

# **THE HEADS OR TAILS OF COW PROTECTION IN INDIA**

## **RELIGIOUS FREEDOM OR SECULAR AGRICULTURE?**

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### **Abstract:**

Recent events underscore the threat of cow protection in India: as laws against cow-slaughter are tightened, religious and caste minorities are being brutally assaulted or killed. How should we combat this politics? One strategy challenges cow protection on religious freedom grounds, as an imposition of Hindu religious preferences in violation of the religious rights of non-Hindus. Drawing on contemporary and historical material, this paper argues that a religious approach is counter-productive. Analytically, it yields an inadequate description of cow protectionist politics, past or present. Politically, it makes an unstable basis from which to resist Hindu majoritarianism.

Recent years have seen a spike in violent attacks on minorities in India in the name of protecting male and female cattle from slaughter.<sup>1</sup> The violence has been perpetrated by members of the Hindu majority community who style themselves “cow vigilantes” (*gau-rakshak*). It has followed in the wake of legislation, passed in many states since 2015, that tightens restrictions on the slaughter of cattle and the sale or possession of beef. Laws restricting cattle-slaughter have been on the books in many Indian states almost since independence.

The politics of cow protection (*gau-rakshā*) is generally attributed to Hindu reverence for the “sacred cow.” It has been a recurring feature of Indian public life since the 1880s. During the colonial period, Hindu demands for anti-slaughter legislation were regularly accompanied by violence against Muslims and low-castes. This trend has continued since independence in 1947, as cow protection has been adopted as a central political demand by Hindu Nationalist parties. Hindu Nationalists advocate a majoritarian vision of India-for-Hindus, and portray religious minorities as anti-national, un-Indian, and disrespectful of the Hindu majority. Today’s strengthened anti-slaughter laws and the vigilante violence that accompanies them are clearly connected with the ruling Hindu Nationalist party, the BJP or Bharata Janata Party, which has been in power since May 2014.

Hindu Nationalists advocate a government and politics based on the idea that the Indian nation is a Hindu nation, or that “the country should be exclusively Hindu.” Hindu Nationalism portrays Muslims as excluded from the Indian nation as many ways: Muslims are described as foreigners; as having indelibly foreign religious and political sympathies; and as disrespecting national (Hindu) values, history, and traditions. Anti-Muslim stereotypes are also deeply embedded in cow protectionist discourse. Cow protectionist literature has a long history of scapegoating Muslims as *mleccha* cow-killers (*mleccha* is a derogatory term for non-Hindu):

violent, bloodthirsty, morally deficient, enslaved to their selfish passions and desires, and stubbornly disrupting social and political harmony. These anti-Muslim themes continue among cow protectionists and Hindu Nationalists today. Scholars have documented how Hindu Nationalists deploy the Islamophobic stereotypes of Muslims as cow-killers and beef-eaters to provoke and to legitimize organized anti-Muslim violence.<sup>2</sup> Hindu nationalists and cow protectionists regularly portray Indian Muslims as a threat to the national interest.<sup>3</sup>

How shall we approach a critical understanding of this aggressive, majoritarian politics? Should we address the politics of cow protection as a failure of religious freedom or of secularism in India — an imposition of Hindu religious dictates on others, a failure to accommodate India’s “religiously plural society”?<sup>4</sup> Such an approach has been advocated in the name of minority rights both within India, and, in the U.S., by the Department of State’s Office of International Religious Freedom (IRF) and the independent advisory body, the U.S. Commission on Religious Freedom (USCIRF). It also finds a place in the scholarship.

This critical approach, which addresses the politics of cow protection as a violation of the religious rights of minorities in India, implies a certain chronology to the politics of cow protection. It aims its criticisms at the 1958 judgment by the Supreme Court of India — the first ruling on anti-slaughter laws following India’s independence from British colonial rule in 1947 — and at the Constitution of the Republic of India, on which the Court’s ruling was based. The implication is that during previous decades, the British colonial government upheld religious freedom, held the line in its policy on religious neutrality, and, in legal principle if not in administrative practice, did the needful to hold the politics of cow protection in check.<sup>5</sup>

Compelling as it may be, this paper argues that [such an approach=?] is unsound.

Analytically, it yields an inadequate description of cow protectionist politics, past or present. Politically, it makes an unstable basis from which to resist Hindu majoritarianism, and advocate for minority rights in India. Policy that frames cow protection as a religion problem does not prevent, and may foster and facilitate, a sectarian divide between majority and minority religious communities.

I present my argument in four parts. After a brief discussion of my method, part two treats accounts of the contemporary politics of cow protection provided by IRF and USCIRF reports since 2015. It observes that these accounts omit important aspects of the current political struggle in India. It argues that a political focus on religious freedom tends unnecessarily to single out Muslims as the primary victims and opponents of cow protection, portraying the controversy in the stark terms of Hindu-Muslim religious difference. Part three observes that the US religious freedom reports resonate with a strain of critique in India.

Part four draws on my historical research to reflect on the contrast between the colonial policy on cow protection, which rejected cow protectionists' demands for anti-slaughter legislation in order to protect Muslims' religious right to cow-sacrifice, and the postcolonial policy laid down by the Supreme Court in 1958, which denied that cow-sacrifice was an essential religious practice for Indian Muslims, and allowed a total ban on the slaughter of female cows. Scholars have found this Supreme Court decision baffling: how could the Court logically conclude that a ban on cow-slaughter was consistent with the secular principles of the new Indian state? The Supreme Courts' radical reversal of the colonial policy on religious neutrality has struck many observers as a patent example of Hindu religious bias overwhelming secular reasoning. I demonstrate that the Supreme Court's ruling — and the Constitutional Directive

pertaining to cattle on which that decision was partly based — belong to a long history of scientific or expert engagement with animal husbandry and dairying in which cow protectionists partnered with the colonial state. During the colonial period and today, a policy of religious freedom — in which cow protection is defined in narrowly religious terms — enables Muslims to be singled out as a religious minority, separate and separable from the national interest, while national interest is defined in Hindu majoritarian terms.

### **ONE. THE POLITICS OF RELIGION**

Over the past two decades, the insight that religion is a category of modern politics originating in Europe, and not a universal feature of human life, has been productive for thinking about the histories of the postcolonial world, and the politics of secularism everywhere.<sup>6</sup> The contributions of Talal Asad found an echo in Winnifred Sullivan’s critical reflection on first amendment jurisprudence in the U.S..<sup>7</sup> Because there can be no fixed or stable definition of religion that stands outside politics, governments can not make neutral determinations about religion or about religious freedom. To the contrary, the politics of secularism consists in the contested effort to determine the boundary between religious and secular. Upon close inspection, authoritative determinations appear to be more a matter of semantics or vocabulary choice than anything else. Government regulation of religion can be easily justified through “secularizing language”: (religious) “sacrifice” becomes subject to government interference when it is renamed (secular) “slaughter”; “religious ministry” becomes available for legitimate government support when it is renamed “spiritual care”.<sup>8</sup> Even as political secularism purports to separate religion from politics, secular states are invariably entangled in defining and managing religion. The conjuncture between these strands of reflection has now yielded a body of work that

explores the varied and unpredictable histories and politics of religious freedom around the world.<sup>9</sup>

This insight has formed the point of departure for my historical work: I take religion in South Asia to be a modern, political category, originating in Europe, that organized the forms and procedures of colonial rule, and therefore the politics of the governed.<sup>10</sup> My driving concern has been to illuminate what the language of religion has obscured in the historiography and the politics of modern India. What is lost when the practices and concerns of South Asians are translated, imperfectly, into the language of religion? What political strategies inform such acts of translation, and what political consequences follow?

My current project pursues what is obscured when cow protection is framed in “religious” terms. The classic scholarship on colonial cow protection focuses on cow protectionist violence against Muslims, or, to a lesser degree, against low castes. It addresses the question of just how readily the Hindu religious significance of the cow was translated into Hindu communal identification and mobilization. Although the question for these scholars is ultimately political — how and when did Hindu religious identity take shape, and become the basis of Hindu Nationalist political action? — it is premised on a framing of cow protectionist concern as religious in the first instance.<sup>11</sup> But Hindu reverence for the “sacred cow” is a slippery affair.<sup>12</sup> Today, Hindus most commonly explain their attitude by referring to the special value of cattle in material terms: the cow, male and female, is said to be a uniquely “useful” animal. Since the nineteenth century, Hindu proponents of cow protection have often abjured religious reasoning, and argued for cattle preservation on economic grounds. As I have discussed elsewhere, in framing cow protection as a religious matter, scholars have either overlooked or hastily dismissed the predominant emphasis in the discourse of cow protection from the nineteenth

through the twenty-first centuries. My current project expands on this observation to flesh out cow protectionists' concerns with material cattle from the 1880s through the 1960s.

In this paper, I bring my historiographical concern into conversation with the critical literature on religious freedom. My goal is not to critique US foreign policy, which seems unlikely to have a very great impact, negative or positive, on the politics of cow protection in India today.<sup>13</sup> Similarly, I don't aim to contribute to reflections on the operation of religious freedom as a central cog in the wheel of political secularism, though my analysis does seem to support a growing consensus which indicates that in legal practice, religious freedom is inherently biased in favor of the religious majority.<sup>14</sup> My concern is analytical: can cow protection be adequately described in religious terms? I hope a more adequate description of cow protection may provide some added leverage onto India's legal and political struggles around cattle.

## **TWO: RELIGIOUS FREEDOM ON THE GLOBAL STAGE**

The professed aim of religious freedom in international policy is to diminish religious discrimination and inter-religious violence, and the US religious freedom reports issued by IRF and USCIRF treat the freedom and equality of religious minorities with special concern. Scholars have observed that when religious freedom is made the focal point of policy, certain unanticipated consequences may follow that run contrary to this aim.

Reviewing the scholarship on this issue, Elizabeth Shakman Hurd observes that in the very act of seeking out cases of religious discrimination that demand remedy, an international policy of religious freedom has a tendency to single out individuals and groups as *religious* groups, to portray social conflict as *religious or sectarian* in origin, and, to allow other forms of group affiliation and other causes of social conflict to drop out of sight. In short, the politics of religious freedom, which aims to diminish sectarian violence, runs the risk of strengthening sectarian identification and diminishing the very “possibility of crosscutting, nonsectarian forms of politics.”<sup>15</sup> Elizabeth Shakman Hurd’s observation most certainly applies to the account of cow protection provided in the US religious reform reports.

The US religious freedom reports stress cow protection’s negative impact on the Muslim religious minority in India. In keeping with their mandate to uphold religious freedom, the US religious freedom reports stress that the majority of victims of cow protectionist violence have been Muslims, the largest religious minority in India. In addition to fostering anti-Muslim discrimination, they observe, India’s anti-slaughter laws prevent Indian Muslims from freely practicing their religion. But the reports’ emphasis on religious freedom produces several characteristic distortions: it depicts homogenized religious teachings and neatly bounded

religious communities; it exaggerates religious difference; and it overstates the determinative force of religious convictions in politics.

Above all, the US reports portray India's anti-slaughter law as a violation of Muslim's religious freedom. They describe legal prohibitions on cattle-slaughter as violation of Muslims' right to practice their religion, that is, their right to sacrifice a cow on the occasion of the Islamic holy day, Id al-Adha. It is true that before independence, the British colonial policy of religious neutrality claimed to balance Hindus' religious demand that cattle lives be preserved, against Muslims' religious right to cow-sacrifice. After independence, the first Supreme Court ruling by the Indian Supreme Court in 1958 overturned this settlement, and Muslim groups ever since have sought to reestablish cow-sacrifice as a legal right. But the politics of religious freedom can exert a subtle pressure to portray religious teachings as unanimous and clearcut. The US Religious Freedom reports are more accurate when they say that "many Muslims believe" or "Muslims complain" that sacrifice is essential to their religion: Indian Muslims have long disagreed about whether the sacrifice of a cow, rather than another animal such as a goat, is religiously obligatory.<sup>16</sup> Although they aim to reduce sectarian conflict in India, the US religious freedom reports paint an exaggerated picture of conflicting Muslim and Hindu religious imperatives (to kill cows; not to kill cows).

The reports also describe a more immediate or direct connection than is warranted between a Hindu religious position on the sacred cow and anti-slaughter legislation. We will return to the suggestion that India's anti-slaughter laws are the product of Hindu religious sentiments. For the moment, let us note that the assumption that a Hindu religious prohibition on cow-slaughter is at the back of today's controversy leads the US religious freedom reports to overstatement. The US reports state that anti-slaughter laws are dictated by the Constitution and by the Supreme Court's

ruling in the 1958 Quareshi judgment. But Article 48 of the Constitution is only a “directive”; it does not dictate state policy. Whether it directs the state to “take steps” to prohibit cattle slaughter *tout court*, or whether that directive clause is subordinate to the injunction to “organise agriculture and animal husbandry on scientific lines”, is debatable.<sup>17</sup> Moreover, the 1958 Supreme Court judgment did not prohibit the slaughter of *all* cattle, as the US reports suggest. Although the Quareshi judgment allowed a total ban on the slaughter of female cows, it set important limits to anti-slaughter laws out of regard to the right of cattle-butchers to their occupations; the economic burden on the country of maintaining useless animals under conditions of general food scarcity; and the nutritional needs of impoverished Indians who relied on the cheapest available source of protein: beef. This is an important correction, because the contemporary anti-slaughter legislation and the discriminatory actions that have accompanied it are based in a more recent Supreme Court decision in 2005, the Mirzapur decision, which eliminated the restrictions on cattle-slaughter that the Quareshi judgment had put in place, and allowed prohibition of the slaughter of all cattle, regardless of age, sex, or usefulness for labor or milk production.<sup>18</sup>

The US religious freedom reports portray Muslims as the primary victims of cow protection. To be sure, they give special attention to Muslims as victims of hate speech and vigilante violence for good reason. From the murderous assault on Mohammad Akhlaq in Dadri, UP, in September 2015, to the killing of 16-year old Junaid Khan on a Delhi-Mathura train in June 2017, both allegedly on suspicion of possessing beef, Muslims have been frequent targets of cow vigilante violence. But in highlighting the egregious persecution of the Muslim religious minority, the US reports very nearly disregard many other victims of cow protectionist violence and oppression. This near-silence would seem to be a consequence of the fact that other

opponents of cow protection who experience anti-slaughter initiatives as injustice do not fall easily along the lines of Hindu/ non-Hindu religious difference.

Cow protectionist vigilantes have perpetrated grievous violence against Dalits, members of the most depressed classes in India, ostensibly for their role in slaughter-related trades. For example, in Una town in Gujarat in July, 2016, seven members of a Dalit family were badly beaten for skinning a cow. This violence reached such a scale that Dalits in Gujarat employed in carcass removal put their lives and livelihoods at further risk to strike in protest.

In addition to direct, physical violence, Dalits also suffer other kinds of harm from the cow protection. Strengthened prohibitions on cattle-slaughter cause considerable economic hardship to the many Dalits employed in the leather industry; the leather industry is reported to have been nearly shut down in some locations, and the industry is said to be largely dominated by Dalits.

The politics of cow protection also does significant harm to those Indians who eat beef. This is no small number. As is often pointed out, the beef industry in India is a large one by any standards. “Beef, as<sup>19</sup> the ‘common man’s diet’, is significantly the cheapest meat product available in the country”. Many Dalits include beef in their diet; whether as a matter of food culture and community pride, or out of economic necessity. Whatever their reasons, Dalits are regularly derided for this food choice, which upper caste Hindus associate with demeaned social status.<sup>20</sup> Like Indian Muslims, Dalits are regularly subjected to the jeering and derogatory taunt, “Beef-eater.”<sup>21</sup>

This means that a great number of Hindus in India eat beef, and a great number of Hindus in India are oppressed by the politics of cow protection. Dalits’ religious affiliation has been contested since the colonial period, when the question of how to classify Dalits in terms of religious community first became a matter of administrative and political concern. Although

religious and cultural separatism remains an important strand in Dalit politics, and many Dalits have rejected Hindu domination by converting to Buddhism, most Dalits are officially classed as Hindus in the Republic of India. Other low caste Hindus — those classified by the constitution as “Other Backward Castes” — also eat beef, and are ready to assert this food choice as a matter of identity and pride. Moreover, although the dominant, upper-caste Hindu understanding arranges castes from low to high in a food hierarchy that puts beef at the bottom, Hindus of all castes may include beef in their diet. In the southern state of Kerala, Hindus as well as Muslims and Christians consider beef to be “part of Kerala’s food culture.”

Many Indians, Muslim and non-Muslim, are hurt by cow protection; many are also actively opposing anti-slaughter laws and violence. Protests against the politics of cow protection have cut across the lines of religious difference. In November, farmers in Rajasthan came out in protest against anti-slaughter laws, which have made it difficult for them to refresh their work animals. In the wake of the killing of young Junaid, NotInMyName protests against mob-lynching in cities across India drew members of all religions and all castes. Protests against anti-beef laws have also drawn protest from members of all religions and castes. Whatever their own food preferences, many Indians oppose both anti-slaughter and anti-beef laws as illegitimate interference with citizens’ right to choose their own food.

Over the past year, a legal challenge has been filed against the Bombay High Court by a group of thirty Maharashtra social activists, some Dalits and some not, on the grounds that the state’s anti-slaughter law violates citizens’ dietary rights. The case will be heard by the Supreme Court. The petitioners are represented by Senior Advocate Indira Jaising, who observes that the case breaks new ground: “This is perhaps the first time that consumers of beef have approached the Supreme Court on purely secular grounds. All previous petitions in the courts have been on

behalf of butchers and their right to carry on a profession or of Muslims claiming that slaughtering cows is an essential part of their religion.” If social protests have indicated cross-cutting alliances,<sup>22</sup> this lawsuit marks the possibility of bringing them into the jurisprudence of cow protection. For Jaising is now seeking to challenge not only Maharashtra’s state law (which specifically bans beef possession), but also the troubling 2005 Mirzapur decision of the Supreme Court, which opened the way to laws banning the slaughter of all cattle, without exceptions for butchers, hide merchants, or those who rely on beef for food.<sup>23</sup>

The accounts of the Indian politics of cow protection that are currently provided in the reports of the US Department of State’s Office of International Religious Freedom and by the United States Commission on International Religious Freedom provide no hint of this nonsectarian story of victims and opponents of cow protection. By framing cow protection as a religious issue, the US religious freedom reports place excessive emphasis on a supposed religious conflict between Hindus and Muslims around the cow-slaughter issue, reinforcing the very sectarian stereotypes and divisions that they seek to undermine.

### **Three. Religion and Secularism in India**

The US religious freedom reports impute India’s legislation restricting cattle-slaughter directly to Hindu religious sentiment, describing it as a naked imposition of Hindu religious scruples on India’s non-Hindu citizens. But again, the pressure to describe cow protection in terms of religious freedom has produced some distortions. It is true that in recent years, Hindu Nationalists have loudly advocated cow protection as a matter of Hindu faith that all minorities must “respect.” But neither the Constitution of India, nor the Quareshi decision, advocate restrictions on cattle-slaughter for overtly religious reasons; both couch the imperative to

preserve cattle from slaughter within the imperatives of scientific agriculture. Article 48 reads as follows:

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.

The Supreme Court ruling of 1958 determined that the directive to prohibit slaughter is not independent, but entirely subordinate to the needs of scientific agriculture and animal husbandry.<sup>24</sup> So the law does not articulate a Hindu religious rationale for prohibiting slaughter. This point of clarification carries important ramifications, which we will continue to explore.

But if the account the US religious freedom reports provide of cow protection is dangerously oversimplified on certain counts, we must acknowledge that the reports' overall assessment is shared by scholars and by Indian critics. A prominent scholar of Indian secularism remarked, the "legal bans on cow slaughter... must be viewed primarily as attempts to impose the taboos of one religion upon all citizens. They are certainly contrary to the spirit of the secular state."<sup>25</sup> Shradha Chigateri, an important critical voice who aims to represent the interests of Dalits in the controversy around cow-slaughter, argues similarly that the ostensibly neutral, secular framing of anti-slaughter jurisprudence in India "is predicated on a fundamental constitutive elision of the religious aspects of cow slaughter. This elision both masks the prioritising of dominant-caste Hindu identity in the regulation of cow slaughter and it glosses over religious differences over the sacredness of the cow... Such a move is at the expense of the even-handed recognition of all religious sensibilities, and strikes at the heart of Indian secularism."<sup>26</sup> Chigateri's critical move is to demand the unmasking of the religious motives behind anti-slaughter legislation, and, having brought them into the open, to demand revision of

the Constitution's Article 48. She argues that only by debating cow slaughter openly as a Hindu religious concern will it be possible to engage seriously in the political work of secularism, that is, "accommodating diverging and opposing beliefs and practices in the context of a religiously plural society," with a view to "equal respect of all religions'."<sup>27</sup>

But is a politics of religious freedom capable of addressing the "contested ethical claims, and diverse cultural practices" with respect to slaughter, beef consumption, or assessments of animal value that Chigateri describes in her account of India's mutually reinforcing social hierarchies of caste and diet? The US reports demonstrate how completely the politics of caste can be lost in translation on the global stage of religious freedom advocacy. Within India, the long history of upper-caste Hindu encompassment of Dalits by means of their religious classification as "Hindu" demonstrates how the language of religion masks the ethical and cultural pluralism within the nominal community of "Hindus", even as it imputes an exaggerated, false difference between homogenized categories of "Hindu" and "Muslim."

Finally, we may recall the ambivalence of the Hindu "sacred cow," which renders the strategy of unmasking especially circular and absurd.<sup>28</sup> The revelation that pretensions to concern with the agricultural utility of cattle mask Hindu religious sentiment is quickly flipped around, when Hindus cite the particular usefulness of cattle as the basis for their religious sentiment. Where does secular agriculture end and religious valuation begin? The unmasked is again unmasked; it is unmasking all the way down. Here the logics of political secularism direct us to scientific expertise, which can settle the arbitrary valuations of religious belief on the solid ground of objective, scientific fact.<sup>29</sup> But does this course take us into new territory, or do we find ourselves circling back, once again, to the politics of religion?

### **THREE. THE ROLE OF EXPERTISE**

In the name of religious neutrality, the British colonial state in India held firm to the policy that today's champions of religious freedom advocate: it recognized the demand for cow protection as transparently religious, and balanced this religious demand against the religious rights of India's religious minority. From the 1880s through independence, British colonial officials steadfastly held to their understanding of cow protection as rooted in Hindu religious sentiment. Colonial officials consistently rejected cow protectionists' demands for legislation restricting slaughter, and sought to balance the Hindu religious prohibition against cow-killing against what colonial courts determined was a Muslim religious right to sacrifice cattle in celebration of the Islamic holy day of Id al-Adha.

The Supreme Court ruling of 1958 overturned this policy, and laid the groundwork for the anti-slaughter laws on the books today. How did the secular rationale of the Constitutional Directive (to organize agriculture and animal husbandry on scientific lines) produce this legal result? Critics have cried foul play. The Court carefully weighed the material advantages and disadvantages to be gained from allowing or disallowing bovine slaughter, both for the country as a whole, and for discrete sections of the population, including minorities. It noted butchers' and leather-workers' needs for livelihood, and the needs of the poor for beef as a cheap protein. The Court concluded that a total prohibition on cattle-slaughter was unconstitutional. The slaughter of cattle that were not useful, or that were no longer useful, could not be banned. So far, it might be argued that the Court's carefully secular reasoning sidestepped representations of the cow-slaughter issue as a point of intractable Hindu-Muslim religious conflict. But the Court made an exception that critics have found baffling: it allowed an exception for female cows. It ruled that the slaughter of buffaloes and male cattle could be prohibited only during their useful

years; but the slaughter of female cows, who provided less milk than female buffaloes and were therefore less economic or “useful” to maintain, could be prohibited absolutely. Here, the Supreme Court seemed to depart from its meticulously secular reasoning — indeed, it seemed to abandon reasoning altogether, baldly to impose a Hindu religious scruple on all citizens. In the words of one scholar of Indian secularism, “Why was not the same criterion of usefulness applied to the slaughter of cows?”<sup>30</sup> Critics have concluded that the Court’s secular reasoning was mere pretense, religious motives masquerading as agriculture and economics.

But the Supreme Court did not abandon secular reasoning in its 1958 ruling on female cows; to the contrary, its decision on this point was based on the recommendations of experts — specifically, the recommendations of the 1955 Report of the Expert Committee on the Prevention of Slaughter of Cattle in India.<sup>31</sup> This report, in turn, was based on scientific expertise that extended back decades, well into the period of British colonial rule. Like the colonial statements that preceded it, the 1955 Report of the Expert Committee consistently portrayed cow protectionist opposition to cattle slaughter as religious in nature, and, moreover, as fundamentally opposed to the rational, scientific husbandry of India’s cattle resources.

The Expert Committee’s Report is not easily dismissed as pretense, or unmasked as Hindu pseudo-science. It is premised on evidence and argumentation that accumulated during the colonial period, and it repeatedly reaffirmed the colonial state’s secularist position on cow protection. In designating cow protectionists’ appeals for state action to restrict cattle-slaughter as religious in nature, the colonial state not only held a balance between “Hindu” and “Muslim” religious dictates. It also articulated a contrast between cow protectionists’ irrational, sentimental concern with preserving cattle lives at all costs, and the colonial state’s rational, scientific and economic concern with improving cattle resources. The Report of the Royal Commission of

Agriculture, issued in 1928, exemplified this position: it described India's cattle to be in a deplorable condition, and attributed the degeneration of the breeds to Hindus' religious scruple against culling. The Hindu religious prohibition against killing even weak or useless animals, the Report concluded, had resulted in a "vicious circle". As work animals became increasingly weak and inefficient, Indian cultivators were obliged to keep more and more animals; as meagre feed resources were stretched to feed more and more animals, their quality degenerated still further. The Report described a clear solution: scientific animal husbandry, organized by the expertise of the colonial state, would gradually improve the strength, efficiency, and productivity of Indian cattle.

Before we take the Report's assessment as bare fact, we must remember that the Royal Commission's entire endeavor, unprecedented in scale in any country of the world, was designed above all to serve a political purpose. As David Ludden has shown, more than anything, the Report reasserted the authority of British colonial rule in India as good government — as government that used science to bring development or "improvement" to India.<sup>32</sup> The Commission answered the complaints of Indian nationalists that colonial policy had reduced Indians to poverty. It also answered the complaints of cow protectionists that cattle slaughter was harmful to Indian agriculture and overall prosperity.

The Report of the Royal Commission of Agriculture repeated, in 1928, what was by then a well-established official position against cow protectionists' complaints. When officials conceded that there was some kind of problem affecting cattle in India, they insisted that to restrict the slaughter of cattle would worsen rather than improve Indian agriculture or the prosperity of Indians, by impeding what culling did occur. Increasingly (after 1912), colonial officials blamed India's cattle problems on Indians' lack of initiative: Indians did not adjust to

lost pasture grounds by sowing cattle feed alongside their cash crops; Indian cultivators did not compensate for the skyrocketing costs of cattle by breeding their own work animals; Indians did not organize to develop a modern dairy industry in India; Indians practices of cattle-breeding and cattle-rearing brought degeneration rather than improvement. Where the colonial state's promises of improvement had patently not been realized, the Report cited Indian impediments in the way: Indian culture, Hindu religion, the sacred cow.

In 1955, the Report of the Expert Committee repeated the colonial state's expert, scientific, "secular" position against "religious" cow protection on all of these points. The Report affirmed the secularist position that a total prohibition on cattle-slaughter would worsen a "vicious circle" (60). It affirmed that the solution to this vicious circle was to improve the quality of Indian cattle through scientific breeding. It repeated colonial experts' statements about the need to develop the Indian dairy industry. The 1955 Report also echoed colonial officials and experts when it identified a problem in the cities, what came to be described in official literature and in the literature of cow protection as the need for urban "salvage." The salvage problem was the unstated justification for the Supreme Court's decision, in 1958, that a total prohibition on the slaughter of female cows was reasonable on purely secular grounds.

The Expert Committee on the Prevention of Slaughter of Cattle in India was formed specifically to consider the problem of how to prevent the premature destruction of good-quality cows who were brought into the cities to provide urban populations with fresh milk. Because it was far too expensive to maintain such animals in the cities during the dry period between their lactations, urban dairy-men sold them for slaughter. This practice was said to be a problem of national proportions. For the "milch animals and their progeny" that made their way to urban dairies were said to be "the best milking (and breeding) stock the country possesses" (2). Their

destruction meant the loss of the “most valuable breeding material, the basic stock needed for improving the country’s cattle wealth” (2, 40). The 1955 Report of the Expert Committee argued that “salvage” of these cows was urgently needed in order to advance the objective of improving the productivity, value, and efficiency of India’s cattle through scientific breeding.

The 1955 Report echoed decades of statements by British colonial government agencies and officials at the highest level in identifying the problem of “salvage.” W. Smith, who was appointed “Imperial Dairy Expert” for India in 1920, advocated the urgent importance of salvage for scientific breeding work as early as 1913, and repeated the refrain in 1922 and again in his evidence before the Royal Commission of Agriculture in 1928.<sup>33</sup> Smith’s warning was taken up by the incoming Viceroy, Lord Linlithgow, after 1936. Linlithgow had chaired the Royal Commission’s inquiry, and he immediately directed the Imperial Council of Agricultural Research to turn its attention to the improvement of cattle breeds in India. The Annual Reports of the ICAR for 1937 and 1940 stressed the “urgency and importance of the matter” of urban salvage; the department of Agriculture and Animal Husbandry in India followed suit, stressing “The importance of taking steps to obviate the premature slaughter of prime milch cows when they go dry in cities”... as the basis for sound breeding policy (154).

In 1955, the Report of the Expert Committee cited these imperial precedents, and it observed that immediate action was needed until full development of the dairy industry (and the removal of milch animals outside the cities) could be achieved. It observed that urban dairy-men were under extreme pressure to sell good, dry cattle for slaughter, and that economic compulsion regularly forced them to do so outside the law. It advocated that legislation prohibiting the slaughter of useful animals be made fully effective (45). The 1955 Report of the Expert Committee did not depart from the secular rationale of economic development and scientific

animal husbandry, but it did advocate that the slaughter of specifically female cows be more effectively prevented through legislation. The Supreme Court decision of 1958 cited this Report when it observed that already stringent municipal regulations against the slaughter of useful animals were insufficient, and ruled that female cows required extra protection, which might extend to a total prohibition on their slaughter at the state level.<sup>34</sup>

It seems that when the 1958 Supreme Court made its ruling about the need to preserve the lives of female cows, it did not depart from secular reasoning, or baldly impose a Hindu religious scruple on all Indian citizens. For the 1955 Expert Committee Report, on which that decision rested, echoed the British colonial government's secular, scientific critique of cow protection's Hindu, religious demand that cattle lives be preserved at all costs. Thus it is no simple matter to "unmask" the Hindu religious bias of the Supreme Court's ruling in *Quareshi*. The Constitution's appeal to the scientific organization of animal husbandry is not so easily swept aside; it has deep roots. Cow protectionists and colonial experts had marched in step to the tune of breed improvement for decades before independence.

Let us now observe the contours of the colonial policy on cow protection. Colonial policy defined cow protection as a matter of a Hindu religious prohibition against cattle-killing. But in the colonial period, as today, both Hindus and Muslims were complicit in cattle-slaughter, and urban dairymen, were overwhelmingly Hindu. The colonial conception of the determining force of belief in the Hindu sacred cow, in conjunction with their understanding of Muslim sacrificial practices as essential to their religious freedom, yielded a split account of slaughter practices. Hindu dairymen were described to sell the dry cattle in their possession despite their religious principles, out of economic compunction. Indian Muslims, by contrast, were described as committed to cattle-killing as a matter of religious principle. Yet India's butchers were

predominantly Muslim, and so slaughter was as much a concern for Indian Muslims as was sacrifice. As we have remarked, both Hindus and Muslims included beef in their diet, whether from preference or economic necessity. Like the US religious freedom reports, the colonial policy on cow protection singled out Muslims as a religious group, exaggerated the difference between Hindus and Muslims, and depicted an intractable sectarian difference over cow-killing. The colonial policy singled out Muslims as the primary opponents of cow protection. Many cow protectionists did the same.

Cow protectionists, on the other hand, did not appeal to the colonial government for legal restrictions on cattle-slaughter on exclusively religious grounds. They advocated their cause on material grounds: the economic value of bullocks for agriculture, the indispensable value of milch cows and dairy foods for the nutrition of the population. The colonial state's identification of cow protection as fundamentally religious did not prevent state experts and officials from endorsing cow protectionists' claims that their efforts were in the public interest, that they worked for the good of the country as a whole.

Colonial officials of the highest rank openly advocated Hindu cow protection as a solution to the problem of urban salvage, and extended support to cow protectionist activities and institutions. Viceroy Linlithgow very publicly enlisted cow protectionists in his campaign to improve India's cattle through deliberate breeding. In one of his very first public acts in 1936, the Viceroy presented several dry cows from Calcutta and Bombay to a cow protectionist cattle-shelter, or gaushala, in Delhi at the Delhi Pinjrapole gaushala's annual celebration. Commenting on the Viceroy's gesture, the Agriculture and Animal Husbandry Department remarked, "... It was considered that any attempt to improve cattle would lose greatly in effectiveness unless the serious depletion of the stock of high class dams caused by the premature slaughter of dry cows

in cities were prevented.... His Excellency the Viceroy gave a practical lead... accompanied by an appeal to the public to follow suit and thereby save valuable breeding material.”<sup>35</sup> Five years later, the new Viceroy again observed that with government assistance, “gowshallas can play an important role in tackling many economic problems now facing the country”, including salvage and breed improvement. Throughout the 1940s, the Imperial Council for Agricultural Research and the Government of India actively encouraged urban salvage schemes as urgently important to the scientific and economic progress of the country, and they enlisted cow protectionist organizations and institutions to design and to implement those schemes.

The colonial state maintained a principled distance from the religious politics of cow protection. But at the same time, the colonial state lent active support to the work of cow protection in the name of animal husbandry. By relying on cow protectionist institutions and personnel for state initiatives for breed improvement, the colonial state gave the imprimatur of the supposedly neutral colonial state to the central claim of cow protection: that preventing cow-slaughter was not a sectional Hindu concern, but was in the material interest of the country as a whole, serving the food needs, the economic needs, and even the environmental needs of all castes and communities.

## CONCLUSION

Where can we find a secure boundary between a “religious” approach to cow-slaughter, and a “secular” one? The most authoritative secularist approach to the issue has been that articulated by the colonial state, which held to its avowed principle of religious freedom, and never ceased to declaim the Hindu religious basis of cow protectionist appeals. Yet that secularist approach was combined with practical and institutional support for the work of cow

protectionist organizations and institutions, including their work to preserve cattle from slaughter. Moreover, that secularist approach reproduced a sectarian divide between Hindus and Muslims, inasmuch as it focused not on actions (participation in the slaughter-economy, beef consumption) but on the conflicting Hindu and Islamic religious principles that presumably lay behind those actions. It served to marginalize Muslims, representing their religious beliefs as an obstacle to the best material interests of the country. So a political strategy that depends on unmasking the religious motives behind cow protectionists' veneer of science, agriculture, and economy rests on shaky ground. A political strategy that consists in reasserting the value of religious freedom is similarly uncertain: the evidence of contemporary initiatives for international religious freedom based in the U.S., and the evidence of colonial history, both indicate that a policy of religious freedom is as likely to entrench a sectarian divide between Hindu and Muslim in India as to dissolve it.

If there is no secure "secular" approach to the cow issue in India, that does not mean we are left without grounds for moral critique or political opposition to the aggressive, militant Hindu majoritarianism of cow protection that afflicts Indian society today. But our understanding of the politics of cow protection is in need of revision. Far from limited to a religious prohibition against cow-slaughter, cow protectionist politics has embraced scientific animal husbandry and breed improvement since the early decades of the twentieth century. Shraddha Chigateri and other critics are right that Article 48 of the Indian Constitution "reiterates the Hindu basis" of opposition to cow-slaughter, and upholds a hegemonic Hindu view of the issue that stigmatizes minorities' uses of cattle. But this is not because it is religious at bottom.<sup>36</sup>

After decades of reiteration by scholars, it should come as no surprise to learn that the majoritarianism of the Hindu Right in India is secular as much as it is religious. This

majoritarianism is already being opposed on multiple grounds — dietary rights, right to livelihood, rights that might encompass “diverse cultural practices” and “ethical claims.” These grounds do not reproduce the distinction between homogenized, uniform “Hindu” and “Muslim” communities that both the Hindu Right, and the communalized politics of cow protection, thrive on. Once the full range of cow protectionist activities is recognized, perhaps the struggle will be extended to the work of animal husbandry itself, which continues to direct state funds to Hindu majoritarian causes in the name of scientific breed improvement.

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<sup>1</sup> My special thanks for the generous support of the National Endowment for the Humanities, which funded my American Institute of Indian Studies fellowship in India in the Fall of 2015.

<sup>2</sup> Ghassem-Fachandi has discussed the use of this trope in Gujarat to justify the anti-Muslim pogrom of 2002.

<sup>3</sup> Shraddha Chigateri notes the effort in 2002 to have violators of cow-slaughter prohibitions punished under POTA, the Prevention of Terrorism Act (Negotiating, 141)

<sup>4</sup> The phrase is Chigateri's (Negotiating, 156).

<sup>5</sup> Ian Copland, What to do?; Smith, *Secular State*. Historians have observed how bungling by local officials repeatedly contributed to large-scale communal violence around the cow (Pandey, *Rallying*).

<sup>6</sup> Among the former, we might list Chakrabarty, *Provincializing Europe*; Dressler and Mandair, *Secularism and Religion Making*; Josephson, *Invention of Religion in Japan*; Viswanath, *Pariah Problem*. Among the latter, some key volumes are Sullivan et al, *After Secular Law*; Mahmood, *Religious Difference*; Agrama, *Questioning Secularism*; Cady and Hurd, *Comparative Secularisms*.

<sup>7</sup> Asad, *Genealogies, Formations of the Secular*; Sullivan, *Impossibility of Religious Freedom*.

<sup>8</sup> Sullivan, *Ministry of Presence*, 45; McClure, "Limits of Toleration"; Adcock, "Sacred Cows".

<sup>9</sup> These publications include Sullivan et al., ed., *Politics of Religious Freedom*; special issue of *Journal of Law and Religion*; Schonthal, *Pyrrhic Constitutionalism*; Salomon, *For Love of the Prophet*; Walton, *Muslim Civil Society*.

<sup>10</sup> I have focused on colonialism (*Limits of Tolerance: Indian Secularism and the Politics of Religious Freedom*). Others have addressed the geopolitics of international diplomacy or international law (Mahmood and Danchin; Josephson).

<sup>11</sup> Freitag, McLane, Yang, Pandey.

<sup>12</sup> Although the position of the Hindu scriptural tradition on slaughter is debated, the “religious” sources of Hindu reverence for the cow are well-documented. The products of the cow, or even a living cow, are important in Hindu ritual practice; the cow is frequently portrayed as the abode of deities; and the Hindu god, Krishna, lived as a cowherd.

<sup>13</sup> I therefore take no care to distinguish between IRF and USCIRF characterizations of cow protection, although the latter provide a much more detailed portrait than the former.

<sup>14</sup> Mahmood and Danchin; Asad, "Religion and Politics"; Agrama, *Questioning Secularism*; Mahmood, *Religious Difference*.

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<sup>15</sup> Hurd, *Beyond Religious Freedom*, 42 -- check paraphrase.

<sup>16</sup> Note: slippage in the US reports themselves, between describing sacrifice as a requirement, and noting more precisely that “many Muslims believe” this sacrifice “is required of them” (that’s USCIRF Constitutional and Legal Challenges 2017, similarly USCIRF 2015; vs USCIRF 2017 and 2016. IRF 2016, 2015 make no mention (focus on vigilante violence).

<sup>17</sup> (It is proponents of cow protection who insist that the Constitution prohibits cow slaughter; thus the US reports would appear to echo the cow protectionist position).

<sup>18</sup> Supreme Court 1958 judgment, AIR; Supreme Court Mirzapur judgment; Chigateri, "Negotiating."

<sup>19</sup> The source of beef varies in different states, as the laws restricting cattle also vary. In some states beef is available, in some it is outlawed. In many states beef is sourced from male cattle and buffaloes.

<sup>20</sup> The prominent political leader and advocate for Dalits, BR Ambedkar, attributed the practices of untouchability to Hindus’ contempt for Dalits’ beef diet. Ambedkar also portrayed Hindus’ contempt as rooted in hypocrisy — for, he argued, Hindus had earlier been beef-eaters themselves (Chigateri Food, 21).

<sup>21</sup> (Chigateri, Food, 23).

<sup>22</sup> Recent protests by Dalits and OBCs, also Muslim groups against BJP and upper-caste oppression, in Maharashtra. Immediate cause was act of violence by Hindutvavadis against Dalits commemorating moment in Dalit history; but recent acts of violence against their community by gaurakshaks also named by some commentators as a contributing cause.

<sup>23</sup> Thanks to Meher Dev, Research and Teaching Fellow, Centre for Constitutional Law, Policy & Governance, National Law University, Delhi, for confirming the status of this case. Meher Dev served as Advocate on this case, which is scheduled to be heard before the Supreme Court in the third week of February.

<sup>24</sup> AIR 735-36.

<sup>25</sup> Smith, *India as a Secular State*, 489.

<sup>26</sup> Chigateri, "Negotiating," 138).

<sup>27</sup> Chigateri, "Negotiating," 156.

<sup>28</sup> Many scholars have remarked on the circular quality of these debates; Agrama described it as the productive of a constitutive paradox of political secularism (*Questioning Secularism*).

<sup>29</sup> Sullivan observes the conjunction of legal reasoning with empiricism (*Ministry*). Bruno Latour has commented on the notional dependence of modern politics on putatively objective scientific facts (*Politics of Nature*).

<sup>30</sup> (Smith, *India as a Secular State*, 488)

<sup>31</sup> (AIR 1958, note p# references to 1955 Report). *Report of the Expert Committee on the Prevention of Slaughter of Cattle in India*. New Delhi: Ministry of Food and Agriculture, Government of India, 1955.

<sup>32</sup> Although departments were established to create the appearance of colonial expertise, colonial science was largely handicapped by lack of funding, when it wasn’t made entirely subservient to the maximizing of imperial profits. Ludden, Arnold.

<sup>33</sup> (Proceedings Board Agri, 1913; Agricultural Journal of India 1922, 19-20; RCAI Evidence 1928)

<sup>34</sup> AIR 1958, 754-755.

<sup>35</sup> Agriculture and Animal Husbandry in India, 1936-1937, 255

<sup>36</sup> Chigateri, Guest Post, blog: Law and other things.