Law and Ecological Conflicts: The Case of the Sacred Cow in India

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The status of the cow in India has not only been the object of academic debates, but also of fierce and impassionate legislative and judicial battles. These disputes have notably crystalized over the admissibility of ritual sacrifice of cows by Muslim practitioners for the holiday of Bakr-Id, with the issue reaching the courts on several occasions. This paper explores the terms of this legal debate, and the solutions that have been progressively adopted by the legislative and judicial institutions after the independence. Particular attention will be paid to the processes involved in the apprehension of the religious justification of this practice by the judiciary. Eventually, the Indian legal system has failed at acknowledging the importance and the complexity of the Muslim minority's ecological beliefs and traditions in this long-standing dispute.

I. Introduction

If the veneration of the cow in Hindu culture constitutes almost a *cliché* of the diversity of human-animal relations throughout the world, there is another religious tradition concerning this animal that has attracted relatively less attention outside the borders of India: their ritual sacrifice by Muslims for Bakr-Id. These two traditions have logically been the source of important tensions between the two main religious communities of the country. Yet, deciding this conflict has proved a delicate task for the legislative and judicial institutions of India after independence. Should the practice be accommodated in the name of the protection of religious freedom and cultural identity? Or should the peculiar protection afforded to the animal by the Hindu majority prevail?

For the purpose of this discussion, I propose to consider these traditions as *ecological*. The term should not be understood in its political sense, where it refers to a political ideology that aims at creating an ecologically sustainable society; nor should it be understood in its scientific sense, where it refers to the

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study of the interactions among organisms and their environment. Rather, the use of the notion of ecology in this context refers to the specific ways in which a given group interacts with, and exploits its environment, including domesticated resources - and in turn creates the distinction between different ecologies in a given context.[1] Viewing this conflict not merely as a clash between religious groups, but as a conflict over each groups' practical and symbolic relationships with its environment, adds an interesting dimension to the debate.

This case constitutes a perfect entry point into the challenges of the legal management of ecological conflicts. Firstly, because it presents two radically opposed (and easily identifiable) sets of beliefs and practices relating to a specific animal —*i.e.* one particular element of the environment shared by the two communities. Secondly, because the legal debate has revolved mainly around religious and cultural arguments; considerations about health issues or animal rights, that are usually central in ecological conflicts in Western liberal democracies, are at best peripheral in this case. And thirdly, because of the rich, numerous and observable traces produced by judicial and legislative institutions of how the law has been struggling to decide this conflict, which enable the identification and the discussion of the concrete processes involved in the legal apprehension and management of religious diversity.

This paper thus aims at critically investigating the ways in which the Indian legal system has addressed this conflict.[2] In Part 2, I discuss the nature and the origin of these two opposing ecological rationalities, and I try to place the contemporary legal dispute in its complex historical and political dimensions. In Parts 3 and 4, I explore the legislative and judicial responses that have been

1 This particular use of the notion of *ecology* has recently emerged in environmental studies in order to avoid concepts such as "nature" or "environment" that are considered too narrow and culturally situated. *See* for instance BRUNO LATOUR, POLITICS OF NATURE (Harvard University Press, 2004), and PHILIPPE DESCOLA, BEYOND NATURE AND CULTURE (University of Chicago Press, 2013).

2 For the purpose of this article, I will concentrate solely on practices of ritual sacrifice. It should be noted here that cattle protection laws have engendered other legal conflicts with Muslim communities in India, especially concerning commercial slaughtering, and sale and export of cattle meat and products (which have however relied almost uniquely on economic rather than religious or cultural arguments). For cases relating to these questions, *see* for instance Mohammed Faruk v. State of Madhya Pradesh, AIR 1970 SC 93 and State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, AIR 2006 SC 212.

progressively adopted after independence, in order to discuss the legal rationale behind these decisions in Part 5.

II. The Origin of Two Conflicting Ecologies

The sacred cow, a complex heritage

The veneration of the cow in Hindu culture remains a complex, evolving, and somewhat equivocal ecological tradition. Although there is ample evidence that the cow has been a symbol of wealth in India since ancient times, it appears that they may not have always been as revered and protected as they are today. Still, many writers have consistently pointed to old religious scriptures to argue that the sanctity of *gaumata* ("mother cow") constitutes a foundational belief of Hinduism.[3] Additionally, several legends in the Indian folklore tend to support the view that the cow has for long enjoyed a particular status in India.[4]

However, recent researches have contributed to raise doubts about the origin and the continuity of this tradition. Authors like Dwijendra Narayan Jha[5] have argued that the "holiness" of the cow is ultimately a myth to which fundamentalist Hindu organizations have clung. Indeed, historical evidence as well as various accounts in the *Vedas* seem to indicate that practices of cow sacrifice and beef eating were part of many important ceremonial occasions.[6] Others have argued that the prohibition of cow sacrifices and beef eating in Hindu culture has been significantly influenced by Buddhism and Jainism.[7] Still others, like Marvin Harris, have argued that the origin of this belief was to be found in economic rather than religious motivations, pointing at the heavy reliance of the Hindu population on the cow for dairy products and for tilling

3 Authors generally refer to verses from the Rig Veda, which, apart from containing various prayers and hymns in praise of the cow, have also at places equated it with God. The cow is sometimes referred to as *Aghnya,* meaning one not to be killed. Additionally, the sanctity of the cow is also often associated with the cult of Krishna.

4 For instance, a legend tells the story of the Chola King Manu Needhi Cholan, who sentenced his own son Veedhividangan to death after he heard that the calf of a cow had been killed under the wheels of his son's chariot.

5 Dwijendra Narayan Jha, The Myth Of The Holy Cow (Verso, 2002). The book triggered a violent controversy in India. *See also* Marvin Harris, *India's Sacred Cow,* 34 Cultural Anthropology 201 (1989).

6 S.M. Batra, Cows and Cow-slaughter in India: Religious, Political and Social Aspects (1981).

7 Ram Punyani, *Beef eating: Strangulating History,* The Hindu, August 14, 2001.

the fields, and on cow dung as a source of fuel and fertilizer.[8] In any case, it appears that the commonly held belief that the cow has always been inviolable and sacred in Hindu culture remains a controversial issue.

To understand this debate, it is further necessary to place it in its complex historical and political dimensions. Indeed, the status of the cow has on several occasions served as the support of political mobilisations in Modern India, especially during the colonial period, as the practices of cow slaughter and beef eating significantly intensified with the arrival of the British in the eighteenth century. The first slaughterhouse in India was hence built in Calcutta in 1760 by Robert Clive, the then Governor of Bengal.[9] The insensitivity of the colonial rulers to the cow thus resulted in obvious tension with the Hindu population, a situation which triggered violent uprisings on several occasions, and later helped structure the independence movement.

The reverence for the cow notably played an important role in the Indian Revolt of 1857 against the East India Company, as rumors spread that the paper cartridges used by Hindu and Muslim sepoys were greased with cow and pig fat. While loading the gun, the soldiers had to bite the cartridge open to release the powder. Knowledge of the origins of the grease caused many "Native" soldiers to feel that the British were forcing them to break edicts of their religion.[10] The rebellion, which lasted for more than a year, resulted in the end of the East India Company's rule in India. In August, by the Government of India Act, 1858, the company was formally dissolved and its ruling powers over India were transferred to the British Crown.

In the period that followed, the veneration of the cow continued to serve as a critical means of political mobilization against the British rulers. In the 1870s, cow protection movements, which first appeared in Punjab, started to spread rapidly all over North India and to Bengal, Bombay and other central provinces. The organizations rescued wandering cows, created *gaushalas* (cow refuges), and demanded a ban on cow-slaughter. The issue was then relayed by

8 Marvin Harris, *The Cultural Ecology of India's Sacred Cattle,* 7(1) CURRENT ANTHROPOLOGY 51 (1966).

9 BARBARA D. METCALF & THOMAS R METCALF, A CONCISE HISTORY OF MODERN INDIA 83 (Cambridge University Press, 2006).

10 KIM A. WAGNER, THE GREAT FEAR OF 1857: RUMOURS, CONSPIRACIES AND THE MAKING OF THE INDIAN MUTINY 28-29 (Oxford University Press, 2010).

many leaders of the independence movement, including Gandhi, in order to mobilize the public to participate actively in the freedom movement.[11] However, although these movements were primarily targeting the colonial power, they also contributed to escalating tensions between Hindu and Muslim communities, resulting in numerous violent riots throughout this period. In 1893, during the peak of the cow protection movement and immediately after an order from a British magistrate who asked Muslims who wanted to sacrifice to register, riots between Hindus and Muslims in Azamgarh district caused at least a hundred casualties.[12] Post-independence, the issue has continued to occupy a significant place in regional and national political life, as Hindu nationalist parties such as the BJP have unremittingly pushed cow protection as an integral part of their political agenda.[13]

At this point, it is crucial to note that the tensions between the two communities have significantly crystalized over the ritual slaughter of cows by Muslims on the occasion of Bakr-Id.[14] I shall therefore explore the origins of this tradition.

The ritual slaughter of the cow in Muslim culture

Bakr-Id (also known as Eid al-Adha, "Festival of the Sacrifice") is considered the most important Muslim holiday. It honours the willingness of Ibrahim (Abraham) to sacrifice his son Ismail at Mina, near Mecca, as an act of submission to God's command, before God intervened, through his angel Jibra'il (Gabriel) and informed him that his sacrifice had already been accepted.[15] In remembrance of this episode, Muslims who can afford it have to sacrifice an animal (a cow, a camel, a goat, a sheep, or a ram - depending on the region) as a symbol of Ibrahim's willingness to sacrifice his son.

Since the Quran is silent on the specifics of the sacrifice, the question of whether the cow is specifically recommended for sacrifice, or is only among the

11 PETER VAN DER VEER, RELIGIOUS NATIONALISM. HINDUS AND MUSLIMS IN INDIA 86-95 (University of California Press, 1994).

12 *Id.,* at 92-3.

13 Manoj Joshi, *Hindutva Politics and the Holy Cow,* THE DAILY MAIL, February 4, 2012.

14 Hence, in 1916, Hindu protesters endeavoured to prevent a cow sacrifice in Patna, resulting in a riot that took the life of several Muslims, in spite of the presence of armed police.

15 Contrary to the account of the episode in the Bible, there is no explicit mention in the Quran of an animal replacing Ibrahim's son; rather, he is replaced with a "great sacrifice" (QURAN, 37: 100-111).

permitted animals, has been the subject of great discussion.[16] And this debate has indeed been central in the different court cases where the legality of the ritual has been under review. Since the Quran is silent on this, the most important written source that explicitly discusses the ritual is the Hedaya, a commentary on Islamic law, which states "the sacrifice established for one person is a goat and that for seven a cow or a camel".[17] Additionally, some hadiths from the Shahi Bhukari mention slaughter or sacrifice of cows.[18]

Although it is generally assumed that cow sacrifice appeared and became widespread in India when the territory was invaded by various Islamic rulers of Arab and Central Asian origin after 1000 AD, it should be noted that most Mughal emperors have tended to prohibit, or at least limit the practice during their reign.[19] Hence, in his testament to his son and successor Humayun, the Mughal emperor Babur wrote:

> The realm of Hindustan is full of diverse creeds. Praise be to God, the Righteous, the Glorious, the Highest, that He had granted unto you the Empire of it. It is but proper that you, with heart cleansed of all religious bigotry, should dispense justice according to the tenets of each community. And in particular refrain from the sacrifice of cow, for that way lies the conquest of the hearts of the people of Hindustan; and the subjects of the realm will, through royal favour, be devoted to you. [20]

Nevertheless, the ritual of sacrificing a cow for Bakr-Id has persisted in most parts of South Asia until today. Despite this relative lack of scriptural references, it appears that the tradition has developed and been maintained

16 *See* for instance MURRAY T. TITUS, ISLAM IN INDIA AND PAKISTAN: A RELIGIOUS HISTORY OF ISLAM IN INDIA AND PAKISTAN 154 (2005) (hereinafter *Titus*).

17 CHARLES HAMILTON, THE HEDAYA, OR GUIDE: A COMMENTARY ON THE MUSSULMAN LAWS (1791). *See* Section V(2) of this article for further discussion on the translation of the Hedaya.

18 Hadiths are reports describing the sayings, actions, and habits of Muhammad; The Shahi Bhukari is considered to be one of the most important sources of law after the Quran for Sunni Muslims.

19 S.M. JAFFAR, THE MUGHAL EMPIRE FROM BABUR TO AURANGZEB (1936).

20 *Id.,* at 89.

mostly as an alternative to individual sacrifices, allowing the impoverished members of Muslim communities to take part in the celebration. Indeed, by allowing the sacrifice of a single animal for the benefit of seven persons, the tradition has proved central in "democratizing" the holiday in South Asia.[21] In India, the practice is especially present in states with large Muslim communities such as Assam, West Bengal, and Kerala, where Muslims respectively account for 34%, 27%, and 26% of the population.[22] Consequently, it has remained a source of antagonism between the two most important religious communities of the country – an antagonism that has been not only the subject of academic debates, but also of fierce and impassionate political and judicial battles.

As noted above, the current tensions surrounding this practice are in a large part the result of historical and political dynamics that developed during the colonial period. At the time of independence, which resulted in terrible communal violence, regulation on this issue was central. Yet, as we will see in the next part, the Constituent Assembly was not able to push for the adoption of a uniform legislation at the central level on this issue.

III. Cow-Sacrifice and the Law

Despite several attempts to include a total ban on cow-slaughter in the Constitution, the prohibition was eventually adopted as a non-justiciable provision under Article 48. Individual States were thus eventually entrusted to regulate on the issue by adopting laws governing cattle slaughter, which consequently vary slightly from State to State. And as the Central Government remained silent on the issue of the ritual sacrifice of cow on Bakr-Id, it was ultimately the responsibility of States to decide whether or not the practice should be accommodated locally.

Constitutional provisions

In 1940, seven years before Independence, a proposition for a complete prohibition of cow-slaughter was first issued by one of the Special Committees of the Indian National Congress. An amendment for the inclusion of an article seeking to "prohibit the slaughter of cow and other useful cattle" was then

21 *Titus,* at 154-7.

22 Government of India, Census of India (2011). Islam constitutes a minority religion in India, with 14% of the country's population (i.e. approximately 172 million people) identifying as adherents.

moved before the Constituent Assembly. The demand, which revolved mainly around economic rather than religious arguments, aimed at incorporating the clause in the Fundamental Rights chapter of the Constitution – thus preventing individual States from opting out of the ban.[23]

However, the proposition faced considerable opposition in the Assembly, with arguments ranging from the usefulness of cattle products for exportation, to undue discrimination against the non-Hindu population – although, here again, the issue of ritual sacrifices for Bakr-Id was ignored in the discussions. The amendment was hence debated, and eventually adopted as a Directive Principle[24] under Article 48 of the Constitution. Entitled "Organisation of agriculture and animal husbandry", it reads as follows:

> 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.

'Preservation, Protection and Improvement of Stock' was consequently placed under the State List of the Constitution,[26] thus empowering individual states to legislate on the matter. Their freedom to manoeuvre appeared at first limited, as the instruction resulting from Article 48 was seemingly straightforward in enjoining State Governments to adopt laws prohibiting cow-slaughter. Yet, only a few months after the promulgation of the Constitution, the Central Government sent a letter to State Governments directing them to refrain from adopting a total ban, arguing:

> Hides from slaughtered cattle are much superior to hides from the fallen cattle and fetch a higher price. In the absence of slaughter, the best type

23 MINISTRY OF AGRICULTURE, GOVERNMENT OF INDIA, REPORT OF THE NATIONAL COMMISSION ON CATTLE (2002) (hereinafter *Ministry*).

24 In India, the "Directive Principles of State Policy" constitute fundamental guidelines for the State governments to be applied in the process of law and policy-making. These provisions, contained in Part IV of the Constitution, are however not enforceable by courts.

25 INDIA CONST. art. 48.

26 Entry 15 of List II of the Seventh Schedule of the Constitution.

> of hide, which fetches good price in the export market, will no longer be available. A total ban on slaughter is thus detrimental to the export trade and works against the interest of the Tanning industry in the country. [27]

These contradictory directives, resulting from a clash between secularist and religious agendas, coupled with antagonist economic rationales, can certainly explain the current discrepancies amongst State legislations governing the slaughter of cattle. The Hindu right-wing parties have since then repeatedly highlighted the government's unwillingness to lay down an absolute prohibition as an affront to the sentiments of the majority Hindu community, and another example of appeasement of minorities.[28]

State Laws

Soon after the Constitution came into force, most States progressively started to enact laws regulating cow-slaughter. Till date, only Kerala, Sikkim, Arunachal Pradesh, Meghalaya, Mizoram and Nagaland have not adopted such legislations. However, the nature and the scope of these regulations vary significantly from State to State, notably on whether the prohibition is absolute or relative.

For instance, States like Assam, Tamil Nadu, and West Bengal can issue "fit-for-slaughter" certificates allowing for the slaughter of cows in certain conditions, while others like Andhra Pradesh, Bihar, and Gujarat have adopted a complete ban on cow-slaughter.[29] Offenders generally face up to six months in jail, but some States are considerably more severe. In Gujarat for instance, the sentence can go up to seven years in jail, while other States like Madhya Pradesh and Rajasthan have adopted policies that fix mandatory minimum terms of imprisonment.

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27 *Ministry,* Chapter 1, at 64.

28 Numerous attempts to address the issue through a central legislation have been made since the adoption of the Constitution, although none have been successful in obtaining a complete nationwide ban on cow slaughter. In 1966, a violent riot broke out outside the Parliament in Delhi during a demonstration supporting a demand by several Hindu organizations for a country-wide ban on cow slaughter.

29 Moreover, sale of beef is also selectively prohibited in many States, some allowing only beef imported from other States to be sold, while others like Haryana, Himachal and Madhya Pradesh banning it completely.

Interestingly for our discussion, at least two States —namely West Bengal and Assam— have included specific exemptions based on religious considerations, to the prohibition, although these exemption regimes vary in their degree of specificity. Hence, Section 12 of the West Bengal Animal Slaughter Control Act, 1950, provides that the State Government may exempt from the operation of the Act, the slaughter of cattle for any religious, medicinal or research purposes —but without referring specifically to Bakr-Id rituals. Section 13 of the Assam Cattle Preservation Act, 1950, includes a similar provision, but crucially adds:

> Provided that the operation of the Act will not be applicable to the slaughter of any cattle on the occasion of Id-uz-Zuha festival on such conditions as the State Government may specify regarding privacy.

Despite these two examples, most States have ultimately remained silent on the question, once again ignoring its importance. As a consequence, courts have on several occasions been called upon to decide the underlying clash in these regulations between the veneration for the cow in Hindu culture and the ritual sacrifice of cows by Muslims on Bakr-Id.

IV. Judicial Encounters with Practices of Ritual Sacrifice

The inability of the legislative power to resolve this ecological conflict has logically paved the way for judicial disputes. Notably, the courts have had to decide (1) whether State legislations banning slaughtering – and thus ritual sacrifices – of cows violate the rights to religious freedom of practitioners of Islam, as protected by the Constitution, and (2) whether the ritual sacrifice of cows on Bakr-Id could be protected by State regulations allowing for the exemption of slaughtering performed for religious purposes.

Quareshi

The first significant case to reach the Supreme Court was decided in 1958. In the case *M.H. Quareshi v. State of Bihar,*[30] the constitutional validity of three legislative enactments banning the slaughter of cattle passed by the States of Bihar, Uttar Pradesh and Madhya Pradesh, were challenged on the grounds that

30 Mohammed Hanif Quareshi v. State of Bihar, AIR 1958 SC 731 (hereinafter *Quareshi*).

these acts violated the fundamental rights guaranteed to the Muslim petitioners under Articles 14, 19 and 25 of the Indian Constitution.[31] The Supreme Court held that a total ban on the slaughter of useless cattle could not be supported as reasonable in the interest of the general public, and therefore was invalid. However, a total ban on the slaughter of milch cattle, breeding bulls and working bullocks, which were considered essential to the nation's economy for milk, working power and also manure, was held to be valid and reasonable, as being in the interest of the general public. Moreover, the Court upheld a total ban on the slaughter of cows of all ages, and calves of cows as being in consonance with the directive principles laid down in Article 48 of the Constitution.

More importantly for our discussion, the Supreme Court endeavoured to inquire in detail the claim that sacrifice of a cow on Bakr-Id constitutes a religious requirement for Muslims, and should hence invalidate legislative provisions preventing it. However, the Court considered that the materials presented to support this claim were "extremely meagre", and was surprised that the allegations in the petitions were "so vague."[32] The Court notably regrets that the claim was not supported by an affidavit by any academic expert or religious leader explaining in greater depth, the nature and the significance of the practice, or more prosaically the implications of the religious scriptures adduced as evidence.[33] As a consequence, the Court ultimately relied on the translation of the Hedaya to conclude that it was not established that the sacrifice of a cow on Bakr-Id was an obligatory overt act for a Muslim to exhibit his religious beliefs and ideas. The practice being judged optional, it was not entitled to constitutional protection under Article 25.

This first decision thus closed the door of a general protection of the practice under the religious rights enshrined in the Constitution and individual States were held free to prohibit it. The only avenue left for accommodation was thus the adoption of specific exemptions within State legislations banning cow slaughtering. But as we will see below, the scope of the exemption regime must be precisely defined in order to accommodate the practice.

31 Article 14 ensures equality before the law, Article 19 affirms the right to practice any profession, and Article 25 affirms the right to freedom of religion.

32 *Quareshi,* at 19.

33 *Id.,* at 20.

Lahiri

Hence, when the issue reached the Supreme Court again in 1995, it was the State power to grant an exemption accommodating ritual sacrifices of cows for Bakr-Id, rather than the general prohibition of this practice, that was challenged.[34] Indeed, the dispute started when several plaintiffs filed a writ petition before the Calcutta High Court, contending that the State of West Bengal had wrongly invoked Section 12 of the West Bengal Animal Slaughter Control Act, 1950, when it exempted from the operation of the Act, the slaughter of healthy cows on the occasion of Bakr-Id.

On August 20, 1982, the Division Bench of the Calcutta High Court, after hearing the contesting parties, took the view that such slaughter of cows by members of the Muslim community on Bakr-Id did not constitute a religious requirement and, therefore, such exemption was outside the scope of Section 12 of the Act. Consequently, the State of West Bengal appealed the decision before the Supreme Court. As in *Quareshi,* the Court relied once again on the provisions of the Hedaya to hold that slaughtering of cows was not the only way of carrying out the ritual sacrifice, and that it was therefore not an essential religious purpose, but an optional one.[35] Then, considering that the State could only exercise the exemption power under Section 12 if it can be shown that such exemption is necessary for serving an essential religious, medicinal or research purpose,[36] the Court concluded that such was not the case of cow sacrifice for Bakr-Id, and therefore rejected the appeal.

The reasoning of the Court in this case appears problematic insofar as it adopted a highly restrictive interpretation of the exemption regime under Section 12 of the West Bengal Act. Although the provision refers to "any religious purpose[37]," the Court construed it as restricted to *essential* religious practices, and consequently considered that it could not serve as a basis for exempting sacrificial practices for Bakr-Id from the application of the Act. Such an interpretation arguably gutters the religious exemption under Section 12: what religious practice could indeed be eligible for exemption under this provision?

34 State of West Bengal v. Ashutosh Lahiri, AIR 1995 SC 464.

35 *Id.,* at 8.

36 *Id.,* at 9.

37 Sec. 12, West Bengal Animal Slaughter Control Act, 1950.

Read together, these two Supreme Court decisions – which have been consistently reaffirmed by lower courts in other instances[38] – appear to almost completely shut the door to the accommodation of the ritual sacrifice of cows for Bakr-Id, except when States have not adopted any legislation prohibiting the slaughtering of cattle (as in the case of Kerala), or when they have enacted specific provisions which explicitly exempt this practice from the application of anti-slaughter regulations (as in the case of Assam). Indeed, the Supreme Court made it clear in *Lahiri* that mechanisms of exemptions which refer to religious concerns in general and unspecified terms (as in the case of West Bengal) could not protect a practice that was deemed only "optional".

It should be noted here that courts have tended to adopt a similar approach in other cases dealing with ritual practices of animal sacrifice performed by devotees of Hindu sects. For instance, in 2002, the Andhra Pradesh High Court directed several actions to prevent large-scale sacrifices of animals for the fair of Sri Lingamanthula Swamy in Nalgonda District.[39] Similar decisions were reached in Uttarakhand[40], Gujarat[41], and Karnataka[42], with the courts consistently holding that rights to religious freedom could not exempt these practices from the application of laws preventing animal sacrifices.[43]

It remains that the legal reasoning that resulted in the rejection, of this claim for religious freedom, by the judicial system has to be questioned. What were the legal reasoning, the evidence, and the methods of appreciation, which led to the consideration that these ritual practices did not constitute an essential part of the Muslim faith? The ways in which the courts have dealt with this ecological practice need to be thoroughly explored and interrogated. This is what I shall attempt to do in the last part.

38 *See* for instance Shaikh Zahid Mukhtar v. Commissioner of Police, (2007) 109 BOM LR 1201; see also the decisions of the Calcutta High Court in the matters of Abhijit Das v. State of West Bengal (2010); Enamul Haque v. State of West Bengal (2010); and Rajesh Yadav v. State of West Bengal (2011).

39 Jasraj Shri Shrimal And Ors. v. Govt. Of A.P., 2002 ALT 656 (Andhra Pradesh High Court).

40 Gauri Maulekhi v. State of Uttarakhand (19 December, 2011) (Uttarakhand High Court).

41 Vadodara City District Samasth v. State Of Gujarat, 2001 CriLJ 184 (Gujarat High Court).

42 Alevoor Premraj Kini v. The Deputy Commissioner (20 March, 2015) (Karnataka High Court).

43 In these cases, either the Prevention of Cruelty to Animals Act, 1960, or State laws prohibiting animal sacrifices, such as the Gujarat Animals & Birds Sacrifices (Prevention) Act, 1972, or the Karnataka Prevention of Animal Sacrifices Act, 1959.

V. Religious Interpretation and Colonial Legacy

In order to analyse the way in which the Supreme Court interpreted the religious significance of ritual sacrifice of cows for Muslims, it is necessary to briefly recall the historical dynamics that led to the construction of the judicial interpretation of Islamic traditions in India. They have indeed profoundly structured the way in which Indian judges now interpret religious traditions and beliefs.

The limits of scripturalism

In particular, it is crucial to note that, in their effort at systematising this body of law over many decades, colonial jurists turned almost exclusively to a limited number of textual sources.[44] This approach had profound effects on judicial processes beyond the colonial period, as it led the courts to endorse highly orthodox forms of Islamic law.

The British efforts at codifying "native" laws can be traced back to the Warren Hastings' Plan of 1772, and were primarily based on translations of ancient scriptural texts.[45] Hence, classical religious-legal texts, whatever their genuine relevance, were taken as the key to understanding colonised cultures and societies, even though the positions articulated in the scriptures could often be far removed from the actual prevalent practices in the given religious communities.

Of course, focusing on textual sources facilitated the administrators' task of ascertaining general legal rules quickly, but it fundamentally misunderstood the role of these religious texts in the life of most South Asian Muslims – especially beyond specific urban and gentry groups. The legalist ideology of colonial judges erred on the side of applying clear rules in a consistent manner, regardless of whether people genuinely treated them as binding.

Lost in translation

Given the assumed preference for a strict scriptural approach, colonial legal administrators were eager to have Islamic texts translated into English so

44 *See* Michael R. Anderson, *Islamic Law and the Colonial Encounter in British India,* in David Arnold and Peter Robb (eds.), Institutions and Ideologies: A SOAS South Asia Reader 65 (Curzon Press, 1993) (hereinafter *Anderson*).

45 J. Duncan M. Derrett, *The Administration of Hindu Law by the British,* 4(1) Comparative Studies In Society And History, 10 (1961).

that indigenous laws could be applied directly by British judges. Looking for a unified Islamic law, British administrators hence endeavoured to identify classical Islamic texts and to treat them as binding legal codes. They focused their study on Hedaya (*al-Hidaya*[46]), a twelfth-century text of Central Asian origin that was taken as the central legal source for the Hanafi school, although it is generally agreed that it does not consistently provide the underlying logic or reasoning for the rules of the school [47].

At the insistence of Hastings, Hedaya was translated into English in 1791 by Charles Hamilton – a British Orientalist who died a few months after the publication. British judges were content to rely on Charles Hamilton's translation of Hedaya, although Hamilton did not translate directly from the original Arabic text. Instead, three Muslim clerics were commissioned to translate the Arabic text into Persian, which Hamilton then translated into English.[48] This translated legal treatise hence provided the British with a textual foundation to understand and apply Islamic law, although a considerable number of translating errors and omissions were later discovered.[49]

Moreover, Hamilton's original translated text comprised four volumes. Yet, as a large and voluminous work was often not easily available by the late nineteenth century, the translated Hedaya proved very costly for students at the Inns of Court in Britain who wanted to practise law in India and needed to purchase the text to qualify themselves for the English Bar. Consequently, in 1870, the editor of the second edition of the Hedaya decided to remove whole sections of Hamilton's translation.[50]

Ultimately, the colonial administration ended up adopting a reductive approach to Islamic law. Firstly, because this approach failed at recognizing that, although scriptural sources provided an authoritative foundation for juristic analysis and interpretation, they did not, by themselves, constitute a legal system. The Quran, and even more specifically legal texts such as Hedaya, had never

46 AL-MARGHINANI, AL-HIDAYA: SHARH BIDAYAT AL-MUBTADI' (1197).

47 The Hanafi tradition, one of the four Sunni legal schools (madhahib), is predominant in South Asia. *See* STANLEY FISH, IS THERE A TEXT IN THIS CLASS? THE AUTHORITY OF INTERPRETIVE COMMUNITIES (Harvard University Press, 1980).

48 Anderson, at 98.

49 Anver M. Emon, *Islamic Law and the Canadian Mosaic: Politics, Jurisprudence, and Multicultural Accommodation,* 87 THE CANADIAN BAR REVIEW 391 (2008).

50 *Id.,* at 403.

been directly applied as sources of legal precept. Their legal relevance had always derived from a properly authoritative religious leader *(qadi)* whose moral probity and knowledge of local arrangements could translate precept into practice. And secondly, because the selection of the legal texts that were to become the source of Islamic law for British judges was both highly reductive and flawed with omissions and translation mistakes.

It can be argued that this approach of the judicial treatment of religious traditions has continued after independence.[51] From the 1950s, the principle that it was the courts' task to ascertain what constituted religious doctrine and practice was firmly established. Indeed, in the two Supreme Court's decisions discussed previously, judges limited themselves to a mere scriptural interpretation of the sacrifice tradition at issue, based solely on excerpts from Hamilton's translation of Hedaya.

Hence, the Court's appreciation that the practice is only "secondary" and not "essential" for Muslim practitioners appears highly problematic for two reasons. Firstly, because it raises the fundamental question of whether, and to what extent, judges can interpret religious traditions. In deciding that the practice was only secondary, the Supreme Court indeed took a strong stance on the definition of the content of the Islamic faith, a position that many jurisdictions consider as problematic.[52] And secondly, because the approach appears too restrictive. What if relevant developments had been lost in the successive translations and re-edition of the Hedaya? What if other religious sources had been overlooked? Moreover, it is regretful that no expertise, either academic or religious, was adduced to give context to the practice.[53] In any case, these shortcomings certainly cast doubts on the validity of the religious interpretation reached by the Court in this complex ecological conflict.

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51 *See* ROBERT D. BAIRD (ED.), RELIGION AND LAW IN INDEPENDENT INDIA (2005).

52 In many legal systems, judges indeed only undertake to assess whether a practice or a belief can be considered as "sincerely-held" by a claimant; *see* for instance, in the case of Canada, Syndicat Northcrest v. Amselem, 2004 SCC 47 (Supreme Court of Canada).

53 The recourse to cultural expertise has indeed become central in this kind of conflicts in many other jurisdictions. *See* for instance Alison Dundes Renteln, *The Cultural Defense: Challenging the Monocultural Paradigm,* in MARIE-CLAIRE FOBLETS ET AL. (EDS.), CULTURAL DIVERSITY AND THE LAW: STATE RESPONSES FROM AROUND THE WORLD (2010). Yet, this reluctance of the Indian legal system to rely on such experts seems to echo the growing dismissal of religious experts by British judges during the colonial period. *See* Anderson, at 112.

VI. Conclusion

Ecological conflicts evidently constitute challenging cases for legal systems. And this is even truer when the contentious traditions are very emblematic and fiercely defended, as is the case for the status of the cow in India. In this paper, I have briefly presented the consecutive legal decisions that have led to almost completely outlawing the practice of sacrificing cows for Bakr-Id in India (except in States with no legislations banning cow-slaughter, and in States which adopted specific exemptions for that practice).

Read in conjunction with similar decisions reached in cases dealing with animal sacrifices performed by certain Hindu sects, this attitude of the Indian legal system seems to demonstrate a failure at acknowledging the importance of ecological beliefs and traditions of minority groups – and hence, at accommodating them. Considering the amount of research in environmental studies that have been, since the 1970s, increasingly highlighting the complexity and the significance of these traditions,[54] I argue that these conflicts should be approached in a more cautious and rigorous manner by legislative and judiciary institutions.

Nevertheless, the concrete consequences of these decisions remain to be assessed on the ground. Indeed, the repeated legal actions introduced before the West Bengal courts seem to indicate that the practice has not disappeared in this State – most probably thanks to an implicit policy of selective non-enforcement by the local executive authorities. Hence, the question of whether this ecological practice will eventually cease to be part of the identity of Indian Muslim communities remains to be thoroughly explored.

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54 *See* for instance John B. Callicott, Earth's Insights: A Multicultural Survey of Ecological Ethics from the Mediterranean Basin to the Australian Outback (University of California Press, 1994); Philippe Descola, The Ecology of Others (Prickly University Press, 2013).