violence reported across India between 2012-2018 it is pertinent to mention that so far, more than half the victims of lynching over alleged cow slaughter has been Muslims and Hinduthva groups use the cow as a tool to demarcate territories of fear and intimidation. Resulting which the Cow Vigilantes Groups in the State will activated and it may result in mob lynching and other criminal activities.

PRAYER

WHEREFORE, it is most respectfully prays that this Hon'ble Court may be pleased to issue:

- a) Allow this Public Interest Litigation;
- b) To issue Writ in the nature of Certiorari or any other appropriate Writ by quashing the impugned **KARNATAKA ORDINANCE NO. 01 OF 2021 (PARLIAMENTARY AFFAIRS AND LEGISLATION SECRETARIAT NOTIFICATION NO. DPAL 86 SHASHANA 2020, BENGALURU, DATED 05.01.2021)** State of Karnataka to overturn the validity of the aforesaid Ordinance as unconstitutional.
- c) Pass such other that this Hon'ble Court may deems fit in the interest of justice and equity.

INTERIM RELIEF PRAYED FOR

In the circumstances it is most respectfully prayed that

Pending hearing and final disposal of the Petition this Hon'ble Court may be pleased to grant stay of operation of impugned Ordinance KARNATAKA ORDINANCE NO. 01 OF 2021 (PARLIAMENTARY AFFAIRS AND LEGISLATION SECRETARIAT NOTIFICATION NO. DPAL S6 SHASHANA 2020, BENGALURU, DATED 05.01.2021) passed by respondent No.1 in the interest of justice and equity.

BENGALURU

(R. KOTHWAL)

Date: 06.01.2021

ADVOCATE FOR PETITIONER

ADDRESS FOR SERVICE:

R. Kothwal and Co.,