Moot Problem

Rubina Tamboli V. State of Saurashtra

The economy of the State is still predominantly agricultural. In the agricultural sector, use of cattle for milch, draught, breeding or agricultural purposes always has great importance. It has, therefore, become necessary to emphasis preservation and protection of agricultural animals like bulls and bullocks. With the growing adoption of non-conventional energy sources like bio-gas plants, even waste material have come to assume considerable value. After the cattle cease to be useful for the purpose of breeding or are too old to do work, they still continue to give dung for fuel, manure and bio-gas and, therefore, they cannot, any time, be said to be useless. It is well accepted that the backbone of Indian agriculture is, in a manner of speaking, the cow and her progeny and they have, on their back, the whole structure of the Indian agriculture and its economic system. So govt impose total prohibition on slaughter of the progeny of cow.

Certain other provisions which it is felt by the Government would help in effecting the implementation of such total ban are also being incorporated such as provision for prohibition on the transport, export, sale or purchase of the above category of cattle for slaughter, in regard to entry, search and seizure of the place and vehicles where there is a suspicion of  such offences being committed, provision placing the burden of proof on the accused, provision regarding custody of the seized cattle, pending trial with the Goshala or Panjarapole or such other Animal Welfare Organisations which are willing to accept such custody and the provision relating to liability for the payment of maintenance of such seized cattle for the period they remained in the custody of any of such charitable organisations by the accused.

It can be said that by the Amendment Act, a complete ban on slaughter of bulls and bullocks in the State has been imposed by amending Section 5 of the Animal Preservation Act in addition to complete ban on the slaughter of Cow which was already provided in unamended Section 5. Under the unamended Animal Preservation Act, bulls and bullocks were scheduled animals which could be slaughtered only after obtaining a certificate of the Competent Authority in accordance with Sub-Section (1) of Section 6.

Sub-Section (2) of Section 6 provided that no certificate as contemplated by Sub-Section (1) would be granted unless the conditions specified in Sub-Section (2) were satisfied. Section 6 of the Act empowers competent authority to issue certificate for slaughter of the scheduled animals, but such certificate is not to be granted if in the opinion of that competent authority the animal is or is likely to become useful for draught, agricultural operations, breeding, giving milk or bearing offspring.

Now after the coming into force of the Amendment Act, only female buffalos and buffalo calves continue to be scheduled animals as bulls and bullocks have been removed from the Schedule.

By introducing Section 5A, a complete ban on transport of cow, bull or bullock from any place in the State to any place outside the State for the purpose of its slaughter has been imposed. By the same Section, a complete ban on export outside the State of Maharashtra of cow, bull and bullock for the purpose of slaughter has been imposed.

Section 5B provides for a ban on purchase, sale or otherwise disposal of any cow, bull or bullock for its slaughter.

Section 5C imposes a prohibition on any person possessing flesh of any cow, bull or bullock slaughtered in contravention of the provisions of the Animal Preservation Act.

Section 5D provides that no person shall have in his possession flesh of any cow, bull or bullock slaughtered outside the State of Saurashtra.

Section 9A, it is provided that violation of Sections 5C, [5D](https://indiankanoon.org/doc/1210757/) or 6 shall be an offence. By amending Section 9, even violation of Sections 5A and 5B has been made an offence. A very drastic provision putting a negative burden on the accused at the time of trial of the offences punishable under Sections 9 and 9A has been introduced by way of Section 9B which provides that at the time of the trial, the burden of proving that the slaughter, transport, export, sale, purchase or possession of flesh of cow, bull or bullock was not in contravention of the provisions of the Animal Preservation Act shall be on the accused. It is also being provided for enhancement of penalty of imprisonment for certain kind of offences under Section 9 of the Act from six months to five years and of fine of one thousand rupees to ten thousand rupees and with a view to curb the tendency towards such offences also making such offences non-bailable so as to serve as deterrent.

The Petitioner, who is a citizen of India, practising Advocate & owners of the cattle, cattle dealers and butchers and beef sellers and the owners of leather industry has filed this Petition before high court for a declaration that the provisions of Sections 5, 5A, 5C, 5D, [6](https://indiankanoon.org/doc/582772/) as well as Sections 9, 9A & 9B of the Animal Preservation Act are unconstitutional, illegal and null and void.

In this Petition, High Court has hold and declare that Section 5, Section5A,Section 5B, Section 5C, Sub sections (3) and  (4) of Section   8,   Section   9   and   Section   9A   of   the Saurashtra Animal Preservation  Act, 1986 as amended/inserted by the Saurashtra Act of 2005 are constitutional, valid and legal; And Section 5D and 9B of the Saurashtra  Animal Preservation Act,2005  is struck down on the ground  that  the  same infringes the fundamental right guaranteed under the Constitution  of  India;

Petitioner being aggrieved from above judgment filed appeal before the Supreme Court. This matter is posted for final hearing.

Note: All Indian Laws are applicable to above Moot Problem. Participants can frame any three suitable and relevant issues for final hearing/arguments before Supreme Court.