IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5731 OF 2015

Shaikh Zahid Mukhtar … Petitioner
Versus
The State of Maharashtra and Ors. … Respondents
--
Mr. Firoz A. Ansari for the Petitioner.
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WITH
WRIT PETITION NO.9209 OF 2015 WITH
CIVIL APPLICATION NO.3183 OF 2015

Indian Union Muslim League … Petitioner
Versus
State of Maharashtra and Ors. … Respondents
--
Ms. Gayatri Singh, Senior Advocate a/w Mr. Zamin Ali i/by Mr. Mohd. Rehan Sayeed Chhapra for the Petitioner.
Mr. Rajiv R. Gupta i/by Dhanuka & Partners for the Applicant in CA.
–

WRIT PETITION NO.9996 OF 2015

Jamat-ul-Quresh Minority Association
Through its President
Mohammed Arif Chowdhary and Ors. … Petitioners
Vs.
State of Maharashtra and Ors. … Respondents
--
Mr. Ravindra Adsure i/by Mr. Sidheshwar Namdev Biradar for the Petitioner.
--

WITH
WRIT PETITION NO.11744 OF 2015 WITH

Anna Baburao Nigade and Anr. … Petitioners
Vs.
State of Maharashtra and Ors. … Respondents
–
Mr. Dinesh Ramchandra Shinde for the Petitioners.
–

WITH
CIVIL APPLICATION NO.3326 OF 2015
IN
WRIT PETITION NO.11744 OF 2015 WITH

Mr. Ramesh Dhanraj Purohit … Applicant/
Proposed Intervener

In the matter between

Anna Baburao Nigade and Anr. … Petitioners
Vs.
State of Maharashtra and Ors. … Respondents
--
Mr. Shashikant Damodarlal Chandak for the Applicant.
–

WITH
PUBLIC INTEREST LITIGATION NO.127 OF 2015

Mohd. Hisham Osmani
s/o Mohd. Yusuf Osmani and Anr. … Petitioners
Vs.
The State of Maharashtra and Ors. … Respondents
--
Mr. S.S. Kazi for the Petitioners.
–

WITH
PUBLIC INTEREST LITIGATION NO.133 OF 2015

Mr. Sheikh Aasif Sheikh Rashid and Anr. … Petitioners
Vs.
Malegaon Municipal Corporation and Ors. … Respondents
--
Ms. Shama Mulla i/by M/s. Jay and Co.
Mr. G.H. Keluskar for the Respondent No.1.

Mr. S.G. Aney, Advocate General, Mr. A.B. Vagyani, Government Pleader, Mr. V.S. Gokhale, AGP, Mr. V.B. Thadhani, AGP, Ms. Tintina Hazarika, AGP for State in all the above Petitions.
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WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1314 OF 2015 WITH
CHAMBER SUMMONS (L.) NO. 139 OF 2015 WITH
CHAMBER SUMMONS (L.) NO. 374 OF 2015 WITH
NOTICE OF MOTION (L.)251 OF 2015 WITH
CHAMBER SUMMONS NO.264 OF 2015
IN
WRIT PETITION NO.1314 OF 2015

Haresh M. Jagtiani … Petitioner
Vs.
The State of Maharashtra … Respondent
--

WP/1314/2015
Mr. Aspi Chinoy, Senior Counsel alongwith Mr. Navroz Seervai, Senior Counsel along with Ms. Gulhar Mistry, Mr. Khalid Khurani, Miss. Rushika Rajadhyaksha, Miss. Taruna Jaiswal, Mr. Ryan Mendes and Mr. Royden Fernandes i/b Nikhil Milind Sansare, Advocate for Petitioner.

CHSW(L.)/139/2015
Mr. Ram Apte, Senior Counsel a/w Mr. Harish Pandya, Mr. Rajendra Kookada and Mr. Raju Gupta i/by Mr. Raju Gupta for Intervenor.

CHSW(L.)/374/2015
Mr. Swaraj S. Jadhav and Saipan Shaikh for Applicant.

NMW (L.)/251/2015 AND CHS/264/2015
Mr. Subhash Jha a/w Mr. Ghanashyam Upadhyay, Ms. Rushita Jain & Mr. Ashish Shukla and Ms. Priyanka Jangid i/by Law Global for Applicant.

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WITH
WRIT PETITION NO.1379 OF 2015 WITH
CHAMBER SUMMONS (L.) NO. 106 OF 2015 WITH
CHAMBER SUMMONS (L.) NO. 109 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.416 OF 2015
IN
WRIT PETITION NO.1379 OF 2015

Mr. Vishal Sheth & Ors. … Petitioners
Vs.
State of Maharashtra and Ors. … Respondents

WP/1379/2015
Mr. Sunip Sen alongwith Vishwajit P. Sawant i/by Prabhakar Manohar Jadhav, Advocate for Petitioners.

Mr. H.S. Venegaonkar, Additional Government Pleader along with Mrs. Anjali Helekar, AGP for Respondent - State.

CHSW(L.)/106/2015
Mr. Subhash Jha a/w Mr. Ghanashyam Upadhyay, Ms. Rushita Jain & Mr. Ashish Shukla i/by Law Global for Applicant.

CHSW(L.)/109/2015
Mr. Ashish Mehta along with Mr. Sarbari Chatterjee a/w Avani Rathod i/by Ashish Mehta, for Intervenor.

CHSW(L.)/416/2015
Mr. A.V. Anturkar, Senior Counsel alongwith Mr. Prafulla B. Shah, for applicant – Intervenor.

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WITH
PUBLIC INTEREST LITIGATION NO.76 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.389 OF 2015 WITH
CHAMBER SUMMONS (L.) NO. 419 OF 2015
IN
PUBLIC INTEREST LITIGATION NO.76 OF 2015

Gautam Benegal and Ors. … Petitioners
Vs.
State of Maharashtra … Respondents
--
PIL/76/2015
Mr. Sunip Sen alongwith V.P. Sawant alongwith Vishal Sheth and Ruben Fernandes, Ms. Tanayya Patankar and Mr. Veerdhaval Kakade, for Petitioners.

Mr. H.S. Venegaonkar, Additional Government Pleader along with Mrs. Anjali Helekar, AGP for Respondent No.1 - State.

CHSW(L.)/389/2015
Mr. Harish Pandya a/w Rajendra Kookada, Mr.Raju Gupta i/by Mr. Raju Gupta for Intervenors.

CHSW(L.)/419/2015
Mr. A.V. Anturkar, Senior Counsel alongwith Mr. Prafulla B. Shah, for applicant – Intervenors.
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WITH
WRIT PETITION NO.1975 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.306 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.417 OF 2015
IN
WRIT PETITION NO.1975 OF 2015

Ansari Mohamed Umar and Anr. … Petitioners
Vs.
The State of Maharashtra and Ors. … Respondents
--
Mr. Mukesh M. Vashi, Senior Counsel alongwith Mr. Makarand Kale and Ms. Aparna Deokar, Panthi Desai and A.A. Siddiqui i/by A.A. Siddiqui and Associates for Petitioners.
Mrs. Anjali Helekar, AGP for Respondent - State.

CHSW(L.)/306/2015
Mr. M.P. Rao, Senior Counsel a/w Mr. Rajendra Kookada, Mr. Harish Pandhya and Raju Gupta i/by Raju Gupta for Intervenor.

CHS(L.)/417/2015
Mr. A.V. Anturkar, Senior Counsel alongwith Mr. Prafulla B. Shah, for applicant – Intervenors.

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WITH
WRIT PETITION NO.2680 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.455 OF 2015 WITH
CHAMBER SUMMON (L.) NO.420 OF 2015
IN
WRIT PETITION NO.2680 OF 2015

Aslam Alamgir Malkani and Anr. … Petitioners
Vs.
The State of Maharashtra and Ors. … Respondents

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WP/2680/2015
Mr. A.A. Siddiqui i/by A.A. Siddiqui and Associates, Advocate for Petitioners.

Mr. Prakash Gada i/by Dhanuka & Partners for Mohd Faiz Khan-Intervenor.

CHSW(L.)/455/2015
Mr. P.R. Diwan a/w Mr. Rajendra Kookade, Mr. Aditya Khanna i/by Kookade and Associates & Aditya Khanna for Intervenor.

CHSW(L.)/420/2015
Mr. A.V. Anturkar, Senior Counsel alongwith Mr. Prafulla B. Shah, for applicant – Intervenor.

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WITH
WRIT PETITION (L.) NO.2566 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.456 OF 2015

Huzaifa Ismail Electricwala and Ors. … Petitioners
Vs.
The State of Maharashtra and Anr. … Respondents

CHSW(L.)/456/2015
Mr.P.R.Diwan alongwith Rajendra Kookada and Mr. Aditya Khanna i/by Kookada & Associates & Aditya Khanna for Intervenor.

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WITH
WRIT PETITION (L.) NO.1109 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.418 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.315 OF 2015
IN
WRIT PETITION (L.) NO.1109 OF 2015

Swatija Paranjpe and Ors. … Petitioners
Vs.
State of Maharashtra
Through the Department of
Animal Husbandry and Ors. … Respondents

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WP(L.)/1109/2015
Mr. Mihir Desai a/w Ms. Rebecca Gonsalves, Ms. Ushajee Peri, Sariputta P. Sarnath, Chetan Alai, Vinamra Kopariha, Devyani Kulkarni, Chetan Mali i/by Vijay Hiremath, Advocate for Petitioners.
Mrs. Anjali Helekar, AGP for Respondent No.-1 – State.

CHSW(L.)/418/2015
Mr. A.V. Anturkar, Senior Counsel alongwith Mr. Prafulla B. Shah, for applicant – Intervenor.

CHSW(L.)/315/2015
Mr. M.P. Rao, Senior Counsel a/w Shri Rajendra Kookada, Mr. Harish Pandhya and Raju Gupta i/by Raju Gupta for Intervenor.

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WITH
WRIT PETITION NO.1653 OF 2015 WITH
CHAMBER SUMMONS NO.277 OF 2015 WITH
CHAMBER SUMMONS (L.) NO.138 OF 2015
IN
WRIT PETITION NO.1653 OF 2015

Arif Usman Kapadia … Petitioner
Vs.
The State of Maharashtra and Anr. … Respondents

WP/1653/2015
Mr. Firoz Bharucha i/by Pratap Manmohan Nimbalkar, Advocate for Petitioner.
Mrs. Anjali Helekar, AGP for Respondent No.-1 - State.

CHSW/277/2015
Mr. Satya Prakash Sharma i/by Abdi & Co. for applicant.

CHS(L)/138/2015
Mr. Rakesh Kumar alongwith Ms. Laxmi Narayan Shukla, Miss Shobha Mehra and Mr. Shivkumar Mishra i/by Legal Venture for Applicant - Intervenor.

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WITH
CHAMBER SUMMONS (L.) NO.132 OF 2015
IN
WRIT PETITION NO.1653 OF 2015

Jayostu Swarajya Prathishthan … Applicant
In the matter between
Arif Usman Kapadia … Petitioner
Vs.
State of Maharashtra
Through the Ministry of
Animal Husbandry … Respondent

--

Mr. Sampanna Walawalkar a/w Mr. Dhrutiman Joshi i/by Bafna Law Associates for Intervenor.

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WITH
CHAMBER SUMMONS (L.) NO.120 OF 2015
IN
WRIT PETITION NO.1653 OF 2015

Abrar Qureshi … Applicant
In the matter between
Arif Usman Kapadia … Petitioner
Vs.
State of Maharashtra
Through the Ministry of
Animal Husbandry … Respondent

--

Mr. A.V. Anturkar, Senior Counsel a/w Mr. P.B. Shah, Kayval P. Shah for Applicant – Intervenor.

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WITH
CHAMBER SUMMONS (L.) NO.125 OF 2015
IN
WRIT PETITION NO.1653 OF 2015

Bharatvarshiya Digamber Jain … Applicant
In the matter between
Arif Usman Kapadia … Petitioner
Vs.
State of Maharashtra
Through the Ministry of
Animal Husbandry … Respondent
--
Mr. J.S.Kini i/by Shri Suresh Dubey for the Applicant.
–

WITH
CHAMBER SUMMONS (L.) NO.110 OF 2015 IN
WRIT PETITION NO.1653 OF 2015

All India Jain Journalist Association (AIJJA) … Applicant
In the matter between
Arif Usman Kapadia … Petitioner
Vs.
State of Maharashtra
Through the Ministry of
Animal Husbandry … Respondent
--
Mr. A.V. Anturkar, Senior Counsel along with Mr. P.B. Shah, Kayval P. Shah for Applicant – Intervenor.
–

WITH
CHAMBER SUMMONS (L.) NO.105 OF 2015
IN
WRIT PETITION NO.1653 OF 2015

Akhil Bharat Krishi Goseva Sangh … Applicant
In the matter between
Arif Usman Kapadia … Petitioner

Vs.
State of Maharashtra
Through the Ministry of
Animal Husbandry … Respondent

--

Mr. A.V. Anturkar, Senior Counsel along with Mr. P.B.Shah, Kayval P. Shah for Applicant-Intervenor.

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WITH
WRIT PETITION (L.) NO.3395 OF 2015

Mayur Cold Storage Private Limited … Petitioner
Vs.
State of Maharashtra and Ors. … Respondents

--

Mr. Mihir Desai, Senior Counsel alongwith instructed by Amit Survase, Advocate for Petitioner.

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WITH
WRIT PETITION (L.) NO.3396 OF 2015

Maharashtra Cold Storage Owners Association … Petitioner
Vs.
State of Maharashtra and Ors. … Respondents

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Mr. Ashutosh A Kumbhakoni, Senior Counsel alongwith Mr. Rui Rodriques with Afroz Shah, Mr. Udyan Shah and Ms. Kavisha Shah i/by Indian Law Alliance, Advocate for Petitioner.

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WITH
WRIT PETITION (L.) NO.3422 OF 2015

Mr. Waris Pathan … Petitioner
Vs.
State of Maharashtra and Ors. … Respondents

–

None for the Petitioner.

Mr. Shrihari Aney, Advocate General with Ms. P.H. Kantharia, Government Pleader, and Mr. Hitesh S. Venegaonkar, Additional Government Pleader, alongwith Mrs. Anjali Helekar and Mr. J.S. Saluja, AGPs for Respondent - State of Maharashtra in all the above Original Side Petitions.

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CORAM : A.S. OKA & S.C. GUPTE, JJ.

JUDGMENT RESERVED ON : 8TH JANURARY 2016

JUDGMENT IS PRONOUNCED ON : 6TH MAY 2016

JUDGMENT :
PER A.S. OKA, J

1. As per the administrative order dated 17th November 2015 passed by the Hon'ble the Acting Chief Justice, this group of Petitions has been specifically assigned to this specially constituted Bench.

OVERVIEW

2. The challenge in this group of Petitions is to various provisions of the Maharashtra Animal Preservation Act, 1976 (for short “Animal Preservation Act”) as amended by the Maharashtra Animal Preservation(Amendment)Act,1995 (for short “the Amendment Act”). The Amendment Act received the assent of the Hon'ble President of

India on 4th March 2015. By the Amendment Act, in addition to existing prohibition on the slaughter of cows, a complete prohibition was imposed on slaughter of bulls and bullocks in the State. A ban was imposed on possessing the flesh of cow, bull or bullock slaughtered within and outside the State. Moreover, by introducing Section 9B, at the trial of certain offences, a negative burden was put on the accused.

3. Before we deal with the facts of each Petition and the challenges therein, it will be convenient to have an overview of the relevant provisions of the Animal Preservation Act. The Animal Preservation Act was brought into force with effect from 15th April, 1978. The Preamble of the unamended Animal Preservation Act reads thus :-

> "An Act to provide for the prohibition of slaughter of cows and for the preservation of certain other animals suitable for milch, breeding, draught or agricultural purposes.
>
> And whereas it is expedient to provide for the prohibition of slaughter and to provide for matters connected therewith"

4. Section 5 of the Animal Preservation Act prior to its amendment by the Amendment Act provided for a complete ban on slaughter of any cow in any place of State of Maharashtra. Sub-Sections (1) of Section 6 provided that no person shall slaughter or cause to be slaughtered any scheduled animal (Bovines namely bulls, bulloks,

female buffaloes, buffalow calves) in any place in the State of Maharashtra unless he has obtained in respect of each animal a certificate in writing from the Competent Authority that the animal is fit for slaughter. As per Section 7, a scheduled animal in respect of which a permission under Section 7 has been granted can be slaughtered only at the place specified by such authority or such officer the State Government may appoint in that behalf. For the sake of convenience, we are reproducing Sections 5 to 7 of the Animal Preservation Act before its amendment which read thus :-

> "5. Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary **no person shall slaughter or cause to be slaughtered or offer for slaughter any cow, in any place in the State of Maharashtra**.
>
> 6. (1) Notwithstanding anything contained in any law for the time being in force or any usage or custom to the contrary, **no person shall slaughter or cause to be slaughtered any scheduled animal in any place in the State of Maharashtra, unless he has obtained in respect of such animal a certificate in writing from the competent authority that the animal is fit for slaugh**ter.
>
> (2) No certificate shall be granted under sub-section (1), if in the opinion of the competent authority, -
>
> (a) the scheduled animal, whether male or female, is or likely to become economical for the purpose of draught or any kind of agricultural operations;

(b) the scheduled animal, if male, is or is likely to become economical for the purpose of breeding;

(c) the scheduled animal, if female, is or is likely to become economical for the purpose of giving milk or bearing offspring.

(3) The State Government may, on an application by any person aggrieved by an order passed by the competent authority refusing to grant him a certificate, made to it within sixty days from the date of receipt of such order, or any time suo motu, call for and examine the records of the case for the purpose of satisfying as to the legality or propriety of any order passed by the competent authority under this section, and pass such order in reference thereto as it thinks fit.

(4) A certificate under this section shall be granted in such form and upon payment of such fees as may be prescribed.

(5) Subject to the provisions of sub-section (3), any order passed by the competent authority granting or refusing to grant a certificate, and any order passed by the State Government under sub-section (3), shall be final and shall not be called in question in any Court.

7. No scheduled animal in respect of which a certificate has been issued under section 6 shall be slaughter in any place other than a place specified by such authority or officer as the State Government may appoint in that behalf."

(Emphasis added)

5. The "scheduled animal" was defined in clause (e) of Section 3. Clause (e) of Section 3 reads thus :-

> "(e) "Scheduled animal" means any animal specified in the Schedule; and the State Government may, by notification in the Official Gazette, add to the Schedule any species of animals, after considering the necessity for preservation of that species of animals; and the provisions of sub-section (3) of section 16, in so far as they shall apply in relation to such notification as they apply to any rule made under that section."

6. The Schedule reads thus :

> "[Section 3(e)]
>
> Bovines (bulls, bullocks, famale buffaloes and buffalo calves.)"

7. Section 9 in the unamended Animal Preservation Act provided for penalties which reads thus :-

> "9. Whoever contravenes any of the provisions of this Act shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

8. In the year 1995, the Maharashtra State Legislature passed the Maharashtra Animal Preservation (Amendment) Bill, 1995. However, the Bill did not receive Presidential assent for considerably long time. The Presidential assent was received to the said Bill on 4th March, 2015. Accordingly, the Amendment Act was published in

Maharashtra Government Gazette dated 4th March, 2015. The Amendment Act was brought into force on 4th March, 2015. The Long Title of the Principal Act as well as the Preamble were amended by the Amendment Act. By the Amendment Act, even the Schedule was amended and consequential amendment was made to Sub-Section (4) of Section 1. Section 5 was amended by incorporating words "bull or bullock" after the word "cow". Sections 5A to 5D were incorporated after Section 5 of the Principal Act. Sub-Sections (3) and (4) were added to Section 8 of the Principal Act. There were amendments made to Section 9 of the Principal Act. Sections 9A and 9B were added by the Amendment Act. There were amendments made to Sections 10, 11 and 14 by the Amendment Act.

9. For the sake of convenience, we are reproducing the relevant provisions of the amended Animal Preservation Act. The long title and preamble read thus:

> "An Act to provide for the prohibition of slaughter ~~of cows and for the preservation of certain other animals suitable for milch, breeding, draught or agricultural purposes~~ **and preservation of cows, bulls and bullocks useful for milch, breeding, draught or agricultural purposes and for restriction on slaughter for the preservation of certain other animals suitable for the said purposes.**"
>
> WHEREAS it is expedient to provide for the prohibition of slaughter ~~of cows and for the preservation of certain other animals suitable for milch, breeding, draught or agricultural purposes~~ **and preservation of cows, bulls and bullocks useful for milch, breeding, draught or agricultural purposes**

and for restriction on slaughter for the preservation of certain other animals suitable for the said purposes and to provide for matter connected therewith."

(added portion in bold letters & deleted portions struck out)

10. The amended Sub-Section (4) of Section 1 reads thus:

"(4) It shall apply to cows, **bulls and bullocks** and to scheduled animals."

(portion in bold letters added by the Amendment Act)

11. The amended Section 5 reads thus:

"5. Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary no person shall slaughter or cause to be slaughtered or offer for slaughter any cow, **bull or bullock,** in any place in the State of Maharashtra."

(Added portion in bold letters)

12. Sections 5A to 5D incorporated by the Amendment Act read thus:

"5A. (1) No person shall transport or offer for transport or cause to be transported cow, bull or bullock from any place within the State to any place outside the State for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaughtered.

(2) No person shall export or cause to be exported outside the State of Maharashtra cow, bull or bullock for the purpose of slaughter either directly or through

his agent or servant or any other person acting on his behalf, in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be slaughtered.

5B. No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of any cow, bull or bullock for slaughter or knowing or having reason to believe that such cow, bull or bullock shall be slaughtered.

5C. Notwithstanding anything contained in any other law for the time being in force, no person shall have in his possession flesh of any cow, bull or bullock slaughtered in contravention of the provisions of this Act.

5D. No person shall have in his possession flesh of any cow, bull or bullock slaughtered outside the State of Maharashtra."

13. Sections 8 and 9 as amended read thus:

"8. (1) For the purpose of this Act, the competent authority or any person authorized in writing in that behalf by the competent authority (hereinafter in this section referred to as "the authorized person") shall have power to enter and inspect any place where the competent authority or the authorized person has reason to believe that an offence under this Act has been, or is likely to be, committed.

(2) Every person in occupation of any such place shall allow the competent authority or authorized person such access to that place as may be necessary for the aforesaid purpose and shall answer to the best of his knowledge and belief any question put to him by the competent authority or the authorized person.

(3) Any Police Officer not below the rank of Sub-Inspector or any person authorized in this behalf by the State Government, may, with a view to securing compliance of provisions of Section 5A, 5B, 5C or

5D, for satisfying himself that the provisions of the said sections have been complied with may

(a) enter, stop and search, or authorize any person to enter, stop and search and search any vehicle used or intended to be used for the export of cow, bull or bullock;

(b) seize or authorize the seizure of cow, bull or bullock in respect of which he suspects that any provision of sections, 5A, 5B, 5C or 5D has been is being or is about to be contravened, alongwith the vehicles in which such cow, bull or bullock are found and there after take or authorize the taking of all measures necessary for securing the production of such cow, bull or bullock and the vehicles so seized, in a court and for their safe custody pending such production.

Provided that pending trial, seized cow, bull or bullock shall be handed over to the nearest Gosadan, Goshala, Panjrapole, Hinsa Nivaran Sangh or such other Animal Welfare Organisations willing to accept such custody and the accused shall be liable to pay for their maintenance for the period they remain in custody with any of the said institutions or organizations as per the orders of the Court.

(4) The provisions of the Section 100 of Code of Criminal Procedure, 1973 relating to search and seizure and shall, so far as may be, apply to searches and seizures under this Section."

(portion in bold letters added by Amendment)

"9. Whoever contravenes **the provisions of Section 5, 5A or 5B** shall, on conviction, be punished with imprisonment for a term which may extend to **five years**, or with fine which may extend to **ten thousand rupees**, or with both.

Provided that except for special and adequate reasons to be recorded in the judgment of the court such imprisonment shall not be of less than six months and such fine shall not be less than one thousand rupees."

(portion in bold letters added by Amendment)

14. Sections 9A and 9B as amended read thus:

"9A. Whoever contravenes the provisions of sections 5C, 5D, or 6 shall on conviction be punished with imprisonment for a term which may extend to one year or fine which may extend to two thousand rupees.

9B. In any trial for an offence punishable under sections 9 or 9A for contravention of the provisions of this Act, the burden of proving that the slaughter, transport, export outside the State, sale, purchase or possession of flesh of cow, bull or bullock was not in contravention of the provisions of this Act shall be on the accused."

15. Section 10 as amended reads thus:

"10. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act shall be cognizable **and non-bailable.**"

(portion in bold letters added by Amendment)

16. For the sake of completion, we may also make a reference to the statement of objects and reasons of the Amendment Act which reads thus:-

"1. The Maharashtra Animal Preservation Act, 1976 (Mah. IX of 1977), has been brought into force in the State from the 15th April 1978. The Act totally prohibits in any place in the State, slaughter of cows which also include heifer and male or female

calf of cow and provides for preservation of certain other animals specified in the schedule to the Act, like bulls, bullocks, female buffaloes and buffalo calves. Section 6 of the Act empowers the persons appointed as competent authority under this Act 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.

2. The economy of the State of Maharashtra 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 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.

3. In order to achieve the above objective and also to ensure effective implementation of the policy of State Government towards securing the directive principles laid down in article 48 of the Constitution of India and in larger public interest, it is considered expedient by the Government of Maharashtra to impose total prohibition on slaughter of also 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 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."

17. Broadly, 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. 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. Importantly, 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 Maharashtra.

18. Correspondingly, by introducing Section 9A, it is provided that violation of Sections 5C, 5D 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 . Section 9B 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.

19. There are large number of Petitions in this group which seek to challenge the constitutional validity of various provisions brought on the statute book by the Amendment Act. Before we advert to the submissions made across the Bar, we propose to briefly refer to the facts of each case and the prayers made therein.

PRAYERS IN THE WRIT PETITIONS AND PUBLIC INTEREST LITIGATIONS

ORIGINAL SIDE WP NO.1314 OF 2015

20. The Petitioner in this Petition is a designated Senior Advocate of this Court. The challenge in this Writ Petition under Article 226 of the Constitution of India is confined to the constitutional validity of Sections 5D and 9A of the Animal Preservation Act as amended by the Amendment Act. The contention is that Sections 5D and 9A are ultra-vires the Constitution of India. It is contended that right to privacy is included in the right to life guaranteed by the Article 21 of the Constitution of India. It is contended that right to personal liberty and privacy includes the right to choose what a citizen may eat/ consume. It is contended that the impugned Sections seek to prevent a citizen from possessing flesh of cow, bull or bullock which is slaughtered outside the State where there is no prohibition on slaughter. It is contended that the impugned provisions are ex-facie arbitrary and have no nexus with the purpose, object and ambit of the Animal Preservation Act. It is

contended that the provisions are violative of Article 14 of the Constitution of India. It is contended that the said amended provisions are contrary to the object of Article 48 of the Constitution of India. It is urged that the amended Sections put restrictions on Inter-State trade and commerce contrary to the provisions of Article 301 of the Constitution of India. Various other contentions are raised such as the amended provisions are in violation of right of preservation of culture and violation of right to life.

21. The State Government has relied upon the affidavits in reply filed by it in Writ Petition No.1653 of 2015 for defending this Petition. Moreover, in this Petition, there is a reply dated 17th July, 2015 filed by the State Government by Shri Shashank Madhav Sathe, the Deputy Secretary (Animal Husbandry), Agriculture, Animal Husbandry, Dairy Development and Fisheries Department of the State Government. A contention has been raised in the said affidavit that the impugned provisions have been made for giving effect to Articles 48 and 51A(g) of the Constitution of India. Therefore, it is contended that no part of the Amendment Act can be called in question on the ground that it is inconsistent with or it takes away any of the rights conferred by Articles 14 and 19 of the Constitution of India. It is contended that the bulls and bullocks are useful not only as draught animals, for agricultural operations and breeding but they never become useless and continue to

be useful for their waste material which is a source of fuel, manure, fertilizer and biogas. It is contended that the dung as well as urine of the cow as well as its progeny are valuable and are used for vermi-compost and bio-manure which is used to improve the quality of soil, land as well as nutritional value of the agricultural produce. It is contended that there is a scientific evidence to point out that the flesh of cow and its progeny contains high saturated fats and cholesterol. It is pointed out that it can be a major cause of heart disease, diabetes, obesity and cancer. We must note that this contention is not pressed into service by the State Government at the time of final hearing. In the subsequent detailed affidavit of the same officer filed after notice for final hearing was issued, the said contention is not incorporated. Reliance is placed on Livestock Census of India which shows consistent decrease in the cattle population of India. Various figures are relied upon. Shri Rajender Kumar K. Joshi, an Intervenor has filed an affidavit in support of the State Government. There is a Chamber Summons No.264 of 2015 taken out by Shri Ghanashyam Upadhyay for intervention. The said intervenor is a practising Advocate. The intervention is for supporting the State.

22. This Petition along with other connected Petitions were admitted for final hearing by the Judgment and Order dated 29th April, 2015 by granting limited ad-interim relief directing the State

Government not to take coercive steps for the purpose of initiating any prosecution of those who are found to be in possession of beef.

ORIGINAL SIDE PUBLIC INTEREST LITIGATION NO.76 OF 2015

23. In this Petition under Article 226 of the Constitution of India, a declaration is sought that the Amendment Act is violative of various provisions of the Constitution of India and be declared as illegal, ultra-vires and void. The first Petitioner in the said PIL claims to be a film maker and the second Petitioner who is his wife is claiming to be a writer. The third Petitioner is an Advocate by profession. It is alleged that the provisions of the Amendment Act are in breach of Articles 19, 21 and 29 and the said provisions contravene the Directive Principles of State Policy incorporated under Articles 47, 48, 48A and 51A. It is urged that the Amendment Act violates the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India of the owners of the cattle, cattle dealers and butchers and beef sellers and the owners of leather industry. The statistics of milk production and other details have been incorporated in the Petition. There is a detailed affidavit in reply dated 1st December 2015 of Shri Shashank Madhav Sathe filed in the said Writ Petition along with the annexures thereto. We have reproduced the details set out in the said reply in the subsequent part of the Judgment. There is a rejoinder filed by the third Petitioner. There is an application for intervention being Chamber

Summons (L.) No.389 of 2013 taken out by Viniyog Parivar Trust. The intervention is for opposing the Petition.

ORIGINAL SIDE WRIT PETITION NO.1975 OF 2015

24. In this Petition under Article 226 of the Constitution of India there is a prayer made for declaration that Section 5 of the Animal Preservation Act as amended by the Amendment Act is ultra-vires Article 19 of the Constitution of India so far as it prohibits slaughter of bulls and bullocks. A writ of mandamus is prayed for directing the State to prohibit slaughter of only those bulls and bullocks which are not useful for various purposes. There is a prayer for challenging the relevant provisions of the Amendment Act. The first Petitioner in this Petition is involved in the trade, sale and purchase of bulls and bullocks and the second Petitioner is a butcher by profession. In this Writ Petition there is a Chamber Summons taken out being Chamber Summons No.306 of 2015 by Viniyog Pariwar Trust for intervention. The intervention is for opposing the Petition.

ORIGINAL SIDE WRIT PETITION NO.2680 OF 2015

25. This Petition again seeks to challenge the validity of amended Section 5 of the Animal Preservation Act insofar as it prohibits slaughter of bulls and bullocks by claiming that it is ultra-vires the amended Preamble and long title of the Animal Preservation Act. There

is also a challenge to the validity of Sections 5A to 5D. The first Petitioner in the Petition is a businessman and the second Petitioner is a practising Advocate. There is a prayer for directing the State Government to prohibit slaughter of only those bulls and bullocks which are not useful. There is also a prayer made seeking a writ of mandamus against the State Government for making bulls and bullocks available for sacrifice on the auspicious occasion of Bakra-Eid (Id-Ul-Azha). In this Petition, there is a Notice of Motion taken out praying for interim relief which is confined to occasion of Bakra-Eid held on 25 to 27th September, 2015. In this Petition, there is a Chamber Summons (L.) No.455/2015 taken out by Ekta Foundation for intervention. The intervention is for opposing the prayers made in the Petition.

ORIGINAL SIDE WRIT PETITION (L.) NO.2566 OF 2015

26. This Writ Petition under Article 226 of the Constitution of India has been filed by the Petitioners who are claiming to be active social workers engaged in social, agricultural and welfare activities for the upliftment of poor and down-trodden in the society. The prayer made in this Writ Petition is for a declaration that the Animal Preservation Act and the Amendment Act are unconstitutional. Chamber Summons (L.) No.456 of 2015 has been filed in this Writ Petition for intervention by Karuna Animal Welfare Trust. The intervention is for opposing the Writ Petition.

ORIGINAL SIDE WRIT PETITION (L) NO.1109 OF 2015

27. This Petition has been filed for challenging the constitutional validity of Sections 5, 5A, 5C, 5D, 6 as well as Sections 9 and 9A of the Animal Preservation Act. There are 29 Petitioners in this Petition. Some of them are activists. Some of them are claiming to be beef eaters. Some of them are Doctors and journalists. Some of them are film producers and womens' rights activist. One of them is the President of the Beef Market Merchants' Association, Sangli. Chamber Summons No.315 of 2015 has been filed by Viniyog Parivar Trust in this Petition for intervention. The Intervenors desire to oppose the Petition.

ORIGINAL SIDE WRIT PETITION NO.1653 OF 2015

28. The Petitioner, who is a citizen of India, has filed this Petition for a declaration that the provisions of Sections 5D and 9A of the Animal Preservation Act are unconstitutional, illegal and null and void. Chamber Summons (L.) Nos.132 of 2015, 105 of 2015, 110 of 2015, 120 of 2015 and 125 of 2015 have been filed by various Intervenors for claiming intervention in the Writ Petition. Some of the Intervenors want to support the Petitioner and some of them desire to oppose the Petitioner. There is a detailed affidavit-in-reply filed by Shri Shashank Sathe on behalf of the State Government.

ORIGINAL SIDE WRIT PETITION(L) NO.3395 OF 2015

29. This Writ Petition is filed by a Private Limited Company which is having cold storages located in the State. The business of the Petitioner is of running cold storages of perishable food items and allowing storage of perishable food items on payment of licence fee therein. In this Petition, a declaration is claimed that Sections 5C and 5D of the Animal Preservation Act introduced by the Amendment Act are unconstitutional. Similar prayer is made in respect of Sections 8(3)(b), 9A and 9B. In the alternative, it is prayed that the word "possession" used in Sections 5C and 5D be read as "conscious possession". There is a further prayer made in the alternative that the word "suspects" in Section 8(3)(b) be read as "reasons to belief"/ "grounds of belief". One of the contentions raised is that the State is not competent to enact a law prohibiting an entry into the State of Maharashtra of the flesh of cows, bulls or bullocks which is lawfully slaughtered outside the State. Another contention is of violation of fundamental rights under Article 19(1)(g) of the Constitution of India. It is alleged that Sections 5C and 5D are in violation of Article 301 read with Article 304(b) of the Constitution of India.

ORIGINAL SIDE WRIT PETITION (L.) NO.3396 OF 2015

30. This Petition is filed for a declaration that Sections 5C and 5D of the Animal Preservation Act are unconstitutional. This Petition is filed by an Association of Cold Storage Owners in Maharashtra. The challenges are similar to those in Writ Petition (L.) No.3395 of 2015.

ORIGINAL SIDE WRIT PETITION (L.) NO. 3422 OF 2015

31. This Writ Petition has been filed by the Petitioner who is an Advocate by profession and who is claiming to be a social activist. He is also an elected member of the Maharashtra Legislative Assembly. In this Petition, the challenge is to the validity of the entire Amendment Act mainly on the ground of infringement of fundamental rights under Articles 21 and 25 of the Constitution of India.

APPELLATE SIDE WRIT PETITION NO.9209 OF 2015

32. This Petition has been filed by the Indian Union Muslim League. In the said Petition, there is a challenge to the constitutional validity of the Amendment Act based on violation of fundamental rights under Article 25 of the Constitution of India. It is contended that sacrifice of bulls and bullocks is an essential part of festival of Eid-Ul-

Adha and Eid-ul-Fitr. Violation of Article 48 is alleged in this Petition. It is contended that the Amendment Act infringes the fundamental right of the citizens under Articles 14, 21, 25 and 29 of the Constitution of India.

APPELLATE SIDE WRIT PETITION NO.9996 OF 2015

33. This Writ Petition has been filed by Jamat-ul-Quresh Minority Association and others wherein the challenge is to the constitutional validity of the Amendment Act on the ground that it violates the fundamental rights under Articles 14,19(1)(g), 21 and 25 of the Constitution of India. Various Associations and Educational Societies of the members of the Quresh Community are the Petitioners. It is stated that the Qureshi community is mainly engaged in butcher's trade and its subsidiary undertakings such as sale of tannery, etc. There is an additional affidavit filed by the Petitioners giving statistics. The Petitioners have relied upon various reports.

APPELLATE SIDE WRIT PETITION NO.11744 OF 2015

34. This Petition has been filed by one Anna Baburao Nigade and another. In this Petition, the challenge is to the constitutional validity of Sections 5, 5A, 5B, 8, 9 and 11 of the Animal Preservation Act as amended by the Amendment Act. It is contended that the said amended Sections are ultra vires the Constitution as they violate the

fundamental rights guaranteed under Articles 14, 19(1)(g), 21 and 25 of the Constitution of India. The Petitioners claim that they are the owners of cows, bulls and bullocks and they are engaged in agricultural activity. There is an application for intervention filed by Shri Ramesh Dhanraj Purohit who wants to oppose the Petition.

APPELLATE SIDE PUBLIC INTEREST LITIGATION NO.127 OF 2015

35. This PIL is filed by one Mohd. Hisham Osmani s/o Mohd. Yusuf Osmani and another. The prayer in this Petition is for quashing and setting aside the notification dated 4th March, 2015 by which the Amendment Act was published in the Government Gazette. The challenge to the amended provisions of the Animal Preservation Act is essentially to Section 5 and 5A to 5D. The challenge is on the ground of violation of fundamental rights.

APPELLATE SIDE PUBLIC INTEREST LITIGATION NO.133 OF 2015

36. This Petition is filed by one Shri Sheikh Aasif Sheikh Rashid and another. The first Petitioner is a member of the Legislative Assembly and a social worker. In this PIL, the challenge is to the letter dated 17th April, 2015 issued by the second Respondent who is a Government Officer informing the first Petitioner that the slaughter of cows, bulls and bullocks has been banned in the State with effect from 4th March,

2015. There is a challenge to the constitutional validity of Section 5D and 9A of the Animal Preservation Act as amended by the Amendment Act. The challenge is on the ground of violation of fundamental rights under Article 19(1)(g) of the Constitution of India.

ORIGINAL SIDE WRIT PETITION NO.1379 OF 2015

37. The first and third Petitioners are Advocates by profession. The second Petitioner is a student. The challenge in this petition under Article 226 is to the constitutional validity of the entire Amendment Act on the grounds of the violation of Articles 19 and 21 of the Constitution. It is contended that the amendment is contrary to Article 48.

APPELLATE SIDE WRIT PETITION NO.5731 OF 2015

38. In this Petition, the challenge is to the constitutional validity of all the provisions of the Unamended provisions of the Animal Preservation Act and the Amendment Act on the ground that the same infringe Articles 15, 16, 19, 21 and 25 of the Constitution of India.

A SUMMARY OF THE SUMMISSIONS CANVASSED ACROSS THE BAR

39. Detailed submissions were made by the parties including the Intervenors. Some of the submissions are common. We are reproducing a summary of the relevant submissions made on behalf of the parties.

40. In Writ Petition No.1314 of 2015, Shri Chinoy, the learned senior counsel made detailed submissions. He pointed out the unamended provisions of the Animal Preservation Act and the nature of the amendments incorporated by the Amendment Act. He also invited our attention to the Statement of Objects and Reasons of the Amendment Act. He pointed out that the newly introduced Section 5D prohibits any person from possessing flesh of any cow, bull or bullock slaughtered outside the State of Maharashtra. He pointed out that violation of this provision is made punishable with imprisonment upto one year and/or fine upto Rs.2,000/-. After making a reference to the Statement of Objects and Reasons of the Amendment Act, he urged that the Statement of Objects and Reasons does not contain any basis or reason for introduction of Section 5D. He pointed out that even if a cow or bull or bullock is slaughtered at a place outside the State where there is no prohibition on the slaughter, the possession of the meat of such cow, bull or bullock in the State is made an offence. He urged that Section 5D constitutes a clear infringement of the Petitioners' right to personal liberty (which includes right to eat food of one's choice) and privacy guaranteed under Article 21 of the Constitution of India. He extensively relied upon a decision of the Apex Court in the case of ***Kharak Singh v. State of Uttar Pradesh***[1]. He urged that the said decision holds that the term *"personal liberty"* used in Article 21 of the Constitution of India is a compendious term which includes within itself

1 (1964)1 SCR 332

all varieties of rights which go to make up personal liberties of a man. Relying upon another decision of the Apex Court in the case of ***Maneka Gandhi v. Union of India***[2]***,*** he urged that Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. He relied upon a decision of the Apex Court in the case of ***R. Rajagopal v. State of Tamil Nadu***[3]. He submitted that the Apex Court has held that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens by Article 21 of the Constitution of India. He urged that the Apex Court held that right of privacy is implicit in Article 21. The said right of privacy is the right to be let alone. He submitted that this view taken by the Apex Court in the case of ***R. Rajagopal*** has been reiterated in its decision in the case of ***District Registrar & Collector, Hyderabad v. Canara Bank***[4]. By pointing out the decision of the Apex Court in the case of ***M.P. Sharma and others v. Satish Chandra***[5], he submitted that the Apex Court has not considered the question whether right to privacy is a part of right to personal liberty guaranteed under Article 21 of the Constitution of India. He pointed out that in the decision in the case of ***Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat and others***[6], the

2 (1978)1 SCC 248
3 (1994) 6 SCC 632
4 (2005) 1 SCC 496
5 AIR 1954 SC 300
6 (2008)5 SCC 33

Apex Court has observed that what one eats is one's personal affair and it is a part of his right to privacy which is included in Article 21 of the Constitution of India. He relied upon the recent decision of the Apex Court in the case of ***National Legal Services Authority v. Union of India***[7] which holds that Article 21 takes all those aspects which go to make a citizen's life meaningful and it protects personal autonomy and right of privacy. He submitted that the essence of personal liberty guaranteed by Article 21 is the personal autonomy of an individual and it is a right to be let alone. He would urge that the negative right is not to be subjected to interference by others and the positive right of an individual is to make a decision about his life. These rights are the essence of personal liberty guaranteed under Article 21 of the Constitution of India. He pointed out that the personal liberty under Article 21 is a compendious term which covers variety of rights which constitute the personal liberty of a man. He pointed out the observations made in Paragraph 17 of the decision of the Apex Court in the case of ***Kharak Singh*** to the effect that the right to privacy is not a guaranteed right under the Constitution. He also pointed out the observations made by the Apex Court in the case of ***M.P. Sharma v. Satish Chandra*** to the effect that there is no justification to import a totally new fundamental right by some strained process of construction. He also pointed out that the observations made by the Apex Court in a recent order by which a reference was made to a larger bench. The said

7 (2014) 5 SCC 438

order is in the case of ***K.S. Puttuswami (Retired) and Another v. Union of India***[8]. He urged that the Petitioner is not claiming that the right of privacy as an independent fundamental right as distinct from the right of personal liberty. He urged that the contention of the Petitioner is that the right to privacy is implicit in the personal liberty guaranteed under Article 21. He submitted that the challenge to Section 5D by the Petitioner is based on the violation of right to personal liberty. He pointed out that when the Petitioner is alleging infringement of right of privacy, the right is invoked is a component or constituent of personal liberty. He urged that the decision in the case of ***Kharak Singh*** was based on the concept of personal liberty and not on the right of privacy. He urged that in the case of ***R. Rajagopal***, the Apex Court has proceeded on the footing that right of privacy was implicit in or was equivalent to personal liberty and personal autonomy. He urged that even in the case of ***Hinsa Virodhak Sangh***, when the Apex Court held that the right to choose one's food is a part of right of privacy, the Apex Court proceeded on the footing that it is a component or a part of personal liberty guaranteed under Article 21 of the Constitution of India. He invited our attention to the majority and minority views in the case of ***Kharak Singh***. He submitted that the ratio of the decision in the case of ***Kharak Singh*** is that the personal liberty guaranteed under Article 21 is a compendious term which includes all varieties of rights which go to make up the personal liberties of a man i.e. the

8 (2015) 8 SCC 735

personal autonomy to live his life in the manner he chooses. He submitted that this would include the right of an individual to eat food of his choice. He urged that if there is any material tangible restriction on, and interference by the State with, the personal autonomy/personal liberty, it would violate Article 21 of the Constitution of India. He submitted that in the decision in the case of ***M.P. Sharma***, the Apex Court observed that right of privacy has not been recognized in the Constitution as a separate fundamental right. He urged that the Apex Court in the decisions in the cases of ***R. Rajagopal v. State of Tamil Nadu, the District Registrar & Collector v. Canara Bank*** **and** ***Hinsa Virodhak Sangh v. Mirzapur*** was dealing with direct and tangible intrusions into, and restrictions on, personal autonomy/personal liberty. He pointed out that these decisions hold that such intrusions into or restrictions on the personal autonomy were violative of the right to privacy which was equated with the personal liberty/personal autonomy. He pointed out that these judgments hold that a citizen was protected against such intrusions/restrictions by Article 21. He urged that in Paragraph 17 of the decision in the case of ***Kharak Singh***, the term *"right to privacy"* has been referred in the restrictive sense pertaining only to mere mental sensitiveness in contradistinction to personal autonomy/personal liberty. He pointed out that in Paragraph 13 of the same decision, right to privacy is used as connoting a personal autonomy/personal liberty. He pointed out that the Apex Court in the

case of ***K.S. Puttuswami (Retired) and Another v. Union of India*** was dealing with the right to privacy. He pointed out that the Apex Court was dealing with the case of *Adhar Card Scheme*. He urged that even the decision in the case of ***K.S. Puttuswami*** does not in any way detract from the undisputable position that the direct or tangible restrictions on, and interference by the State, on personal autonomy/personal liberty which includes choice of food would necessarily violate the Article 21 of the Constitution of India.

41. He submitted that any restrictions on the right of an individual which violates Article 21 of the Constitution of India can be sustained only if the State establishes the existence of compelling State interest. He submitted that even the plea of existence of compelling State interest is subject to scrutiny on the ground of reasonableness and proportionality of the intrusion vis-a-vis the compelling state interest.

42. His submission is that Section 5D imposes a direct and tangible restriction/prohibition on the right of the personal liberty and privacy of the Petitioner inasmuch as it purports to prohibit the Petitioner from eating the food of his choice. He urged that the said Section which purports to prohibit the Petitioner from eating the food of his choice (flesh of cow, bull or bullock) which is not generated by illegal slaughter in the State is a direct interference with the Petitioner's

personal autonomy and personal liberty. He urged that it is not the case made out by the State that it is injurious to eat the meat of bulls, bullocks or cows. He clarified that the Petitioner is not claiming a positive right to be provided with the food of his choice as a part of his right to life. He reiterated that the case made out by the Petitioner is that his right to personal liberty which includes personal autonomy, the right to be let alone and to live his life without interference, is infringed by Section 5D. He pointed out that the right to privacy which is a part of the personal liberty is infringed. Relying upon the decision of the Apex Court in the case of ***National Legal Services Authority v. Union of India,*** he submitted that what is held by the Apex Court is that the personal autonomy includes both the negative right not to be subjected to interference by others and the positive right of individuals to make decisions about their life. He submitted that the concept of personal autonomy is the essence of personal liberty and the right to exercise personal choice regarding diverse aspects of his life constitutes personal liberty of a man. Relying upon the provisions of the Food Safety and Standards Act, 2006 and the Regulations framed thereunder, he urged that bovine flesh has been statutorily accepted as a nutritious food. He urged that in any event the State has not placed any material on record to show that the consumption of bovine flesh is harmful to the human health. He submitted that Section 5D violates personal liberty guaranteed under Article 21. As held in the case of ***Deena alias Deen***

Dayal v. Union of India[9], the burden is on the State to place material to establish compelling state interest or necessity. He urged that in support of Section 5D, no such material has been placed on record by the State. Relying upon various decisions of the Apex Court and in particular the decisions in the cases of ***Maneka Gandhi v. Union of India*** and ***Delhi Transport Corporation v. DTC Mazdoor Congress***[10] he urged that the doctrine of pith and substance is not relevant for determining the question of infringement of the fundamental rights under Article 21.

43. Another limb of his argument in support of the challenge to Section 5D is that Section 5D has no nexus to the objects and purposes of the Animal Preservation Act. He pointed out that Section 5D not only prohibits but criminalises the possession of flesh of cows, bulls or bullocks which have been slaughtered elsewhere in India or even outside the country where there is no prohibition on slaughter. Relying upon the decision of the Apex Court in the case of ***Akhil Bharat Goseva Sangh v. State of Andhra Pradesh & Others***[11], he urged that no earlier judgment of the Apex Court holds that the laws and policies of the States which permit slaughter of cows, bulls or bullocks are not unconstitutional. He urged that the possession of flesh of cows, bulls or bullocks which have been lawfully slaughtered outside the State of

9 (1983)4 SCC 645
10 (1991)Supp 1 SCC 600
11 (2006)4 SCC 162

Maharashtra or outside the country has no nexus with the Article 48 of the Constitution of India. By pointing out the provisions of the Prevention of Cruelty to Animals Act, 1960, he urged that even the said Act specifically permits slaughter of animals for food.

44. He submitted that if the amendment to Section 5 introduced by the Amendment Act is held to be constitutionally valid, at the highest,it can be said that Sections 5A to 5C have been enacted for the effective implementation of the ban on slaughter of cows, bulls and bullocks. However, Section 5D is a stand alone Section which has no nexus with the ban on slaughter of cows, bulls and bullocks in the State. He pointed out that the ban imposed by Section 5 of the Amendment Act on the slaughter of cow has been in existence for last 40 years. However, there is no material placed on record to show that the said ban cannot be effectively implemented unless possession of meat of a cow slaughtered outside the State or outside the country is not prohibited and criminalised. He pointed out that even under the unamended Animal Preservation Act, slaughter of bulls and bullocks on the basis of the certificate issued under Section 6 was permitted only at the Municipal or Government Abattoirs. He submitted that there is nothing placed on record as to why import of the beef from other States and abroad cannot be adequately regulated, if that is felt necessary to ensure that it does not create any hindrances in the implementation of

the ban on cows, bulls and bullocks. He also pointed out that Section 5D does not create mere prohibition but the amendment to Section 9 makes the possession of flesh of cow, bull or bullock an offence. Moreover, Section 9B imposes onerous negative burden on the person who is found in possession of such meat which is prohibited by Section 5D. He urged that this drastic provision will also apply to the flesh of cow, bull or bullock which is a product on slaughter in a State where there is absolutely no prohibition on the slaughter.

45. The learned senior counsel appearing for the Petitioner summarized his submissions by submitting that Section 5D directly and tangibly violates the right of the Petitioner to personal liberty guaranteed under Article 21 of the Constitution of India. He submitted that the State has failed to plead and establish any compelling public/State interest to justify the enactment of Section 5D. He urged that Section 5D subserves no public interest and in any case, no such public interest is disclosed. Hence, he would urge that Section 5D of the Amendment Act should be declared as unconstitutional.

46. Learned counsel appearing for the Petitioners in Writ Petition No.1379 of 2015 and Public Interest Litigation No.76 of 2015 submitted that even the State Government has accepted that there is nothing inherently wrong or offensive with consumption of meat of the

cows, bulls or bullocks. His submission is that it is not disputed that beef was the cheapest meat available and 3.99 crore kg of domestically produced beef was available in Maharashtra to poor people to eat. Inviting our attention to the provisions of the Animals Preservation Act, he submitted that those bulls, bullocks and buffaloes which are useful for draught, agricultural purposes etc. were always protected before before the unamended provisions of the Animal Preservation Act. The State has not stated that there is a need for enhancement of protection to bulls or bullocks in addition to the protection which is already available under Section 6 of the unamended Animal Preservation Act. He pointed out that in the affidavit of the State, it is admitted that there is an excess of bulls and bullocks which are used neither for breeding nor for draught purposes. He urged that it is not the case of the State that there was a shortage of bulls or bullocks. His submission is that even the State has accepted that there is a shortage of fodder as claimed in the affidavit that the State is trying to cope up with the fodder requirements. He pointed out that the Petitioners have given figures showing the acute shortage of fodder. He submitted that the bulls, bullocks and buffaloes which are useful for agricultural and draught purposes were always protected. Only for the purposes of banning consumption of meat that a blanket ban has been imposed on slaughter of bulls and bullocks as well.

47. His submission is that the State Government has sought to defend the validity of the Amendment Act only by relying upon the directive principles of State policy which attract a presumption that the legislation is in public interest. However, the factual issues raised by the Petitioners have not been dealt with by the State. He submitted that even assuming that the Amendment Act is relatable to directives principles of the State policy, it is not necessary to presume that the restrictions imposed by the provisions thereof on the fundamental rights are reasonable. Relying upon a decision of the Apex court in the case of ***Akhil Bharatiya Soshit Karmachari Sangh v. Union of India***[12], he urged that the reasonableness of restrictions imposed by the Statute is required to be independently examined. He urged that the decision of the Apex Court in the case of ***Pathumma v. State of Kerala***[13] will not help the State. His submission is that the directives principles of the State policy ***per se*** can never negate the requirements of Part III. He submitted that in the facts of the case, it was necessary for the State to establish reasonableness of restrictions and the existence of compelling public interest.

48. He urged that when a law enacted simplicitor for protecting bulls and bullocks without any reason, thereby infringing the fundamental rights, merely because the law is relatable to the

12 (1981)1 SCC 246
13 AIR 1978 SC 771

directives principles of the State policy, it is not valid. Such a law cannot curtail fundamental rights. The submission is that the directive principles of the State policy by themselves do not constitute any reason for infringing the fundamental rights. Learned counsel appearing for the Petitioners also dealt with the factual case made out by the Intervenors such as *Viniyog Parivar Trust*. He also made submission on the right to privacy. He submitted that the order made by the Apex Court in the case of ***Puttaswami*** does not lay down any law. He submitted that as the law earlier laid down by the Apex Court holds that the right to privacy is a fundamental right, the question arose of making a reference. He also referred to the majority view in the decision of the Apex Court in the case of ***Kharak Singh***. He submitted that the Apex Court has dealt with the issue of pith and substance which is irrelevant in a case where there is an infringement of the fundamental rights. He relied upon the provisions of the Human Rights Act,1993 which incorporates rights set out in the International Covenant for Civil and Political Rights, 1966. He submitted that in view of the provisions of the said Act, privacy is a statutorily recognized human right and therefore, must have the protection of Article 21 of the Constitution of India. Learned counsel urged that the hidden motive is to ban consumption of meat of bulls and bullocks and this hidden motive will have to be considered while testing reasonableness. Dealing with the right to food and right to nutrition in the context of Article 47

of the Constitution, he urged that beef is the cheapest animal protein available to the poor. He submitted that the argument of the State that buffalo meat is still available does not entitle the State to support the Amendment Act by relying upon Clause (g) of Article 51-A of the Constitution of India.

49. He relied upon a decision of the Apex Court in the case of ***Sri SriKalimata Thakurani v. Union of India and Others***[14]. He submitted that while dealing with the issue of violation of fundamental rights, the Court has to determine whether or not the restrictions imposed contain the quality of reasonableness. Relying upon the observations made by the Apex Court in the case of ***Javed v. State of Haryana***[15], he urged that the judgment does not suggest that the test of reasonableness can be dispensed with merely because the Statute is enacted in furtherance of the directive principles of the State policy. He also relied upon a decision of the Apex Court in the case of ***Minerva Mills v. Union of India***[16]**.** He submitted that the Apex Court negatived the contention that the directive principles automatically support legislation which curtail fundamental rights. He relied upon Paragraphs 62 and 68 from the said decision.

14 AIR 1981 SC 1030
15 AIR 2003 SC 3057
16 AIR 1980 SC 1789

50. In Writ Petition (L) No.3396 of 2015, the challenge is to the constitutional validity of Sections 5C and 5D as well as Sub-section (3) of Sections 8 and 9B. The basic submission of the learned senior counsel appearing for the Petitioners is that if the word “Possession” appearing in Sections 5C and 5D is not read down to mean as “conscious possession”, Sections 5C and 5D will become unconstitutional. Another submission is that Section 9B is ultra vires the Constitution of India as the negative burden cast by it virtually means that there is a burden to prove that the accused is innocent. Another contention is that Sections 5C and 5D defeat the constitutional right to carry on trade and commerce and hence, they are violative of Article 301 read with Article 304B. It is pointed out that the Petitioners in this Petition are either owners of cold storages or they represent such owners of the cold storages. Their business is to store perishable food items including meat products in their cold storages. It is their contention that the meat products are stored in their cold storage which are meant for export. It is pointed out that they receive meat products in a vehicle having refrigeration facilities along with a consignment note and a certificate of a Government Veterinary Doctor from a place outside the State from where the meat has originated. The learned senior counsel pointed out that as per the instructions of the owners of the meat products, the same are stored in their cold storage facilities and released on payment of necessary charges for the purposes of

dispatch to the Port for the purposes of export. It is pointed out that the business of sale of meat is a legitimate business. As a part of the business, the Petitioners have to store the packages of meat without opening the same and therefore, the Petitioners have no source of ascertaining the contents of the packets and they have to go by the description on the packages of meat products.

51. The learned senior counsel appearing for the Petitioners pointed out that the 3 Lists in the Seventh Schedule of the Constitution of India are to be read together. It is contended that under Entry 33 of List-III, the State legislature is competent to enact the law in trade and commerce for the purposes of production, supply and distribution of food items. It is pointed out that in view of Entry 26 of List-II, the State legislature has exclusive power to legislate with respect to the trade and commerce within the State. It is urged that Section 5D of the Amendment Act is not restricted in its applicability within the State and therefore, the State does not have competence to enact Section 5D by virtue of Entry 26 in the List-II of the Constitution of India. It is urged that Sections 5C and 5D are not ancillary or incidental to the provision of Section 5. The ban on the possession of flesh of cows, bulls or bullocks slaughtered outside the State of Maharashtra is not an ancillary or incidental provision as the same has no nexus with the object of the Amendment Act.

52. The Submission of the learned senior counsel is that wherever the violation of Article 19 of the Constitution of India is alleged, the burden is on the State is to justify the validity of the statute. The contention is that the said burden has not been discharged by the State in the present case. It is contended that the restrictions under Clause (6) of Article 19 of the Constitution of India must not be arbitrary or excessive so as to go beyond the requirements of the interest of the general public and there must be a direct and proximate nexus between the restrictions imposed and the object which is sought to be achieved.

53. The learned counsel appearing for the Petitioners in Writ Petition No.9996 of 2015 urged that on 8th January 2007, the Animal Husbandry Department wrote a letter to the Law and Judiciary Department stating that the bill of the Amendment Act be withdrawn and hearing must be given to all the concerned. Notwithstanding this view, there were no deliberations made by the Government of Maharashtra. Reliance is placed on the decision of the Apex Court in the case of ***Manohar S/o Manikrao Anchule v. State of Maharashtra and Another***[17]**.** It is pointed out that the reasoning of the Government in the legislative process has to be reflected on the file of the Government at the relevant time and reasons cannot be supplied by

17 (2012)13 SCC 14

filing an affidavit-in-reply in the present Petition. It is urged that the State Government has not brought on record any material to justify the legislative amendments. He submitted that both the affidavits on record filed by the State Government do not satisfy the test. Inviting the attention of the Court to a decision of the Apex Court in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others***[18], it was submitted that to satisfy the test of reasonable restriction, while imposing a total prohibition on the slaughter of bull and bullocks, it must be proved that a lesser alternative would be inadequate. Reliance is placed on the report of the Study Group dated 12th December 2013 annexed to the Writ Petition from Pages 193 to 205. It is urged that the Study Group shows that enough mechanism is available to regulate and control the slaughtering of bulls and bullocks having the age of more than 12 years at the notified Slaughtering Houses. He relied upon various reports and material which form part of the additional affidavit of the Petitioner and urged that the State Government has not considered several factors. It is urged that in the decision of the Apex Court in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***, a similar Gujarat Amendment to Bombay Animal Preservation Act, 1954 was held to be reasonable only on the basis of the documents which were brought on record by the Gujarat Government. It is submitted that no such material is brought on record by the State Government. It is urged that the amendment introduced by

18 (2005)8 SCC 534

the Amendment Act is based on extraneous material. The learned counsel relied upon the fundamental rights guaranteed under Article 25 of the Constitution of India. He relied upon the extract of holy Quran relied upon in Writ Petition No.9209 of 2015. He urged that the sacrifice of a bull on the day of Eid is an essential religious practice of the muslim community which is protected under Article 25 of the Constitution of India. He urged the decision of the Apex Court in the case of ***State of West Bengal & Others v. Ashutosh Lahiri***[19] refers only to the sacrifice of the cows and holds that it is not essential religious practice. He relied upon a decision of the Apex Court in the case of ***Ratilal Panachand Gandhi v. State of Bombay***[20] by contending that every person has a fundamental right under Article 25 of the Constitution which includes the right to exhibit his beliefs and ideas by such overt acts as are enjoined or sanctioned by his religion. He submitted that the sacrifice of bull is a religious usage and, therefore, it will fall under Clause (2)(b) of Article 25 of the Constitution of India as held by the Apex Court in its decision in the case of ***Sheshammal v. State of Tamil Nadu***[21]. Coming back to the judgment in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***, he urged that the Apex Court has recorded in the said decision that there are 335 Goshalas and 174 Panjarpoles in the State of Gujarat and as against this, in the State of Maharashtra, there are only 86 Goshalas. It is

19 (1995)1 SCC 189
20 AIR 1954 SC 388
21 (1972)2 SCC 11

pointed out that as per the report of the Commissioner of Animal Husbandry dated 30th March 2010 for taking care of 3 lakhs uneconomical bullocks, there is a necessity of 300 more Goshalas. He pointed out that the National Commission on Cattle in its report records the problems faced by Goshalas. He pointed out the fact that stray old livestock including bulls are endangering human life and causing health related problem as noted in the said report. He submitted that the Goshalas in Maharashtra are in a pathetic condition and are indulging in illegal sale of "uneconomical" bullocks. He urged that once a statute is shown to transgress on fundamental rights, the onus is on the State to establish reasonableness of the restrictions imposed by the statute. He relied upon the specific contentions raised in the Writ Petition. He pointed out that the restrictions imposed by the Amendment Act are not for the benefit of the public and cannot be called as reasonable by any stretch of imagination.

54. The learned senior counsel appearing for the Petitioner in Writ Petition No.9209 of 2015 has invoked Clause (1) of Article 25 of the Constitution of India. Her submission is that the slaughtering of cattle on the occasion of Bakri Eid and every festival is a religious practice which is protected under Clause (1) of Article 25 of the Constitution of India. Her submission is that the slaughtering of cattle on the religious occasions being the core activity itself, the same cannot

be regulated under Clause (2) of Article 25 of the Constitution of India. She urged that the Amendment Act does not purport to further public order, morality and health. Inviting our attention to the affidavits filed by the State, she urged that while the State seeks to protect cattle for the furtherance of non-mechanized agriculture, it has actually cut fodder subsidy by over 50%. On the other hand, the subsidy provided to pesticides alone ranges from 50 to 75 percent. Her submission is that the decision in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*** is founded on the data made available by the Gujarat Government which shows that there was an abundance of fodder in the State of Gujarat. On the other hand, in the reply given by the Ministry of Agriculture in the Rajya Sabha, it was stated that there was a huge shortage of fodder in the State of Maharashtra. She urged that though the Amendment Act is of the year 1995, no survey was carried out to determine the situation before arriving at the conclusion that a complete ban on the slaughter of bulls and bullocks is necessary. She relied upon various decisions of the Apex Court including the decisions in the cases of ***Ratilal Panachand Gandhi v. State of Bombay & Others*** and ***Seshammal and Others v. State of Tamil Nadu***. In addition, she relied upon a decision of the Apex Court in the case of ***Commissioner, Hindu Religion Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***[22]. She relied upon a decision of the Apex Court in the case of ***Dr.M. Ismail Faruqui &***

22 AIR 1954 SC 282

Others v. Union of India[23] by submitting that the secularism is a positive concept of equal treatment of all religions. She urged that imposition of total ban on the slaughter of bulls and bullocks amounts to violation of Clause (g) of Article 19(1) of the Constitution of India and, therefore, the burden of proof that a total ban on the exercise of the right alone may ensure the maintenance of the general public interest lies heavily upon the State Government. She urged that laws permitting slaughter of bovine cattle by itself are not unconstitutional. She relied upon the extract of Holly Quran in support of her contention that the slaughter of bull and bullocks on the religious occasion is an essential practice of muslim religion.

55. The learned senior counsel appearing in Writ Petition No.9209 of 2015 by way of written arguments, urged that the religious scriptures refer only to the specified animals which can be sacrificed. It was submitted that a judicial notice can be taken of the fact that the majority of muslim community is poor and therefore, the majority of muslims are not in a financial position to sacrifice a goat. Therefore, unless they are permitted to sacrifice the bulls or bullocks, they will not be able to perform essential practice of their religion. Relying upon a decision of the Constitutional Bench of the Apex Court in the case of ***I.R. Coelho, since deceased by the legal representative v. State of***

23 (1994)6 SCC 360

Tamil Nadu[24], she urged that when infringement of fundamental rights is shown, there is no burden on the Petitioner alleging infringement to show that the infringement is not reasonable or is contrary to morality. It is for the State to justify the law by showing that the infringement of right to practice religion under Clause (1) of Section 25 can be saved on the ground of morality, public health and any other ground. She submitted that the Petitioner has produced documentary evidence to show the decline of use of cattle for agricultural purposes. She submitted that as held in the case of ***S.R. Bommai & Others v. Union of India & Others***[25], secularism forms a part of basic structure of the Constitution. The submission is that violation of Article 25 would be tantamount to a violation of the basic structure of the Constitution. It is submitted that by banning the slaughter of cow and her progeny, the State is favouring one religion against other under the guise of Article 48 of the Constitution of India. The submission is that in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***, the issue of violation of Article 25 of the Constitution of India was not considered.

56. She has specifically relied upon Verse No.1 under Surah Al-Maidah in Part 6 in Holly Quran. She submitted that it provides that Eid Ul Adha marks the end of the Haj pilgrimage wherein cattle (including bulls and bullocks) is sacrificed. She also relied upon Verse

24 (2007)2 SCC 1
25 (1994)3 SCC 1

36. She pointed out that the Muslim religion provides for sacrifice or slaughter of cows, bulls and bullocks on the auspicious occasion of Eid Ul-Adha. It facilitates even the economically weaker sections of muslim community to perform their religious obligation. She pointed out that the sacrifice of a goat is counted and treated as a single qurbani per person whereas, seven mature muslims can join together in case of sacrifice of one cow, bull or bullock. The submission in short is that the sacrifice of bulls and bullocks forms an integral and essential part of the religion of Islam and therefore, a complete ban imposed by the Amendment Act by introducing Section 5 of the Animal Preservation Act infringes fundamental rights guaranteed under Article 25 of the Constitution of India.

57. The learned senior counsel appearing for the Petitioners in Writ Petition (L) No.3395 of 2015 urged that the possession under Sections 5C and 5D will have to be a conscious possession. He relied upon a decision of the Apex Court in the case of ***Mohan Lal v. State of Rajasthan***[26]. He also relied upon the decisions of the Apex Court in the cases of ***People's Union for Civil Liberties and Another v. Union of India***[27], ***Sanjay Dutt v. State Through C.B.I., Bombay (II)***[28] and ***Gopaldas Udhavdas Ahuja and Another v. Union of India and***

26 (2015)6 SCC 222
27 (2004)9 SCC 580
28 (1994)5 SCCC 410

Others[29]**.** While adopting the submissions of the other learned counsel made in support of attack on Section 9B, he relied upon a decision of the Andhra Pradesh High Court in the case of ***K. Munivelu v. The Government of India and Others***[30]. While dealing with Section 9B, he relied upon a decision of the Apex Court in the case of ***Noor Aga v. State of Punjab & Another***[31]. He submitted that unless the State establishes the basic fact that the meat is the product of illegal slaughter within the State and that the person found in possession was having the knowledge of the said fact, Section 9B will not come into picture. His submission is that unless Sections 5C and 5D along with Section 9B incorporated by the Amendment Act are read down, the same will be exposed to the vice of unconstitutionality. He submitted that unless the possession contemplated by Sections 5C and 5D is held to be conscious possession, a negative burden will be put on the accused. He urged that in the cases covered by Sections 5C and 5D, it will be impossible for the accused to prove that the meat found in his possession is not a creation of illegal slaughter. He submitted that Section 9B will have to be held to be a draconian piece of legislative provision.

58. In Writ Petition No.1314 of 2015, Shri Anturkar, the learned senior counsel representing one of the Intervenors made detailed submissions. He submitted that the majority view in the case

29 (2004)7 SCC 33
30 AIR 1972 Andhra Pradesh 318
31 (2008)16 SCC 417

of ***Kharak Singh*** lays down that the right of privacy is not available as a fundamental right under Article 21 of the Constitution of India. He submitted that notwithstanding the clear view expressed by the majority in the case of ***Kharak Singh***, all subsequent decisions of the Apex Court having bench strength of two Hon'ble Judges have proceeded on the footing that the right to privacy is a fundamental right under Article 21 of the Constitution of India. He submitted that now the Bench of three Hon'ble Judges of the Apex Court in the case of ***K.S. Puttaswami*** has made a reference to a larger Bench on the issue of availability of the right to privacy as a fundamental right. Relying upon the decision of the Apex Court of a larger Bench of eight Hon'ble Judges in the case of ***M.P. Sharma***, he urged that the said decision lays down that the right to privacy is not included in the Constitution of India. He urged that such a right is not included in the fundamental rights in Part III of the Constitution of India.

59. He urged that Article 21 of the Constitution of India cannot be read to include each and every right. He pointed out that in large number of cases, the Apex Court has refused to read certain rights in Article 21. He submitted that the rights which are essential for life are included in Article 21 of the Constitution of India and the rights which are not essential are not included therein. He submitted that even if the right to life and liberty includes every right which makes the life

meaningful, it would mean only core rights or essential rights and not fringe rights. He submitted that the fringe rights are the one which are merely desirable to make the life comfortable or more comfortable or luxurious. He urged that in the present case, the Petitioner is not only claiming the right to food but claiming the right to a particular food in a particular geographical area, i.e the State of Maharashtra, which right is not protected by the Constitution of India. He urged that if such a right is held to be a part of right under Article 21, the same would be available even to foreigners. He urged that the right to have food of one's choice is not a part of right to make the life meaningful. He relied upon the directive principles of the State policy in Articles 48 and 48A and 53 of the Constitution of India. He urged that the same will have to be read with Clauses (g) and (h) of the fundamental duties of the citizens in Article 51-A. He relied upon a decision of the Apex Court in the case of ***Animal Welfare Board of India v. A. Nagaraja & Others***[32] and in particular Paragraphs 67 and 68 thereof. He urged that the directive principles of the State policy as interpreted in the said judgment are sought to be implemented by the impugned Amendment Act. He urged that the Amendment Act including Section 5D brought by the Amendment Act is in the interest of general public. He urged that the law laid down by the Apex Court in the aforesaid decision is that not only Indian cows but even “International cows” can be protected by the Statute and that is how Section 5D is brought on the

32 (2014)7 SCC 547

Statute Book. He submitted that there is nothing illegal or unconstitutional about Section 5D. Relying upon the decisions of the Apex Court in the cases of ***Bhaktawar Trust & Others v. M.D. Narayan & Others***[33] and ***Keshavlal Khemchand and Sons Pvt. Ltd. v. Union of India***[34], he would urge that the statement of Objects and Reasons can be looked into only for a limited purpose as laid down in the said decisions. He submitted that while testing the validity of various amendments brought into by the Amendment Act, the test of reasonableness of the Sections will have to be applied.

60. He relied upon a decision of the Apex Court in the case of ***State of West Bengal v. Ashutosh Lahiri***. He submitted that the said decision holds that slaughtering of cow is not an essential part of Muslim religion. He submitted that merely because a certain practice is permissible as provided in religious texts, it does not automatically mean that it is an essential part of the religion. He submitted that the things which are made compulsory or necessary for the purposes of a particular religion are covered by the right guaranteed under Article 25 of the Constitution of India. He relied upon a decision of the Apex Court in the case of ***Hinsa Virodhak Sangh vs. Mirzapur Moti Kuresh Jamat and Ors.***

33 (2003)5 SCC 298
34 (2015)4 SCC 770

61. The learned counsel representing Viniyog Parivar Trust urged that in India, there is a drastic shortfall of the required cattle. He submitted that against the requirement of 88,21,660 bullocks, there are only 54,23,718 bullocks. He submitted that the estimated meat production in the State during the year 2014-2015 of buffaloes was 84.495 metric tonnes. He pointed out that the India is the largest exporter of buffalo meat. Relying upon the affidavit-in-reply filed by the State Government in PIL No.76 of 2015, he would urge that the State has made necessary provision for providing fodder and care of cattle. He submitted that in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others***, the Apex Court has termed the act of slaughter of cattle in its old age as an act of reprehensible ingratitude. He submitted that the Amendment Act is saved by Article 31-C and it is in furtherance of Articles 48 and Clause (g) of Article 51-A of the Constitution of India.

62. While coming to the reasonableness of the restrictions which can be imposed, he urged that the reasonableness has to be judged not from the view point of citizen who may be objecting to the restrictions but from the view point of the object which is sought to be achieved by the Statute. He urged that there is nothing wrong with the negative burden imposed by Section 9B which is brought on the Statute

Book by the Amendment Act as such negative burden can be found in several Statutes including Section 57 of the Wild Life (Protection) Act, 1972.

63. He urged that the right to privacy or right to live meaningful life is not the prerogative only of meat eaters. He urged that those who worship the cow and its progeny and those who are dependent upon the cow and the cow progeny have also a right to live a meaningful life. He urged that their right to live cannot be taken away to satisfy taste buds of few individuals. It is urged that the right to life is far superior than the right to kill. He would urge that right to possess beef and to eat beef can by no stretch of imagination be termed as a fundamental right. He urged that the so called beef eaters have many other alternative choices of meat whereas, the farmers/cow worshipers/persons who are dependent on the cow and cow progeny have no other alternative. It is submitted that the right to choice of food cannot be termed as a fundamental right. He pointed out that the Petitioner in Writ Petition No.5731 of 2015 has raised the same questions which the said Petitioner had earlier raised which were decided by the decision in the case of ***Shaikh Zahid Mukhtar v. Commissioner of Police, Thane***[35]. He urged that those who worship cow and cow progeny cannot be deprived of their right to life by those who seek to relish beef. He submitted that the export and import of

35 2007(4) Mh.LJ 815

cows, calves and oxen is prohibited. He urged that only export from India is of meat of Buffalo. He urged that the law laid down in the said decision will apply to the challenges in the present Petitions as well.

64. Shri M.P. Rao and Shri R.S. Apte, learned senior counsel have made submissions. Shri Rao relied upon a decision of the Apex Court in the case of ***Indian Handicrafts Emporium and Others v. Union of India***[36]. He pointed out that amended provisions of the Wild Life (Preservation) Act, 1972 prohibited the trade of imported ivory. He pointed out that the Supreme Court upheld the said ban on the ground that it was necessary to implement the ban on poaching of Indian elephants. He urged that the ban on import was necessary to avoid evasion of taking recourse to camouflage.

65. The learned counsel appearing for the Intervenor in Writ Petition No.9209 of 2015 pointed out that at least in 14 States in the country, there is a total ban on the slaughter of entire cow progeny. It is contended that practically in all the States in Northern India, except the North East, there is a total ban on the slaughter of entire cow progeny. He relied upon a decision of the Apex Court in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***. Relying upon Article 48 of the Constitution of India, he urged that there is no constitutional mandate in favour of slaughtering of animals. He submitted that the

36 (2003)7 SCC 589

Intervenor himself is a follower of Islam religion and is practising the said religion. He submitted that according to the Intervenor, the interpretation put by the Petitioner to the Holly Quran is completely erroneous.

66. On the negative burden, the learned senior counsel representing the Petitioner relied upon a decision of the House of Lords in the case of ***Regina v. Johnstone***[37]. Reliance was also placed on another decision of the House of Lord in the case of ***Regina v. Lambert***[38].

67. The learned counsel appearing for the Karuna Animal Welfare Trust (the Applicant in Chamber Summons (L) No.456 of 2015 in Writ Petition (L) No.2566 of 2015) as well as appearing for Ekata Foundation (the Applicant in Chamber Summons (L) No.455 of 2015 in Writ Petition No.2680 of 2015) urged that as far as Article 304 of the Constitution of India is concerned, as there is a subsequent sanction to the statute by the President of India, no illegalities are attracted. He urged that if any reasonable restriction is imposed on freedom of trade for securing the directive principles of the State Policy, it will be held as reasonable. He urged that implementation of the directive principles of the State Policy is always considered to be in the interest of general

37 (2003)1 WLR 1736
38 (2002)3 Appeal Cases 545

public. He submitted that the very fact that the presidential assent has been received to the Amendment Act will show that the Amendment Act is in the public interest. The submission is that Article 304B of the Constitution of India itself permits the State Legislature to legislate imposing reasonable restrictions on the freedom of trade, Commerce or intercourse with or within that particular State as may be required in public interest. He urged that the framers did not contemplate a conflict between the fundamental rights and the directive principles of the State Policy. He urged that the Amendment Act is enacted for giving effect to the directive principles of the State Policy in Articles 48 and 48A of the Constitution of India. He urged that it is not permissible for the Court to read into the Constitution of India right to privacy as a fundamental right covered by either under Article 21 or any other Article in Chapter III of the Constitution of India. He urged that if such a course is adopted, it would create a direct conflict between the fundamental rights and directive principles of the State Policy. He relied upon a decision of the Division Bench of this Court in the case of ***State of Bombay v. R.M.D. Chamarbaughwalia***[39]. He also relied upon a decision of the Apex Court in the case of ***Indian Handicrafts Emporium and Others v. Union of India and Others***. He urged that in view of this decision, the argument that Sections 5A, 5B, 5C and 5D are unconstitutional will have to be rejected as the same have been enacted to ensure that the ban imposed by Section 5 is effectively implemented.

39 AIR 1956 Bombay 1

He would submit that there is no merit in the challenge to the constitutional validity of the Amendment Act.

68. Shri J.S. Kini, the learned counsel appearing for the Intervenors in Writ Petition No.1653 of 2015 urged that the rights of the animals which are sought to be slaughtered for the purposes of eating will have to be protected by this Court. He relied upon a decision of the Apex Court in the case of ***Aarushi Dhasmana v. Union of India and Others***[40]. He also relied upon the views of *Swami Vivekananda.* He urged that the entire mankind drinks milk and consumes milk products. He submitted that though the entire mankind is benefited by milk and milk products, some human beings want the Court to permit the cattle to be slaughtered. He urged that the slaughter is rightly prohibited in the State by the Amendment Act. Relying upon a decision of the Apex Court in the case of ***Javed v. State of Haryana,*** He urged that the Apex Court has held that the fundamental rights must not be read in isolation but will have to be read along with the directive principles of the State Policy and the fundamental duties. He submitted that the act of prohibiting beef eating does not amount to a breach of fundamental rights as the said rights will have to be read as circumscribed by the fundamental duties under the Clause (g) of Article 51A of the Constitution of India. He urged that a stage has come when fundamental duties have to be given absolute

40 (2013)9 SCC 475

priority over the fundamental rights as our country has always been a country giving precedence to the duty rather than seeking rights. He urged that if two views are possible, one holding a statute to be unconstitutional and the other holding it constitutional, the former view must prevail and the Court must make an effort to uphold the constitutional validity of a statute. He submitted that the principle is that the legislation is presumed to be valid unless contrary is proved. He relied upon the observations made in that behalf by the Apex Court in the case of ***Namit Sharma v. Union of India***[41]. He invited our attention to the photograph of the original preamble of the Constitution of India on which a picture of progeny of cow is printed. He urged that every citizen of India is bound to perform fundamental duties as enjoined by Article 51A of the Constitution of India. He urged that the Amendment Act has been made to further the fundamental duties and, therefore, it cannot be said that any provision of the Amendment Act is ultra vires the Constitution of India. He relied upon certain documents such as Charak Sanhita. He submitted that while interpreting the Constitution of India as held by the Apex Court in its decision in the case of ***Union of India v. Navin Jindal***[42], the Court will have to keep the doctrine of flexibility in mind.

41 (2013)1 SCC 745
42 AIR 2004 SC 1559

69. Some of the learned counsel appearing for the Intervenors pointed out that in the State of Delhi under the provisions of Delhi Agricultural Cattle Preservation Act, 1994, there is a complete prohibition of possession of flesh of agricultural cattle slaughtered in contravention of the said Act of 1994. It prohibits the possession of flesh of agricultural cattle slaughtered outside Delhi. It is pointed out that there is a complete prohibition on the sale, storage and transport of beef or beef products in any form under the Bombay Animal Preservation Act, 1954 which is applicable to the State of Gujarat. The learned counsel pointed out similar laws applicable to the States of Madhya Pradesh, Karnataka, Bihar and Andhra Pradesh etc. The submission is that a ban on possession of flesh of cow, bull or bullock in the State is something which is necessary.

70. Learned counsel appearing for the Applicants in Chamber Summons No.277 of 2015 in Writ Petition No.1653 of 2015 has contended that if Section 5D is declared as ultra vires the Constitution, the entire Act will become redundant and the very purpose of enacting the Act will be defeated. Reliance was placed on the fundamental duties under Clause (g) of Article 51A of the Constitution of India. It is pointed out that this Court has prohibited killing of dogs except in

exceptional circumstances. Therefore, if the slaughter of any animal is not prevented, it will be discriminatory to other animals. Reliance is placed on the opinions expressed by the great personalities like *Mahatma Gandhi and Sri Aurobindo etc*. It is contended that red meat is injurious to health. The learned counsel has also given a historical perspective of Muslims and British Rules as well as Independence Movement. He has also referred to various tenets of Muslim religion. The submission of saints have laid great emphasis on leading a noble life and a life of renunciation and compassion, eating simple food and abstaining from consuming meat. His submission is that there is not a single verse in Holly Quran which allows killing cows or bulls. He relied upon various verses in Quran.

THE SUBMISSIONS OF THE ADVOCATE GENERAL

71. The learned Advocate General appearing for the State of Maharashtra has made detailed submissions. His first submission is based on the decision of the Apex Court in the case of ***Ashoka Kumar v. Union of India***[43]. His submission is that the challenge to the constitutional validity of any legislation can be only on two grounds. The first is that the legislation is ultra vires the fundamental rights or some other parts of the Constitution and the second is that the legislation is beyond the legislative competence. His submission is that in some of the Petitions, infringement of Article 14 of the Constitution of India is alleged and therefore, the burden lies on the Petitioners to

43 (2008)6 SCC 1

prove arbitrariness in terms of unreasonableness and discrimination. He relied upon a decision of the Apex Court in the case of ***Deena v. Union of India***. He submitted that where the Petitioners allege infringement of a fundamental right, the burden lies on the State to show that it has not infringed any fundamental right or that the infringement falls under the category of reasonable restrictions. He pointed out that where the challenge is based on the infringement of Article 21, the Petitioners will have to establish that imposing restrictions on dealing with cows, bulls and bullocks or the flesh of these animals amounts to an infringement of the right to life and personal liberty. He urged that the Petitioners will have to establish that there exists under the Constitution, a right to privacy which is a part of the fundamental right to life and personal liberty. Thereafter, they must establish that the right to consume beef is a part of fundamental right to privacy. Further, they will have to show as to how the restriction on the transport, sell, purchase and possession of flesh of animals is violative of the fundamental right to life. He, thereafter, made detailed submissions on various decisions relied upon by the Petitioners.

72. He submitted that in ***Kharak Singh v. State of Uttar Pradesh***, Subba Rao, J. speaking for himself and Shah, J. in the minority judgment agreed that although the Constitution did not expressly declare the right to privacy as a fundamental right, it was an

essential ingredient of personal liberty. Since personal liberty under Article 21 extended to the right of an individual to be free from restrictions and encroachments on his person, a violation of the right to privacy should be understood also to be an encroachment of his person and therefore a violation of Article 21. Ayyangar, J. for the majority refers to the right of privacy as an aspect of personal liberty under Article 21. He urged that the majority judgment clearly says that our constitution does not in terms confer any like constitutional guarantees. The ratio of the majority judgment is that in any case, such a right to choice, if at all it exists, must be "both direct and tangible" and must be "something tangible and physical" and not attributable to imponderable effects on the mind of the person. It is not possible to extend this judgment to include what the Petitioners term as "the right to choice". It goes without saying that the right to privacy, which means the same as the right to be left alone, is an individual's right subject to non interference where the privacy is enjoyed for the doing of any lawful activity. If, by virtue of the provisions of the impugned Act, the provisions of the amended Sections 5A , 5B, 5C, and in particular 5D, consumption of beef amounts to an unlawful act then it is not possible to treat the right to choice as a part of right to life or personal liberty under Article 21. Another reason why the right to personal liberty under Article 21 should not be extended to the right to choice is also indicated in this judgment. In order to constitute an infringement, while speaking

of the right to personal liberty as a fundamental right, the Supreme Court observes that the infringement must be both 'direct and tangible'. Personal liberty as contained in Article 21 is not intended to protect 'mere personal sensitiveness'. In the facts of the instant matter, there is no immediate, direct or tangible nexus between the impugned provisions – particularly of Section 5D – and the act of consumption by the Petitioners.

73. This position appears to be supported by an eight-Judge judgment of the Supreme Court in ***M.P. Sharma v. Satish Chandra***. While considering the powers of search and seizure under the Criminal Procedure Code in terms of the right to Privacy, the Supreme Court categorically observed that "...when the constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a Fundamental Right to Privacy, analogous to the Fourth Amendment, we have no justification to import it into a totally different Fundamental Right by some process of strained construction."

74. In ***Gobind v. State of Madhya Pradesh and Another***[43A], the Supreme Court did not accept the argument that the right to privacy was a Fundamental Right. The observation in paragraph 22 that the law infringing a Fundamental Right must satisfy the test of compelling state interest is relevant only "if the Court does find that a claimed right

43A (1975)2 SCC 148

is entitled to protection as a fundamental privacy right". Therefore, in order to accept an argument of the applicability of compelling state interest test, it is necessary first for the Petitioner to establish that transport, export, sale, purchase and possession of the livestock (Sections 5A and 5B), and possession of the flesh of such animals (Sections 5C and 5D), is a right to privacy, which in turn is a Fundamental Right to Life and Liberty under Article 21 and therefore, entitled to protection.

75. The right to privacy as discussed in ***R. Rajagopal v. State of Tamil Nadu*** needs to be considered. In attempting to establish that the right to privacy is an aspect of Fundamental Right, the Supreme Court held that it was established in the facts of that case, as being connected with the Fundamental Right to speech and expression under Article 19(1)(a). He stated that with great respect, the discussion attempting to relate the right to privacy as a part of right to life under Article 21 was inconclusive. Reference was made to American law and judgments, most of which has already been considered in both ***Kharak Singh*** and ***Gobind***. The U.S. Law was mostly viewed from the stand point of rights of private citizens with regard to freedom of speech and expression. The conclusion drawn in paragraph 26 is that even where it was said that the right to Privacy is implicit in the right to life guaranteed under Article 21, it was in respect of certain aspects of

privacy such as the citizen's right to safeguard the privacy of himself, his family, marriage, procreation, motherhood, child bearing and education amongst other matters, and that no one could publish anything concerning these matters without his consent. In effect, it was an aspect of Article 19(1)(a). The broad principle set out in the judgment is therefore not a conclusion that the right to privacy in its absolute form is included in the right to life. The judgment can thus be distinguished.

76. In ***Ram Jethmalani v. Union of India***[44] a two-Judge Bench of the Supreme Court observed that right to privacy was an integral part of the right to life and labelled it a cherished Constitutional value. However, it went on to observe that "it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner...". The solution for the problem of abrogation of one zone of constitutional values cannot be the creation of another zone of abrogation of constitutional values..." It may be noted that in this case, as in most earlier cases, the discussion on the right to privacy was in the context of the right to liberty and freedom of movement. It was thus relatable to police action in matters of criminal procedure. Even in such judgments, the Supreme Court has been careful to consistently observe that the right to privacy must not be seen as a protection to any unlawful action. In other words, the right to

44 (2011)8 SCC 1

privacy does not protect an accused who is seen to have violated the law.

77. In ***In Re Ramlila Maidan Incident,*** a two-Judge Bench of the Supreme Court was dealing with the forcible eviction of the sleeping public from Ramlila Maidan by the police authorities. The Bench referred to the six-Judge Bench judgment in ***Kharak Singh*** and the judgment in ***Gobind*** and observed that the right to privacy has been held to be a Fundamental Right of the citizen being an integral part of Article 21. As demonstrated herein above, neither of the aforementioned judgments recognises privacy as a part of the Fundamental Right to life and liberty under Article 21. In effect, the Division Bench made observations which were contrary to those laid down by larger Benches. He urged that these observations therefore do not constitute the ratio of that judgment nor hold any precedentiary value. They are not binding. Seen from this context, the mere mention of certain rights such as the right to eat was nothing more than a broad equation of certain unspelt rights like right to sleep or right to breathe or right to drink. It is clear from the inclusion of the words “right to blink” that this exposition of the right to privacy is more in the nature of a literary exercise than a judicial finding. The conclusion that the right to privacy and the right to eat should be treated like a Fundamental Right was without any reasoning.

78. He contended that the words “right to eat”, when equated with the words like the right to sleep, breathe or drink, carry a specific emphasis. They are concerned with the right of every person to have access to food in order to nourish his body and sustain his life. It cannot be stretched by any means to cover the right to choose a particular kind of food. Assuming therefore that the right to eat is a part of the right to privacy, which might be a part of the right to life and liberty, it cannot be extended to mean that the right to eat beef is a fundamental right to eat. The right to eat the food of one's choice has been held to be an aspect of a person's right to privacy by a two-Judge Bench of the Supreme Court in ***Hinsa Virodhak Sangh v. Mirzapur Moti Kureshi Jamat***. However, the aforesaid observation proceeds on an assumption that the right to privacy is included in Article 21 of the Constitution. Since it has been demonstrated that the right to privacy is not included in Article 21, the right to eat the food of one's choice as a part of the right to privacy can also not be read into the fundamental right to life or personal liberty. He urged that the observation is not central to the judgment which was concerned with total ban on slaughter-houses. It was in that context that the judgment merely made a passing observation, more in the nature of an obiter, and certainly not as ratio, that what one chooses to eat is one's personal affair and therefore, part of his right to privacy. The negative tone of

the language used itself indicates that the observation is not a declaration of a right. As such, the casual observation has no precedentiary value.

79. *In* ***National Legal Services Authority v. Union of India*** members of the transgender community had filed a writ petition seeking legal declaration of their right to choose their gender identity. In the said judgment, the right to privacy is thus seen as being an aspect of life which goes to make a person's life meaningful. Article 21 is considered to be a protector of such aspects of life. As such, Article 21 is distinct and separate from a variety of subordinate rights such as the right to privacy, and can only be understood as a guardian of the lesser constituent rights. He reiterated that there does not appear to be any authoritative judgment of the Supreme Court which lays down the ratio that the right to privacy should be considered a fundamental right. As right to privacy cannot exist dehors Article 21, then the right to choice of food also cannot be elevated to the status of an independent fundamental right.

80. He relied upon to the order of the Supreme Court in Justice ***K.S. Puttaswamy & Another v. Union of India***. By the said order, a three-Judge Bench of the Supreme Court referred the decisions of the respective Constitution Benches in ***Kharak Singh*** and ***M.P. Sharma*** to a

larger Bench. He pointed out that the said order records that there is a certain amount of apparent unresolved contradiction in the law declared by the Supreme Court in regard to the right of privacy. The issue has therefore, been referred to a larger Bench. The order of reference makes it clear that even the three-Judge Bench of the Supreme Court is of the view that numerous smaller Benches which declared that the right to privacy is a part of right to life and personal liberty as contemplated by Article 21 of the Constitution, departed from the principles laid down by the Constitution of India.

81. The Supreme Court in the case of ***Central Board of Dawoodi Bohra Community v. State of Maharashtra***[45] has categorically held that the law laid down by the Supreme Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser strength. Therefore, a High Court is also bound by a decision delivered by a Larger Bench.

82. He, therefore, submitted that it is a settled law that the right of privacy claimed by the Petitioner is not a part of his fundamental right to life or personal liberty under Article 21 of the Constitution of India. In the absence of such a fundamental right, the ultra vires challenge based on breach of fundamental rights is not available. As it is not a fundamental right, its curtailment by the

45 (2005)2 SCC 673

impugned legislation cannot be attacked for want of compelling public interest.

83. The learned Advocate General submitted that the impugned provision of the Amendment Act finds justification in compelling public interest. He submitted that the Amendment Act has been enacted by the legislature keeping in view the directive principles of the State Policy embodied in Articles 48 and 48A and the fundamental duties enshrined in Clause (g) of Article 51A of the Constitution of India. He relied upon a decision of the Apex Court in the case of ***AIIMS Students' Union v. AIIMS & Others***[46]. He submitted that though the fundamental duties may not be enforceable, it can serve as a guide not only for resolving the issue before the Writ Court but also for moulding the relief which may be given by the Court. He submitted that a duty of every citizen of India is collectively speaking the duty of the State. Relying upon a decision of the Apex Court in the case of ***Javed v. State of Haryana***, he urged that the fundamental rights will have to be read along with the directive principles of the State Policy and fundamental duties. Relying upon a decision of the Apex Court in the case of ***Akhil Bharatiya Soshit Karmachari Sangh v. Union of India***, he urged that the laws made in furtherance of the subjects mentioned in Part IV and IVA of the Constitution must be assumed to be in compelling public interest. He submitted that if restrictions imposed

46 (2002)1 SCC 428

by the law are in implementation of the directive principles of the Constitution, the same would be upheld as being in public interest as the individual interest must yield to the interest of the community at large. He submitted that as the impugned legislation advances the directives principles of the State Policy, there is a compelling public interest. He also relied upon a decision of the Apex Court in the case of ***Animal Welfare Board v. A. Nagraja***. He pointed out that the Apex Court has held that as far as the animals are concerned, life means something more than mere survival or existence. He submitted that the Apex Court held that the animals have right to lead life with some intrinsic worth, honour and dignity. He submitted that in the Statement of Objects and Reasons in the Amendment Act, there is a justification in compelling public interest. He urged that the Statement of Objects and Reasons in the Amendment Act partakes the colour of Article 48 of the Constitution of India. While relying upon a decision of this Court in the case of ***Dhariwal Industries Ltd. v. Union of India***[47], he urged that the compelling public interest is inherently connected to public good. He pointed out that there is a reasonable nexus between the enactment and the object sought to be achieved by the Act of 1976 and the impugned provisions of Sections 5D and 9B.

47 2003(2) BomCR 698

84. Relying upon a decision of the Apex Court in the case of ***Intellectual Forum v. State of Andhra Pradesh***[48], he urged that Article 48-A and Article 51A are not only fundamental in the governance of the country but that it is a duty of the State to apply these principles in making the laws. These two Articles are to be kept in mind to understand the scope and purport of the fundamental rights guaranteed by the Constitution of India including Articles 14, 19 and 21 thereof. Relying upon a decision of the Apex Court in the case of ***Municipal Corporation of the City of Ahmedabad & Others V. Jan Mohammed Usmanbhai and Another***[49], he urged that the expression "in the interest of general public" is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution. He submitted that since the impugned provisions of the Amendment Act are in furtherance of the directives sought to be achieved under Part IV of the Constitution, they are in the general public interest. He submitted that no further proof of their character or of their quantum, or degree of compelling public interest needs to be established by the State.

85. The learned Advocate General submitted that there is no requirement of law that the statement of Objects and Reasons must be

48 (2006)3 SCC 549
49 (1986)3 SCC 20

restricted in the Bill and the law that may be followed. Relying upon a decision of the Apex Court in the case of ***Keshavlal Khemchand & Sons v. Union of India***, he urged that if the enactment is otherwise within the constitutionally permissible limits, the fact that there was a divergence between the objects appended to the Bill and the tenor of the Act cannot be a ground for declaring the law as unconstitutional.

86. The learned Advocate General also dealt with the argument based on the violation of fundamental rights guaranteed under Article 25 of the Constitution of India. He relied upon the observations made by the Apex Court in the case of ***Mohmmed Hanif Quareshi v. The State of Bihar***[50] **(for short** *"Quareshi-I"***)** . The Apex Court held that the slaughter of cows on *BakrI'd* day was not an essential religious practice for Muslims and, therefore, a total ban on cow's slaughter on all days including *Bakri Eid* day would not be violative of Article 25(1) of the Constitution of India. He submitted that the law is very well settled by the Apex Court in the case of ***Dr. M. Ismail Faruqui v. Union of India***. He submitted that the protection under Articles 25 and 26 of the Constitution is with respect to only to such religious practice which forms an essential and integral part of the religion. He also relied upon a decision of the Apex Court in the case of ***Ashutosh Lahiri*** wherein the Apex Court held that it is optional for a Muslim to sacrifice a goat for

50 AIR 1958 SC 731

one person or a cow or a camel for seven persons. The Apex Court held that there was no fundamental right of a Muslim to insist on slaughter of a cow.

87. As far as the arguments based on Article 29 of the Constitution of India is concerned, the learned Advocate General submitted that a customary right should not be confused with culture. Article 29 is concerned with preservation of essential culture of people and not with peripheral customs which often have no relation to an existing culture to which they claim affinity. He urged that the culture refers to the underlying characteristics that is shared in common by people in a particular section of the Society. He submitted that the Petitioners in the present case have failed to establish that the slaughtering of cows, bulls and bullocks or consumption of their flesh is such a common underlying characteristics of a particular class to which they belong. He urged that in any event, assuming that the fundamental rights under Article 29 of the Constitution of India have been restricted, such restriction is in public interest.

88. The learned Advocate General submitted that the Animal Preservation Act has been enacted under Entry 15 of List II of the Seventh Schedule of the Constitution of India, and therefore, in view of Clause 3 of Article 246 of the Constitution, the State Legislature was

competent to enact the said law. He submitted that the Animal Preservation Act and the Prevention of Cruelty to Animals Act, 1960 operate in completely independent legislative fields. He submitted that the Prevention of Cruelty to Animals Act has been enacted under Entry 17 of the Concurrent List. He also relied upon the doctrine of pith and substance. As far as the argument that Section 5D operates beyond the territories of the State of Maharashtra is concerned, he urged that the doctrine of nexus can be invoked to sustain the validity of the Section 5D. He relied upon a decision of the Apex Court in the Case of ***Khyerbari Tea Co. v. State of Assam***[51]. He submitted that in any case, even assuming that there was a repugnancy, the State Act having the assent of the President will prevail.

89. The learned Advocate General dealt with the argument of misuse of Sections 5C, 5D, 9A and 9B and submitted that it is no ground to invalidate the legislation as observed in the decision of the Apex Court in the case of ***Sushil Kumar Sharma v. Union of India***[52].

90. He urged that Section 9B cannot be read in isolation. A conjoint reading of Sections 9A and 9B make it clear that in a trial for an offence under the impugned Act, two foundational facts will have to be established by the prosecution viz., (a) the flesh is of an animal

51 AIR 1964 SC 925
52 (2005)6 SCC 281

protected under the Act and (b) the accused is found in possession of the same. Once these foundational facts are established, only then the burden will shift on the accused to show that the slaughter etc was not in contravention of the provisions the impugned Act. In response to a query made by the Court, he candidly stated that the possession contemplated by Sections 5C and 5D will have to be conscious possession.

91. As far as the challenge to Section 9B is concerned, he urged that presumption of innocence is not a fundamental right guaranteed by the Constitution. He pointed out several penal statutes which provide for reverse onus clauses like Section 9B.

[A] CONSIDERATION OF SUBMISSIONS ON THE CONSTITUTIONAL VALIDITY OF SECTION 5 AND ESPECIALLY THE AMENDMENT MADE BY THE AMENDMENT ACT.

92. The first question to be considered in these matters is "whether the amendment to Section 5 of the Animal Preservation Act made by the Amendment Act by incorporating the words "bull or bullock" after the word "cow" is constitutionally valid?

93. Before We deal with this issue, it must be noted that in some of the Petitions, there is also a challenge to the validity of unamended Section 5 which imposes a total ban on slaughter of cows.

However, this challenge was specifically rejected by a Division Bench in the case of ***Shaikh Zahid Mukhtar vs Commissioner of Police, Thane and others***. The said decision has attained finality.

STATE OF GUJARAT VS. MIRZAPUR MOTI KURESHI KASSAB JAMAT

94. Before we deal with the grounds of challenge and the defence of the State, it will be necessary to make a reference to the decision of the Apex Court in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***. The reason for making a reference to the said decision is that by the said decision, a Constitution Bench of the Apex Court upheld the validity of a similar provision incorporated in the Bombay Animal Preservation Act, 1954 (as applicable to the State of Gujarat). This Act is hereafter for convenience is referred as "Gujarat Act". Before its amendment, Sub-section (1) of Section 5 of Gujarat Act provided that no person shall slaughter or cause to be slaughtered any animal unless he has obtained in respect of such animal, a certificate in writing from the Competent Authority appointed for the area that the animal is fit for slaughter. In the year 1961, Section 5 of the Gujarat Act was amended. Again in the year 1979, the Gujarat Act was amended by incorporating a provision in Sub-section (1) in Section 5 that no such certificate shall be granted in respect of a cow. By the said amendment, Sub-section (1) of Section 5A was incorporated which

provided that no certificate under Sub-section (1) of Section 5 shall be granted in respect of a cow, a calf of a cow as well as a bull or bullock below the age of 16 years. The said amendment of 1979 was challenged before the Gujarat High Court. The said challenge was turned down. Thereafter, the matter was carried to the Apex Court and the Constitution Bench of the Apex Court in the case of ***Haji Usmanbhai Hasanbhai Qureshi v. State of Gujarat***[53] turned down the challenge. We are reproducing relevant provisions of the Gujarat Act.

95. Unamended Sections 5 and 6 of the Gujarat Act read thus:

> "5. (1) Notwithstanding any law for the time being in force or any usage to the contrary, no person shall slaughter or cause to be slaughtered any animal unless he has obtained in respect of such animal a certificate in writing from the competent authority appointed for the area that the animal is fit for slaughter.
>
> (2) No certificate shall be granted under sub-section (1), if in the opinion of the competent authority—
>
> (*a*) the animal, whether male or female, is useful or likely to become useful for the purpose of draught or any kind of agricultural operations;
>
> (*b*) the animal, if male, is useful or likely to become useful for the purpose of breeding;
>
> (*c*) the animal, if female, is useful or likely to become useful for the purpose of giving milk or bearing offspring.
>
> (3) Nothing in this section shall apply to the slaughter of any animal above the age of fifteen years for bona fide religious purposes:

53 (1986)3 SCC 12

Provided that a certificate in writing for such slaughter has been obtained from the competent authority.

(4)-(6)***

6. No animal in respect of which a certificate has been issued under Section 5 shall be slaughtered in any place other than a place specified by such authority or officer as the State Government may appoint in this behalf."

In the year 1961, the Act was amended by Section 4 of the Amendment Act which reads thus:

"4. *Amendment of Section 5 of Bombay Act 72 of 1954*.—In Section 5 of the principal Act,—

(1) after sub-section (1), the following sub-section shall be inserted, namely—

'(1-A) No certificate under sub-section (1) shall be granted in respect of a cow.';

(2) in sub-section (2), for the words 'No certificate' the words, brackets, figure and letter 'In respect of an animal to which sub-section (1-A) does not apply, no certificate' shall be substituted;

(3) in sub-section (3), for the words 'religious purposes' the words, 'religious purposes, if such animal is not a cow' shall be substituted."

96. Thereafter, a total ban on the slaughter of cow was brought about by 1979 Amendment Act. Section 1A was substituted as under:

"(1-A) No certificate under sub-section (1) shall be granted in respect of -

(a) a cow;

(b) the calf of a cow, whether a male or female and if male, whether castrated or not;

(c) a bull below the age of sixteen years;

(d) a bullock below the age of sixteen years."

97. Then came the 1994 Amendment to the Gujarat Act which further amended Sub-section (1A) of Section 5 by substituting Clauses (c) and (d). The Section 2 of the Amendment Act of 1994 reads thus:

> "2. In the Bombay Animal Preservation Act, 1954 (hereinafter referred to as 'the principal Act'), in Section 5,—
>
> (1) in sub-section (1-A), for clauses (*c*) and (*d*), the following clauses shall be substituted, namely—
>
> '(*c*) a bull;
>
> (*d*) a bullock.';
>
> (2) in sub-section (3)—
>
> (i) in clause (*a*), sub-clauses (*ii*) and (*iii*) shall be deleted;
> (*ii*) in clause (*b*), after the words 'calf of a cow', the words 'bull or bullock' shall be inserted."

98. Thus, unamended Gujarat Act contained Sub-section (1) of Section 5 which provided that no person shall slaughter or cause to be slaughtered any animal unless he has obtained in respect of such animal a certificate in writing from the Competent Authority that the animal is fit for slaughter. By the 1979 Amendment, Sub-section (1A) of Section

5 was enacted which imposed a complete ban on slaughter of a cow, calf of the cow and bull or bullock below the age of 16 years. By the Amendment of the year 1994 which was the subject matter of challenge before the Apex Court, Clauses (c) and (d) of Sub-section (1A) of Section 5 were substituted. The effect of substitution of Clauses (c) and (d) was that no certificate under Sub-section (1) of Section 5 could be granted in respect of a cow, bull or bullock. As a result of the Amendments of the years 1979 and 1994, there is a complete ban imposed on the issuing of certificates under Sub-section (1) of Section 5 for slaughter of cow, bull or bullock. In effect, there is a complete prohibition on slaughter of cow, bull and bullock in Gujarat. The said 1994 amendment to Section 5 was struck down by Gujarat High Court. The State of Gujarat filed Appeal before the Apex Court. The majority Judgment was by the Hon'ble the Chief Justice. One Hon'ble Judge dissented. The Apex Court allowed the Appeal and held that 1994 amendment was intra vires the Constitution. The Apex Court upheld the validity of the Gujarat Amendment. The Apex Court in its earlier decision in the case of ***Mohd Hanif Quareshi v. State of Bihar*** ("***Qureshi-I***") dealt with a Bihar Legislation imposing prohibition on slaughter of bovine cattle. The Apex Court upheld the challenge to constitutional validity of the Bihar Act. In the case of ***Abdul Hakim Quareshi v. State of Bihar***[54] ***(***for short ***"Quareshi-II),*** a similar view was taken. The Apex Court noted in Paragraph 35 of the decision in the

54 AIR 1961 SC 448

case of ***Mirzapur*** that following six contentions raised by the State of Gujarat were required to be decided. The said contentions read thus:

> "***Quareshi-I*** holds Directive Principles of State Policy to be unenforceable and subservient to the Fundamental Rights and, therefore, refuses to assign any weight to the Directive Principle contained in Article 48 of the Constitution and refuses to hold that its implementation can be a valid ground for proving reasonability of the restriction imposed on the Fundamental Right guaranteed by Article 19(1)(g) of the Constitution - a theory which stands discarded in a series of subsequent decisions of this Court.
>
> (2) What has been noticed in ***Quareshi-I*** is Article 48 alone; Article 48A and Article 51A(g) were not noticed as they were not available then, as they were introduced in the Constitution by Forty-second Amendment with effect from 3.1.1977.
>
> (3) The meaning assigned to "other milch and draught cattle" in ***Quareshi-I*** is not correct. Such a narrow view as has been taken in ***Quareshi-I*** does not fit into the scheme of the Constitution and, in particular, the spirit of Article 48.
>
> (4) ***Quareshi-I*** does not assign the requisite weight to the facts contained in the Preamble and Statement of Objects and Reasons of the enactments impugned therein.
>
> (5) 'Restriction' and 'Regulation' include 'Prohibition' and a partial restraint does not amount to total prohibition. Subsequent to the decision in ***Quareshi-I*** the trend of judicial decisions in this area indicates that regulation or restriction within the meaning of Articles 19(5) and 19(6) of the Constitution includes total prohibition - the question which was not answered and left open in ***Quareshi-I***.
>
> (6) In spite of having decided against the writ petitioners on all their principal pleas, the only ground on which the constitutional validity of the impugned enactments was struck down in ***Quareshi-I*** is founded

> on the finding of facts that cow progeny ceased to be useful after a particular age, that preservation of such 'useless cattle' by establishment of gosadan was not a practical and viable proposition, that a large percentage of the animals, not fit for slaughter, are slaughtered surreptitiously outside the municipal limits, that the quantum of available fodder for cattle added with the dislodgement of butchers from their traditional profession renders the total prohibition on slaughter not in public interest. The factual situation has undergone a drastic change since then and hence the factual foundation, on which the legal finding has been constructed, ceases to exist depriving the later of all its force".

The Apex Court also dealt with the issue whether the ban imposed on the slaughter of bulls or bullocks was a reasonable restriction.

99. Conclusions of the Apex Court on the said six contentions can be summarized as under:

> Question 1
>
> "The restriction which can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6); **the provisions contained in the chapter on Directive Principles of State Policy can also be pressed into service and relied on for the purpose of adjudging the reasonability of restrictions placed on the Fundamental Rights.**"
>
> (emphasis added)
>
> Question 2
>
> "**It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of**

regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51-A of the Constitution play a significant role. The decision in *Quareshi-I* [1959 SCR 629 : AIR 1958 SC 731] in which the relevant provisions of the three impugned legislations was struck down on the singular ground of lack of reasonability, would have decided otherwise if only Article 48 was assigned its full and correct meaning and due weightage was given thereto and Articles 48-A and 51-A(*g*) were available in the body of the Constitution."

(emphasis added)

Question 3

"**In our opinion, the expression 'milch or draught cattle' as employed in Article 48 of the Constitution is a description of a classification or species of cattle as distinct from cattle which by their nature are not milch or draught and the said words do not include milch or draught cattle, which on account of age or disability, cease to be functional for those purposes either temporarily or permanently.** The said words take colour from the preceding words "cows or calves". A specie of cattle which is milch or draught for a number of years during its span of life is to be included within the said expression. **On ceasing to be milch or draught it cannot be pulled out from the category of "other milch and draught cattle.**"

(emphasis added)

Question 4

"**The facts stated in the Preamble and the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment**. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the Fundamental Rights of the

individuals. **The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the Preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved"**.

(emphasis added)

Question 5

"**In the present case, we find that the issue relates to a total prohibition imposed on the slaughter of cow and her progeny. 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 Act.** It is not that the respondent-writ petitioners survive only by slaughtering cow progeny. They can slaughter animals other than cow progeny and carry on their business activity. Insofar as trade in hides, skins and other allied things (which are derived from the body of dead animals) is concerned, it is not necessary that the animal must be slaughtered to avail these things. 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 based thereon.

We hold that though it is permissible to place a total ban amounting to prohibition on any profession, occupation, trade or business subject to satisfying the test of being reasonable in the interest of the general public, **yet, in the present case banning slaughter of cow progeny is not a prohibition but only a restriction.**"

(emphasis added)

Question 6

"**The Legislature has correctly appreciated the needs of its own people and recorded the same in the Preamble of the impugned enactment and the**

Statement of Objects and Reasons appended to it. In the light of the material available in abundance before us, there is no escape from the conclusion that the protection conferred by impugned enactment on cow progeny is needed in the interest of Nation's economy. Merely because it 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."

(emphasis added)

100. In paragraph 81, the Apex Court, observed thus:

"The facts contained in preamble and the Statement of Objects and Reasons in the impugned enactment highlight the following facts:

(a) Cow and her progeny sustain the health of the nation;

(b) Working bulls are indispensable in agriculture as they supply power more than any animal;

(c) The dung of the animal is cheaper than the artificial manures and is extremely useful for production of bio-gas;

(d) The backbone of Indian Agriculture is the cow and her progeny and they have on their patient back the whole structure of the Indian agriculture and economic system;

(e) The economy of the State of Gujarat is still predominantly agricultural. After the cattle are ceased to breed or are too old to do work, they still continue to give dung for fuel, manure and bio-gas and, therefore, such animals cannot be said to be useless."

While dealing with the issue whether the ban on slaughter of a cow or her progeny is in the public interest, the Apex Court, in addition,

considered the affidavits filed on record and in particular the affidavits of the Deputy Secretary of Agriculture, Co-operative and Rural Development Department and the Joint Director of Animal Husbandry. Reliance was placed on a report on the draughtability of bulls above the 16 years of age. Even the report of the Working Group on Animal Husbandry and Dairy Farming and the Tenth Five Year Plan 2002-2007 were dealt with by the Apex Court. The report of the National Commission on Cattle was also referred. In Paragraph 108, the Apex Court observed that the utility of the cow cannot be doubted at all. The Apex Court noted that the important role that the cow and her progeny play in the Indian economy has been acknowledged in its decision in the case of ***Quareshi-I***. After considering all the facts, the Apex Court held that the ban on slaughter of cow and her progeny is in the interest of general public within the meaning of Clause (6) of Article 19 of the Constitution of India.

FACTUAL DETAILS PLACED ON RECORD BY THE STATE GOVERNMENT

101. In the light of the law laid down by the Apex Court, it is necessary to examine the factual details placed on record by the State Government in the present case. Though there are earlier affidavits in reply filed by the State Government in some of the Petitions, the learned Advocate General has mainly relied upon an affidavit of Shri Shashank

Madhav Sathe, the Deputy Secretary (Animal Husbandry) of the Agriculture, dated 1st December 2015 in PIL No.76 of 2015. In the said affidavit, a reliance has been placed on the affidavit-in-reply filed in Writ Petition No.1314 of 2015 and Writ Petition No.1653 of 2015. Shri Sathe in his affidavit stated that in the year 1970, there were 1451 veterinary dispensaries in the State of Maharashtra which number has gradually increased. He has stated in the affidavit that as of 2015, there were 4856 veterinary dispensaries for taking care of the entire livestock in the State. He has further stated that in the year 1970-71, 66.20 lakh bovine animals were vaccinated and in the year 2014-15, 455.21 lakh bovine animals were vaccinated. In the said affidavit, he pleaded that according to the statistical data quoted by National Dairy Development Board, in its report "Dairying in Maharashtra- Statistical Profile 2015", the area under fodder crops in Maharashtra in the year 2010-2011 was 9,01,000 hectares and the area of permanent pasture and grazing lands was 12,45,000 hectares. In the said affidavit, he pleaded that in addition, there is a sizable production of coarse foodgrains like bajra, raagi, jowar, millet etc. The plant residue of these crops is used as a fodder. All these facilities put together try to cope up with the fodder requirement of cattle population of Maharashtra State. However, the uncertainties in monsoon rains pose difficulties in availability of green as well as dry fodder. The State Government through various measures is promoting production as well

as availability through preservation of green and dry fodder for the cattle. The said measures set out in the affidavit are as under:

(a) Distribution of fodder seed to the farmers under centrally sponsored feed and fodder scheme, RKVY (Rashtriya Krishi Vikas Yojana) and also under accelerated fodder development programme. Fodder seed of the order of 6782 MT has been distributed in the year 2014-2015. Besides this, fodder saplings of the order of 13.52 lakh pertaining to multi-cut perennial varieties of grasses have also been distributed in the year 2014-2015.

(b) Distribution of chaff cutters for preventing wastage of available fodder has also been taken up under the centrally sponsored scheme and also under RKVY (Rashtriya Krishi Vikas Yojana) and NLM (National Livestock Mission). From the year 2012-2013 to 2015-16, a total number of 26044 power driven chaff cutters have been distributed to the farmers in the state.

(c) Preservation of green fodder through silage making has also been promoted and farmers have been encouraged the silo-pits and preserve fodder in them.

During the year 2012-2013 and 2013-2014, a total number of 3706 silo-pits have been constructed at farmer's level for preservation of green fodder.

102. In the said affidavit, it is contended that there were 290 *Goshalas and Panjarpols* in the State which take care of providing feed and fodder to the cattle sheltered with them. He has also set out the funds allocated for drought relief for the years 2010-2011 to 2015-2016. He has given a reason as to why there is a problem of fodder shortage in some areas. In the affidavit, the details of the land holding in the State of Maharashtra are set out. Paragraph 6 of the affidavit reads thus:

> "6. In reply to para 8 of the Affidavit in rejoinder I say that in Western Countries like Canada, USA, European Countries, Australia etc. the land holding is huge, as compared to the land holding in the State.
>
> Land holding status in Maharashtra is as follows:-

	Area (000)Ht	Number (000)	Category
0-1 Ht	3186	6709	Marginal Farmers
1-2 Ht	5739	4052	Small Farmers
2-4 Ht	5765	2159	Semi Medium
4-10 Ht	3993	711	Medium
10 Ht & above	1084	68	Large
Total	19767	13699	

(Source : Agriculture Census 2010-2011)

> I say that, from the above information, **it is clear that average land holding in Maharashtra State is low. The farm sizes are such that the farmers cannot afford use of tractors and more than 90% of the farmers (below 4 Ht of land) depend on bullocks to plough the land. The concept of tilling the land with mechanical tillers is applicable in case of large farms. This is not the position in the State.** An average small farmer can ready his farm with proper tilling in 2/3 days' time before the rains are expected. The farmer is not caught unawares. Further, mechanical tilling with tractors has got its own disadvantage. The mechanical tiller breaks the crust of the soil up to the depth of 12 to 15 inches. This exposes the crust of 12 to 15 inches to outside dryness and the humus of the entire crust is lost. In this situation, unless there is good rain or irrigation to make the crust of 12 to 15 inches wet, sowing cannot take place. On the other hand, ploughing with the conventional plough with the help of bullocks breaks the crust up to the depth of 5 to 6 inches only and the humus below this level is retained. In this situation, even a small amount of rain makes the crust wet and suitable for sowing. I say that the Petitioners have given examples of unusual phenomena of rain this year in Western Maharashtra. The phenomena being unusual cannot justify their contention.
>
> **I further say that bullocks also are used for transportation of Agriculture produce through bullock cart which is much economical than using motor vehicles to majority of poor farmers. Besides, ploughing and sowing, bullocks are also used for carting, hauling, water lifting, grinding etc.**"
>
> (emphasis added)

103. Extensive reliance is placed by Shri Sathe in his affidavit on the decision in the case of **State of Gujarat v. Mirzapur *Moti Kureshi Kassab Jamat***. In Paragraph 9 of the affidavit, emphasis is laid on the cow dung. He stated that the dung of cow and its progeny is collected

by villagers and farmers for use as a fuel as well as fertilizer. Relevant portion of Paragraph 9 reads thus:

> ".....**One can see huge heaps of composting fertilizer in corners of agricultural farms and other places. Naturally, these heaps are created from collected dung and hardly any dung is allowed to go waste. Similarly, urine of the cattle which is used as pesticide after processing with neem leaves is required in small quantities which is collected by the farmers and cattle owners in the morning at their home before the cattle venture out either for grazing or go to the farms for agricultural activities.** There is no denying the fact that chicken excreta or sheep and goats excreta are more potent fertilisers. The fertiliser requirement for agricultural sector in India is quite huge and the excreta of goat, sheep and chicken cannot meet that requirement. Though human excreta is also a good fertilizer, its use as fertilizer is shrinking with passage of time. In earlier days human beings went to ease themselves to the agricultural farms in early mornings. However, with growing emphasis on 'shauchalayas' the availability of human excreta as a fertilizer is being totally wiped out.
>
> **I further submit that organic manure obtained from dung should not be viewed only in terms of monetary price.** There is a difference between price and value. Air has no price but is invaluable. Water has negligible price but is invaluable. **Similarly, organic manure may be available at certain price but its value is much more. It restores the fertility of soil to which no price can be attributed. It is devoid of the serious adverse features of chemical fertilizers which are used as an alternate due to shortage of organic manure.** Chemical fertilisers pollute the soil, the crop, the sub-soil water table, and are huge financial burden on the farmers. Consistent use of chemical fertilizers has ruined the soil in Punjab and other parts of the country and rendered the soil as infertile. **Organic manure rejuvenates soil, is freely available as a bonus and by-product from cattle at the farmers' door step and does not need the huge**

> **infrastructure for production and distribution of chemical fertilisers."**
>
> (emphasis added)

104. Paragraph 10 of the affidavit of Shri Sathe deals with the contention regarding the methane emissions. It is contended that methane is not produced only by cattle and there are other sources of methane emission. It is contended as under:

> "Belching or breaking winds are natural things with any living being. Even human beings belch and break wind. Thus this factor cannot be made responsible for elimination of the livestock population."

105. In Paragraph 11, it was contended that the shortage of dung which is the source of organic manure has compelled the use of chemical fertilizers. It is contended that the shortage can be overcome only by increasing dung availability and that is possible only if the cattle is saved. It is contended that under the Indian Agriculture and Animal Husbandry Practices, yielding of dung by cattle enjoys the topmost position amongst all the yields from cattle. It is pointed out that the dung fuel is extensively used for cooking purposes as well as for lining the walls and floors of houses in villages. It is contended that the dung used for lining of the walls and floors acts as a disinfectant and also performs a thermoregulatory function. It is contended that the reports/ articles annexed to the affidavit-in-rejoinder of the Petitioner which are relied upon in Paragraph 16 are primarily in relation to agricultural and

animal husbandry practices mainly in western countries. It is contended that the effect of grazing by cattle in pasture lands is that it enriches the pasture lands by excreta and urine of the cattle gets spread into the pasture lands. In Paragraph 14, reliance is placed on the figures of the cattle population as per the last four censuses of 1997, 2003, 2007 and 2012. Paragraph 14 reads thus:

> "The cattle strength in Maharashtra is steadily declining and the figures for the same are available in the quinquennial census over the years. The cattle population as per the last four censuses 1997, 2003, 2007 and 2012 is as follows:

			(in 000's)	
Cattle	1997	2003	2007	2012
Indigenous Adult Male	6763	6243	6092	5748
Indigenous Adult Female	4643	3840	3650	3302
Sub-total	**11406**	**10083**	**9742**	**9050**
Cross-bred Adult Male	226	280	235	212
Cross-bred Adult Female	1243	1483	1734	2138
Young Stock Male*	2371	1994	1846	1264
Young Stock Female*	2825	2897	2627	2820
Total	**18071**	**16737**	**16184**	**15484**

> * Both indigenous & cross bred and upto the age of 2 ½ to 3 years.

> Source : Livestock and Poultry Census, Maharashtra State for the year 1997, 2003, 2007 & 2012, published by Commissionerate of Animal Husbandry, Govt. of Maharashtra.
>
> In the State, **almost all villages have cow grazing land (Gairan). These lands are reserved for and in the name of 'Cows'. Additionally, approximately 12.5 lakh hector permanent pasture lands are also available for grazing**."
>
> (emphasis added)

106. In paragraph 15, he has stated that there is nothing like "over population of cattle" in the face of declining cattle population. It is contended that the straying of cattle on roads can be checked by proper steps.

107. We must note here that at the stage of admission, the same Deputy Secretary Shri Shashank Sathe had filed an affidavit-in-reply. In Paragraph 16 of the said affidavit, it is contended that flesh of cow and its progeny leads to diabetes, obesity etc. We must note here that the said contention is not pressed into service in the subsequent affidavit dated 1st December 2015 of Shri Sathe. We must also note that the learmed Advocate General has not pressed the said contention in the earlier affidavit of Shri Shashank Sathe. In the affidavit dated 1st December 2015, he has stated thus:

> "17. In reply to para 21 of the Affidavit in Rejoinder I submit that **it is not the intention of the State to impose a vegetarian regime or dictate/force food habits.** The non-vegetarians are free to have their own food choices but cannot insist as a matter of right

> on a particular type of meat- beef in the present case. **As regards the effect of non-vegetarian food on health, the consumers are free to have their own informed choices. The aim and object of the impugned act is to preserve cattle for their undeniable utility in agriculture and draught sectors."**
>
> (emphasis added)

108. Coming back to the affidavit dated 1st December 2015 of Shri Shashank Sathe, it was contended that the ban on slaughter of cows, bulls and bullocks is only a restriction on the butchers and it will not amount to a complete ban on their occupation. It is contended that the butchers slaughter other animals as well. Lastly, it is contended that after the Amendment Act came into force, 155 cases have been registered in the State alleging commission of offence under the Animal Preservation Act. It is pointed out that some of the cases are of breach of the amended provisions of the Animal Preservation Act.

109. It must be noted here that even under the unamended Act, under Section 6, there was a prohibition on the slaughter of bulls and bullocks which were scheduled animals without obtaining a certificate in respect of such animal from the Competent Authority that the animal was fit for slaughter. Sub-section (2) of Section 6 reads thus:-

> "6(2). No certificate shall be granted under sub-section (1), if in the opinion of the competent authority,-
>
> (a) the scheduled animal, whether male or female, is or likely to become economical for the

purpose of draught or any kind of agricultural operations;

(b) the scheduled animal, if male, is or is likely to become economical for the purpose of breeding;

(c) the scheduled animal, if female, is or is likely to become economical for the purpose of giving milk or bearing offspring."

110. By the Amendment Act, bulls and bullocks have been deleted from the schedule and now a complete ban on their slaughter has been imposed. The ban imposed by Section 5 is essentially challenged on the ground of violation of fundamental right of butchers under Article 19(1)(g) of the Constitution of India and breach of fundamental rights guaranteed under Article 25. There is also a challenge on the ground of violation of Article 29. There is a challenge in some of the Petitions on the basis of violation of Article 21. But, none of the Petitioners have seriously pressed the challenge based on Article 21. Section 5 does not take away the right, if any of any individual, of eating meat of cow, bull or bullock. The said prohibition comes by way of Section 5D which will be dealt with separately. So, essentially the challenge to the amended portion of Section 5 will have to be dealt with on the basis of the allegations of violation of Article 19(1)(g), Article 25 and Article 29. We must note that the decision of the Apex Court in the case of ***State of Gujarat v. Mirzapur*** dealt with the challenge to similar Gujarat enactment, basically on the ground of infringement of rights of butchers and traders in meat under Article

19(1)(g) and Article 14 of the Constitution of India. However, the Apex Court has observed that the issue of violation of Article 25 has not been dealt with.

111. After the amendment to Section 5 of the Animal Preservation Act, Butchers can continue to slaughter other animals and traders can continue to trade in meat of the other animals. Thus, what is done by the impugned amendment to Section 5 is a restriction and not prohibition. Hence, the question is whether the restriction is reasonable in terms of Article 19(6).

112. We have extensively referred to the decision of the Apex Court in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***. In the said decision, the Constitution Bench of the Apex Court has quoted the decision in the case of ***Pathumma v. State of Kerala*** with approval. In Paragraph 39, the Constitution Bench of the Apex Court has analysed the decision in the case of ***Pathumma*** and the same has been summarized. Summary of the said decision reads thus:

> "(*1*) The courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people, which the legislature, in its wisdom, through beneficial legislation, seeks to solve. The

judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. This Court while acting as a sentinel on the *qui vive* to protect fundamental rights guaranteed to the citizens of the country *must try to strike a just balance between the fundamental rights and the larger and broader interests of society* so that when such a right clashes with a larger interest of the country it must yield to the latter.

(para 5)

(*2*) ***The legislature is in the best position to understand and appreciate the needs of the people as enjoined in the Constitution*. The Court will interfere in this process only when the statute is clearly violative of the right conferred on a citizen under Part III or when the Act is beyond the legislative competence of the legislature. The courts have recognised that *there is always a presumption in favour of the constitutionality of the statutes and the onus to prove its invalidity lies on the party which assails it*.**

(para 6)

(*3*) The right conferred by Article 19(1)(*f*) is conditioned by the various factors mentioned in clause (5).

(para 8)

(*4*) The following tests have been laid down as guidelines to indicate in what particular circumstances a restriction can be regarded as reasonable:

(*a*) *In judging the reasonableness of the restriction the court has to bear in mind the directive principles of State policy*. …

(para 8)

(*b*) **The restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirements of the interests of the**

general public. The legislature must take intelligent care and deliberation in choosing the course which is dictated by reason and good conscience so as *to strike a just balance between the freedom in the article and the social control* permitted by the restrictions under the article.

(para 14)

(*c*) No abstract or general pattern or fixed principle can be laid down so as to be of universal application. It will have to vary from case to case and *having regard to the changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances* all of which must enter into the judicial verdict.

(para 15)

(*d*) The Court is to examine the nature and extent, the purport and content of the right, the nature of the evil sought to be remedied by the statute, the ratio of harm caused to the citizen and the benefit conferred on the person or the community for whose benefit the legislation is passed.

(para 18)

(*e*) There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved.

(para 20)

(*f*) The needs of *the prevailing social values* must be satisfied by the restrictions meant to protect social welfare.

(para 22)

(*g*) **The restriction has to be viewed not only from the point of view of the citizen but the problem before the legislature and the object which is sought to be achieved by**

> **the statute. In other words, the Court must see whether the social control envisaged by Article 19(1) is being effectuated by the restrictions imposed on the fundamental right.** ***However important the right of a citizen or an individual may be it has to yield to the larger interests of the country or the community.***
>
> (para 24)

> (*h*) The Court is entitled to take into consideration matters of common report, history of the times and matters of common knowledge and the circumstances existing at the time of the legislation for this purpose."
>
> (emphasis added)

113. We have already referred to the conclusions drawn by the Apex Court dealing with six issues in the case of the ***State of Gujarat vs Mirzapur.*** The Apex Court has held that the Court would begin with the presumption regarding reasonability of restrictions. The facts stated in the preamble and the Statement of Objects and Reasons appended to any legislation are evidence of the legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the fundamental rights of the individuals. Hence,it will be necessary to reproduce the Objects and Reasons of the impugned Amendment Act. Clauses 1, 2 and 3 thereof read thus:

"1. The Maharashtra Animal Preservation Act, 1976 (Mah.IX of 1977), has been brought into force in the State from the 15th April 1978. The Act totally prohibits in any place in the State, slaughter of cows which also include heifer and male or female calf of cow and provides for preservation of certain other animals specified in the Schedule to the Act, like bulls, bullocks, female buffaloes and buffalo calves. Section 6 of the Act empowers the persons appointed as competent authority under this Act 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.

2. **The economy of the State of Maharashtra 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, at 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.**

3. **In order to achieve the above objective and also to ensure effective implementation of the policy of State Government towards securing the directive principles laid down in article 48**

> **of the Constitution of India and in larger public interest, it is considered expedient by the Government of Maharashtra to impose total prohibition on slaughter of also 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 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."
>
> (emphasis added)

114. In the preamble of the Animal Preservation Act before its amendment, it is stated that the Act has been made to provide for prohibition of slaughter of cows and for the preservation of certain other animals suitable for milch, breeding, draught or agricultural purposes. Clause 1 of the Statement of Objects and Reasons of the Amendment Act refers to Section 6 which empowers the Competent Authority to issue a certificate for slaughter of scheduled animals. It

also refers to the fact that 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 or agricultural operations, breeding or giving milk or bearing offspring. Clause 2 provides that the economy of the State of Maharashtra is still predominantly agricultural. It is stated that in the agricultural use of cattle for milch, draught, breeding or agricultural purposes has a great deal of importance. It also refers to the growing adoption of non-conventional energy sources like bio-gas plants and even waste material. Therefore, Clause 2 recites that after the cattle cease to be useful for the purposes of breeding or is too old to do work, it still continues to give dung for fuel, manure and bio-gas and, therefore, they cannot at any time be said to be useless. It is further stated that it is well accepted that the backbone of Indian agriculture is in a manner of speaking the cow or her progeny. Clause 3 records that with a view to achieve the above object and also to ensure effective implementation of the policy of the State Government towards securing the directive principles laid down in Article 48 of the Constitution of India and in larger public interest, it is considered expedient by the Government of Maharashtra to impose total prohibition on slaughter of the progeny of cow as well. It is provided that for effective implementation of such total ban, it is necessary to provide for prohibition on the transport, export, sale or purchase of the category of cattle, the slaughter of which is proposed to be banned. It is further

provided that for effective implementation of the ban, there is a need to provide for entry, search and seizure of the place and vehicles where there is a suspicion of such offences being committed and a provision of placing the burden of proof on accused.

115. Thus, the legislature felt that it is necessary to preserve and protect agricultural animals like bulls and bullocks. Even after bulls or bullocks cease to be useful for the purposes of breeding or even after bulls or bullocks become too old to do work, it is stated that such bulls or bullocks still continue to give dung for fuel, manure and bio-gas, and therefore, they cannot be said to be useless.

116. The statement of Objects and Reasons of the Amendment Act relies upon Article 48 of the Constitution of India which is incorporated in Part IV of the Constitution of India which reads thus:

> "48. Organisation of agriculture and animal husbandry.-- 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."**
>
> (emphasis added)

117. The second part of Article 48 enjoins the State to prohibit the slaughter of cows and calves and other milch and draught cattle.

Article 48A is also relevant which is again a part of the directive principles of the State policy. Article 48A of the Constitution of India reads thus:

> "48A. Protection and improvement of environment and safeguarding of forests and wild life.-- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

Clause (g) of Article 51A of the Constitution reads thus:

> "51-A. *Fundamental duties*.—It shall be the duty of every citizen of India—
>
> ***
>
> (*g*) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;"

At this stage, it will be necessary to make a reference to Paragraphs 48 to 52 and 68 of the decision of the Apex Court in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***. What is held therein can be summarized as under:

(i) the expression "milch or draught cattle" as employed in Article 48 of the Constitution is a description of a classification or species of cattle as distinct from cattle

which by their nature are not milch or draught and the said words do not exclude milch or draught cattle, which on account of age or disability, cease to be functional for those purposes either temporarily or permanently. The said words take colour from the preceding words “cows or calves”. A species of cattle which is milch or draught for a number of years during its span of life is to be included within the said expression. **On ceasing to be milch or draught it cannot be pulled out from the category of “other milch and draught cattle” mentioned in Article 48. Hence, bulls and bullocks on ceasing to be milch or draught continue to be covered by Article 48**.

(ii) Article 48 consists of two parts. The first part enjoins the State to “endeavour to organise agricultural and animal husbandry” and that too “on modern and scientific lines”. The emphasis is not only on “organisation” but also on “modern and scientific lines”. The subject is “agricultural and animal husbandry”. India is an agriculture-based economy. According to the 2001 census, 72.2% of the population still lives in villages (see India Vision 2020,

p. 99) and survives for its livelihood on agriculture, animal husbandry and related occupations. The second part of Article 48 enjoins the State, dehors the generality of the mandate contained in its first part, to take steps, in particular, "for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle".

(iii) **Cow progeny excreta is scientifically recognised as a source of rich organic manure. It enables the farmers avoid the use of chemicals and inorganic manure. This helps in improving the quality of the earth and the environment. The impugned enactment enables the State in its endeavour to protect and improve the environment within the meaning of Article 48-A of the Constitution.**

(iv) Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wildlife". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living

creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48. **The State is, in a sense, "all the citizens placed together" and, therefore, though Article 51-A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is, collectively speaking, the duty of the State** (see also AIIMS Student's Union vs. AIIMS).

(v) It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of State policy and fundamental duties as enshrined in Article 51-A of the Constitution play a significant role. Hence, the Statement and Objects and Reasons of the impugned Amendment Act shows that the same enacted to give effect to Articles 48,48A and clause (g) of Article 51A of the Constitution.

(emphasis added)

118. In the case of ***Javed v. State of Haryana***, the Apex Court held that the fundamental rights cannot be read in isolation but along with the directive principles and the fundamental duties enshrined under Article 51A of the Constitution of India.

119. While dealing with the issue of reasonableness of restriction imposed by the statute in the case of ***Sri SriKalimata Thakurani v. Union of India and Others,*** in Paragraph 19, the Apex Court observed thus:

> "**19.** Another important factor to consider the reasonableness of restrictions is if the restrictions imposed are excessive or disproportionate to the needs of a particular situation. **Further, if the restrictions are in implementation of the directive principles of the Constitution the same would be upheld as being in public interest because the individual interest must yield to the interest of the community at large, for only then a welfare State can flourish.**"
>
> (emphasis added)

120. In Paragraph 123 of the decision in the case of ***Akhil Bharatiya Soshit Karmachanri Sangh v. Union of India,*** the Apex Court held thus:

> "**123.** Because fundamental rights are justiciable and directive principles are not, it was assumed, in the beginning, that fundamental rights held a superior position under the Constitution than the directive principles, and that the latter were only of secondary importance as compared with the Fundamental Rights. That way of thinking is of the past and has become obsolete. It is now universally recognised that the difference between the Fundamental rights and directive principles lies in this that Fundamental rights

are primarily aimed at assuring political freedom to the citizens by protecting them against excessive State action while the directive principles are aimed at securing social and economic freedoms by appropriate State action. The Fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the directive principles cannot in the very nature of things be enforced in a court of law. It is unimaginable that any court can compel a legislature to make a law. If the court can compel Parliament to make laws then parliamentary democracy would soon be reduced to an oligarchy of Judges. It is in that sense that the Constitution says that the directive principles shall not be enforceable by courts. It does not mean that directive principles are less important than Fundamental rights or that they are not binding on the various organs of the State. Article 37 of the Constitution emphatically states that directive principles are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It follows that it becomes the duty of the court to apply the directive principles in interpreting the Constitution and the laws. The directive principles should serve the courts as a code of interpretation. Fundamental rights should thus be interpreted in the light of the directive principles and the latter should, whenever and wherever possible, be read into the former. **Every law attacked on the ground of infringement of a Fundamental Right should, among other considerations, be examined to find out if the law does not advance one or other of the directive principles or if it is not in discharge of some of the undoubted obligations of the State, constitutional or otherwise, towards its citizens or sections of its citizens, flowing out of the preamble, the directive principles and other provisions of the Constitution."**

(emphasis added)

121. The Apex Court in the case of ***State of Gujarat vs Mirzapur Moti Kureshi Kassab Jamat*** held that the facts stated in the preamble and the Statements of Objects and Reasons constitute important factors which will have to be taken into consideration by the Court while judging the reasonableness of any restrictions imposed on the fundamental rights. What is stated in the Statement of Objects and Reasons of the impugned Amendment Act can be summarized as under:

(i) The economy of the State of Maharashtra 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.

(ii) 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 any time, be said to be useless.

(iii) 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.

(iv) In order to achieve the above objective and also to ensure effective implementation of the policy of State Government towards securing the directive principles laid down in article 48 of the Constitution of India and in larger public interest, it is considered expedient by the Government of Maharashtra to impose total prohibition on slaughter of also the progeny of cow.

122. We must note that Statement of the Objects and Reasons of Gujarat Amendment Act the validity of which was upheld by the Apex Court in the case of ***Mirzapur,*** is similar to the one of the impugned Amendment Act. The Statement of the Objects and Reasons of Gujarat Amendment Act reads thus:

> "The existing provisions of the Bombay Animal Preservation Act, 1954 provides for prohibition against the slaughter of cow, calf of a cow, and the bulls and bullocks below the age of sixteen years. It is an established fact that the cow and her progeny sustain

> the health of the nation by giving them the life-giving milk which is so essential an item in a scientifically balanced diet.
>
> The economy of the State of Gujarat is still predominantly agricultural. In the agricultural sector, use of animals for milch, draught, breeding or agricultural purposes 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 biogas plants, even waste material has come to assume considerable value. After the cattle cease to breed or are too old to do work, they still continue to give dung for fuel, manure and biogas, and therefore, they cannot be said to be useless. It is well established that the backbone of Indian agriculture is, in a manner of speaking, the cow and her progeny and have on their back, the whole structure of the Indian agriculture and its economic system. In order to give effect to the policy of the State towards securing the principles laid down in Articles 47, 48 and clauses (*b*) and (*c*) of Article 39 of the Constitution, it was considered necessary also to impose total prohibition against slaughter of progeny of cow."

123. In the case of ***Mirzapur Moti Kureshi Kassab Jamat***, in paragraph 81, the Apex Court has analyzed the Statement of Objects and Reasons of the Gujarat Amendment which was impugned before it. The said paragraph reads thus:

> "81.The facts contained in the Preamble and the Statement of Objects and Reasons in the impugned enactment highlight the following facts:
>
> (i) it is established that cow and her progeny sustain the health of the nation;
>
> (ii) the working bullocks are indispensable for our agriculture for they supply power more

than any other animal (the activities for which the bullocks are usefully employed are also set out);

(iii) the dung of the animal is cheaper than the artificial manures and extremely useful of production of biogas;

(iv) it is established that the backbone of Indian agriculture is the cow and her progeny and they have on their back the whole structure of the Indian agriculture and its economic system;

(v) the economy of the State of Gujarat is still predominantly agricultural. In the agricultural sector use of animals for milch, draught, breeding or agricultural purposes has great importance. Preservation and protection of agricultural animals like bulls and bullocks needs emphasis. With the growing adoption of non-conventional energy sources like biogas plants, even waste material have come to assume considerable value. After the cattle cease to breed or are too old to work, they still continue to give dung for fuel, manure and biogas and, therefore, they cannot be said to be useless. Apart from the fact that we have to assume the above-stated facts as to be correct, there is also voluminous evidence available on record to support the above said facts. We proceed to notice few such documents".

124. If we compare the Statement of Objects and Reasons of the impugned Amendment Act with the Statement of Objects and Reasons of the Gujarat Amendment, both appear to be similar. The Apex Court relied upon the Statement of Objects and reasons of Gujarat Act to uphold ban on slaughter of bulls and bullocks. The Apex Court

also held that what was stated in the Statement of Objects and Reasons of the impugned Amendment Act was supported by the material placed on record.

125. Hence, we turn to the material placed on record by the State Government in the present case. Now we turn to the factual details placed on record by the State Government in the affidavits which we have elaborately set out in the earlier paragraphs. We may summarize what is stated in the affidavits and in particular the affidavit of Shri Shashank M. Sathe, the Deputy Secretary (Animal Husbandry Department) of the State Government in the PIL No.76 of 2015. What is stated in the affidavit can be summarized as under:

(a) As per the 2012 Census, the cattle which is not used either for draught or breeding was only 61,439 which was one percent of the total indigenous male population and less than half percent of the total cattle population. The percentage of the indigenous male cattle as per the 2012 Census which was not used either for draught or breeding was approximately only 1% of the total indigenous male population and less than half percentage of the total cattle population in the year 2012. It is, therefore, incomprehensible that such an insignificant portion of

the total cattle population will create pressure on the available pasture and grazing lands;

(b) In 1990, there were 2566 veterinary dispensaries which number increased to 4856 in the year 2015;

(c) In 1993, there were 53 mobile veterinary units which number increased to 65 by the year 2014;

(d) The average distance for availing veterinary aid considerably reduced in the year 1974-1975 to 16 kms which got further reduced to 3.91 kms in the year 2013-2014;

(e) The area under fodder crops in the State of Maharashtra in the year 2010-2011 was more than 9,01,000 Hectares and the area of permanent pasture and grazing lands was 12,45,000 Hectares. In almost all villages, there are cow grazing lands (Gairan). Moreover, there is a sizable production of foodgrains like bajra, raagi, jowar, etc. The plant residue of these crops is available as a fodder;

(f) Paragraph 5b deals with various schemes which are available for supply and distribution of fodder seeds. In the year 2014-2015, under the Rashtriya Krishi Vikas Yojana, the fodder seeds of 6782 Metric Tonnes have been distributed to the farmers in the State. During the years 2012-2013 and 2013-2014, 3706 silo-pits have been constructed at farmer's level for production of green fodder ;

(g) There are more that 290 Goshalas and Panjarpoles in the State established for taking care of the cattle sheltered with them and there were no reports of shortage of feed and fodder in the said Institutions;

(h) In the Current Financial Year (2015-2016), there were 23 cattle camps established in the affected/fodder scarce districts of Marathwada which housed nearly 27,479 animals;

(i) As compared to the developed countries like Canada, USA, etc, the average land holding in Maharashtra State is very low and more than 90% of the farmers are holding the land having area of less than 4

Hectares. Therefore, most of the farmers cannot afford use of tractors or mechanical tillers and they mostly depend on bullocks to plough the land.

(j) The advantages of ploughing with the help of bullocks have been set out in Paragraph 6 of the said affidavit;

(k) The figures of 1997, 2003, 2007 and 2012 have been set out in Paragraph 14 which show that the cattle population in the State is steadily decreasing;

(l) The dung of cows and progeny of cow is collected by the villagers and the same is used as fuel as well as organic fertilizer. Similarly, urine of the cattle is used as pesticide after processing with neem leaves. Hence,the cattle which is not useful for milch or draught does not cease to be useful to the agriculturists ;

(m) Similarly, organic manure may be available at certain price but its value is much more. It restores the fertility of soil to which no price can be attributed. It is devoid of the serious adverse features of chemical

fertilizers which are used as an alternative due to shortage of organic manure. Chemical fertilisers pollute the soil, the crop, the sub-soil water table, and are huge financial burden on the farmers. Consistent use of chemical fertilizers has ruined the soil in Punjab and other parts of the country and has rendered the soil infertile. Organic manure rejuvenates soil, is freely available as a bonus by-product from cattle at the farmers' door step and does not need the huge infrastructure for production and distribution of chemical fertilisers:

(n) The decline in male population is clearly attributable to the policy of slaughter of cow progeny.

126. In the present case, the State Government has justified the prohibition imposed on slaughter of a cow, bull or bullock by contending that the cow progeny excreta is recognized as a source of rich organic manure which enables the farmers to avoid the use of chemicals as well as inorganic manure which helps in improving the quality of earth and the environment. In paragraph 50 of its judgment in the case of ***Mirzapur***, the Apex Court has accepted this by observing that “Cow progeny excreta is scientifically recognised as a source of rich

organic manure. It enables the farmers avoid the use of chemicals and inorganic manure. This helps in improving the quality of the earth and the environment. The impugned enactment enables the State in its endeavour to protect and improve the environment within the meaning of Article 48-A of the Constitution." Thus, the stand taken by the State Government in the present matter that the dung of bulls and bullocks is used as an organic manure is very relevant as the use of such manure is in furtherance of the object specified in Article 48-A of the Constitution of India. The prevention of slaughter is for giving effect to Article 48. The duty of the State under Article 48 is of preserving and preventing the slaughter of cows and other milch and draught animals. We have already noted that the Apex Court held that on ceasing to be milch or draught, such animals cannot be pulled out of the category of other milch and draught animals.

127. In the case of ***Quareshi-I***, the Apex Court accepted that cow and her progeny play an important role in Indian Economy. The Apex Court observed thus:

> "**The discussion in the foregoing paragraphs clearly establishes the usefulness of the cow and her progeny.** They sustain the health of the nation by giving them the life-giving milk which is so essential an item in a scientifically balanced diet. The working bullocks are indispensable for our agriculture, for they supply power more than any other animal. Good breeding bulls are necessary to improve the breed so that the quality and stamina of future cows and

> working bullocks may increase and the production of food and milk may improve and be in abundance. **The dung of the animal is cheaper than the artificial manures and is extremely useful. In short, the backbone of Indian agriculture is in a manner of speaking the cow and her progeny.** Indeed Lord Linlithgow has truly said— 'The cow and the working bullock have on their patient back the whole structure of Indian agriculture.' (Report on the Marketing of Cattle in India, p. 20.) If, therefore, we are to attain sufficiency in the production of food, if we are to maintain the nation's health, the efficiency and breed of our cattle population must be considerably improved. **To attain the above objectives we must devote greater attention to the preservation, protection and improvement of the stock** and organise our agriculture and animal husbandry on modern and scientific lines."
>
> (emphasis added)

128. In Paragraph 86 of the decision in the case of ***Mirzapur***, the Apex Court noted the conclusions of the Study Group appointed by Gujarat University. The study report submitted its conclusions as under:

> "1. The aged bullocks above 16 years of age generated 0.68 horse power draft output per bullock while the prime bullocks generated 0.83 horsepower per bullock during carting-hauling draft work.
>
> 2. The aged bullocks worked satisfactorily for the light work for continuous 4 hours during morning session and total 6 hours per day (morning 3 hours and afternoon 3 hours) for medium work.
>
> 3. The physiological responses (Rectal temperature, Respiration rate and Pulse rate) and hemoglobin of aged bullocks were within the normal range and also maintained the incremental range during work. However, they exhibited the distress symptoms earlier as compared to prime bullocks.

> 4. Seven percent aged bullocks under study were reluctant to work and/or lied down after 2 hours of work.
>
> 5. The aged bullocks were utilized by the farmers to perform agricultural operations (ploughing, sowing, harrowing, planking, threshing), transport-hauling of agricultural product, feeds and fodders, construction materials and drinking water.
>
> Finally, **it proves that majority (93%) of the aged bullocks above 16 years of age are still useful to farmers to perform light and medium draft works**."
>
> (emphasis added)

129. Thus, the study shows that 93% of the aged bullocks above 16 years of age are still useful to the farmers. The argument based on lack of adequate supply of fodder will not be sufficient to invalidate Section 5. There is material placed on record to show that the bulls and bullocks, after they cease to be draught animals, continue to be useful in many ways for agriculture and farmers. The dung can be used for multiple purposes. All this has to be appreciated in the light of the fact that economy of the State is predominantly agricultural.

130. In Paragraph 132 of the decision in the case of ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***, the Apex Court rejected the argument that the poor will suffer only because of the prohibition of slaughter of cow progeny. Ultimately in paragraph 137, the Apex Court has observed thus:

> "137. .....The Legislature has correctly appreciated the needs of its own people and recorded the same in the Preamble of the impugned enactment and the

> Statement of Objects and Reasons appended to it. In the light of the material available in abundance before us, there is no escape from the conclusion that the protection conferred by impugned enactment on cow progeny is needed in the interest of Nation's economy. Merely because it 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."

131. The legislature is the best judge of what is good for the community. The legislative wisdom cannot be doubted only because some other view is possible. The amendment to Section 5 is for giving effect to Article 48 with the object of sustaining the economy of the State which is predominantly agricultural. Effect is sought to be given to Article 48 by banning slaughter of cow, bull or bullock. In our view, apart from the conclusions recorded by the Apex Court on the usefulness of the progeny of cow even after it ceases to be a milch or draught animal, the State of Maharashtra has placed on record facts and data to support what is stated in the Statement of Objects and Reasons of the Amendment Act. The State has placed on record material to support the stand that it is necessary to preserve cows, bulls and bullocks and to prevent its slaughter in the State. Considering the legal and factual position and what we have discussed above, we find that the stand of the State Government that prohibiting the slaughter of cows, bulls and bullocks is in public interest will have to be accepted.

132. The question is whether the restriction imposed by Article 19(1)(g) is unreasonable. We find nothing unreasonable about the said restriction. It is for giving effect to Article 48 and Clause (g) of Article 51A of the Constitution of India. The restrictions are not arbitrary and therefore, do not infringe Article 14. Therefore, the challenge based on violation of Article 19(1)(g) to the amendment made to Section 5 of the Animal Preservation Act completely prohibiting the slaughter of cows, bulls and bullocks is without any merit and the validity of the amendment to Section 5 will have to be upheld.

CONSIDERATION OF THE CHALLENGE TO AMENDMENT TO SECTION 5 BASED ON VIOLATION OF ARTICLE 25 OF THE CONSTITUTION OF INDIA

133. Now, we deal with the challenge to the amended portion of Section 5 on the basis of Article 25 of the Constitution of India. The contention raised is that the slaughter of a bull or bullock is an essential part of Muslim religion. It is contended that a large number of Muslim population is poor and they cannot afford to sacrifice one goat even on the occasion of BakrI'd instead seven persons can afford to sacrifice one cow or a progeny of cow. Reliance is placed by the Petitioners on the extracts of holy Quran and other material in support of their contention that the sacrifice of a cow, bull or bullock is an essential part of the Muslim religion. It is contended that to commemorate the outstanding act of sacrifice (Quarbani) by Prophet Abraham, people sacrifice a lamb,

goat, ram, cow, bull, bullock or camel on Eid-ul-Adha. It is contended in Writ Petition No.9209 of 2015 that the animal sacrifice is compulsory according to Islamic Jurisprudence and it is obligatory for every mature Muslim to sacrifice a cow, goat, lamb or a bull according to his financial status to almighty God. We must note here that the said issue is no longer res integra. In the case of ***Ashutosh Lahiri***, a three Judge Bench of the Apex Court observed that it is optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. The Apex Court held that it is, therefore, not obligatory for a muslim to sacrifice a cow or progeny of cow. The Paragraphs 8 and 9 of the said decision read thus:

> "**8.** The aforesaid relevant provisions clearly indicate the legislative intention that healthy cows which are not fit to be slaughtered cannot be slaughtered at all. That is the thrust of Section 4 of the Act. In other words there is total ban against slaughtering of healthy cows and other animals mentioned in the schedule under Section 2 of the Act. This is the very essence of the Act and it is necessary to subserve the purpose of the Act i.e. to increase the supply of milk and avoid the wastage of animal power necessary for improvement of agriculture. Keeping in view these essential features of the Act, we have to construe Section 12 which deals with power to grant exemption from the Act. As we have noted earlier the said section enables the State Government by general or special order and subject to such conditions as it may think fit to impose, to exempt from the operation of this Act slaughter of any animal for any religious, medicinal or research purpose. Now it becomes clear that when there is a total ban under the Act so far as slaughtering of healthy cows which are not fit to be slaughtered as per Section 4(1) is

concerned, if that ban is to be lifted even for a day, it has to be shown that such lifting of ban is necessary for subserving any religious, medicinal or research purpose. The Constitution Bench decision of this Court in *Mohd. Hanif Quareshi case* [AIR 1958 SC 731 : 1959 SCR 629] at (SCR) page 650 of the report speaking through Das, C.J. referred to the observations in Hamilton's translation of *Hedaya*, Book XLIII at page 592 that **it is the *duty* of every free Mussalman arrived at the age of maturity, to offer a sacrifice on the I'd Kurban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslims consists of making sacrifice of any animal which should be a healthy animal, on BakrI'd, then slaughtering of cow is not the only way of carrying out that sacrifice.** It is, therefore, obviously not an essential religious purpose but an optional one. In this connection Mr Tarkunde for the appellants submitted that even optional purpose would be covered by the term “any religious purpose” as employed by Section 12 and should not be an essential religious purpose. We cannot accept this view for the simple reason that Section 12 seeks to lift the ban in connection with slaughter of such animals on certain conditions. For lifting the ban it should be shown that it is essential or necessary for a Muslim to sacrifice a healthy cow on BakrI'd day and if such is the requirement of religious purpose then it may enable the State in its wisdom to lift the ban at least on BakrI'd day. But that is not the position. It is well settled that an exceptional provision which seeks to avoid the operation of main thrust of the Act has to be strictly construed. In this connection it is profitable to refer to the decisions of this Court in the cases*Union of India* v. *Wood Paper Ltd.* [(1990) 4 SCC 256 : 1990 SCC (Tax)

422 : JT (1991) 1 SC 151] and *Novopan India Ltd.* v. *C.C.E. & Customs* [1994 Supp (3) SCC 606 : JT (1994) 6 SC 80] . If any optional religious purpose enabling the Muslim to sacrifice a healthy cow on BakrI'd is made the subject-matter of an exemption under Section 12 of the Act then such exemption would get granted for a purpose which is not an essential one and to that extent the exemption would be treated to have been lightly or cursorily granted. Such is not the scope and ambit of Section 12. We must, therefore, hold that before the State can exercise the exemption power under Section 12 in connection with slaughter of any healthy animal covered by the Act, it must be shown that such exemption is necessary to be granted for subserving an essential religious, medicinal or research purpose. If granting of such exemption is not essential or necessary for effectuating such a purpose no such exemption can be granted so as to bypass the thrust of the main provisions of the Act. We, therefore, reject the contention of the learned counsel for the appellants that even for an optional religious purpose exemption can be validly granted under Section 12. In this connection it is also necessary to consider *Quareshi case* [AIR 1958 SC 731 : 1959 SCR 629] which was heavily relied upon by the High Court. The total ban on slaughter of cows even on BakrI'd day as imposed by Bihar Legislature under Bihar Preservation and Improvement of Animals Act, 1955 was attacked as violative of the fundamental right of the petitioners under Article 25 of the Constitution. Repelling this contention the Constitution Bench held that even though Article 25(1) granted to all persons the freedom to profess, practise and propagate religion, as slaughter of cows on BakrI'd was not an essential religious practice for Muslims, total ban on cow's slaughter on all days including BakrI'd day would not be violative of Article 25(1). **As we have noted earlier the Constitution Bench speaking through Das C.J., held that it was optional for the Muslims to sacrifice a cow on behalf of seven persons on BakrI'd but it does not appear to be obligatory**

that a person must sacrifice a cow. It was further observed by the Constitution Bench that the very fact of an option seemed to run counter to the notion of an obligatory duty. One submission was also noted that a person with six other members of his family may afford to sacrifice a cow but may not be able to afford to sacrifice seven goats, and it was observed that in such a case there may be an economic compulsion although there was no religious compulsion. In this connection, Das C.J. referred to the historical background regarding cow slaughtering from the times of Mughal emperors. Mughal Emperor Babur saw the wisdom of prohibiting the slaughter of cows as and by way of religious sacrifice and directed his son Humayun to follow this. Similarly, Emperors Akbar, Jehangir and Ahmad Shah, it is said, prohibited cow slaughter. In the light of this historical background it was held that total ban on cow slaughter did not offend Article 25(1) of the Constitution.

9. **In view of this settled legal position it becomes obvious that if there is no fundamental right of a Muslim to insist on slaughter of healthy cow on BakrI'd day, it cannot be a valid ground for exemption by the State under Section 12 which would in turn enable slaughtering of such cows on BakrI'd. The contention of learned counsel for the appellants that Article 25(1) of the Constitution deals with essential religious practices while Section 12 of the Act may cover even optional religious practices is not acceptable**. No such meaning can be assigned to such an exemption clause which seeks to whittle down and dilute the main provision of the Act, namely, Section 4 which is the very heart of the Act. If the appellants' contention is accepted then the State can exempt from the operation of the Act, the slaughter of healthy cows even for non-essential religious, medicinal or research purpose, as we have to give the same meaning to the three purposes, namely, religious, medicinal or research

> purpose, as envisaged by Section 12. It becomes obvious that if for fructifying any medicinal or research purpose it is not necessary or essential to permit slaughter of healthy cow, then there would be no occasion for the State to invoke exemption power under Section 12 of the Act for such a purpose. Similarly it has to be held that if it is not necessary or essential to permit slaughter of a healthy cow for any religious purpose it would be equally not open to the State to invoke its exemption power under Section 12 for such a religious purpose. We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on BakrI'd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily sacrificed for earning religious merit on BakrI'd."
>
> (emphasis added)

134. This issue was dealt with by the Constitution Bench of the Apex Court in the case of ***Quareshi-I***. In the said case, the challenge was to the total ban on slaughter of cows on BakrI'd day under the Bihar Preservation and Improvement of Animals Act, 1955. The challenge was specifically on the ground of violation of fundamental rights guaranteed under Article 25(1) of the Constitution of India. The Constitution Bench held that the slaughter of cows on BakrI'd was not an essential religious practice for Muslims and, therefore, a total ban on cow's slaughter on the BakrI'd day could not be violative of Article 25(1). It was held that there is an option given to sacrifice a goat or bull or a bullock or a camel. The said decision in the case of ***Quareshi-I*** has been relied upon in the decision of the Apex Court in the case of

Ashutosh Lahiri. It is well settled that what is protected by Articles 25 and 26 is only such religious practice which forms an essential and integral part of the religion. A practice followed may be a religious practice. But, if it is not an essential or integral part of the religion, the same is not protected by Article 25 of the Constitution of India. The alleged economic compulsion will not make the alleged practice an essential part of the religion. It is held in the cases of ***Ashutosh Lahiri*** and ***Quareshi-I*** that the sacrifice of a cow or its progeny is not an essential part of the muslim religion. Hence, violation of Article 25(1) of the Constitution of India is not at all attracted.

CONSIDERATION OF CHALLENGE TO SECTION 5 BASED ON ARTICLE 29 OF THE CONSTITUTIOIN OF INDIA

135. Then we turn to the challenge on the ground of violation of Article 29. It is alleged that the ban on slaughter of bulls and bullocks is violative of the fundamental rights of the Petitioners to conserve their culture. The learned Advocate General rightly submitted that no culture can claim perpetual and inflexible existence beyond the character of the civilization that created it. He submitted that a customary right could not be confused with the culture. Article 29 is for preservation of the essential culture of the people and not with peripheral customs which have no relation to an existing culture. He rightly gave an example of the abolition of the practice of Sati or untouchability which can be said to be a part of traditional practice.

However, the abolition of such traditional practice cannot amount to destroying culture. The Petitioners who are agitating the violation of Article 29 have failed to establish that the slaughter of cows, bulls or bullocks is a part of the essential culture of any religion or community. Cultural right cannot be confused with right to religion. Common thread in Article 29(1) is language, script and culture and not religion. Therefore, the argument based on the violation of Article 29 is without any merit.

Hence, to conclude, the challenge to the constitutional validity of amended Section 5 of the Animal Preservation Act must fail.

[B] THE VALIDITY OF SECTIONS 5A, 5B AND 5C OF THE ANIMAL PRESERVATION ACT

SECTION 5A

136. Section 5A is in two Sub-sections. Sub-section (1) of Section 5A reads thus:

> "5A(1) No person shall transport or offer for transport or cause to be transported cow, bull or bullock from any place within the State to any place outside the State for the purpose of its slaughter in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaughtered.

137. Sub-section (1) of Section 5A incorporates a prohibition on any person transporting or offering to transport or cause to be transported a cow, bull or bullock from any place within the State to

any place outside the State for the purposes of its slaughter in contravention of the provisions of the Animal Preservation Act or with the knowledge that it will be or it is likely to be so slaughtered. The ban imposed by the amendment to Section 5 on slaughter of cows, bulls or bullocks is applicable only within the State of Maharashtra as the law is made by the State Legislature. Therefore, there is no question of anyone slaughtering a cow, bull or bullock at any place outside the State of Maharashtra in contravention of the provisions of section 5 the Animal Preservation Act as the prohibition on slaughter imposed by said Act will not apply outside the State. If anyone transports cow, bull or bullock to any place outside the State and slaughters it at that place, such slaughter cannot be in breach of the Animal Preservation Act as the State Act cannot and does not declare a slaughter made outside the State as illegal. The legislature of the State has no legislative competence to do that. Hence, the Section, as worded, makes little practical sense. It may, though cover a hypothetical case of such transport of animals outside the State so as to slaughter it within the State, of course, after it is brought back to the State possibly by the slaughterer himself, the transporter and slaughterer being different persons.

138. However, the object of the amendment to Section 5 is to preserve cows, bulls or bullocks inside the State. It can be said that this

provision has a direct and proximate nexus with the object sought to be achieved by making amendment to Section 5 for imposing prohibition on slaughter of cows, bulls and bullocks in the State. This provision can be said to have been made for the effective implementation of Section 5. Therefore, subject to what we have observed above, there is no merit in the challenge to Sub-Section (1) of Section 5A.

139. Sub-section (2) of Section 5A reads thus:

> "(2) No person shall export or cause to be exported outside the State of Maharashtra cow, bull or bullock for the purpose of slaughter either directly or through his agent or servant or any other person acting on his behalf, in contravention of the provisions of this Act or with the knowledge that it will be or is likely to be slaughtered."

Sub-section (2) of Section 5A imposes a prohibition on any person exporting or causing to be exported outside the State of Maharashtra a cow, bull or bullock for the purposes of its slaughter either directly or through his agent, or servant or any other person acting on his behalf, "in contravention of the provisions of this Act" or with the knowledge that it will be or is likely to be so slaughtered.

140. The conclusions which we have recorded above whilst dealing with Sub-Section (1) of Section 5A will apply to Sub-Section (2) as well and the challenge to the validity Sub-Section (2) of Section 5A must fail.

SECTION 5B

141. The Section 5B provides that no person shall purchase, sale or otherwise dispose of or offer to purchase, sell or dispose of any cow, bull or bullock for slaughter or knowing or having reason to believe that such cow, bull or bullock shall be slaughtered in contravention of the provisions of the Act. This restriction is naturally applicable within the State of Maharashtra which appears to be in furtherance of the intention of the legislature to put a complete embargo on slaughter of cows, bulls or bullocks with a view to implement Article 48. The Sub-section 5B has direct and proximate connection with the ban imposed by Section 5. We have dealt with issue of direct and proximate connection while dealing with Sections 5C. Section 5B has been enacted with a view to ensure that the ban imposed by Section 5 is effectively implemented. Hence, the said restriction is reasonable and cannot be unconstitutional.

SECTION 5C

142. Section 5C starts with a non-obstante clause which provides that notwithstanding anything contained in any other law for the time being in force, no person shall have in his possession flesh of any cow, bull or bullock slaughtered in contravention of the provisions of this Act. As the prohibition of slaughter of cow, bull or bullock is

within the State, Section 5C will apply to a possession of flesh of any cow, bull or bullock slaughtered within the State. Again this provision seems to be in furtherance of the intention of the legislature to ensure that the cows, bulls or bullocks in the State should be preserved.

143. The first challenge to the constitutional validity of the provisions of the Sections 5C is that the possession of such flesh is made an offence though the possession may not be a conscious possession, namely with the knowledge that the flesh is the product of illegal slaughter of cow, bull or bullock made in contravention of Section 5. The second ground is that Section 9B introduced by the Amendment Act imposes a negative burden in a trial for offences punishable under Sections 9 and 9A on the accused of proving that the slaughter, transport, export outside the State, purchase, sale or possession of flesh of cow, bull or bullock was not in contravention of the provisions of the Animal Preservation Act. We must note here that there is a challenge in some of the Petitions to the constitutional validity of the provisions of Section 9B. By a detailed finding recorded in this judgment, we are accepting the contention that Section 9B suffers from the vice of unconstitutionality and, therefore, it is not necessary to test the challenge to Sections 5A, 5B and 5C on the basis of the provisions of the Section 9B.

144. Another challenge to Section 5C is on the ground that the said provision is not an ancillary or incidental provision. On a plain reading of Section 5C, we disagree with the said submission. The Section 5C attempts to put a ban on any person possessing flesh of any cow, bull or bullock slaughtered in contravention of the Animal Preservation Act. As the provision imposing a complete ban on the slaughter of cow, bull or bullock is constitutional, we do not see how the vice of unconstitutionality is attracted to the provision which seeks a ban on a person consciously possessing the flesh of cow, bull or bullock which is slaughtered inside the State. The said provision ensures the ban imposed by Section 5 is properly implemented. Therefore, it can be said that the said provision is having a direct nexus to the provision of Section 5.

145. On this aspect, we may state that the learned Advocate General, notwithstanding the provisions of Section 9B, stated that in the prosecution for an offence punishable under Section 9 or 9A, the initial burden to prove the basic existence of facts constituting the offence of violation of Sections 5A, 5B and 5C will be always on the State. In short, the offence will be attracted if the possession is a conscious possession.

146. The challenge to Section 5C essentially by the owners of cold-storages in the State is based on violation of fundamental rights under Article 19(1)(g) of the Constitution of India. The contention is that Section 5C violates their fundamental rights under Article 19(1)(g) of the Constitution of India and the restriction imposed is unreasonable which will not stand to test of Article 19(6) of the Constitution of India.

147. The contention is that the burden is on the State to justify the law in cases where there is an allegation of violation of Article 19 of the Constitution of India. Reliance is placed on the decision of the Apex Court in the case of ***Deena alias Deen Dayal and Others***. As stated earlier, Section 5C prohibits any person from possessing the flesh of any cow, bull or bullock slaughtered in contravention of the provisions of the Animal Preservation Act. Section 5C applies to the flesh of any cow, bull or bullock which is slaughtered inside the State. Such flesh is a product of a slaughter of cow, bull or bullock which is banned under Section 5. Section 5C puts restrictions on the owners of the cold storages of storing flesh of cow, bull or bullock slaughtered in the State. The storage of other categories of meat is not prohibited. The storage of other items of food is not prohibited. We have already accepted the submission of the State Government that the ban on slaughter of a cow, bull or bullock is in public interest. If ban on slaughter of progeny of

cow is held to be in public interest, it follows that even restriction imposed by Section 5C is in public interest.

148. There is another argument canvassed by the owners of the cold storages. The argument is that Section 5C can be misused as it is impossible for the owners of cold storages to know whether the meat which is stored by their customers in their cold storages is the product of the illegal slaughter of animals which is prohibited under Section 5. Perhaps, this argument is in the context of negative burden put on the accused in a trial for offences under Sections 9 and 9A. Firstly, the possibility of a legal provision being misused is no ground to hold it unconstitutional. Secondly, in the subsequent part of the decision, we have held Section 9B to be an unconstitutional. Another argument is that if the possession contemplated by Section 5C is not construed as "conscious possession", a person who is found in possession of flesh of cow, bull or bullock without the knowledge of the fact that the same is the flesh of animals slaughtered in contravention of the Section 5 will be convicted for an offence punishable under Section 5C.

149. Another limb of argument is that if Section 5C cannot be struck down, the word 'possession' will have to be read down to mean 'conscious possession'. As stated earlier, the learned Advocate General on behalf of the State has submitted that initial burden will be on the

prosecution to prove the facts which are necessary to constitute an offence under Sections 9 and 9A. The burden will be on the State to prove that the accused was in possession of flesh of any cow, bull or bullock illegally slaughtered within the State. In the absence of Section 9B, the prosecution will have to prove that the accused who is charged for violation of Section 5C was found in possession of flesh of cow, bull or bullock slaughtered within the State with the knowledge that it is a flesh of cow, bull or bullock so slaughtered. On this aspect, it will be necessary to make a reference to what is held by the Apex Court in its decision in the case of ***People's Union for Civil Liberties (PUCL) v. Union of India and Another.*** The Apex Court was dealing with Section 4 of the Prevention of Terrorism Act, 2002. Section 4 read thus:

> "**4. Possession of certain unauthorized arms, etc.**— Where any person is in unauthorized possession of any,—
>
> (*a*) arms or ammunition specified in columns (2) and (3) of Category I or Category III(*a*) of Schedule I to the Arms Rules, 1962, in a notified area,
>
> (*b*) bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not,
>
> he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force, and be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.
>
> *Explanation*.—In this section "notified area" means such area as the State Government may, by notification in the Official Gazette, specify."

While dealing with the offence under Section 4, in paragraphs 26 and 27 of the decision in the case of ***People's Union for Civil Liberties and Another v. Union of India***, the Apex Court has held thus:

> "**26.** Section 4 provides for punishing a person who is in "unauthorised possession" of arms or other weapons. **The petitioners argued that since the knowledge element is absent the provision is bad in law**. A similar issue was raised before a Constitution Bench of this Court in *Sanjay Dutt* v. *State (II)* (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] . Here this Court in para 19 observed that: (SCC p. 430)
>
> > "Even though the word 'possession' is not preceded by any adjective like 'knowingly', yet it is common ground that in the context the word 'possession' must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorised substance has been understood."
>
> **27. The finding of this Court squarely to the effect that there exists a mental element in the word possession itself answers the petitioners' argument.** The learned Attorney General also maintains the stand that Section 4 presupposes conscious possession. Another aspect pointed out by the petitioners is about the "unauthorised" possession of arms and argued that unauthorised

> possession could even happen, for example, by non-renewal of licence etc. In the light of *Sanjay Dutt case* [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] this section presupposes knowledge of terrorist act for possession. There is no question of innocent persons getting punished. Therefore, we hold that there is no infirmity in Section 4."
>
> (emphasis added)

150. Thus, even in a case of a legislation which makes unlawful possession of arms and ammunition an offence, the Apex Court read the possession as a conscious possession and not merely a custody. The meaning of the word "conscious" is awareness of a fact. It is a state of mind which is deliberate. Section 5C makes possession of flesh as an offence. Mental element is also a part of "possession" under Section 5C. The knowledge element is certainly a part of "possession" in Section 5C. The law laid down by the Apex Court will apply to Section 5C as well. To that extent, the Petitioners are right in contending that "conscious" possession will have to be read into Section 5C. If the possession under Section 5C is not treated as a conscious possession and is treated as mere custody, there is every possibility of an innocent person being convicted for an offence punishable under Section 9A.

151. The next limb of argument in support of the challenge to Sections 5A to 5C is based on Article 301 read with Article 304B. The contention is that the prohibition imposed by the Sections has a direct and immediate effect on the trade, commerce and intercourse of flesh of

cows, bulls or bullocks among states. Articles 301 provides that trade, commerce and intercourse throughout the territory of India shall be free. It is not a fundamental right but is an ordinary right conferred by the Constitution of India. Article 301 is specifically subject to the other provisions of the Constitution. Moreover, Article 304B permits imposition of reasonable restrictions. We have held that the ban on slaughter of cow and its progeny in the State is valid. The ban on possession of flesh of cows, bulls or bullocks illegally slaughtered in the State has a direct correlation or nexus with the prohibition imposed by Section 5. Therefore, assuming that the provisions of the Amended Act violate rights conferred by Article 301 of the Constitution of India, the restriction imposed is reasonable as this Court has held that the prohibition of slaughter of cows, bulls or bullocks is in public interest.

(C) VALIDITY OF SECTION 5D OF ANIMAL PRESEVATION ACT

Section 5D which reads thus:

> "5D. No person shall have in his possession flesh of any cow, bull or bullock slaughtered outside the State of Maharashtra."

152. The effect of Section 5D is that there is a complete prohibition on possessing flesh of cow, bull or bullock even though the flesh is of cow, bull or bullock which is slaughtered outside the State of Maharashtra. The effect of the said Section 5D is that if a cow, bull or

bullock is slaughtered in another State or in a foreign country where there is no restriction on slaughter of cow, bull or bullock, even then possession of flesh of such cow, bull or bullock is prohibited in the State. Not only that its possession is prohibited in the State, but the possession is made an offence by virtue of the Amendment Act. The main challenge to the constitutional validity of the Section 5D is on the basis of infringement of right of the Petitioners guaranteed by the Article 21 of the Constitution of India.

153. The contention in support of the challenge to Section 5D is that it constitutes a clear infringement of the Petitioner's right to privacy (which includes the right to eat food of one's choice) The question before this Court is whether the right to privacy is a fundamental right guaranteed under Article 21 of the Constitution of India. If the answer to the said question is in the negative, the question will be whether Section 5D infringes the said fundamental right.

WHETHER RIGHT OF PRIVACY IS A PART OF PERSONAL LIBERTY GUANTEED BY ARTICLE 21

154. The first relevant decision which needs consideration is in the case of ***Kharak Singh v. State of U.P. and Others***. It is a decision of the Constitution Bench of the Apex Court consisting of six Hon'ble Judges. The majority view in the said decision is by Ayyangar, J and the minority view is by Subba Rao, J. The challenge before the Apex Court

was to the constitutional validity of Chapter 22 of the U.P. Police Regulations. Chapter 22 included Regulation 236 which defines "survelliance". Paragraph 7 of the said decision refers to the definition of "survelliance" in Regulation 236 which reads thus:

> "7. The sole question for determination therefore is whether "surveillance" under the impugned Ch. XX of the U.P. Police Regulations constitutes an infringement of any of a citizen's fundamental rights guaranteed by Part III of the Constitution. The particular Regulation which for all practical purposes defines "surveillance" is Regulations 236 which reads :
>
> "Without prejudice to the right of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures :
>
> (a) Secret picketing of the house or approaches to the house of suspects;
>
> (b) domiciliary visits at night;
>
> (c) through periodical inquiries by officers not below the rank of Sub-Inspector into repute, habits, associations, income, expenses and occupation;
>
> (d) the reporting by constables and chaukidars of movements and absence from home;
>
> (e) the verification of movements and absences by means of inquiry slips;
>
> (f) the collection and record on a history-sheet of all information bearing on conduct."

155. As noted in paragraph 9 of the said decision, the argument of the Petitioner was that Regulation 236 infringes the fundamental rights guaranteed under Clause (d) of Article 19(1) and it also infringes personal liberty under Article 21 of the Constitution of India. In Paragraph 13 of the majority view, the Apex Court discussed the concept of personal liberty under Article 21 of the Constitution of India. The Apex Court observed that while Article 19(1) deals with particular species or attributes of the freedom, personal liberty under Article 21 takes in and comprises the residue. The Apex Court in the majority view held that Clause (b) of Regulation 236 is violative of Article 21 of the Constitution of India. In paragraphs 15 and 16 the majority view holds thus:

> "**15.** It is true that in the decision of the U.S. Supreme Court from which we have made these extracts, the Court had to consider also the impact of a violation of the Fourth Amendment which reads:
>
> > "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
>
> and that our Constitution does not in terms confer any like constitutional guarantee. Nevertheless, these extracts would show that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it

> were the violation of a common law right of a man an ultimate essential of ordered liberty, if not of the very concept of civilisation. An English Common Law maxim asserts that "every man's house is his castle" and in *Semaynecase* [5 Coke 91 : 1 Sm LC (13th Edn) 104 at p. 105] where this was applied, it was stated that "the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose." We are not unmindful of the fact that *Semayne case* [5 Coke 91 : 1 Sm LC (13th Edn) 104 at p. 105] was concerned with the law relating to executions in England, but the passage extracted has a validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a concept of "personal liberty" which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value.
>
> **16.** In our view clause (*b*) of Regulation 236 is plainly violative of Article 21 and as there is no "Law" on which the same could be justified it must be struck down as unconstitutional."

156. In Paragraph 17, the majority view observes thus:

> "17. …..As already pointed out, the right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III."

157. In the minority view of *Subba Rao, J*, it was held that under the Constitution, though right to privacy is not expressly declared as fundamental right, the said right is essentially an ingredient of personal liberty. Relevant part of Paragraph 28 of the said decision reads thus:

"**28.** Now let us consider the scope of Article 21. The expression "life" used in that Article cannot be confined only to the taking away of life i.e. causing death. In *Munn* v. *Illinois* [(1877) 94 US 113] , Field, J., defined "life" in the following words:

> "Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, of the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world."

The expression "liberty" is given a very wide meaning in America. It takes in all the freedoms. In *Bolling* v. *Sharpe* [(1954) 347 US 497, 499] , the Supreme Court of America observed that the said expression was not confined to mere freedom from bodily restraint and that liberty under law extended to the full range of conduct which the individual was free to pursue, But this absolute right to liberty was regulated to protect other social interests by the State exercising its power such as police power, the power of eminent domain, the power of taxation etc. The proper exercise of the power which is called the due process of law is controlled by the Supreme Court of America. In India the word "liberty" has been qualified by the word "personal", indicating thereby that it is confined only to the liberty of the person. The other aspects of the liberty have been provided for in other Articles of the Constitution. The concept of personal liberty has been succinctly explained by Dicey in his book on *Constitutional Law*, 9th edn. The learned author describes the ambit of that right at pp. 207-08 thus:

> "The right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification."

Blackstone in his *Commentaries on the Laws of England*, Book 1, at p. 134 observes:

> "Personal liberty includes the power to locomotion of changing situation, or removing one's person to whatsoever place one's inclination may direct, without imprisonment or restraint, unless by due course of law."

In *A.K. Gopalan case* [1950 SCR 88] , it is described to mean liberty relating to or concerning the person or body of the individual; and personal liberty in this sense is the antithesis of physical restraint or coercion. The expression is wide enough to take in a right to be free from restrictions placed on his movements. The expression "coercion" in the modern age cannot be construed in a narrow sense. In an uncivilized society where there are no inhibitions, only physical restraints may detract from personal liberty, but as civilization advances the psychological restraints are more effective than physical ones. The scientific methods used to condition a man's mind are in a real sense physical restraints, for they engender physical fear channelling one's actions through anticipated and expected grooves. So also the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. **It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty.** Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle"; it is his rampart against encroachment on his personal liberty. The pregnant words of that famous Judge, Frankfurter J., in *Wolf* v. *Colorado* [[1949] 238 US 25] pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one. If physical restraints on a person's movements affect

> his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. It so understood, all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Article 21 of the Constitution."
>
> (emphasis added)

158. The second judgment on this aspect is in the case of ***Gobind v. State of Madhya Pradesh and Another***. In Paragraphs 22 to 24 of the said decision, the Apex Court held thus:

> "**22.** There can be no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test. Then the question would be whether a State interest is of such paramount importance as would justify an infringement of the right. Obviously, if the enforcement of morality were held to be a compelling as well as a permissible State interest, the characterization of a claimed right as a fundamental privacy right would be of far less significance. The question whether enforcement of morality is a State interest sufficient to justify the infringement of a fundamental privacy right need not be considered for the purpose of this case and therefore we refuse to enter the controversial thicket whether enforcement of morality is a function of State.

23. Individual autonomy, perhaps the central concern of any system of limited Government, is protected in part under our Constitution by explicit constitutional guarantees. In the application of the Constitution our contemplation cannot only be of what has been but what may be. Time works changes and brings into existence new conditions. Subtler and far reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. Yet, too broad a definition of privacy raises serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. Of course, privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values.

24. Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty."

Thereafter, in paragraph 28, the Apex Court held thus:

"**28.** The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute."

159. The next decision on this aspect is in the case of ***R. Rajagopal alias R.R.Gopal and Another v. State of Tamil Nadu and Others***. The questions were framed by the Apex Court in Paragraph 8. The Question No.1 in Paragraph 8 reads thus:

> "1. Whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorized writing infringe the citizen's right to privacy? Whether the freedom of press guaranteed by Article 19(1)(a) entitles the press to publish such unauthorized account of a citizen's life and activities and if so to what extent and in what circumstances ? What are the remedies open to a citizen of this country in case of infringement of his right to privacy and further in case such writing amounts to defamation?"

In Paragraph 9, the Apex Court considered its decision in the case of ***Kharak Singh***. Thereafter, the Apex Court considered various decisions of Foreign Courts. In Clause (1) of Paragraph 26, the Apex Court summarized the principles. Clause (1) reads thus:

> "1. **The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters.** None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however be different, if a person voluntarily thrusts

himself into controversy or voluntarily invites or raises a controversy."

(emphasis added)

Thus, the Apex Court held that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21 of the Constitution of India which includes a right to be let alone.

160. The issue whether a right to privacy is a part of the fundamental rights was again considered by the Apex Court in the case of ***District Registrar and Collector, Hyderabad and Another v. Canara Bank and Others***. In Paragraph 24, the Apex Court observed that in our Constitution, there is no specific provision as regards the privacy. While interpreting the decision in the case of ***Kharak Singh***, the Apex Court in Paragraph 36 observed thus:

"**36.** Two later cases decided by the Supreme Court of India where the foundations for the right were laid, concerned the intrusion into the home by the police under State regulations, by way of "domiciliary visits". Such visits could be conducted any time, night or day, to keep a tab on persons for finding out suspicious criminal activity, if any, on their part. The validity of these regulations came under challenge. In the first one, *Kharak Singh* v. *State of U.P* [(1964) 1 SCR 332 : (1963) 2 Cri LJ 329] the U.P. Regulations regarding domiciliary visits were in question and the majority referred to *Munn* v. *Illinois* [94 US 113 : 24 L Ed 77 (1877)] and held that though our Constitution did not refer to the right to privacy expressly, still it can be traced from the right to "life" in Article 21. **According to the majority, clause 236 of the relevant**

> **Regulations in U.P., was bad in law; it offended Article 21 inasmuch as there was *no law* permitting interference by such visits. The majority did not go into the question whether these visits violated the "right to privacy". But, Subba Rao, J. while concurring that the fundamental right to privacy was part of the right to liberty in Article 21, part of the right to freedom of speech and expression in Article 19(1)(*a*), and also of the right to movement in Article 19(1)(*d*), held that the Regulations permitting surveillance violated the fundamental right of privacy. In the discussion the learned Judge referred to *Wolf* v. *Colorado* [338 US 25 : 93 L Ed 1782 (1949)] . In effect, all the seven learned Judges held that the "right to privacy" was part of the right to "life" in Article 21.**"
>
> (emphasis added)

Thereafter, the Apex Court considered the decision in the case of ***Gobind***. Ultimately, in Paragraphs 39 and 40, the Apex Court held thus:

> "**39.** We have referred in detail to the reasons given by Mathew, J. in *Gobind* [(1975) 2 SCC 148 : 1975 SCC (Cri) 468] to show that, the right to privacy has been implied in Articles 19(1)(*a*) and (*d*) and Article 21; that, the right is not absolute and that any State intrusion can be a reasonable restriction only if it has *reasonable basis* or *reasonable materials* to support it.
>
> **40.** A two-Judge Bench in *R. Rajagopal* v. *State of T.N.* [(1994) 6 SCC 632] held the right of privacy to be implicit in the right to life and liberty guaranteed to the citizens of India by Article 21. "It is the right to be let alone." Every citizen has a right to safeguard the privacy of his own. However, in the case of a matter being part of public records, including court records, the right of privacy cannot be claimed. **The right to privacy has since been widely accepted as implied in our Constitution, in other cases, namely, *People's Union for Civil Liberties* v. *Union of India* [(1997) 1 SCC 301], '*X*' v.**

> ***Hospital 'Z'*** **[(1998) 8 SCC 296],** ***People's Union for Civil Liberties*** **v.** ***Union of India*****[(2003) 4 SCC 399] and** ***Sharda*** **v.** ***Dharmpal*** **[(2003) 4 SCC 493]** ."
> (emphasis added)

161. In another decision of the Apex Court in the case of ***Re Ramlila Maidan Incident***, in Paragraph 318, the Apex Court observed thus:

> "318. Thus, it is evident that right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breathe, to eat, to drink, to blink, etc."

162. Another decision on the aspect whether the right to privacy is a fundamental right guaranteed under Article 21 of the Constitution of India, is in the case of ***Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat and Others*** wherein again the issue of right of privacy as a fundamental right arose before the Apex Court. In Paragraph 27, the Apex Court observed thus:

> "**27.** Had the impugned resolutions ordered closure of municipal slaughterhouses for a considerable period of time we may have held the impugned resolutions to be invalid being an excessive restriction on the rights of the butchers of Ahmedabad who practise their profession of meat selling. After all, butchers are practising a trade and it is their fundamental right under Article 19(1)(*g*) of the Constitution which is guaranteed to all citizens of India. Moreover, it is not a matter of the proprietor of the butchery shop alone. There may be also several workmen therein who may become unemployed if the slaughterhouses are closed for a considerable period of time, because one of the conditions of the licence given to the shop-owners is to

> supply meat regularly in the city of Ahmedabad and this supply comes from the municipal slaughterhouses of Ahmedabad. Also, a large number of people are non-vegetarian and they cannot be compelled to become vegetarian for a long period. **What one eats is one's personal affair and it is a part of his right to privacy which is included in Article 21 of our Constitution as held by several decisions of this Court. In *R. Rajagopal* v. *State of T.N.*[(1994) 6 SCC 632 : AIR 1995 SC 264] (vide SCC para 26 : AIR para 28) this Court held that the right to privacy is implicit in the right to life and liberty guaranteed by Article 21. It is a "right to be let alone".**"
>
> (emphasis added)

163. The next judgment on this aspect is in the case of ***National Legal Services Authority v. Union of India and Others***. The Apex Court held that Article 21 guarantees protection of personal autonomy of an individual. In paragraphs 73 and 75, the Apex Court held thus:

> "**73.** Article 21 of the Constitution of India reads as follows:
>
> > "**21. *Protection of life and personal liberty*.**—No person shall be deprived of his life or personal liberty except according to procedure established by law."
>
> Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. **Article 21 takes all those aspects of life which go to make a person's life meaningful. Article 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc.** Right to dignity has been recognised to be an essential part of the right to life and accrues to all persons on account of being

> humans. In *Francis Coralie Mullin* v. *UT of Delhi*[(1981) 1 SCC 608 : 1981 SCC (Cri) 212] (SCC pp. 618-19, paras 7 and 8), this Court held that the right to dignity forms an essential part of our constitutional culture which seeks to ensure the full development and evolution of persons and includes "expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings"."
>
> (emphasis added)
>
> **75. Article 21, as already indicated, guarantees the protection of "personal autonomy" of an individual. In *Anuj Garg* v. *Hotel Assn. of India* [(2008) 3 SCC 1] (SCC p. 15, paras 34-35), this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in**. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India."
>
> (emphasis added)

164. The learned Advocate General relied upon another order of the Apex Court in the case of ***K.S. Puttaswami (retd.) and Others v. Union of India*** wherein the Apex Court made a prima facie observation that the decision of the Constitution Bench in the case of ***Kharak Singh*** has not been correctly read by smaller Benches and, therefore, a reference has been made to a larger Bench to decide the question as to whether the right of privacy is guaranteed by Article 21 of the Constitution of India. The Apex Court in the said order observed that the view taken in several judgments subsequent to the decision in the

case of ***Kharak Singh*** is that the right of privacy is a part of Article 21 of the Constitution of India.

165. Another decision which is on this aspect is in the case of ***People's Union for Civil Liberties (PUCL) v. Union of India and Another***[55] This was a case of telephone tapping. The argument before the Apex Court was that the right of privacy is a fundamental right guaranteed under Article 19(1) and Article 21. The Apex Court considered the decisions in the cases of ***Kharak Singh, Gobind and R. Rajagopal.*** In Paragraphs 11 to 13, the Apex Court quoted the majority and minority views in the case of ***Kharak Singh*** and in Paragraph 14, it was observed thus:

> "**14.** Article 21 of the Constitution has, therefore, been interpreted by all the seven learned Judges in *Kharak Singh case* [(1964) 1 SCR 332 : AIR 1963 SC 1295] (majority and the minority opinions) **to include that "right to privacy" as a part of the right to "protection of life and personal liberty" guaranteed under the said Article**."
>
> (emphasis added)

The ultimate finding of the Apex Court is in Paragraphs 17 and 18 which read thus:

> "**17. We have, therefore, no hesitation in holding that right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy,**

55 (1997)1 SCC 301

> **Article 21 is attracted.** The said right cannot be curtailed "except according to procedure established by law".
>
> **18.** The right to privacy — by itself — has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. **Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case.** But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law."
>
> (emphasis added)

166. With a view to answer the question whether the right to privacy is a part of Article 21, the analysis of the decisions of the Apex Court which are quoted above will be necessary. In the case of ***Kharak Singh***, the majority view is by *Ayyangar, J*. In Paragraph 13, the Apex Court examined the expression "personal liberty" under Article 21. The majority judgment observes that Article 19(1) deals with particular species or attributes of specific freedoms incorporated therein and Article 21 comprises the residue. The Apex Court observed that the

words "personal liberty" cannot be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence. Clause (b) of Regulation 236 of the U.P. Police Regulations provided for domiciliary visits at night which was a part of surveillance on suspects. The said Clause (b) was declared as plainly violative of Article 21 as observed in Paragraph 16. Thus, the majority view as is apparent from Paragraph 13 appears to have accepted that an intrusion into personal security and right to sleep will be a part of personal liberty guaranteed under Article 21 of the Constitution of India. Intrusion into a person's home was also held to be a part of personal liberty. The majority view in paragraph 13 reads thus:

> "We have already extracted a passage from the judgment of Field, J. in *Munn* v. *Illinois*[94 US 113 : 24 L Ed 77 (1877)] US at p. 142, where the learned Judge pointed out that 'life' in the 5th and 14th Amendments of the U.S. Constitution corresponding to Article 21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs — his arms and legs etc. We do not entertain any doubt that the word 'life' in Article 21 bears the same signification. Is then the word 'personal liberty' to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to 'assure the dignity of the individual' and therefore of those cherished human values as the means of

ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as 'personal liberty' having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories. Frankfurter, J. observed in *Wolf* v. *Colorado* [338 US 25 : 93 L Ed 1782 (1949)] :

'**The security of one's privacy against arbitrary intrusion by the police … is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples ….** We have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment.'

Murphy, J. considered that such invasion was against 'the very essence of a scheme of ordered liberty'.

It is true that in the decision of the U.S. Supreme Court from which we have made these extracts, the Court had to consider also the impact of a violation of the Fourth Amendment which reads:

> 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

> and that our Constitution does not in terms confer any like constitutional guarantee. **Nevertheless, these extracts would show that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man — an ultimate essential of ordered liberty, if not of the very concept of civilisation. An English Common Law maxim asserts that 'every man's house is his castle' and in*Semayne case* [*Semayne's case*, (1604) 5 Co Rep 91 a] , where this was applied, it was stated that 'the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose'.** We are not unmindful of the fact that*Semayne case* [*Semayne's case*, (1604) 5 Co Rep 91 a] was concerned with the law relating to executions in England, but the passage extracted has a validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a concept of 'personal liberty' which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value.
>
> In our view clause (*b*) of Regulation 236 is plainly violative of Article 21 and as there is no 'law' on which the same could be justified it must be struck down as unconstitutional."
>
> (emphasis added)

167. While dealing with Clauses (c), (d) and (e) of Regulation 236 of the U.P. Police Regulations, the majority view observes that Article 21 had no relevance as far as these clauses are concerned. From the last sentence in Paragraph 17 which we have quoted earlier, it appears that the majority view has not specifically considered the question whether the right to privacy is a part of Article 21. What is held is that the right of privacy is not a guaranteed right under the

Constitution in Part III. But, the majority view holds that an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence will be an infringement of personal liberty guaranteed under Article 21. Perhaps, that is how in the case of ***District Registrar and Collector, Hyderabad v. Canara Bank*** in Paragraph 36, the Apex Court observed that in ***Kharak Singh*** all Judges held that "right of privacy" was a part of the right to life in Article 21.

168. The minority view of Subba Rao, J holds that the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It observes that it is true that our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty.

169. It will be necessary to consider what is held by the eight-Judge Bench of the Apex Court in the case of ***M.P. Sharma v. Satish Chandra***. We have carefully perused the said judgment. The challenge in the Petitions under Article 32 of the Constitution of India was to the search warrants for simultaneous searches at 34 places. From Paragraph 1 of the judgment, it appears that the contention raised was

of violation of Articles 20(3) and 19(1)(f). We find that there was no specific contention raised by the Petitioners that there is a violation of the right of privacy being a part of right of personal liberty conferred by Article 21.

170. In the case of ***R. Rajagopal,*** Question No.1 was framed on the infringement of right of privacy. In Paragraph 9, the Apex Court extensively examined both the majority and minority views in the case of ***Kharak Singh*** and in Paragraph 26 which we have quoted above, the Apex Court held that the right to privacy is implicit in the right to life and liberty guaranteed by Article 21. In fact, the Apex Court held that it is a right to be let alone. In the case of ***District Registrar and Collector, Hyderabad and Another v. Canara Bank and Others***, the Apex Court specifically considered the question of right of privacy qua the search and seizure. In Paragraph 24, the Apex Court observed that our Constitution does not contain a specific provision either as to privacy or even as to unreasonable search. Thereafter, the Apex Court in Paragraph 35 referred to the decision in the case of ***M.P. Sharma***. Thereafter, in Paragraph 36, a reference was made to the decision in the case of ***Kharak Singh***. Thereafter, in Paragraph 39, the Apex Court referred to the decision in the case of ***Gobind*** and ultimately, in Paragraph 40, the Apex Court held that the right of privacy is implicit in the right to life and liberty guaranteed to the citizens of India by Article

21 of the Constitution of India. It was held that it is a right to be let alone. In the case of ***Re Ramlila Maindan Incident***, the Apex Court considered the scope of Article 21 in the context of right of privacy. The Apex Court considered the decisions in the cases of ***Kharak Singh, Gobind*** and ***People's Union for Civil Liberties***. In Paragraph 312, the Apex Court held that the right of privacy has been held to be a fundamental right of the citizen being an integral part of Article 21 of the Constitution of India. The Apex Court observed that in exceptional circumstances, the surveillance in consonance with the statutory provisions may not violate that right. Ultimately, in Paragraph 318, the Apex Court held that right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breathe, to eat, to drink, to blink, etc. In the decision in the case of ***Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat and Others***, the issue of existence of right to privacy specifically arose. In Paragraph 27, the Apex Court held that what one eats is one's personal affair and it is a part of his right to privacy which is included in Article 21 of the Constitution of India. It was held that right to privacy is implicit in the right to life and liberty guaranteed by Article 21 and it is a right to be let alone. There is one more decision on this aspect. It is the decision in the case of ***Ram Jethmalani v. Union of India***. The Apex Court reiterated that the right to privacy is an integral part of the right to life. Thus, there are series of decisions of the Apex Court which are

delivered after considering the decisions of the Constitution Benches in the cases of ***Kharak Singh*** and ***M.P. Sharma*** consistently taking a view that the right to privacy is an integral part of the right to personal liberty under Article 21 of the Constitution of India.

171. Then comes the order of the Apex Court in the case of ***K.S. Puttaswamy and Another v. Union of India***. The Apex Court was dealing with the challenge to the Adhar Card Scheme under which the Government of India is collecting and compiling both the demographic and biometric data of the residents of the country. One of the grounds of attack on the Scheme was a ground based on a right to privacy by contending that it is implied under Article 21 of the Constitution of India. The learned Attorney General submitted before the Apex Court that the decisions of the Apex Court in the cases of ***R. Rajagopal*** and ***People's Union for Civil Liberties*** were contrary to the judgments of the larger Bench of the Apex Court in the cases of ***M.P. Sharma*** and ***Kharak Singh***. We must note here that the Apex Court did not specifically accept the argument of the learned Attorney General as well as one of the Respondents that the opinions expressed by various Benches of the Apex Court after the decisions in the cases of ***M.P. Sharma*** and ***Kharak Singh*** show the jurisprudentially impermissible divergence of judicial opinions. In Paragraphs 12 and 13, the Apex Court observed thus:

> "12. We are of the opinion that the cases on hand raise far reaching questions of importance involving interpretation of the Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right Under Article 21. If the observations made in ***M.P. Sharma*** (supra) and ***Kharak Singh*** (supra) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty Under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches. With due respect to all the learned Judges who rendered the subsequent judgments-where right to privacy is asserted or referred to their Lordships concern for the liberty of human beings, we are of the humble opinion that there appears to be certain amount of apparent unresolved contradiction in the law declared by this Court.
>
> 13. Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of ***M.P. Sharma*** (supra) and ***Kharak Singh*** (supra) is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength."

If the Apex Court had accepted the submission that the view taken in the decisions in the cases of ***R. Rajgopal*** and ***People's Union for Civil Liberties*** are contrary to the decisions of larger Benches

in the case of ***Kharak Singh*** and ***M.P. Sharma,*** there was no need to make a reference.

172. To sum up, the following are the cases in which the Apex Court upheld the right of privacy as part of personal liberty guaranteed under Article 21 of the Constitution of India.

(a) *R. Rajagopal v. State of Tamil Nadu;*

(b) *District Registrar & Collector v. Canara Bank;*

(c) Re Ramlila Maidan Incident;

(d) Peoples Union of Civil Liberties v. Union of India;

(e) Hinsa Virodhak Sangh vs. Mirzapur Moti Kuresh Jamat and Ors;

(f) National Legal Services Authority v. Union of India

(g) Ram Jethmalani

173. Most of the aforesaid decisions are rendered after considering the decisions in the cases of ***M.P. Sharma*** and ***Kharak Singh***. In the case of ***Ashok Sadarangani and Another v. Union of India***[56], in Paragraph 29 held thus:

> "**29.** As was indicated in *Harbhajan Singh case* [*Harbhajan Singh* v. *State of Punjab*, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , the pendency of a

56 (2012)11 SCC 321

> reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in *Gian Singh case* [(2010) 15 SCC 118] need not, therefore, detain us. **Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field**."
>
> (emphasis added)

Hence, the aforesaid seven decisions continue to hold the field notwithstanding the pending reference. Therefore, in our considered view, the position of law as it stands today and which is reflected from the series of binding decisions is that the right of privacy is part of personal liberty guaranteed under Article 21 of the Constitution of India.

174. The argument of the Petitioners in support of their challenge to Section 5D is that it infringes the right of privacy which includes the right to be let alone and the right to consume the food of one's choice provided it is not otherwise prohibited by a valid law. In the second affidavit of Shri Shashank Sathe, the State Government has made it very clear that it is not the intention of the State Government to prevent the citizens from eating non-vegetarian food. It is not the case made out by the State at the time of final hearing that beef as an item of food is either obnoxious or harmful and its consumption is sought to be prevented for that reason.

175. Some of the Respondents have completely misunderstood the argument canvassed in Writ Petition No.1314 of 2015 by contending that the Petitioner cannot compel the State to supply the food of his choice. In fact, that is not the right claimed by the Petitioner in Writ Petition No.1314 of 2015. It is not claimed that a citizen has a right to compel the State to supply meat of cow, bull or bullock.

176. 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). In the decision in the case of ***Hinsa***

Virodhak Sangh, 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. If a particular food is injurious to health or a particular food is illegally manufactured, it will be a case of compelling public interest which will enable the State to deprive citizens of the right to privacy by following the procedure established by law. In the present case, Section 5D prevents a citizen from possessing and from consuming flesh of a cow, bull or bullock even if it is flesh of a cow,bull or bullock slaughtered in territories where such slaughter is legal. Hence, Section 5D is certainly an infringement of right to privacy which is implicit in the personal liberty guaranteed by Article 21.

177. It will be necessary on this aspect to make a reference to the decision of the Apex Court in the case of ***Deena alias Deen Dayal and Others v. Union of India and Others***. In Paragraph 17, the Apex Court held thus:

> "**17.** Thus, there is a fundamental distinction between cases arising under Article 14 and those which arise under Articles 19 and 21 of the Constitution. I**n a challenge based on the violation of Articles 19 and 21, the petitioner has undoubtedly to plead that,**

for example, his right to free speech and expression is violated or that he is deprived of his right to life and personal liberty. But once he shows that, which really is not a part of the "burden of proof", it is for the State to justify the impugned law or action by proving that, for example, the deprivation of the petitioner's right to free speech and expression is saved by clause (2) of Article 19 since it is in the nature of a reasonable restriction on that right in the interests of matters mentioned in clause (2), or that, the petitioner has been deprived of his life or personal liberty according to a just, fair and reasonable procedure established by law. In cases arising under Article 19, the burden is never on the petitioner to prove that the restriction is not reasonable or that the restriction is not in the interests of matters mentioned in clause (2). Likewise, in cases arising under Article 21, the burden is never on the petitioner to prove that the procedure prescribed by law which deprives him of his life or personal liberty is unjust, unfair or unreasonable. That is why the ratio of cases which fall under the category of the decision in *Ram Krishna Dalmia* [*Ram Krishna Dalmia* v. *Justice S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279 : 1959 SCJ 147] must be restricted to those arising under Article 14 and cannot be extended to cases arising under Article 19 or Article 21 of the Constitution."
(emphasis added)

178. In Paragraph 21, the Apex Court held thus:

"**21.** The observations made by Gajendragadkar, J., in regard to the position arising under Article 304(*b*) are apposite to cases under Article 21. Article 304(*b*) provides that, notwithstanding anything in Article 301 or Article 303, the legislature of a State may by law "impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest". According to the learned Judge, in the case of a law passed under Article 304(*b*), the position on the question of burden of proof is somewhat stronger in favour of the citizen, because the very fact that the law is passed under that article means clearly that it

purports to restrict the freedom of trade. **By analogy, the position is also somewhat stronger in favour of the petitioners in cases arising under Article 21, because the very fact that, in defence, a law is relied upon as prescribing a procedure for depriving a person of his life or personal liberty means clearly that the law purports to deprive him of these rights. Therefore, as soon as it is shown that the Act invades a right guaranteed by Article 21, it is necessary to enquire whether the State has proved that the person has been deprived of his life or personal liberty according to procedure established by law, that is to say, by a procedure which is just, fair and reasonable."**

(emphasis added)

179. In paragraph 22, the Apex Court held thus:

"**22.** Another decision in the same category of cases is *Mohd. Faruk* v. *State of Madhya Pradesh*[(1969) 1 SCC 853 : AIR 1970 SC 93 : (1970) 1 SCR 156] in which the State Government issued a notification cancelling the confirmation of the municipal bye-laws in so far as they related to the permission to the slaughtering of bulls and bullocks. Dealing with the challenge of the petitioner to the notification on the ground that it infringed his fundamental right under Article 19(1)(*g*) of the Constitution Shah, J., who spoke for the Constitution Bench, observed: (SCC pp. 856-57, para 8)

"When the validity of a law placing restriction upon the exercise of fundamental rights in Article 19(1) is challenged, the onus of proving to the satisfaction of the Court that the restriction is reasonable ties upon the State.... Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition, but when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the general public interest lies heavily upon the State. (SCR pp. 160-61)

> **When, in a matter arising under Article 21, the person aggrieved is found to have been totally deprived of his personal liberty or is being deprived of his right to life, the burden of proving that the procedure established by law for such deprivation is just, fair and reasonable lies heavily upon the State**."
>
> (emphasis added)

Again in Paragraph 30, the Apex Court reiterated that when violation of Article 21 of the Constitution of India is alleged, the burden of proof does not lie on the Petitioner to prove that the procedure prescribed by the statutory provision is unjust, unfair and unreasonable. The State must establish that the procedure prescribed by the statutory provision is just, fair and reasonable.

180. It will be necessary to consider here the decision of the Constitution Bench in the case of ***Mrs. Maneka Gandhi v. Union of India***. In Paragraph 5 of the judgment delivered by Bhagwati, J for himself and on behalf of *Untwalia* and *S. Murtaza Fazal Ali, JJ*, the Apex Court referred to the majority decision in the case of ***Kharak Singh v. State of Uttar Pradesh*** wherein it was observed that Article 19(1) deals with particular species or attributes of that freedom, personal liberty in Article 21 takes in and comprises the residue. The minority view in the decision of the Apex Court in the case of ***Kharak Singh*** was that the fundamental right of life and personal liberty has many attributes and

some of them are found in Article 19 of the Constitution of India. The Apex Court observed in view of its decision in the case of ***R.C. Cooper v. Union of India***[57] that the minority view on this aspect in the case of ***Kharak Singh*** will have to be recorded as correct and majority view must be held to have been overruled. The Apex Court in Paragraph 5 observed that the expression "personal liberty" in Article 21 is of widest amplitude and it covers variety of rights. Paragraph 7 of the judgment delivered by Bhagwati, J is relevant for our consideration which deals with the nature and requirement of the procedure under Article 21 of the Constitution of India. What is held by the Apex Court is that the procedure contemplated by Article 21 must answer the test of reasonableness. In Paragraph 5, the Apex Court held thus:

> "**5.** It is obvious that Article 21, though couched in negative language, confers the fundamental right to life and personal liberty. So far as the right to personal liberty is concerned, it is ensured by providing that no one shall be deprived of personal liberty except according to procedure prescribed by law. The first question that arises for consideration on the language of Article 21 is : what is the meaning and content of the words "personal liberty" as used in this article? This question incidentally came up for discussion in some of the judgments in *A.K. Gopalan* v. *State of Madras* [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] and the observations made by Patanjali Sastri, J., Mukherjea, J., and S.R. Das, J., seemed to place a narrow interpretation on the words "personal liberty" so as to confine the protection of Article 21 to freedom of the person against unlawful detention. But there was no definite pronouncement made on this point since the question before the Court was not so much

57 AIR 1970 SC 574

the interpretation of the words "personal liberty" as the inter-relation between Articles 19 and 21. It was in *Kharak Singh* v. *State of U.P.* [AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329] that the question as to the proper scope and meaning of the expression "personal liberty" came up pointedly for consideration for the first time before this Court. The majority of the Judges took the view "that "personal liberty" is used in the article as a compendious term to include within itself all the varieties of rights which go to make up the "personal liberties" of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, 'personal liberty' in Article 21 takes in and comprises the residue. The minority Judges, however, disagreed with this view taken by the majority and explained their position in the following words: "No doubt the expression 'personal liberty' is a comprehensive one and the right to move freely is an attribute of personal liberty. It is said that the freedom to move freely is carved out of personal liberty and, therefore, the expression 'personal liberty' in Article 21 excludes that attribute. In our view, this is not a correct approach. **Both are independent fundamental rights, though there is overlapping. There is no question of one being carved out of another. The fundamental right of life and personal liberty has many attributes and some of them are found in Article 19. If a person's fundamental right under Article 21 is infringed, the State can rely upon a law to sustain the action, but that cannot be a complete answer unless the said law satisfies the test laid down in Article 19(2) so far as the attributes covered by Article 19(1) are concerned."** There can be no doubt that in view of the decision of this Court in *R.C. Cooper* v.*Union of India* [(1970) 2 SCC 298 : (1971) 1 SCR 512] the minority view must be regarded as correct and the majority view must be held to have been overruled. We shall have occasion to analyse and discuss the decision in *R.C. Cooper case* [(1970) 2 SCC 298 : (1971) 1 SCR 512] a little later when we deal with the arguments based on infraction of Articles 19(1)(*a*) and 19(1)(*g*), but it is sufficient to state for the present that according to this decision, which was a decision given by the Full Court, the fundamental

rights conferred by Part III are not distinct and mutually exclusive rights. Each freedom has different dimensions and merely because the limits of interference with one freedom are satisfied, the law is not freed from the necessity to meet the challenge of another guaranteed freedom. The decision in *A.K. Gopalan case* [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] gave rise to the theory that the freedoms under Articles 19, 21, 22 and 31 are exclusive — each article enacting a code relating to the protection of distinct rights, but this theory was overturned in *R.C. Cooper case* [(1970) 2 SCC 298 : (1971) 1 SCR 512] where Shah, J., speaking on behalf of the majority pointed out that "Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields they do not attempt to enunciate distinct rights." The conclusion was summarised in these terms : "In our judgment, the assumption in *A.K. Gopalan case* [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] that certain articles in the Constitution exclusively deal with specific matters — cannot be accepted as correct". It was held in *R.C. Cooper case* [(1970) 2 SCC 298 : (1971) 1 SCR 512] — and that is clear from the judgment of Shah, J., because Shah, J., in so many terms disapproved of the contrary statement of law contained in the opinions of Kania, C.J., Patanjali Sastri, J., Mahajan, J., Mukherjea, J., and S.R. Das, J., in *A.K. Gopalan case* — that even where a person is. detained in accordance with the procedure prescribed by law, as mandated be Article 21, the protection conferred by the various clauses of Article 19(1) does not cease to be available to him and the law authorising such detention has to satisfy the test of the applicable freedoms under Article 19, clause (1). This would clearly show that Articles 19(1) and 21 are not mutually exclusive, for, if they were, there would be no question of a law depriving a person of personal liberty within the meaning of Article 21 having to meet the challenge of a fundamental right under Article 19(1). Indeed, in that event, a law of preventive detention which deprives a person of "personal liberty" in the narrowest sense, namely, freedom from detention and thus falls indisputably within Article 22 would not require to be tested on the touchstone of clause (*d*) of

Article 19(1) and yet it was held by a Bench of seven Judges of this Court in *Shambhu Nath Sarkar* v. *State of West Bengal* [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] that such a law would have to satisfy the requirement inter alia of Article 19(1), clause (*d*) and in*Haradhan Saha* v. *State of West Bengal* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778] which was a decision given by a Bench of five Judges, this Court considered the challenge of clause (*d*) of Article 19(1) to the constitutional validity of the Maintenance of Internal Security Act, 1971 and held that that Act did not violate the constitutional guarantee embodied in that article. It is indeed difficult to see on what principle we can refuse to give its plain natural meaning to the expression "personal liberty" as used in Article 21 and read it in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. We do not think that this would be a correct way of interpreting the provisions of the Constitution conferring fundamental rights. **The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. The wavelength for comprehending the scope and ambit of the fundamental rights has been set by this Court in *R.C. Cooper case* [(1970) 2 SCC 298 : (1971) 1 SCR 512] and our approach in the interpretation of the fundamental rights must now be in tune with this wavelength. We may point out even at the cost of repetition that this Court has said in so many terms in *R.C. Cooper case* [(1970) 2 SCC 298 : (1971) 1 SCR 512] that each freedom has different dimensions and there may be overlapping between different fundamental rights and therefore it is not a valid argument to say that the expression "personal liberty" in Article 21 must be so interpreted as to avoid overlapping between that article and Article 19(1). The expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19**. Now, it has been held by this Court

in *Satwant Singh case* [AIR 1967 SC 1836 : (1967) 3 SCR 525 : (1968) 1 SCJ 178] that "personal liberty" within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in *Satwant Singh case*[AIR 1967 SC 1836 : (1967) 3 SCR 525 : (1968) 1 SCJ 178] was struck down as invalid. It will be seen at once from the language of Article 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means "enacted law" or "state law" (vide *A.K. Gopalan case* [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383]). Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney-General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law. There was some discussion in *A.K. Gopalan case* [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] in regard to the nature of the procedure required to be prescribed under Article 21 and at least three of the learned Judges out of five expressed themselves strongly in favour of the view that the procedure cannot be any arbitrary, fantastic or

oppressive procedure. Fazl Ali, J., who was in a minority, went to the farthest limit in saying that the procedure must include the four essentials set out in Prof. Willis' book on *Constitutional Law,* namely, notice, opportunity to be heard, impartial tribunal and ordinary course of procedure. Patanjali Sastri, J., did not go as far as that but he did say that "certain basic principles emerged as the constant factors known to all those procedures and they formed the core of the procedure established by law". Mahajan, J., also observed that Article 21 requires that "there should be some form of proceeding before a person can be condemned either in respect of his life or his liberty" and "it negatives the idea of fantastic, arbitrary and oppressive forms of proceedings". But apart altogether from these observations in *A.K. Gopalan case* [AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] which have great weight, **we find that even on principle the concept of reasonableness must be projected in the procedure contemplated by Article 21, having regard to the impact of Article 14 on Article 21**."

(emphasis added)

181. In paragraph 7, Bhagawati, J. held thus:

"**7.** Now, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in*E.P. Royappa* v. *State of Tamil Nadu* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348] namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one

> belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. **The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied"**
>
> (emphasis supplied)

182. Krishna Iyer, J in Paragraph 85 summed up by holding that the procedure in Article 21 must mean fair and not a formal procedure. The majority view taken in the said decision is that the fundamental rights under Part III are not distinct and mutually exclusive rights and, therefore, the law affecting personal liberty under Article 21 will have to satisfy the test under Article 14 and Clauses (2) to (6) of Article 19 of the Constitution of India. The procedure contemplated by Article 21 of the Constitution of India has to satisfy the test of fairness and reasonableness.

183. The question is what is the burden which the State will have to discharge. As held in the case of ***Deena*** when there is violation of Article 21, the burden is on the State to prove that the procedure followed is just fair and reasonable. In addition, in paragraph No. 318

in the case of ***Ramlila Maidan Incident In Re***, the Apex Court observed thus:

> "**316. While determining such matters the crucial issue in fact is not whether such rights exist, but whether the State has a compelling interest in the regulation of a subject which is within the police power of the State.** Undoubtedly, reasonable regulation of time, place and manner of the act of sleeping would not violate any constitutional guarantee, for the reason that a person may not claim that sleeping is his fundamental right, and therefore, he has a right to sleep in the premises of the Supreme Court itself or within the precincts of Parliament. More so, I am definitely not dealing herein with the rights of homeless persons who may claim right to sleep on footpath or public premises but restrict the case only to the extent as under what circumstances a sleeping person may be disturbed and I am of the view that the State authorities cannot deprive a person of that right anywhere and at all times."
>
> (emphasis added)

184. Now the question is whether the State has discharged the burden. Article 31-C will not help the State as it is not applicable when there is a challenge based on violation of Article 21. The Statement of Objects and Reasons of the Amendment Act is completely silent as regards the necessity of enacting the drastic provision of Section 5D which prevents a person from possessing flesh of any cow, bull or bullock lawfully slaughtered outside the State of Maharashtra. As pointed out earlier, even if a person is found in possession of flesh of cow, bull or bullock which is slaughtered outside the State where there is no prohibition on slaughter, there will be a violation of Section 5D

which is made an offence. We have carefully perused the affidavits filed by the State Government. Even in the said affidavits, it is not the case made out that by prohibiting the possession of flesh of cow, bull or bullock which is lawfully slaughtered outside the State will in any manner help to achieve the object of protecting the cows, bulls or bullocks in the State of Maharashtra. The unamended Section 5 which has completely prohibited the slaughter of cow existed for last several years. It is not the case of the State Government that on the basis of its past experience, it was felt necessary to impose such a drastic restriction as provided in Section 5D for achieving the object which is sought to be achieved by banning slaughter of cow, bull or bullock in the State.

185. The object of enacting amendment to Sections 5 and 5A, 5B and 5C appears to be to protect cows, bulls and bullocks in the State of Maharashtra from slaughter. Section 5D is a stand alone provision which has no nexus with the said object. It is not the case made out by the State that the ban on slaughter of cows, bulls and bullocks was to ensure that no one should eat the flesh of the said animals as it is injurious to health. The object is to protect cow and its progeny from slaughtering within the State. The object is not to prevent the citizens from eating flesh of cow or its progeny which is brought from a State or a country where there is no prohibition on slaughter. The question is whether such a drastic provision would stand to the test

of compelling State interest. In fact, the State has made no attempt to show any compelling public or State interest for enacting Section 5D. We have already held that right of privacy is an integral part of the personal liberty under Article 21. In the case of ***Akhil Bharat Goseva Sangh,*** the Apex Court observed that it is not held in the case of ***Mirzapur*** that laws/policies permitting slaughter of progeny of cow were unconstitutional. As stated earlier, the burden was on the State Government to justify the constitutionality. There is no effort made to discharge the said burden. The State has not come out with any material to show what is the compelling State interest to prevent an individual from possessing or consuming the meat of cow or its progeny which is a product of slaughter outside the State. Preventing a citizen from possessing flesh of cow, bull or bullock slaughtered outside the State amounts to prohibiting a citizen from possessing and consuming food of his choice. In Section 5D, the focus seems to be generally on consumption of beef, as an item of food. Consumption of food which not injurious to health is a part of an individual's autonomy or his right to be let alone. Hence, it is an infringement of his right of privacy. In our view, Section 5D violates the right of privacy being an integral part of the personal liberty under Article 21. Violation of Section 5D by possessing meat of cow, bull or bullock which is lawfully slaughtered outside the State is made an offence and under Section 9A, a person can be punished with imprisonment for a term which may extend to

one year or fine which may extend to Rs.2,000/-.

186. The only serious attempt made to justify the validity of Section 5D is by one of the Intervenors by relying upon a decision of the Apex Court in the case of ***Indian Handicrafts Emporium and Others v. Union of India and Others***. The challenge in this case was to Section 49-C of the Wild Life (Protection) Act, 1972. By Section 49-C, a total prohibition on the trade of imported ivory was imposed. Even import of Ivory was prohibited. The said provision was challenged on the basis of violation of Article 19(1)(g) of the Constitution of India. The validity of the provision which banned import was upheld on the ground that it was necessary to do so with a view to prevent poaching of elephants in India. We have examined the said decision. The slaughter of elephants had been totally prohibited in India from the year 1980 under the provisions of Wild Life (Prevention) Act, 1972

187. The Apex Court considered the Statement of Objects and Reasons of the Amending Act which brought about the amendment which reads thus:

> "Poaching of wild animals and illegal trade of products derived therefrom, together with degradation and depletion of habitats have seriously affected wildlife population. In order to check this trend, it is proposed to prohibit hunting of all wild animals (other than vermin). However, hunting of wild animals in exceptional circumstances, particularly for the purpose of protection of life and property and for education,

research, scientific management and captive breeding, would continue. It is being made mandatory for every transporter not to transport any wildlife product without proper permission. The penalties for various offences are proposed to be suitably enhanced to make them deterrent. The Central Government Officers as well as individuals now can also file complaints in the courts for offences under the Act. It is also proposed to provide for appointment of honorary Wild Life Wardens and payment of rewards to persons helping in apprehension of offenders.

To curb large-scale mortalities in wild animals due to communicable diseases, it is proposed to make provisions for compulsory immunisation of livestock in and around national parks and sanctuaries.

***

It may be recalled that the parties to the 'Convention on International Trade in Endangered Species of Wild Fauna and Flora' (CITES), being greatly concerned by the decline in population of African elephants due to illegal trade in ivory, have included this animal in Appendix I of the Convention in October 1989. Due to this change, the import and export of African ivory for commercial purposes has been prohibited. As a result, import of ivory would no longer be possible to meet the requirements of the domestic ivory trade. **If the ivory trade is allowed to continue, it will lead to large-scale poaching of Indian elephants. With this point in view, the trade in imported ivory within the country is proposed to be banned after giving due opportunity to ivory traders to dispose of their existing stock.**"

(emphasis added)

188. In paragraph 45 and 46, the Apex Court observed thus:

"**45.** Parliament while enacting the said amending Act took note of serious dimensions of poaching of wild animals and illegal trade giving exponential rise of wild animals and their products.

46. The Hon'ble Minister of State of the Ministry of Environment and Forests in the House stated:

> "Population of Indian elephants, particularly in South India, is under serious threat by ivory poachers. **Although the trade in Indian ivory was banned in 1986, the trade in imported ivory gives an opportunity to unscrupulous ivory traders to legalise poached ivory in the name of imported ivory. With this point in view, the trade in African ivory is proposed to be banned after giving due opportunity to ivory traders to dispose of their existing stocks**."
>
> (emphasis added)

189. In paragraph 53, the Apex Court observed thus:

> "**53.** It is, therefore, difficult to accept the contention of Mr Sanghi that protection and preservation of wildlife would not be in public interest and/or cannot be extended to imported ivory. **Wildlife forms part of our cultural heritage. Animals play a vital role in maintaining ecological balance. The amendments have been brought for the purpose of saving the endangered species from extinction as also for arresting depletion in their numbers caused by callous exploitation thereof."**
>
> (emphasis added)

190. Ultimately, in paragraph 56, the Apex Court held thus:

> "**56.** The stand of the State that by reason of sale of ivory by the dealers, poaching and killing of elephants would be encouraged, cannot be said to be irrational. Mr Sanghi, as noticed hereinbefore, has drawn our attention to the changes sought to be effected in CITES at the instance of Botswana, South Africa, Namibia and Zimbabwe. The question as to whether a reasonable restriction would become unreasonable and vice versa would depend upon the fact situation obtaining in each case. **In the year 1972 when the said Act was enacted, there might not have been any necessity to preserve the elephant as also ivory. The species might not have been on the brink of extinction. The**

> **Objects and Reasons set out for bringing in amendments in the said Acts in the years 1986, 1991 and 2003 clearly bring to the fore the necessity to take more and more stringent measures so as to put checks on poaching and illegal trade in ivory. Experience shows that poaching may be difficult to be completely checked. Preventive measures as regards poaching leading to killing of elephants for the purpose of extraction of their tusks is a difficult task to achieve and, thus, Parliament must have thought it expedient to put a complete ban on trade in ivory to meet the requirement of the country."**
>
> (emphasis added)

Thus in the facts of that case, the Apex Court found that ban on trade of imported ivory was not only justified by the Statement of Object and Reasons, but the State placed on record enough material to justify the total ban. The ban on trade of imported ivory was imposed on the basis of past experience which showed that prevention of poaching can be achieved only by imposing a complete ban on trade in ivory. In the facts of the present case, the drastic provision of Section 5D is justified neither by the Statement of Object and Reasons nor by placing any material on record to justify the compelling state interest. In the facts of the case before us, it is not the case of the State Government that the imported flesh of cow, bull or bullock will be used as a cover for illegal slaughter of the animals of the said category in the State of Maharashtra. Moreover, the challenge to the Section 49-C was on the ground of infringement of right under Article 19(1)(g). In this case, the violation of Article 21 is alleged. Hence, the State must prove

violation of Article 21 as alleged. Hence, the State must prove compelling state interest. Therefore, the said decision in the case of ***Indian Handicrafts Emporium and Others v. Union of India and Others*** will not help the Respondents.

191. In the case of ***Indian Handicrafts Emporium and Others v. Union of India and Others***, the Apex Court has quoted with approval, the following portion of the Commentary on Constitutional Law by D.D.Basu, which reads thus:

> "In D.D. Basu: *Commentary on the Constitution of India* (6th Edn., Vol. C), at pp. 45-46, the law has been summarized in the following manner:
>
> "It is now settled that no inflexible answer to this question is possible, and that it is the nature of the business or property which is an important element in determining how far the restriction may reasonably go:
>
> (*A*) In the case of inherently dangerous or noxious trades, such as production or trading in liquors or cultivation of narcotic plants, or trafficking in women, it would be a 'reasonable restriction' to prohibit the trade or business altogether.
>
> (*B*) **Where the trade or business is not inherently bad, as in the preceding cases, it must be shown by placing materials before the court that prohibition of private enterprise in the particular business was essential in the interests of public welfare.** Thus — In order to prevent speculative dealings in 'essential commodities' (such as cotton), during a period of emergency, the State may impose a temporary prohibition on all normal trading of such

> commodities. In the later case of *Narendra* v. *Union of India* [AIR 1960 SC 430 : (1960) 2 SCR 375] the Supreme Court has sustained even a permanent law leading to the elimination of middlemen from the business in essential commodities in order to ensure the supply of such goods to the consumers at a minimum price."
>
> (emphasis added)

Clause B above would cover the facts of the case in hand. In the present case, Section 5D seeks to prohibit something which is not otherwise illegal. But, the State has not supported it by showing that it is in the interest of public welfare.

192. To summarize, Section 5D will have to be struck down as being violative of fundamental right guaranteed by Article 21 of the Constitution of India.

193. There is one more aspect of the matter. The scope of Article 21 has been expanded by the Apex Court from time to time. It includes the right to lead a meaningful life. It protects the citizen from unnecessary state intrusion into his home. For leading a meaningful life, a citizen will have to eat food and preferably food of his choice. If the state tells him not to eat a particular kind of food though the same is not injurious to health, it will prevent the citizen from leading a meaningful life. If the State starts making intrusion into the personal life of an individual by preventing him from eating food of his choice,

such act may well affect his personal liberty. Hence, even assuming that there may not be any right of privacy, such interference will be violation of personal liberty guaranteed by the State.

SUB-SECTIONS (3) AND (4) OF SECTION 8

194. Now we deal with the challenge to Sub-section (3) of Section 8 and which is added in the Animal Welfare Act by the Amendment Act. Sub-section (3) and Sub-Section (4) which are added to Section 8, read thus:

> "**(3) Any Police Officer not below the rank of Sub-Inspector or any person authorized in this behalf by the State Government, may, with a view to securing compliance of provisions of Section 5A, 5B, 5C or 5D, for satisfying himself that the provisions of the said sections have been complied with may =**
>
> **(a) enter, stop and search, or authorize any person to enter, stop and search and search any vehicle used or intended to be used for the export of cow, bull or bullock;**
>
> **(b) seize or authorize the seizure of cow, bull or bullock in respect of which he suspects that any provision of sections, 5A, 5B, 5C or 5D has been is being or is about to be contravened, alongwith the vehicles in which such cow, bull or bullock are found and there after take or authorize the taking of all measures necessary for securing the production of such cow, bull or bullock and the vehicles so seized, in a court and for their safe custody pending such production.**

Provided that pending trial, seized cow, bull or bullock shall be handed over to the nearest Gosadan, Goshala, Panjrapole, Hinsa Nivaran Sangh or such other Animal Welfare Organisations willing to accept such custody and the accused shall be liable to pay for their maintenance for the period they remain in custody with any of the said institutions or organizations as per the orders of the Court.

(4) The provisions of the Section 100 of Code of Criminal Procedure, 1973 relating to search and seizure and shall, so far as may be, apply to searches and seizures under this Section.

(portion in bold letters added by Amendment)

195. As we have held that Section 5D is unconstitutional, the reference to Section 5D in sub-Section (3) will have to be struck down. Clause (a) of Sub-section (3) of Section 8 confers power on the police officer not below the rank of Sub-Inspector or any officer authorized in that behalf by the State Government to enter, stop and search, or to authorize any person to enter, stop and search any vehicle used or intended to be used for the export of cow, bull or bullock. This power can be exercised only for securing compliance with Sub-section (2) of Section 5A. Clause (b) of Sub-section (3) of Section 8 authorizes seizure of any cow, bull or bullock provided the officers suspect that any provision of Sections 5A, 5B or 5C is being or is about to be contravened along with the vehicles in which such cows, bulls or bullocks are found. Sub-section (4) of Section 8 is very clear. It records that Section 100 of the Code of Criminal Procedure, 1973 will apply to

any search carried out under Section 8. Section 100 of the Code of Criminal Procedure, 1973 reads thus:

> "**100. Persons in charge of closed place to allow search.—** (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
>
> (2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of Section 47.
>
> (3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.
>
> (4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.
>
> (5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code (45 of 1860)."

196. Therefore, all the safeguards which are incorporated in Section 100 are applicable to a search under Sub-section (3) of Section 8.

197. The word "suspicion" used in Clause (b) of Sub-section (3) of Section 8 cannot be a mere doubt. It is something much more than a a mere doubt. We have already held that the provisions of Sections 5A, 5B and 5C have been enacted for the purposes of achieving the object of protecting cows, bulls and bullocks in the State from slaughter. The violation of Sections 5A, 5B and 5C has been made an offence by virtue of the Amendment Act. Therefore, the provisions of search and seizure have been incorporated in Sub-section (3) of Section 8 for securing compliance with the provisions of Sections 5A, 5B and 5C of the

Amendment Act. If there is illegal seizure, the remedies are always available to the aggrieved person under the Code of Criminal Procedure, 1973 to apply for return of the property.

198. Proviso to Section 3 lays down that pending trial, seized cow, bull or bullock shall be handed over to the nearest Gosadans, Goshalas, Panjapols, Hinsa Nivaran Sangh or any other Animal Organizations which are willing to accept such custody. It provides that the accused shall be liable to pay for their maintenance for the period they remain in custody with any other institutions or organizations as per the orders of the Court. Apart from the fact that the remedies are available to challenge the illegal seizure, it is ultimately for the concerned Court to pass an order against the accused for payment of maintenance of the animals. It is obvious that the concerned Court has discretion to pass an order directing the payment of maintenance by the accused. In any event, the existence of suspicion as provided in Clause (b) of Sub-section (3) of Section 8 of likely contravention of the provisions of Section 5C will have to be in the context of the interpretation put by this Court to Section 5C. Before the amendment, Sub-sections (1) and (2) of Section 8 were already part of the Animal Preservation Act which read thus:

> "8. (1) For the purposes of this Act, the competent authority or any person authorised in writing in that behalf by the competent authority (hereinafter in this

> section referred to as "the authorised person") shall have power to enter and inspect any place where the competent authority or the authorised person has reason to believe that an offence under this Act has been, or is likely to be, committed.
>
> (2) Every person in occupation of any such place shall allow the competent authority or the authorised person such access to that place as may be necessary for the aforesaid purpose and shall answer to the best of his knowledge and belief any question put to him by the competent authority or the authorised person."

199. Perhaps, incorporation of Sub-sections (3) and (4) of Section 8 was necessary to give a full effect to the intention of the legislature of completely prohibiting the slaughter of cows, bulls or bullocks in the state. Hence, the reasons which we have recorded for upholding the validity of the amended Section 5 and Sections 5A, B5 and 5C will squarely apply to the challenge to Section 8. Therefore, we find no merit in the challenge to the validity of Sub-sections (3) and (4) of Section 8 of the Animal Welfare Act.

[D] **VALIDITY OF SECTION 9B**

200. The next question which survives for consideration is the issue of constitutional validity of Section 9B introduced by the Amendment Act. I had benefit of going through a separate Judgment of my esteemed colleague S.C.Gupte, J. I fully concur with the view taken by S.C.Gupte, J in his erudite judgment. Hence, while adopting the findings recorded by Gupte, J, I am not recording any separate finding

on this question.

PER S.C. GUPTE, J

201. Section 9B of the Act casts the burden of proving that the slaughter, transport, export, sale, purchase or possession of bovine flesh, as the case may be, was not in contravention of the provisions of the Act on the accused in any trial for an offence punishable under Section 9 or 9A. The Petitioners challenge this provision as illegal and *ultra vires* the Constitution of India. It is submitted that presumption of innocence is a constitutional guarantee to every accused facing a trial and insofar as Section 9B presumes contravention, and thereby the guilt of the accused, and casts the legal burden of proving non-contravention, that is to say, innocence, on the accused, the same in violative of the constitutional right of the accused. Mr. Kumbhakoni, learned Senior Counsel appearing for the Petitioners in Writ Petition (L) No.3396 of 2015, who made lead submissions on this point, suggested various tests where a "reverse burden" on the accused, or, in other words, limitations on the right to be presumed innocent, might be countenanced as valid. He contended that such provision needs to be tested on the anvil of the State's responsibility to protect innocent citizens and the importance of this duty must be weighed against the purpose of the limitations. Learned Counsel relied on the case of ***Noor Aga vs. State of Punjab*** in

support of his submission. Relying on the case of ***Bhola Singh vs. State of Punjab***[58], he also submitted that it is only after the state discharges its initial burden of proving foundational facts that the burden can be shifted onto the accused. Mr. Kumbhakoni submitted that there are no foundational facts to be established by the State in the case of a trial of offences under the Act, by virtue of Section 9B. He submitted that even tests such as the difficulty in the prosecution giving a proof of a presumed fact versus the relative ease with which the accused may prove or disprove any such fact, or the extent and nature of matters to be proved by the accused and their importance relative to the matters required to be proved by the prosecution, which ordinarily sustain casting of a reverse burden, are not satisfied in this case.

202. On the other hand, it is submitted by the learned Advocate General that presumption of innocence is not a right guaranteed by the Constitution and cannot *per se* be extended within the purview of freedom of life and liberty guaranteed under Article 21. It is submitted that though the right to a free and fair trial is an important right in the criminal legal system, such right cannot include the right to presume innocence. Learned Advocate General submits that the rule of reverse burden of proof, or, in other words, shifting of the burden on the accused to prove innocence, is not foreign to Indian legal system. He relies on several enactments such as Essential Commodities Act,

58 (2011)11 Supreme Court Cases 653

Narcotic Drugs and Psychotropic Substances Act, Wild Life Protection Act, Foreign Exchange Regulation Act and Foreign Exchange Management Act, Food Adulteration Act, Customs Act, etc. where burden to prove that his act was innocent and not in contravention of the penal provisions in the relevant Act has been shifted or cast on the accused. Reliance is placed on the judgments of the Supreme Court in ***Noor Aga (supra)*** and ***P.K. Krishna Lal vs. State of Kerala***[59] in support of validity of casting of such reverse burden. It is submitted that Section 9B comes within the exceptions to the general rule requiring the prosecution to prove every element of an offence beyond reasonable doubt. It is submitted that the facts required to be proved by the accused for discharging the burden within the meaning of Section 9B are specially within his knowledge and can be proved by him.

203. The sanctity of human life and liberty is probably the most fundamental of human social values and Article 21, which forms the pivot of this fundamental value enshrined in our Constitution, prevents any encroachment upon this right to life and personal liberty by the executive, save in accordance with a procedure established by law. Every punishment meted out to an individual by way of imprisonment by the State must satisfy the test of Article 21. That is probably the least of the content of that Article. Such punishment must be in accordance with the procedure established by law. It is similar to the

59 (1995) Supp (2) Supreme Court Cases 187

US concept of 'due process'. That concept was explained in the American case of ***Chambers vs. Florida***[60] in the following words :

> "…. A liberty loving people won the principle that criminal punishments could not be inflicted save for that which proper legislative action had already by 'the law of the land' forbidden when done. But even more was needed from the popular hatred and abhorrence of illegal confinement, torture and extortion of confessions of violations of the 'law of the land' evolved the fundamental idea that no man's life, liberty or property be forfeited as criminal punishment for violation of that law until there had been a charge fairly made and fairly tried…. Thus, as assurance against ancient evils, our country, in order to preserve "the blessings of liberty," wrote into its basic law the requirement, among others, that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed."

There are both procedural and substantive aspects of this due process. Procedurally, it means that in dealing with individuals, the State must proceed with 'settled usages and modes of procedure'. For example, the rules that nobody should be convicted without a hearing or that the judge must be impartial or that an orderly course of procedure must be adopted in the trial, are part of procedural due process. This is what the court said in the old case of ***Hagar vs. Reclamation Dist.***[61]:

> "By due process of law is meant one which, following the forms of law, is appropriate to the case and just to the

60 (1940)309 US 227
61 (1884)111 US 701

> parties to be affected. It must be pursued in the ordinary modes prescribed by law, it must be adapted to the end to be attained, whenever it is necessary for the protection of the parties it must give them an opportunity to be heard respecting the justness for the judgment sought. The clause, therefore, means that there can be no proceeding against life, liberty or property which may result in deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

On the other hand, substantive due process mandates that a criminal law does not come into conflict with the rights guaranteed by the First Amendment, e.g. the freedom of speech and of the press, freedom of assembly, of association, etc. A criminal statute, which, for example, is either vague or gives contradictory commands, offends against this substantive aspect of due process.

204. In India, the early approach to Article 21 envisaged the right to life and personal liberty as circumscribed by literal interpretation. That was in ***A.K. Gopalan vs. State of Madras***[62]. Article 21 was construed narrowly, as a guarantee against executive action unsupported by law. That would suggest that a law, coming under Article 21, made by a competent legislature is not controlled by other Articles within Part III (save, of course, Article 22, which provides for protection against arrest and detention in certain cases). Later decisions of the Supreme Court made a clear departure from that view.

62 1950 SCR 88 = AIR 1950 SC 27

In ***R.C. Cooper vs. Union of India***, Shah J., speaking for the majority, pointed out that "Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields : they do not attempt to enunciate distinct rights". The majority in ***R.C. Cooper,*** in so many words, observed that even where a person is detained in accordance with the procedure prescribed by law, as mandated by Article 21, the protection conferred by the various clauses of Article 19(1) does not cease to be available to him. The Court held that the law authorising such detention has to satisfy the test of the applicable freedoms under Article 19. Then, in ***Maneka Gandhi vs. Union of India***, the Supreme Court authoritatively considered the inter-relationship between Article 21 and Article 14 of the Constitution. In no uncertain terms, the Court in ***Maneka Gandhi*** held that if a law depriving a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19, ex hypothesi it must also be liable to be tested with reference to Article 14. In other words, the Court accepted a clear limitation even on law making so that deprivation of life and personal liberty must not only be by law which prescribes a procedure for it, but the procedure prescribed itself must be reasonable, fair and just. Now it is well settled that the validity of a law coming under Article 21 must also be tested with

reference to Articles 14 and 19. This is what the Supreme Court said in ***Maneka Gandhi's*** case (supra).

> "The law must, therefore, now be taken to be well settled that Art. 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of 'personal liberty' and there is consequently no infringement of the fundamental right conferred by Article 21, such law, in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in R.C. Cooper's case. Shambunath Sarkar's case and Haradhan Saha's case. Now, if a law depriving a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex hypothesi it must also be liable to be tested with reference to Article 14. This was in fact not disputed by the learned Attorney General and indeed he could not do so in view of the clear and categorical statement made by Mukherjea, J. in A.K. Gopalan's case that Article 21 "presupposes that the law is a valid and binding law under the provisions of the Constitution having regard to the competence of the legislature and the subject it relates to and does not infringe any of the fundamental rights which the Constitution provides for," including Article 14. This Court also applied Article 14 in two of its earlier decisions, namely, The State of West Bengal v. Anwar Ali Sarkar, 1952 SCR 435: (AIR 1952 SC 123) where there was a special law providing for trial of certain offences by a speedier process which took away some of the safeguards available to an accused under the ordinary procedure in the Criminal Procedure Code. The special law in each of these two cases undoubtedly prescribed a procedure for trial of the specified offences and this procedure could not be condemned as inherently unfair or unjust and there was thus compliance with the requirement of Article 21, but even so, the validity of the special law was

> tested before the Supreme Court on the touchstone of Article 14 and in one case, namely, Kathi Raning Rawat's case, the validity was upheld and in the other, namely, Anwar Ali Sarkar's case, it was struck down. It was held in both these cases that the procedure established by the special law must not be violative of the equality clause. That procedure must answer the requirement of Article 14. The nature and requirement of the procedure under Article 21."

If the procedure prescribed does not satisfy the test of Article 14, e.g. if it is arbitrary, oppressive or fanciful, it would be no procedure at all within the meaning of Article 21 *(See* ***District Registrar and Collector, Hyderabad vs. Canara Bank***). So also, considering that the concept of reasonableness permeates Article 14, a procedure which is unreasonable cannot be termed as a procedure so established by law. In sum, after ***Maneka Gandhi's*** case, the law can be taken as fully settled that personal liberties cannot be restricted even by law except after satisfying Articles 14 and 19. The right of life and liberty under Article 21, thus, clearly covers the substantial due process aspect envisaged in the American jurisprudence.

205. After considering thus the reach of Article 21, we may now focus on the presumption of innocence and its place in a criminal trial from the standpoint of a reasonable and fair procedure which could pass muster of the constitutional scheme. Presumption of innocence is universally regarded as an important human right. Article 11(1) of the Universal Declaration of Human Rights provides that everyone charged

with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Article 6(2) of the European Convention on Human Rights, 1950 also states that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. The Supreme Court, in ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde***[63] put the matter thus :

> "44. The presumption of innocence is a human right. (See Narender Singh v. State of M.P. (2004) 10 SCC 699, Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294 and Rajesh Ranjan Yadav v. CBI (2007) 1 SCC 70) Article 6(2) of the European Convention on Human Rights provides : "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". Although India is not bound by the aforementioned Convention and as such it may not be necessary like the countries forming European countries to bring common law into land with the Convention, a balancing of the accused's rights and the interest of the society is required to be taken into consideration. In India, however, subject to the statutory interdicts, the said principle forms the basis of criminal jurisprudence."

206. Thus, as a normal rule, an accused is presumed to be innocent until he is proved guilty. Correspondingly, it is the duty of the prosecution to prove the guilt of the accused. That brings us to the question of the burden of proof and its role in a criminal trial particularly in reference to the presumption of innocence of the accused. Burden of proof itself, as understood by the law, is of two

63 (2008)4 SCC 54

types; one, burden of pursuation or the legal burden, which is on a party as a matter of law – if no evidence is produced, the party on whom such burden lies fails; and two, evidential burden or the burden of going forward with evidence. Under the traditional view, burden of pursuation never shifts from one party to the other at any stage of the proceedings, whereas evidential burden may well shift back and forth between the parties as the trial progresses. The normal rule of presumption of innocence of the accused would thus imply that it would be for the prosecution to discharge the pursuasive or legal burden to prove the guilt of the accused. Traditionally conceived, every criminal offence has two essential elements - *actus reus*, that is to say, the guilty act itself and *mens rea*, the guilty mind. Though there are many crimes (known as crimes of strict liability) which do not require *mens rea*, whenever *mens rea* is required, the prosecution has to ordinarily establish both the *actus reus* of the crime and the *mens rea*. This traditional view has undergone changes over time. Now there are well known exceptions to the normal rule that the burden of proof is upon the prosecution. These exceptions are : (1) when the accused admits the *actus reus* and *mens rea* but pleads a special defence. For example, in a prosecution for murder, when the accused pleads self-defence, the evidential burden is upon the accused to create at least a reasonable doubt in his favour on such plea; (2) when the accused sets up a special case, such as insanity, in which case both the evidential and

the pursuasive burden rest upon him to establish the facts constituting such defence. It may still be sufficient, however, for him to discharge such burden on a balance of probabilities; (3) The third well known exception is the statutory interdict referred to by the Supreme Court in ***Krishna Janardhan Bhat****'s* case (supra). A statute itself may expressly place a pursuasive burden on the accused. For example, if contraband like narcotic drug or psychotropic substance is seized from the possession of any person and such possession and seizure are established, the burden of proving that such possession was not an offence under the Narcotic Drugs and Psychotropic Substances Act lies on such person. If the person fails to account for such possession satisfactorily, Section 54 of that Act draws a presumption of the offence.

207. In the present case, we are concerned with this third exception. The statute, namely, Section 9B, does cast the pursuasive burden on the accused to prove that the slaughter, transport, export, sale, purchase or possession, as the case may be, was not in contravention of the provisions of the Act. If the State holds the accused guilty and punishes him on his failure to discharge that burden, the personal liberty of the accused is taken away by a procedure established by law. But does this procedure satisfy the mandate of Articles 14 and 19, as it must as discussed above. The aspect of Article

19 insofar as the offences themselves are concerned, has already been considered above. Here we are essentially dealing with the procedure passing the muster of Article 14. Does the procedure violate the equality clause? Is it reasonable, fair and just? Or is it is arbitrary or fanciful? To answer these questions, we must first consider the rationable behind the requirement of casting a reverse burden on the accused, and then see the tests which must be satisfied by any provision of such reverse burden, before we consider how the statute in question fares in that respect.

208. The rationale behind limiting the individual's right to personal liberty and the consequential entitlement to due process in a criminal trial, in the first place, is to balance the interests of the state to secure a conviction, particularly in the case of heinous crimes, and thereby enforce the law with the interests of the citizen to be protected from injustice at the hands of the law enforcement machinery. The Supreme Court in the case of ***Noor Aga*** *(supra)*, put the matter thus :

> "Enforcement of law, on the one hand and protection of citizen from operation of injustice in the hands of the law enforcement machinery, on the other, is, thus, required to be balanced. The constitutionality of a penal provision placing burden of proof on an accused, thus, must be tested on the anvil of the State's responsibility to protect innocent citizens. The court must assess the importance of the right being limited to our society and this must be weighed against the purpose of the limitation. The purpose of the limitation is the reason for the law or conduct which limits the right.(see S v. Dlamini ((1999) 4 SA 623: (1999) 7 BCLR 771 (CC)"

This balance is achieved by allowing the State to rely on presumptions based on recognised principles, whilst at the same time, permitting the accused to rebut those presumptions.

209. There are various recognized reasons why statutes provide for presumptions of fact or law and cast a burden on the accused to displace those presumptions. The Supreme Court in ***P.N. Krishna Lal*** *(supra)* explored the contours of comparable jurisdictions in UK, Hong Kong, Malaysia, USA, Australia and Canada to find the permissive limits of casting the burden of proof on the accused accepted by various jurisdictions. One of the areas where such presumptions are raised is in respect of proof of negative facts. The English Court of Appeal in ***R vs. Edwards***[64], whilst considering the provisions of the Licence Act of 1964, held that when the accused was convicted of selling intoxicating liquor without a licence, the burden was on the defendant (accused) to prove that he held a licence and as he had not done so, he was rightly convicted. After following a number of precedents on the statutory exceptions, the Court held that it was no part of the duty of the prosecution to prove a negative fact that the accused did not have a licence. The other area is where the particular fact is within the special knowledge of the accused. Criminal courts are familiar with the problem presented by the proof of a purpose for which an act is done, whenever such purpose is a necessary ingredient of the offence with

64 [1974]2 All ER 1085 at 1095

which the accused is charged. Generally, in the absence of an express admission by the accused, the purpose with which he did the act complained of is a matter of inference from what he actually did. ***Ong Ah Chuan vs. Public Prosecutor***[65] was a case arising in connection with the Drugs Act of Singapore which raised a statutory presumption, whenever the quantity of a controlled drug was found to be beyond a certain quantity (presumably commensurate with self-consumption), of the drug being possessed for the purpose of trafficking in prohibited drug (heroin, in that case). If the accused is found in possession of controlled drugs and to have been moving them from one place to another, the mere act of moving did not of itself amount to trafficking under the Act. But if the purpose for which they were being moved was to transfer possession from the mover to some other person at their intended destination, the mover was guilty of the offence of trafficking under Section 3 of that Act. If the quantity of the controlled drugs being moved was in excess of a certain minimum specified in Section 15, a rebuttable presumption was created that the purpose of such moving was to so transfer possession. The onus lied upon the mover to satisfy the Court, upon balance of probabilities, that he had not actually intended to part with the possession of the drugs to anyone else, but to retain them solely for his own consumption. The Privy Council upheld the conviction holding that the material before the Court, namely, that the person was found in possession of and moving a certain quantity of

65 [1980]3 W.L.R. 855

drugs beyond the permissible limit was logically probative of the purpose of transferring possession. The possession of prohibited drugs was in itself unlawful, but more heinous was the crime of trafficking in such drugs. Upon the prosecution proving that certain acts consistent with the purpose of trafficking (i.e. transferring possession to another) were committed by the accused, namely, carrying of a quantity over the permissible limit consistent with self-consumption, there is nothing wrong with the presumption of the purpose behind carrying such quantity. The purpose with which he did the act is peculiarly within his knowledge and there was nothing unfair in requiring him to satisfy the Court that he did the act with some other less heinous purpose if such be the fact. Lord Diplock held that presumptions of this kind are a common feature of modern legislation concerning possession and use of things that present danger to society like additive drugs, explosives, arms and ammunition, and accordingly, upheld the validity of Section 15 as being consistent with the constitution.

210. Another important consideration is the level of difficulty, sometimes a virtual impossibility, for the prosecution to fulfill the burden, and the corresponding or relative ease for the accused to bear the burden of proving the opposite. In ***Attorney General of Hong Kong vs. Lee Kwong-Kut***[66], the Court was concerned with conviction of one accused under Section 30 of the Summary Offences Ordinance of Hong

66 [1993]3 All ER 940

Kong, which provided for the offence of being in possession of what is reasonably suspected of having been stolen or unlawfully obtained. Section 30 was in the following terms:

> "Any person who is brought before a magistrate charged with having in his possession or conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained, and who does not give an account, to the satisfaction of the magistrate, how he came by the same, shall be liable to a fine of $1,000 or to imprisonment for 3 months."

What was alleged in the case was that the first respondent had, on a particular day and at a named place, in his possession cash of $HK 1.76 m, reasonably suspected of having been stolen or unlawfully obtained. The Court was also concerned with another accused charged under Section 25 of Drug Trafficking (Recovery of Proceeds) Ordinance of Hong Kong, which provided for an offence of entering into or being concerned in an arrangement to facilitate retention or control of sale proceeds of drug trafficking on behalf of the trafficker. Sub-section (1) of Section 25 defined the offence. A person who enters into or is otherwise concerned in an arrangement whereby the retention or control by or on behalf of another ("the relevant person") of the relevant person's proceeds of drug trafficking is facilitated, knowing or having reasonable grounds to believe that the relevant person is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, commits the offence under Section 25.

The section thus created an offence, which involved an absolute prohibition on engaging in the activities referred to therein with someone whom one knew or had reasonable grounds to believe as a person who carried on or benefited from drug trafficking. There were exceptions provided for in Sub-section (3) and a special defence was contained in Sub-section (4). The exceptions were disclosures made by the accused in accordance with sub-section (3) to an authorized officer of any suspicion or belief that any funds or investments were derived from or used in drug trafficking. If disclosures in terms of sub-Section (3) were made, the person doing an act in contravention with sub-section(1) could not be said to have committed the offence. Sub-section (4) provided for a special defence, namely, a defence to prove either that (a) the accused did not know or suspect that the arrangement related to proceeds of drug trafficking or (b) he did know that by such arrangement the retention or control by or on behalf of the trafficker was facilitated or (c) he actually intended to make a disclosure under sub-section (3) but that there was a reasonable excuse for his failure to do so. Both accused were convicted and their convictions were upheld, but the High Court quashed the indictment in both the cases on the ground that the convictions were violative of Article 11 of the Bill of Rights. (Article 11(1) of the Hong Kong Bill of Rights provided: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to

law.") On appeal by the Attorney General, the Privy Council upheld the judgment in the first case, but set aside the conviction in the second case. After analysing the respective Sections (Sections 25 and 30) and Article 11(1)of the Bill of Rights, the Privy Council held that the substantive effect of the statutory provisions in respect of the first accused (under Section 30) was to place the onus on him to establish his innocent possession of the property, which was the most significant element of the offence. It actually reduced the burden on the prosecution to prove possession by the defendant and facts from which a reasonable suspicion can be inferred that the property had been stolen or obtained unlawfully, matters which are likely to be a formality in a majority of cases. Therefore, it was held that Section 30 contravened Article 11(1) of the Hong Kong Bill of Rights. But with regard to Section 25, it was held that the onus was on the prosecution. Unless the prosecution proved that the defendant has been involved in a transaction involving the relevant person's proceeds of drug trafficking within the wide terms of Section 25(2) and that at that time he had the necessary knowledge or had reasonable grounds to believe the specified facts, the defendant was entitled to be acquitted. The Privy Council held as follows :

> "The language of s 25 makes the purpose of the section clear. It is designed to make it more difficult for those engaged in the drug trade to dispose of the proceeds of their illicit traffic without the

> transactions coming to the knowledge of the authorities. Once a person has knowledge or has reasonable grounds to believe that a relevant person carries on or has carried on drug trafficking or has benefited from drug trafficking, then it will be an offence to become involved with 'the relevant person' in any of the wide-ranging activities referred to in the section, unless the activity is reported in accordance with sub-s (3) or the person who engages in the activity is in a position to establish the defence provided for in s 25(4). The section therefore creates an offence, which involves an absolute prohibition on engaging in the activities referred to in the section with someone whom you know or have reasonable grounds to believe is a person who carries on or has carried on or has benefited from drug trafficking, subject to an exception contained in s 25(3) and a special defence contained in sub-s (4). Section 25 is an offence which falls within the classes referred to by Lawton LJ in the passage cited from his judgment in R v Edwards."

The Privy Council, whilst analyzing the application of Article 11(1) of the Hong Kong Bill of Rights, observed that the Article did not prohibit presumptions of fact or of law, which operate in every legal system, and had an implicit degree of flexibility in that behalf. It further held as follows :

> "This implicit flexibility allows a balance to be drawn between the interest of the person charged and the state. There are situations where it is clearly sensible and reasonable that deviations should be allowed from the strict applications of the principle that the prosecution must prove the defendant's guilt beyond reasonable doubt. Take an obvious example in the case of an offence involving the performance of some act without a licence. Common sense dictates that the prosecution should not be required to shoulder the virtually impossible task of establishing that a

> defendant has not a licence when it is a matter of comparative simplicity for a defendant to establish that he has a licence. The position is the same with regard to insanity, which was one of the exceptions identified by Viscount Sankey LC in the passage in Woolmington v DPP [1935] AC 462 at 481, [1935] All ER Rep 1 at 8 which has already been cited. The other qualification which Viscount Sankey LC made as to statutory exceptions clearly has to be qualified when giving effect to a provision similar to art 11(1).
>
> Some exceptions will be justifiable, others will not. Whether they are justifiable will in the end depend upon whether it remains primarily the responsibility of the prosecution to prove the guilt of an accused to the required standard and whether the exception is reasonably imposed, notwithstanding the importance of maintaining the principle which art 11(1) enshrines. The less significant the departure from the normal principle, the simpler it will be to justify an exception. If the prosecution retains responsibility for proving the essential ingredients of the offence, the less likely it is that an exception will be regarded as unacceptable. In deciding what are the essential ingredients, the language of the relevant statutory provision will be important. However, what will be decisive will be the substance and reality of the language creating the offence rather than its form. If the exception requires certain matters to be presumed until the contrary is shown, then it will be difficult to justify that presumption unless, as was pointed out by the United States Supreme Court in Leary v US (1969) 395 US 6 at 36, 'it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend'."

211. The foregoing discussion also shows that for a reverse burden to be upheld as a permissible limitation upon the presumption of innocence, what is important is to see if the prosecution has proved the basic foundational facts, which have a rational connection with

presumed facts, so as to make them highly probable. In such a case, it may be legitimate to cast the burden of displacing those presumed facts on the accused, keeping in mind the various considerations discussed above, such as the rule against discharging of a negative burden, the rule for discharging of a positive burden of establishing facts within one's peculiar knowledge, the relative ease of discharging such burden, etc. In the case of ***R.vs. Oakes***[67] considered by our Supreme Court in the case of ***P. N. Krishna Lal*** (supra), the Canadian Supreme Court was considering the constitutionality of the presumption engrafted in Section 8 of the Narcotic Control Act, 1970 of Canada on the anvil of Section 11(d)of the Canadian Charter of Rights and Freedoms, which guaranteed the presumption of innocence to the accused. Section 8 required that in any prosecution for the offence of possession of a narcotic for the purpose of trafficking (provided by Section 4(2) of that Act), if the Court found the accused to be in possession of the narcotic (which was itself an offence under Section 3 of that Act), he would be given an opportunity of establishing that he was not in possession of the narcotic for the purpose of trafficking and if he failed to so establish, he would be convicted of the (higher) offence of trafficking and be sentenced accordingly. The Court struck down the Section since it established a mandatory presumption of law and by using the word 'establish' imposed “a legal burden of proof on the accused and not merely an evidentiary burden, by requiring the accused to prove on the

67 26 DLR (4th) 200

balance of probabilities that he was not in possession of the narcotic drug for the purpose of trafficking, it compelled him to prove that he was not guilty of the offence of trafficking." It was held that "the Section failed to rationalise the connection between the basic fact of possession and the presumed fact of possession for the purpose of trafficking of persons guilty of possession only of narcotic drugs."

212. To the similar effect is the judgment of the American Supreme Court in ***Morrison et al. vs. People of State of California***[68] referred to by our Supreme Court in ***P. N. Krishna Lal***. That was a case where the indictment charged that the two appellants had feloniously conspired to place a person, who was said to be an alien Japanese, in the possession and enjoyment of agricultural land within the State of California, which was prohibited under the statutes of the State. On the trial, the State proved that the particular person (who was said to be an alien) had gone upon the land and used it under an agreement with the appellant, but did not attempt to prove that he was not a citizen of United States or that he was ineligible for citizenship. The statutes of California provided that as to this particular element of the crime (namely, the person not being a citizen or eligible to be a citizen of United States) the burden of proving the same was on the defendant. The observations of Cadozo, J. in that case, quoted by our Supreme Court in ***P. N. Krishna Lal***, are quoted below :

68 291 U.S. 82 (1934)

> "The decisions are manifold that within limits of reason and fairness the burden of proof may be lifted from the state in criminal prosecutions and cast on a defendant. The limits are in substance these, that the state shall have proved enough to make it just for the defendant to be required to repel what has been proved with excuse or explanation, or at least that upon a balancing of convenience or of the opportunities for knowledge the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression."

This, then, gives us one more test to evaluate the validity of a statutory presumption. Has the State proved enough basic facts to raise a presumption, considering the probative connection between these basic facts and the facts presumed on the basis thereof, so as to make it just for the defendant to be required to displace such presumption? It is not within the province of a legislature to declare an individual presumptively guilty of a crime, but it is legitimate to draw presumptions on the basis of facts proved by the State and require the accused to displace them. 'These presumptions are not evidence in a proper sense', as observed in the case of ***P. N. Krishna Lal***, 'but simply regulations of the burden of proof'.

213. We may now summarize the various tests which we have discussed above for sustaining a reverse burden in a criminal trial as constitutionally valid. They are as follows :

(i) Is the State required to prove enough basic or essential facts constituting a crime so as to raise a

presumption of balance facts (considering the probative connection between these basic facts and the presumed facts) to bring home the guilt of the accused, and to disprove which the burden is cast on the accused?

(ii) Does the proof of these balance facts involve a burden to prove a negative fact?

(iii) Are these balance facts within the special knowledge of the accused?

(iv) Does this burden, considering the aspect of relative ease for the accused to discharge it or the State to prove otherwise, subject the accused to any hardship or oppression?

Only when these tests are satisfied, can one say that the casting of the particular burden does not detract from fairness or reasonableness or justness of the trial. Only then would it pass the test of Article 14 intrinsic to the guarantee of Article 21.

214. We may now consider the statute in question, namely, Section 9B, to see if it satisfies these tests. Let us first take the offences of Sections 5C and 5D of the Act. Section 5C, as we have noted above whilst dealing with the constitutional validity of the relevant Sections, makes possession of the flesh of any cow, bull or bullock slaughtered in

contravention of the provisions of the Act an offence, whilst Section 5D makes possession of the flesh of any cow, bull or bullock slaughtered outside the State of Maharashtra an offence. Thus, these two provisions, between them, exhaust all cases of possession of bovine flesh, each of which amounts to an offence. In other words, the moment anyone is found to be in possession of bovine flesh in the State of Maharashtra, irrespective of where the slaughter has taken place, such person commits an offence under the Act and a uniform punishment is provided for under the Act for such offence. What is, thus, in contravention of the Act is the very possession of bovine flesh. If that be the case, Section 9B, inasmuch as it casts the burden of proving that the possession of such flesh was not in contravention of the Act, makes no practical sense on the terms of Sections 5C and 5D on the one hand and Section 9B, on the other. Considering, however, that we have interpreted Sections 5C and 5D to apply only to “conscious” possession of bovine flesh, the knowledge of such possession may be said to be another ingredient of offences thereunder. In that case, if the prosecution proves the possession of the accused, the accused may be said to have the burden of proving that he did not know that the flesh was of a cow, bull or bullock. That means a burden to prove a negative fact. It is unthinkable how, even by the test of preponderance of probabilities, the accused can reasonably or fairly be expected to discharge this burden beyond possibly his own statement in the witness

box that he did not know that it was bovine flesh. Greater difficulty would be faced if on the basis of possession of such flesh, the State were to prosecute him for an offence under Section 5C, that is to say, for possession of the flesh of a cow, bull or bullock slaughtered in contravention to the Act, i.e. in Maharashtra. Pray how is the accused to discharge the onus of proving that he did know that the animal was slaughtered in contravention of the Act? Not only does the burden placed on him offend the rule against burden to prove a negative fact, it also subjects the accused to a great hardship and oppression, which is not commensurate with the balance of difficulty faced respectively by the prosecution and the accused in establishing the ingredients of the offence or the lack thereof. It is relatively easy for the prosecution to bear the burden of establishing that the slaughter was in contravention of the Act than for the accused to bear the burden of showing otherwise. Besides, the essence of the offence under Section 5C consists of possession of bovine flesh which is produced out of contravention of the Act, i.e. by slaughter within the State. How can this essential fact be left to the accused to controvert? The basis of any presumption in law in a criminal trial, as we have seen above, is the substantial causal or probative connection between the facts found proved and the facts presumed. That connection is absent in this case. Merely because a person is found in possession of bovine flesh does not make his knowledge of slaughter within the State in any way probable. There

are many countries where slaughter of a cow, bull or bullock is not illegal. Even within India, there are States where such slaughter is perfectly legal. In fact, the only slaughter which is in contravention of the Act is the slaughter within Maharashtra. Now if a person were to obtain beef from these other Countries or States in India, can it be said that his mere possession must lead to a presumption of the place of slaughter being within Maharashtra? Or for that matter, to a presumption of his knowledge of such slaughter within Maharashtra? If bovine flesh from different sources, i.e. from slaughters outside the State as well as within the State, is available in the market, there is practically no way of distinguishing one flesh from the other. There is absolutely no question of fastening any presumed knowledge of slaughter within the State on the accused.

215. In its written submissions, the State has taken up a position that on a conjoint reading of Sections 9A and 9B, in a trial of an offence under the Act, two foundational facts would have to be established by the prosecution, viz.(a) the flesh is of an animal protected under the Act and (b) the accused is found in possession of the same; and once these foundational facts are established, the burden would shift on the accused to show that the slaughter was not in contravention of the Act. As we have shown above, the proof tendered by the State is not enough to lead to a presumption that the slaughter was in contravention of the

Act. The proved foundational facts do not have a sufficient probative connection with the presumed fact of the slaughter being in contravention of the Act. Besides, as we have discussed above, the burden cast on the accused is to prove a negative fact, nothing of which can be said to be within his special knowledge. Casting of such burden amounts to subjecting the accused to grave hardship and oppression. At the hearing, however, the learned Advocate General practically conceded that all these ingredients, namely, (i) the flesh being of a protected animal, (ii) the possession of the accused of such flesh, and (iii) slaughter of the protected animal within the State for producing such flesh, would have to be established by the prosecution. We are afraid that is not how Section 9B is worded. As framed by the legislature, it does cast the burden of proving the negative of the third ingredient on the accused, and as such is unconstitutional. Constitutionality cannot be a matter of concession by the State at the hearing. Besides, if all these ingredients were to be established by the prosecution, there is practically no content in Section 9B. We might as well disregard it entirely, as even the only other ingredient of 'knowledge' also cannot be a matter of presumption. All cases, where knowledge or, in other words, *mens rea*, imputed to the accused is accepted as constitutionally valid, are cases where the substances themselves are so obnoxious or harmful that mere possession leads to the presumption of a harmful purpose and knowledge of such harmful

purpose. For example, these presumptions are applied to possession of deadly firearms, narcotic or psychotropic substances. That is not the case with beef. No one has told us at the Bar, in the first place, of there being any way of distinguishing the flesh of cow, bull or bullock from the flesh of other bovine species, e.g. buffalo. It is inconceivable that an ordinary consumer would know the difference. On top of it, the State would have the Court presume not just the knowledge of the accused of the nature of the flesh, namely, of an animal protected under the Act, but even the manner of its production, namely, by slaughter in contravention of the Act, and cast the burden of showing otherwise, a pure negative fact, on the accused. This is clearly impermissible.

216. The same is also true of offences under Sections 5A and 5B. Section 5A prohibits the transport of a cow, bull or bullock from any place within the State to any place outside the State 'for the purpose of its slaughter in contravention of the provisions of the Act' or 'with the knowledge that it will be, or is likely to be, so slaughtered', and makes such transport an offence. Transporting of cattle (i.e. cow, bull or bullock) *per se* even if it be with the knowledge that such transport is for sale outside the State can hardly ever make the knowledge of its slaughter (and for that matter, its slaughter within the State), if such be the case, out of such sale, probable. The two have no probative

connection. Once again, the essence of the offence consists in the purpose of such transport or the knowledge that the transport is for slaughter in contravention of the Act. That itself cannot be presumed or be left to the accused to disprove. In other words, by proving the fact of transport *per se*, the State does not prove enough of basic or essential facts to raise a presumption of the intended ultimate purpose of the transport or its knowledge. Secondly, as in the case of offences under Sections 5C and 5D, what is cast on the accused is the burden to prove purely negative facts, namely, that the ultimate intended purpose of the transport was not to slaughter the cow, bull or bullock in contravention of the Act or that the accused did not know that such purpose was to slaughter the animal in contravention of the Act. Such a burden is clearly unreasonable and subjects the accused to a grave hardship and oppression. All these considerations squarely apply even to sale or disposal of a cow, bull or bullock covered within Section 5B. To cast a burden on the accused, after the State simply establishes the sale or disposal of the animal by him, to prove that such sale or disposal was not for slaughter or with knowledge of such slaughter or with reason to believe that the animal would be slaughtered, does not satisfy any of the tests for validity of a reverse burden.

217. Sections 5 and 6 prohibit slaughter or causing to be slaughtered or (under Section 5) offering for slaughter any (a) cow, bull

and bullock, or (b) scheduled animal without the certificate referred to in Section 6 (under Section 6), in any place in the State of Maharashtra. Sections 9 and 9A, respectively, make the same punishable. The ingredients of the offence under Sections 5 and 6 read with Sections 9 and 9A are (1) slaughtering or causing to be slaughtered or (under Section 5) offering for slaughter any cow, bull or bullock or (under Section 6) any scheduled animal, (2) such slaughter being in any place in the State of Maharashtra and (3) in the case of Section 6, such slaughter being without obtaining the certificate referred to in that Section. These are necessarily foundational facts, the onus to establish which, it is not disputed by the learned Advocate General, lies squarely on the State. If so, there is no further ingredient to be established by the prosecution or disproved by the defence. On this analysis, Section 9B insofar as it applies to the offences under Sections 5 and 6 read with, respectively, Sections 9 and 9A has practically no content. If, on the other hand, if any of these foundational facts are to be presumed and onus to disprove them is cast on the accused, the provisions would attract the same vice as in the case of the other offences under Sections 5A, 5B, 5C and 5D read with Sections 9 and 9A, as discussed above. The burden of proof cast on the accused read with the definitions of the crimes under Sections 5 and 6, would fail every test set out above to determine the validity of a negative burden. The reasons discussed in respect of Sections 5A, 5B, 5C and 5D squarely apply in the case of

Sections 5 and 6 insofar as the burden of proof is concerned.

218. Hence, the procedure prescribed by Section 9B for the trial of offences cannot be said to be fair, just and reasonable. We must, therefore, hold Section 9B as unconstitutional which infringes Article 21 of the Constitution of India.

219. I concur with the views expressed by A.S.Oka, J on the other aspects of the case.

Per Court

220. Before we part with the judgment, we must record our appreciation for the assistance rendered by all the learned counsel appearing for the parties. Most of them were very brief and to the point. We must note that Shri Jha, the learned counsel appearing for one of the Intervenors made a submission on 23rd December 2015, which was the last working day before the Christmas Vacation, when the hearing was conducted with the consent of the parties till 6.30 p.m. During the course of the arguments, after the Court hour on 23rd December 2015, he urged that when a large number of litigants are waiting in a queue, it was a grave error on the part of this Court to have given priority to the hearing of this group of Petitions. He had to say something about the recusal of a learned Judge who was a part of the

Bench hearing this group. He pointed out that after one learned Judge (G.S. Patel, J) who was a part of the Division Bench hearing this matter recused himself, a new Bench was immediately constituted. We must note here that G.S. Patel, J recused himself following highest traditions maintained by this Court. He had written an article as a member of the Bar on a similar statute of another State in which he had expressed his own views on the subject. We thought that this gesture will be appreciated by the members of the Bar. We must record here that in some of the matters forming part of this group, there was already an order of a Co-ordinate Bench for giving out of turn priority to the final hearing of the Writ Petitions and in fact a peremptory date for final hearing was fixed. Apart from that, the Hon'ble the Acting Chief Justice by an order dated 17th November 2015 constituted this Special Bench for hearing this group of Petitions. It is obvious that the Special Bench was constituted with a view to ensure that there is early disposal of this group of matters.

CONCLUSIONS :

221. Now, we summarize our conclusions drawn in separate Judgments. The conclusions are as under:

(a) We uphold the constitutional validity of the amendment to Section 5 of the Animal Preservation

Act made by the impugned Amendment Act ;

(b) We uphold the constitutional validity of Sections 5A and 5B;

(c) We uphold the constitutional validity of Section 5C. However, the possession contemplated by Section 5C shall be conscious possession. It will be a possession with the knowledge that the flesh is of cow, bull or bullock which is slaughtered in contravention of Section 5 of the Animal Preservation Act;

(d) We hold that right of privacy is a part of the personal liberty guaranteed by Article 21 of the Constitution of India. We hold that Section 5D infringes the right of privacy which is part of Article 21 of the Constitution of India and therefore, it is liable to be struck down;

(e) Accordingly, reference to Section 5D in clause (b) of Sub-section (3) of Section 8 is liable to be struck down. Similarly, a reference to Section 5D in Section 9A is liable to struck down;

(f) The provisions of Section 9B are held to be unconstitutional being violative of Article 21 of the Constitution of India and, therefore, Section 9B is liable to be struck down;

(g) We hold that all other Sections which were subject matter of challenge are legal and valid.

222. Hence, we dispose of the Petitions by passing the following order:

ORDER :

(a) We hereby hold and declare that Section 5, Section 5A, Section 5B, Section 5C, Sub-sections (3) and (4) of Section 8, Section 9 and Section 9A of the Maharashtra Animal Preservation Act,1976 as amended/inserted by the Maharashtra Act No.V of 2015 are constitutional, valid and legal;

(b) However, we hold that the possession in terms of the Section 5C of the Maharashtra Animal Preservation Act,1976 shall be “conscious possession”;

(c) Section 5D of the Maharashtra Animal Preservation Act,1976 is struck down on the ground that the same infringes the fundamental right guaranteed under Article 21 of the Constitution of India;

(d) Accordingly, wherever there is a reference to Section 5D in other Sections of the Maharashtra Animal Preservation Act, 1976, the same stands deleted;

(e) Section 9B of the Maharashtra Animal Preservation Act, 1976 is struck down as it infringes the fundamental right guaranteed by Article 21 of the Constitution of India;

(f) The prayers which are not specifically granted shall be deemed to be rejected;

(g) The Rule is partly made absolute in above terms with no orders as to costs;

(h) All the Pending Chamber Summonses, Notices of Motion and the Civil Applications are disposed of.

223. At this stage, the learned Government Pleader seeks stay of that part of the judgment by which Sections 5D and 9B are held to be unconstitutional. Shri Jha, the learned counsel appearing for one of the Intervenors joins Shri Vagyani, the Government Pleader. We have declared the said Sections unconstitutional as they infringe Article 21 of the Constitution of India. Therefore, the prayer for stay is rejected.

(S.C. GUPTE, J) (A. S. OKA, J)