

COURT RULINGS

Of Eggs and Beef

The ruling by the Chhattisgarh High Court that eggs should not be sold in public places because it hurts the sentiments of vegetarians ignores the preferences of non-vegetarians. Another judgment by the Supreme Court upholding the ban on slaughter of buffaloes along with cows also protects the interests of a particular community. Is the court propagating high caste dietary preferences? In a secular democracy, the role of the judiciary should be to promote pluralism and coexistence rather than take sides.

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Last month India's higher judiciary pronounced two judgments which have a direct bearing on how secularism and democratic rights should be interpreted. One is the judgment pronounced by the Chattisgarh High Court in a public interest litigation wherein the petitioner had contended that the sale of eggs in public places offended his sentiments as well as those of other vegetarian Hindus who do not consider the egg as a vegetarian food item. The court ruled that eggs should not be sold in public places. It directed the state government to provide specific spaces for the sale of eggs. The other is the judgment of the Supreme Court upholding the Gujarat Cow Slaughter Act, which banned the slaughter of buffaloes along with cows, as constitutional. Since both the judgments relate to practices on which there is no consensus in society (some sections favour them while other sections consider them objectionable or offensive), they involve the substantive question of when the objections of one section should be sustainable and when they should be overruled. They also bring into sharp focus the double-edged nature of secularism and democracy.

It will be generally agreed that democracy grants citizens the right to live according to their visions of a good life. If someone considers eating vegetarian diet to be a part of one's vision of a good life, he or she enjoys the right in a democracy to practice vegetarianism. Likewise, if someone considers eating meat to be a

part of one's vision of a good life, he or she too enjoys the right to practise non-vegetarianism. No one can deny this right to a citizen in a democracy. Perhaps, the only condition to which this or any other similar right is subordinated, is that it should not violate the principles of equity, justice and good conscience. So long as this condition is met, the claims of the citizen to live according to his or her vision of a good life cannot be infringed. Both the state and individual citizens are obliged under democracy to honour and respect this right of the citizen. If either the state or individual citizens were to interfere with this right of a citizen, the entire edifice of a democratic state would spring into action and protect the affected citizen's right to live according to her vision of a good life.

Divergent Choices

There is imminent danger in any democratic society that the thin line that divides one's own right vis-à-vis the rights of other citizens to live according to their respective visions of a good life, founded on an obligation to honour and respect other peoples' rights as much as one values one's own, may easily be lost. Citizens may start seeking to impose their vision of a good life upon others. If someone starts doing so, the edifice of a democratic order would stand seriously challenged. It would automatically lead to a situation where certain visions of a good life would be privileged and other visions would be marginalised. Not only would this open up the possibility

of a continuing play of power in inter-citizen interactions as the less powerful (powerful in a wide variety of ways) would be obliged to accept the visions of good life of the more powerful without being able to impose their way of life upon others or defending their democratic right to live according to their vision of a good life. One of the dilemmas of nationalism is that it propagates the idea that the culture of the dominant group would also form the basis of building a national community. This undermines the very basis of pluralism in society.

Pluralism can be defined as coexistence with more or less tension in the same social space of many systems of global convictions and of the communities who produce them. Acceptance of pluralism as a credo of everyday living carries two simultaneous implications. As far as individual citizens are concerned, it demands tolerance of other people's beliefs, values and social practices even if they offend one's sensibilities. So far as the state is concerned, it imposes upon the state the obligation to refrain from sitting in judgment over whether one group's beliefs, values or social practices are offending the sentiments of another community, except where such dispute threatens public order. On countless occasions in this country, festivals coincide and carry an imminent threat of conflict and disturbance of public peace. The state's role on such occasions is limited to ensuring that public order is not disturbed by the simultaneous celebration of festivals of different sections of society. It is not open to the state to ban or restrict the celebration of the festival of one section of society over that of another section.

Serious Implications

One would have expected that keeping these explicit principles of secularism in mind, the Chhattisgarh High Court should have dismissed the petition seeking a ban or restriction on the sale of eggs in public places in limine. Quite to the contrary, the court not only accepted the petition, but went on to pass an order directing the state to restrict the sale of eggs at specified places. This action on the part of the court can be faulted for the serious implications it has for the principles of pluralism and secularism. For one thing, it opens up a Pandora's Box as it creates the possibility for ever new groups to come forward with pleas that social practices

of sections of society which they do not like should either be banned or subjected to restrictions as it offends their sentiments. For example, what will prevent a section of society (not necessarily Muslims or Christians but Hindu atheists or agnostics) approaching the courts tomorrow that the public display of idols at festival times should be banned or restricted because it hurts their monotheistic or atheistic sensibilities?

Attempts at Sanskritisation

The second implication of the Chhattisgarh High Court judgment is even more serious. It is that the court has by its order, appropriated to itself a sanskritising role which is prohibited by the Constitution. M N Srinivas, who originally formulated the idea of sanskritisation, used it to denote a process whereby lower castes adopted the customs, values and preferences of the higher castes that were more sanskritised. Thus, they shifted from non-vegetarianism to vegetarianism or changed their ritual practices.

Under theocratic dispensations during the ancient period the ruler sometimes decreed sanskritisation, but after the establishment of "Pax Britannica" the state ceased to play this role. It is another matter that many changes introduced during British rule helped sanskritisation of lower castes and social groups. The Chhattisgarh High Court has the uncanny merit of taking us back to the times when the state decreed sanskritisation as it definitely privileges sanskritised dietary practice over non-sanskritised diet patterns and that too in a state which is overwhelmingly tribal and where poultry is the mainstay of people's diet.

These observations are equally relevant in the context of the Supreme Court judgment upholding the Gujarat Cow Slaughter Act. In terms of the secular principles, the state should have been indifferent that certain sections of the Indian society eat beef and certain sections hold the cow as sacred and dislike cow slaughter. Both sections should have been allowed to live by their respective dietary preferences. This situation did not come to prevail in India. Instead, the state took upon itself to enact legislations prohibiting cow slaughter. This initiative did not flow out of the secular principles enshrined in the Constitution. It flowed from the directive principles of state policy wherein a provision was incorporated

that the state shall enact laws to ban cow slaughter.

It is well known that there existed divergent constituencies in the constituent assembly. Each constituency was keen to get its demands incorporated quite irrespective of whether or not their demand could be incorporated without seriously jeopardising the secular character of the Constitution. This gave rise to a prolonged process of negotiation and compromise by which it was ensured that the core principles on which a clear consensus existed went into the enforceable part of the Constitution. Whatever was of a controversial nature or on which a clear consensus could not be reached was relegated to the directive principles of state policy if a sufficiently strong constituency existed to back a demand. This is how the provisions relating to enactment of a uniform civil code and cow slaughter came to be incorporated into the Constitution.

There had been a strong Hindu undercurrent in the national movement right from the beginning. After independence, the constituency wanting that this Hindu undercurrent should be reflected in the Constitution, came forward with the demand the protection of the cow, considered sacred by high caste Hindus, should be built into the Constitution despite historical evidence that during ancient times cow sacrifice was common and partaking of beef was practised. This political constituency also received a degree of legitimacy from a streak of Gandhian philosophy. Since this was a sectional demand and no consensus could evolve on it, the founding fathers could not incorporate this demand in the enforceable part of the Constitution. At the same time, the demand could also not be nipped in the bud as the lobby pressing this demand was quite powerful. Accordingly, almost by way of a compromise, banning of cow slaughter was put into the directive principles in a bid to appease the orthodox Hindu lobby.

Since the commitment to the secular spirit informing the enforceable part of the Constitution was not shared strongly by the state-level leaders, some of them allowed themselves to be brow-beaten by orthodox Hindu opinion. This is how the plethora of legislations banning cow slaughter came to be passed by state legislatures even if they caused a degree of resentment among those who looked upon beef as an item of diet. They were too weak and defensive to even protest when such

legislations were being adopted. By its recent judgment the Supreme Court has gone beyond the ban on cow slaughter. It has extended the ban to bulls and buffaloes. One is left to wonder whether the court has not been influenced in this decision by the intent to propagate high

caste dietary preferences one step further. If this is even remotely the case, this augurs badly for the future of secularism as a way of life and the spirit of toleration which constitutes its core value. **EW**

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