

Constitutional Law and Public Administration in India

Prof. (Dr) Sairam Bhat

Centre for Environmental Law, Education, Research and Advocacy (CEERA)

National Law School of India University, Bengaluru

Week- 02

Lecture-02

Constitution and Public Policy

Can we define what public policy is under the Constitution? It is quite interesting that there has been an attempt to define public policy in India. It is not written explicitly, but I think it can be read into by the court. And the same was done by the Supreme Court in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* in 1991. This is a significant case on the rule of proportionality. Because please note, one of the issues on public policy is you should be punished or there should be some kind of a sanction on you to the extent of the fault that you are committing, not anything beyond that. That is called the rule of proportionality. Which says that one should be punished only to the extent of one's fault because a disproportionate punishment is not just. A just punishment is in favor of public policy.

The court in 1991, in this case, said that the rules which stem from public policy must be laid to further the progress of society when social changes bring about an egalitarian social order through the rule of law. Courts can be guided by various principles to determine what public policy is. There is no perfect test of what it may be, and it is not going to be static. Public policy could be as simple as that which is not opposed to public policy.

To a larger extent, people have said that public policy is like an unruly horse. You try to control it and define it, it won't be possible to do so, because that is precisely how it looks. Public policy is applied in so many facets, be it arbitration, dispute resolution, cases of taxes and frauds, it may not be possible to say in clear terms as to what is public policy in each of these cases. A lot of people have said, and jurists believe that public policy is nothing but public interest, a larger public interest. Some have also gone ahead and said that it is a kind of a political experience of what public good is. So, defining public policy may not be possible, but something that is contrary to the fundamental law of the land is not public policy. Something that is contrary to the interest of the country and something that is contrary to justice and morality is not public policy.

Let us understand this better in terms of the Constitution and public policy perception by taking an issue which will describe the importance of this course. Article 48 of the Indian Constitution under the directive principles of state policy talks about the organization of

agriculture and animal husbandry. It says that the states shall endeavor to organize agriculture and animal husbandry on modern and scientific grounds and shall take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. This is something that is mandated by the Constitution. Article 48A which was added to the Constitution later, says that there must be protection and improvement of the environment, safeguard of forest and wildlife. There is an obligation on the state to prohibit the slaughtering of certain kinds of animals that are cows in that sense. This has been an interesting question all throughout, because very recently, cow slaughtering legislations have come under media scrutiny. There is a misconception that cow slaughtering ban has been introduced recently. A misconception that it is a modern public policy dimension that has been introduced only in some states and not in every state and that while you can slaughter any other kind of animal, which are permitted by law and you can market meat or have meat, slaughtering of cows and other milk and draught cattle is banned in this country and this ban came only recently. This is not true at all. The government is trying to invoke an old provision of law; the original basis of the Constitution as it were. The Constituent Assembly debate on Article 48, is quite interesting because there was a big debate about whether there should be a specific provision in the Constitution.

Why should the Constitution determine what you eat? What is the purpose of bringing this provision? A certain section of the community in the Constituent Assembly opposed this provision in the Constitution saying that this is unnecessary. The public policy concern among the majority section of the community was that cows were holy or sacred or having a divine purpose. Hence, that community wanted protection of cows. The Constitution that this policy should be implemented all over. However, the central government wanted to provide states with flexibility. Hence, they let the states take this initiative and if they believe that a particular policy was the right public policy at that point of time. So, while Article 48 was brought into place as an original part of the Constitution, could it be said as the public policy of the majority at that point of time? The answer is yes. Did it trample upon the rights of the minority? Sometimes at their cost, yes. Because public policy cannot be a unanimous opinion. Public policy or public administration is not based on everyone's individual concept or everyone's acceptance of public policy. Sometimes it is necessary to protect several aspects of public administration and public morality. Even though this is how public policy works, you will notice that in the case of protection of cows or other milch and draught cattle in bringing in legislations to prohibit cow slaughters, states like Kerala, Arunachal Pradesh, Meghalaya, Nagaland, Sikkim, Tripura, Manipur, and Mizoram have no such law. But the rest of the country has a law that makes cow slaughter an offence. 22 out of 28 states have banned cow slaughters. Though the Constitution says so under the directive principle of state policy, the states have a choice to follow the directive principles. The interesting dimension is that states can have differential policies than the national government. Respecting the cooperative federalism process is the beauty

of public policy. But it should remain with the dominant will of the state and the state can then exercise the reservation of creating an exception to Article 48. And this has existed for the past 70 years of the Constitution. Because states such as Kerala, Arunachal Pradesh, Meghalaya, Manipur and Mizoram, food habits of the community allow them to consume beef and for them probably the cow is not a sacred animal.

These are states that have been dominated by a certain section of the community and they have continued to hold that position despite major political parties becoming or coming to power over them. So, this very interestingly looks at the dimension of not only say a Hindu versus Muslim dimension, it also looks at the dimension of public policy as laid down in the original Constitution versus as laid down as a reservation of exception of certain states. Cow slaughtering legislations were passed as early as in 1950s and 1960s. They are not new legislations at all.

Recently, the government that came to power wanted to revive these legislations to bring about greater awareness of this legislation. They wanted to effectively implement this legislation and for which what they did was in certain states they announced the punishment for cow slaughter. In certain states they decided to monitor which kind of cattle is being taken to the slaughterhouse or not and most importantly many of these states they started monitoring the trans-border movement of these cattle. It was easy to transport these cattle from Karnataka to Kerala and then take them to slaughterhouses. This interstate movement of cattle for slaughter was attempted to be regulated by bringing some changes and amendments to the existing cow slaughter law and that revived the debate. But please note it was not new, it was the same public policy of the constituent assembly. It was the same public policy at that point of time in 1950 that continues even now. What has been done is strengthening public policy in terms of effective implementation; certain measures were taken from time to time.

There are a couple of interesting cases on this which can be a guiding light to understanding how public policy on cow slaughter was taken into due note and consideration of. In *Mohd. Hanif Qureshi and Ors. v. State of Bihar*, the Supreme Court in 1958, a challenge was taken to the Supreme Court to look into the legitimacy of Article 48. To look into these cow slaughtering legislations whether they should be held to be legal or they should be held to be unconstitutional. Lot of people raised the concern that these laws have resulted in closing their business of slaughterhouses. The challenges were on multiple grounds and multiple fronts. They also claimed that this kind of a profession in the Constitution is only one sided; it takes the side of one community altogether. For example, there is no mention of non-consumption of pork in the Constitution. The court rejected this argument and held that protection of cows is not just a matter of economic profitability. It is a matter of a national consciousness. It should be laid down as the public policy of the nation as it aspires to a larger section of the community to hold this cow as a sacred holy animal. And to protect these kinds of cattle for milking, white revolution, and other purposes, it is very important

that such a ban on cow slaughter be protected, and it is under general interest as well. Interestingly, in some of these legislations, you will notice that some of the legislations have a very clear ban on cow slaughter, very clear. It is called the absolute ban on cow slaughter. Some states make a distinction between milching cow and other kinds of cow and some can be slaughtered while others cannot be. This distinction is also something that some states have exercised as a discretion.

When one is trying to determine public policy, the test laid down in the case of the *Keshvananda Bharati v. State of Kerala* is crucial. In this case, the court said that public policy means that the national interest shall take precedence over the interest of a specific group of people. And the national interest of inscribing article 48 was very clear. Ban on cow slaughter continues to be an integral part of the Constitution's directive principle, whether it is an absolute ban or with exceptions. Cow slaughtering legislations or the anti slaughtering legislations, as we will call it, are legislations protecting animal rights. Every country can have one national animal for the protection of Constitutional principles. And the Indian cow has been granted that kind of a special status right from the time the Constituent Assembly debated putting this specific article in the Constitution. There is a growing debate on the rights of nature. Should nature have rights? The Uttarakhand High Court very recently held that the river Ganga has a right of its own. It has a legal personality of its own, though the same judgment was stayed by the Supreme Court. If a river has rights and someone pollutes it, there can be an allegation of pollution on behalf of Ganga. So, you do not have to file a case on behalf of the pollution control board of the state. You can be the person who takes the case on behalf of Ganga.

The larger message of public policy in India is intertwined with integral cultural practices that respect nature. We revere each of these things in nature, be it forest, be it rivers. That is why you notice that rivers have been named after Gods and Goddesses, Ganga, Cauvery, Yamuna, Brahmaputra, and so on and so forth. There is reverence to religion, holiness, divinity, there is a greater degree of responsibility and duty to protect, the duty to conserve, not to exploit, not to usurp and not to pollute.

We also have the Prevention of Cruelty to Animals Act, 1960. You cannot kill any animal in a cruel manner. Though it is a cognizable offense, it is the duty of a person in charge of animals to take responsible measures to ensure the safety of animals. So, the way you slaughter is also critical and important. In 1967, rules prohibiting cow slaughter were brought in the Andaman and Nicobar Islands. Under these rules, one cannot slaughter or cause to slaughter a cow, bull, or bullock without a certificate from a veterinary officer of the competent authority. Penalty for violation is 250 rupees. Punjab brought this legislation in 1955 itself. You cannot slaughter or cause to slaughter, offer to slaughter any cow without a certificate. There are exceptions in self-defense, of course. Maybe it is an infected animal with continuous diseases. So, it is not an absolute ban, exceptions can be created. You cannot sell or cause to be sold or offer to sell beef in Punjab. Punjab is not dominated

by the Sikh community. But that is a state that continues to hold cow as an important Constitutional animal. You cannot export or cause to export cow for slaughter. Goa also has a similar law. However, an infected animal can also be taken for slaughter. You cannot sell beef in Goa. It is fined with 200 rupees.

There are designated competent authorities under these statutes. In Delhi, since the 1994 Act, a sub inspector is also authorized on behalf of the government of Delhi. He can enter, stop, search, they can seize animals. One cannot slaughter, sell, or possess flesh as well. One cannot transport or cause to be transported. One cannot directly or indirectly export. In contrast, the public policy in Australia is to consume beef. They can cut, kill, slaughter, and eat. But in India, the public policy is slightly different. This is where cultural aspects to any Constitution affect the direction of public policy in that country. Culture, religion, community and other aspects also play a very critical role in determining the Constitutional public policy.

The meat industry is one of the highly contaminating industries and a major contributor to climate change today. Several western countries who advocate that India must take some action towards climate resilience and climate protection must first reflect on themselves as they are the biggest emitters of carbon. In one sense, we have the largest cattle population apart from having the largest human population. Huge amounts of methane production from these cattle have also been alleged by climate activists. The debate on cow slaughtering and laws prohibiting them helps us in the analysis of the Constitution as a factor influencing public administration as it were.

In this lecture, we have tried to link the Constitution to public policy and public administration. We have looked at the Constitution and its structure, the purpose of the Constitution, how the Constitution is framed for and what are the different parts of the Constitution.