CASE NO.:
Appeal (civil) 5469 of 2005

PETITIONER:
Hinsa Virodhak Sangh

RESPONDENT:
Mirzapur Moti Kuresh Jamat & Ors

DATE OF JUDGMENT: 14/03/2008

BENCH:
H. K. Sema & Markandey Katju

JUDGMENT:
J U D G M E N T

(With Civil Appeal Nos. 5470/2005, 5472/2005, 5474/2005, 5476-5478/2005 & 5479-5481/2005]

Markandey Katju, J.

Civil Appeal No. 5469/2005

1. This appeal by special leave has been filed against the impugned judgment dated 22.6.2005 of the Division Bench of the Gujarat High Court in Special Civil Application No. 6329 of 1998.

2. Heard learned counsel for the parties and perused the record.

3. Respondent No. 1 claims to be a registered public charitable trust working for safeguarding the interests of the persons engaged in the business of slaughter and sale of livestock, mutton etc. It is alleged that it is functioning in the city of Ahmedabad in Gujarat since 1962 and has about 3000 members. Respondent No. 2 All Ahmedabad (Chhoti Jamat) Mutton Merchant Association is an association of persons who are engaged in the sale of mutton in the city of Ahmedabad. Respondent No.3 is an individual who is doing the business of selling mutton in the city of Ahmedabad.

4. The common grievance of the respondents herein (the writ petitioners before the High Court), is that with a view to appease the Jain community the State Government and the Ahmedabad Municipal Corporation (in short \021the Corporation\022) have, from time to time, taken decisions/passed resolutions for closure of the municipal slaughter houses in Ahmedabad during the period of the Paryushan festival (which is an important Jain festival) resulting in serious violation of their fundamental right to trade and do business in meat etc. They have alleged that in the year 1993, the State Government accepted the demand of some organizations belonging to the Jain community for closure of the municipal slaughter houses during the period of Paryushan and issued directions to the Corporation to take appropriate action accordingly. In subsequent years, the Corporation passed resolutions for closure of the municipal slaughter houses for different period ranging from 8 to 18 days during the Paryushan festival.

5. They have alleged that the closure of the municipal slaughter houses directly results in violation of their fundamental rights to do trade and business as guaranteed by Article 19(1)(g) of the Constitution and it cannot be said to be a reasonable restriction merely because a particular community or a section of the society feels that for a particular period there should be closure of the municipal slaughter houses as that will be in consonance with the Jain ideology of Ahinsa (non-violence).

6. There were two resolutions impugned in the writ petition passed by the Standing Committee of the Municipal Corporation for closure of the municipal slaughter houses in Ahmedabad during the Paryushan festival. These resolutions read as follows:

\023Resolution dated 14.8.1998:

Resolved that during the current year from 19.8.1998, Mhah Paryushan Parv of Jain Religion begins. Every year during Paryushan Parv, the slaughter houses of this Municipality are closes. Accordingly, having regard to the sentiments of the citizens of Jain Religion, during the current year also, on account of Paryushan Parv from 19.8.1998 to 26.8.1998, and as per the discussion in the Committee, sanction should be obtained from the Municipal Corporation, to close Municipal slaughter houses every year, for eight days, during Paryushan Parv.

Resolution dated 29.8.1999:

Resolved that as demanded by Shree Arihant Seva Samaj and All Gujarat Digambar Jain Samaj, Ahmedabad, in anticipation of the sanction of the Municipal Corporation, sanction is granted to close the Municipal slaughter house for the period 27.8.1998 to 5.9.1998 of Digambar Jain Society Paryushan Parv from 27.8.1998 to 5.9.1998; and as per the discussion in the Committee, hereafter every year, to close the municipal slaughter houses, for ten days of Digambar Jain Samaj Paryushan Parv.\024

7. Thus it appears that the closure of slaughter houses in Ahmedabad was ordered by the Corporation for a period of 18 days, first from 19.8.1998 to 26.8.1998 in connection with the festival of the Shvetamber sect of the Jain community and the other from 27.8.1998 to 5.9.1998 during which the Digambar sect of the Jain community celebrates Paryushan festival. However, during the course of the arguments, learned senior counsels for the appellants Mr. Soli Sorabjee and Mr. T.R. Andhyarujina stated that the closure is only for 9 days and not for 18 days which is evident from paragraphs 20 & 23 of the affidavit filed on behalf of Ahmedabad Municipal Corporation in the connected Civil Appeals (C.A. Nos. 5479-81/2005).

8. The impugned resolutions dated 14.8.1998 and 29.8.1999 were passed under Section 466(1)(D)(b) of the Bombay Provincial Municipal Corporation Act, 1949. The said provision reads as follows:

\023The Commissioner may make standing orders consistent with the provisions of this Act and the rules and by-laws in respect of the following matters, namely:-

(A)\005\005\005. (B)\005\005\005.

(C)\005\005\005. (D)\005\005\005.

(b) fixing the days and the hours on and during which any market, slaughter-house or stock-yard may be held or kept open for use and prohibiting the owner of any private market from keeping it closed without lawful excuse on such days or during such hours\024.

9. It may be mentioned that the slaughter houses in Ahmedabad are owned and managed by the Ahmedabad Municipal Corporation, but the

animals which are slaughtered there belong to private persons represented by the respondents herein, who bring their animals to the slaughter house for slaughtering.

10. The stand taken by the Municipal Corporation is reflected in the affidavit of Dr. Anil, Asstt. Superintendent (Slaughter Houses) filed in Special Civil Application No. 9031 of 2000. In paragraph 6 and 7 of his affidavit, Dr. Anil has stated as under:

\023 6. In reply to para 5 of the petition I state and submit that it is no doubt true that the religions sentiments of the Jain community are taken into consideration when imposing this ban. I submit that it is not a question of Jain community imposing its will upon rest of the people, but it is a question of one section of society who believes in kindness to animals making a request that during their religious days their sentiments may be respected for these few days, if not for all times. It is considering this religious sentiment that for a few days ban is imposed.

7. In reply to para 7 of the petition, I state that the petitioner is right in saying that the question which arises before this Hon\022ble Court is one of principle and not of any specific event which happened during a particular year. I further state and submit that the Corporation has stated earlier what are the reasons which have led it to impose a ban for a few days during the Jain religious days. In reply to the principles raised as under:-

(i) I respectfully state and submit that looking to the long term interest of the city and harmony with which the citizens are expected to live, the Corporation is well within its right for closing down the slaughter houses for a limited period of time.

(ii) I state and submit that such a closure is certainly undisputable in public interest and the restriction which it places temporarily for a few days on the slaughter of animals is in no way contrary to the Constitution.

(iii) I state and submit that the action of the Corporation is well within its power and not malafide and not contrary to law and not violative of Article 19 of the Constitution.

(iv) I state that the Corporation\022s action as stated above is taken not to discriminate between the communities but to see that if communities respect each others\022 feeling and that more tolerant society where people of different religions can live together happily is brought about. Such a desire of the Corporation can by no means be violative of Article 14 of the Constitution of India. It is important to appreciate that the Corporation is not deciding between the Jains and other communities. What the Corporation is attempting to do is to see that the religious beliefs of all communities and classes of society are respected placing as little restriction or curb on the other community so that all can live harmoniously and peacefully.

(v) I state that there is no fundamental right to slaughter animals. I state and submit that the impugned action as stated above is absolutely in public interest and as already stated above, it is not to satisfy religious sentiments of a particular section but to see that the community as a whole lives cordially respecting each other\022s religious belief.

(vi) I respectfully state and submit that Section 466(1)(d)(b) is legal and just and I leave it to my lawyer to raise relevant argument on this legal issue.

(vii) I state and submit that the action of the corporation is legal and valid. It is an absolutely bonafide exercise of power. It is not for a collateral purpose viz. to appease Jains. I am not going into length on the same issue as the same has been referred to in former paragraphs of the affidavit. I state and submit that the power has been exercised to see that the citizens of Ahmedabad can all live cordially together respecting religious sentiments of each other\024.

11. The State Government filed its reply in Special Civil Application No. 9509 of 1993. In paragraph 4 of the affidavit filed by Shri M.V. Khalasi, Under Secretary to the Government, Urban Development and urban Housing Department, reference has been made to the incident involving murder of Smt. Gitaben Shah (Activist of Hinsa Nivaran Samiti) and it has been averred that keeping in view the representations made by the Jain organizations and personal requests made by eminent citizens it was decided to close the slaughter houses during the Paryushan days. Shri Khalasi has referred to the judgment of Supreme Court in Jan Mohammed\022s case and averred that the petitioners cannot complain of the violation of their fundamental rights of trade and business simply because the Municipal slaughter houses are closed during the period of the Paryushan.

12. During the pendency of the petitions, Hinsa Virodhak Sangh, Satellite Murtipujak Jain Sangh, Shree Laxmi Vardak Jain Sangh and Shree Shahibaug Girdhar Nagar Jain Swetambar Murti Pujak Sangh got themselves impleaded as parties to the writ petitions or were allowed to be impleaded as party respondents. Thereafter, Dr. K.K. Shah, President of Hinsa Virodhak Sangh filed affidavit dated 17.8.1998 in Special Civil Application No. 6239 of 1998. He has referred to the Farman issued by Mughal Emperor Akbar in the 16th century, notifying 12 days of the month of Badharva including 8 days of the Paryushan as the period of abstinence during which no living creature would be slaughtered, and averred that the petitioners\022 right to trade and business in livestock, meat etc. is not violated on account of closure of the slaughter houses during the period of the Paryushan. Shri Jayesh Manubhai Shah has also filed affidavit 17.8.1998 on behalf of three Jain Sanghs. In paragraph 4 of his affidavit, Shri Jayesh Manubhai Shah has averred as under:-

\023The Jain religion is a very old religion based mainly on the principles of \023Ahinsa\024 of the highest order. In the days of Paryushan Parva all the Jains all over the world will observe various religious activities such as fasting, prayers, attending the lectures providing and observing \023Ahinsa\024. The Jains are believing in not killing or hurting even a small insect, therefore, the killing or cutting of the animals in the slaughter houses during

these days of Paryushan Parva affect and hurt the religious feelings of all Jains. The respondent Nos. 1 and 2 have been respecting the religious feeling of Jains since last many years and during the closure of the slaughter houses in Paryushan Parva days there are no complaints regarding non-supply of meat or its products by consumers, traders etc. thereof\024.

13. It was submitted by learned counsel for the appellants before the High Court that the closure of the municipal slaughter houses during the period of Paryushan should be declared as an unreasonable restriction on the rights of the writ petitioners to carry on trade and business in livestock, mutton etc. It is alleged that the impugned resolutions were passed by the Corporation in view of the demand made by some organizations belong to the Jain community and it has nothing to do with the general public interest. It was further submitted that the fundamental rights of those engaged in the trade and business of slaughtering animals and/or selling meat etc which is guaranteed under Article 19(1)(g) of the Constitution cannot be put to peril or jeopardized with a view to assuage the feelings of any particular community or a particular section of society, or as a mark of religious sentiments of a particular community. It was submitted that a large number of people living in Ahmedabad are non-vegetarians and their right to food of their choice is an integral part of the right to life guaranteed under Article 21 of the Constitution which cannot be violated at the whims and fancies of the Jain community.

14. It was also submitted that the impugned resolutions of the Corporation were totally arbitrary and discriminatory and hence violative of Article 14 of the Constitution apart from violating Article 19(1)(g) of the Constitution.

15. In reply it was submitted before the High Court by learned counsels for the Municipal Corporation and the State of Gujarat that the impugned resolutions were valid and there is no violation of any constitutional provision. It was submitted that non-vegetarians should respect the sentiments of the Jain community and should not complaint against the closure of the slaughter houses simply because it may adversely affect their business for a few days. A reference was made to the decision of this Court in Haji Usmanbhai Qureshi vs. State of Gujarat AIR 1986 SC 1213 in which a Constitution Bench of this Court upheld the ban on slaughter of bulls and bullocks below the age of 16 years. It was submitted that the right to eat non-vegetarian food cannot be treated as a part of the right to life under Article 21 of the Constitution and the closure of Municipal slaughter houses for a few days cannot be said to be arbitrary or violative of Article 19(1)(g) or Article 14 of the Constitution.

16. Reference was also made to the decision of this Court in Municipal Corporation vs. Jan Mohammed AIR 1986 SC 1205 where closure of the municipal corporation slaughter houses by the Corporation for 7 days i.e. during Janmasthami, Mahatma Gandhi\022s Birthday, 30th January, Mahavir Jayanti, Ram Navami, etc. was held to be valid.

17. By the impugned judgment, the Division Bench of the High Court held that the impugned resolutions of the Municipal Corporation were constitutionally invalid. The Division Bench of the High Court held that the writ petitioners\022 right to freedom to carry on the trade of slaughtering and selling meat cannot be curtailed or abridged merely at the asking of a particular section of society, or organizations belonging to a particular community merely because the members of that particular community feel that according to their religion people should not eat non-vegetarian food during a particular festival. The Division Bench was of the view that whether the people eat vegetarian food or non-vegetarian food is their private affair and the Court cannot make any pronouncement about it. People living in different parts of the country have different eating habits. Even in a particular locality, village or town, there are some who are

vegetarian and others who are non-vegetarian. The Division Bench held that no restriction can be placed on the slaughtering or eating of meat merely because it may hurt the sentiments or the religious feelings of a particular community or a society.

18. The Division Bench of the High Court strongly relied on the decision of a Constitution Bench of this Court in Mohd. Faruk vs. State of Madhya Pradesh AIR 1970 SC 93.

19. We have carefully considered the judgment of the Constitution Bench in Md. Faruk\022s case (supra). In that judgment reference was made to the decision of the earlier Constitution Bench in Mohd. Hanif Quareshi vs. State of Bihar AIR 1958 SC 731 in which it was held - (i) that a total ban on the slaughter of cows of all ages and calves of cows and of she-buffaloes, male and female, was reasonable and valid; (ii) that a total ban on the slaughter of she-buffaloes or breeding bulls or working bullocks (cattle as well as buffaloes), so long as they were capable of being used as milch or draught cattle, was also reasonable and valid; and (iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interest of the general public and was invalid.

20. Reference was also made in Md. Faruk\022s case (supra) to Abdul Hakim Quarishi vs. State of Bihar AIR 1961 SC 448 where it was held that the ban on the slaughter of bulls, bullocks and she-buffaloes below the age of 20 or 25 years was not a reasonable restriction in the interest of the general public and was void. The Court observed that a bull, bullock or buffalo did not remain useful after it was 15 years old, and whatever little use it may then have was greatly offset by the economic disadvantages of feeding and maintaining unserviceable cattle. This Court also held that the additional condition that the animal must, apart from being above 20 or 25 years of age, be unfit was a further unreasonable restriction. On that ground the relevant provisions in the Bihar, U.P. and Madhya Pradesh Acts were declared invalid.

21. In paragraph 11 of Md. Faruk\022s case (supra), this Court observed :

\023The sentiments of a section of the people may be hurt by permitting slaughter of bulls and bullocks in premises maintained by a local authority. But a prohibition imposed on the exercise of a fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in the interest of the general public, but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the claimant\024

22. It was on the basis of the observations made in the aforesaid para 11 in Md. Faruk\022s case (supra) that the Division Bench of the High Court struck down the impugned resolutions of the Ahmedabad Municipal Corporation.

23. Before we proceed further it may be mentioned that a Seven-Judge Constitution Bench judgment of this Court in State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors. 2005(8) SCC 534 has partially overruled the decision of the Five-Judge Constitution Bench in Md. Hanif Qureshi\022s case (supra). In the aforesaid decision the Seven-Judge Constitution Bench has referred, inter alia, to the decision in the Five-Judge Constitution Bench decision in Md. Faruk\022s case (supra) (in para 29). In paragraph 67 of the Seven-Judge bench judgment it has been observed:

\023The State and every citizen of India must have compassion for living creatures. Compassion, according to the Oxford Advanced Learner\022s Dictionary means \023a strong feeling of sympathy for those who are suffering and a desire to help them\024. According to the Chambers

20th Century Dictionary, compassion is fellow-feeling, or sorrow for the sufferings of another; pity\022\024. Compassion is suggestive of sentiments, a soft feeling, emotions arising out of sympathy, pity and kindness. The concept of compassion for living creatures enshrined in Article 51-A(g) is based on the background of the rich cultural heritage of India the land of Mahatma Gandhi, Vinobha, Mahaveer, Buddha, Nanak and others. No religion or holy book in any part of the world teaches or encourages cruelty. Indian society is a pluralistic society. It has unity in diversity. The religious, cultures and people may be diverse, yet all speak in one voice that cruelty to any living creature must be curbed and ceased\024.

24. We have quoted paragraph 67 of the Seven-Judge Bench decision of this Court because this observation will be deemed to have impliedly overruled the observation in paragraph 11 of the judgment in Md. Faruk\022s case (supra) that sentiments of a particular section of the people are irrelevant in imposing a prohibition.

25. We are of the opinion that the impugned judgment of the High Court cannot be sustained. In our opinion, the impugned resolutions of Ahmedabad Municipal Corporation are valid, and there is no violation of Articles 14, 19(1)(g) or 21 of the Constitution.

26. Had the impugned resolutions ordered closure of municipal slaughter houses for a considerable period of time we may have held the impugned resolutions to be invalid being an excessive restriction on the rights of the butchers of Ahmedabad who practise their profession of meat selling. After all, butchers are practicing a trade and it is their fundamental right under Article 19(1)(g) of the Constitution which is guaranteed to all citizens of India. Moreover, it is not a matter of the proprietor of the butchery shop alone. There may be also several workmen therein who may become unemployed if the slaughter houses are closed for a considerable period of time, because one of the conditions of the licence given to the shop-owners is to supply meat regularly in the city of Ahmedabad and this supply comes from the municipal slaughter houses of Ahmedabad. Also, a large number of people are non-vegetarian and they cannot be compelled to become vegetarian for a long period. What one eats is one\022s personal affair and it is a part of his right to privacy which is included in Article 21 of our Constitution as held by several decisions of this Court. In R. Rajagopal vs. State of Tamilnadu AIR 1995 SC 264 (vide para 28) this Court held that the right to privacy is implicit in the right to life and liberty guaranteed by Article 21. It is a 'right to be let alone\022.

27. However, in the present case, the closure of the slaughter houses is only for 9 days and not for a considerable period of time. We have, therefore, to take a balanced view of the matter.

28. In this connection it may be mentioned that there is a large population of the Jain community in the States of Rajasthan and Gujarat. The Jains have a religious festival called Paryushan during which they do penance. Out of respect, for their sentiments surely the non-vegetarians can remain vegetarians for 9 days in a year.

29. Mr. Soli Sorabjee, learned senior counsel for one the appellants submitted that even non-vegetarians can get meat from other cities of Gujarat or from other States during these 9 days\022 period of Paryushan and they will not be compelled to become vegetarians. Learned counsel submitted that it is only the municipal slaughter houses which are closed for 9 days, but there is no ban on eating meat during those 9 days which can easily be procured from outside. We do not agree.

30. We have to take a practical view of the matter. Most people do not

have the money to purchase meat from other cities or other States and bring it to Ahmedabad. Almost all meat eaters get their meat from the local butcher shop in the city, usually from a shop which is close to their residence. Hence, closure of the slaughter house, in substance, means compelling the non-vegetarians to become vegetarians for 9 days.

31. However, we agree with Mr. Sorabjee that the restriction is only a partial restriction for a limited period, and it is not disproportionate. Hence it is not an unreasonable restriction.

32. While it is true that the fundamental right of the writ petitioners under Article 19(1)(g) is affected by the impugned resolutions of the municipal corporation, we have further to examine whether the resolutions are saved by Article 19(6) which states that reasonable restrictions can be put on the right to freedom of trade and occupation under Article 19(1)(g) of the Constitution.

33. In this connection, we may now refer to the well known Constitution Bench decision of this Court in State of Madras vs. V.G. Row 1952 SCR 597, where this Court observed that while determining the reasonable restriction, the Court should consider not only the factors of the restriction such as the duration and the extent but also the circumstances and the manner in which the imposition has been authorized. The Court further observed:
\023It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable\024.

34. The aforesaid observations have become locus classicus. In the present case we have noticed that the closure of the slaughter house is only for 9 days and not for a considerable period of time. This decision indicates that the restriction is reasonable. A period of 9 days is a very short time and surely the non-vegetarians can become vegetarians during those 9 days out of respect for the feeling of the Jain community. Also, the dealers in meat can do their business for 356 days in a year, and they have to abstain from it for only 9 days in a year. Surely this is not an excessive restriction, particularly since such closure has been observed for many years.

35. In the above observation in State of Madras vs. V.G. Row (supra) mention has been made therein of the things to be seen in judging whether the restriction is reasonable or not, and one important consideration is whether the restriction is disproportionate. In our opinion, there is no disproportionate restriction because the restriction is only for a short period of 9 days. Moreover, in the above observation in V.G. Row\022s case (supra),

it is also mentioned that Courts must act with a sense of responsibility and self-restraint with the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and the majority of the elected representatives of the people have in authorizing the imposition of the restrictions considered them to be reasonable.

36. Judging from that angle mentioned above in V.G. Row\022s case (supra), which has been consistently followed thereafter, in our opinion the closure of slaughter house cannot be said to be an unreasonable restriction on the writ petitioners\022 right to do their trade and business of slaughtering animals.

37. In this connection, reference may be made to Om Prakash and others vs. State of U.P. and others 2004 (3) SCC 402, where this Court held that a municipal bye-law prohibiting sale of meat, fish and egg in Rishikesh is valid considering the fact that most people in Risikesh come for religious purposes and members of several communities are strictly vegetarian, and it is such people who come in large numbers to visit Haridwar, Muni-Ki-Reti are vegetarians.

38. It may be mentioned that the impugned resolutions which have been made under Section 466(1)(D)(b)of the Bombay Provincial Municipal Corporations Act, 1949 amount to a piece of delegated legislation. A piece of delegated legislation is also statutory in character and the only limitation on it is that it should not violate the provisions of the parent statute or of the Constitution. In our opinion, the impugned resolutions of the Corporation do not violate the parent statute or any constitutional provisions.

39. We have recently held in Govt of Andhra Pradesh & Ors. vs. Smt. P. Laxmi Devi, JT 2008(2) 8 SC 639 that the Court should exercise judicial restraint while judging the constitutional validity of statutes. In our opinion, the same principle also applies when judging the constitutional validity of delegated legislation and here also there should be judicial restraint. There is a presumption in favour of the constitutionality of statutes as well as delegated legislation, and it is only when there is a clear violation of a constitutional provision (or of the parent statute, in the case of delegated legislation) beyond reasonable doubt that the Court should declare it to be unconstitutional.

40. In the present case, we do not find any clear violation of any constitutional provision by the impugned resolutions. As already stated above, had the closure of the slaughter houses been ordered for a considerable period of time, we would have declared it to be unconstitutional on the ground of violation of Articles 14, 19(1)(g) as well as 21 of the Constitution. However, in the present case, the closure is only for a few days and has been done out of respect for the sentiments of the Jain community which has a large population in Gujarat. Moreover such closure during Paryushan has been consistently observed in Ahmedabad for a very long time, at least from 1993 and probably for a longer period.

41. It must be remembered that India is a multi-cultural pluralistic society with tremendous diversity. There are a large number of religions, castes, languages, ethnic groups, cultures, etc. in our country. Somebody is tall, somebody is short, somebody is fair, somebody is brown, somebody is dark in complexion, someone has Caucasian features, someone has Mongoloid features, someone has Negroid features, etc. We may compare our country with China which is larger in population and size than India. China has 1.3 billion people while our population is 1.1 billion. Also, China has more than twice our land area. However, there is broad homogeneity in China. All Chinese have Mongoloid features; they have a common written script (Mandarin Chinese) and 96% of them belong to one ethnic group called the Han Chinese.

42. On the other hand, India as stated above, has tremendous diversity and this is due to large scale migrations and invasion into India over thousands of years.

43. People migrate from uncomfortable areas to comfortable areas. Before the coming of modern industry there were agricultural societies and

India was a paradise for these because agriculture requires level land, fertile soil, plenty of water for irrigation etc. which was in abundance in India. Why would anybody living in India migrate to Afganistan which has a harsh terrain, rocky and mountainous and covered with snow for several months in a year when one cannot grow any crop? Hence, almost all migrations and invasions came from outside into India (except in recent times when some people have gone to other countries for job opportunities). Most of the migrations/invasions came from the North-West, and to a much lesser extent from the North-East of India. Thus, people kept pouring into India, and it is for this reason that there is so much diversity in India.

44. As the great Urdu poet Firaq Gorakhpuri wrote :

lj t+ehus fgan ij vdokes vkye ds fQjkd
dkfQys xqt+jrs x, fgUnqLrku Ckurk x;k

Which means \026
\023In the land of Hind, the Caravans of the peoples of
The world kept coming in and India kept getting formed\024

45. Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and respect for all communities and sects. It was due to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country.

46. Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups, etc. in the country.

47. The architect of modern India was the great Mughal Emperor Akbar who gave equal respect to people of all communities and appointed them to the highest offices on their merits irrespective of their religion, caste, etc.

48. The Emperor Akbar held discussions with scholars of all religions and gave respect not only to Muslim scholars, but also to Hindus, Christians, Parsis, Sikhs, etc. Those who came to his court were given respect and the Emperor heard their views, sometimes alone, and sometimes in the Ibadatkhana (Hall of Worship), where people of all religions assembled and discussed their views in a tolerant spirit. The Emperor declared his policy of Suleh-e-Kul, which means universal tolerance of all religions and communities. He abolished Jeziya in 1564 and the pilgrim tax in 1563 on Hindus and permitted his Hindu wife to continue to practise her own religion even after their marriage. This is evident from the Jodha Bai Palace in Fatehpur Sikri which is built on Hindu architectural pattern.

49. In 1578, the Parsi theologian Dastur Mahyarji Rana was invited to the Emperor\022s court and he had detailed discussions with Emperor Akbar and acquainted him about the Parsi religion. Similarly, the Jesuit Priests Father Antonio Monserrate, Father Rodolfo Acquaviva and Father Francisco Enriques etc. also came to the Emperor\022s court on his request and acquainted him about the Christian religion. The Emperor also became acquainted with Sikhism and came into contact with Guru Amar Das and Guru Ram Das (see 'The Mughal Empire\022 by R.C. Majumdar).

50. Thus, as stated in the Cambridge History of India (Vol.IV \026 The Mughal Period) Emperor Akbar conceived the idea of becoming the father of all his subjects, rather than the leader of only the Muslims, and he was far ahead of his times. As mentioned by Pt. Jawahar Lal Nehru in 'The Discovery of India\022, \023Akbar\022s success is astonishing, for he created a sense of oneness among the diverse elements of India.\024

51. In 1582, the Emperor invited and received a Jain delegation consisting

of Hiravijaya Suri, Bhanuchandra Upadhyaya and Vijayasena Suri. Jainism, with its doctrine of non-violence, made a profound impression on him and influenced his personal life. He curtailed his food and drink and ultimately abstained from flesh diet altogether for several months in the year. He renounced hunting which was his favourite pastime, restricted the practice of fishing and released prisoners and caged birds. Slaughter of animals was prohibited on certain days and ultimately in 1587 for about half the days in the year.

52. Akbar\022s contact with Jains began as early as 1568, when Padma Sunder who belonged to the Nagpuri Tapagaccha was honoured by him.

53. As mentioned in Dr. Ishwari Prasad\022s 'The Mughal Empire\022, the Jains had a great influence on the Emperor. A disputation was held in Akbar\022s court between the Jain monks Buddhisagar of Tapgaccha and Suddha Kirti of Khartargaccha on the subject of Jain religious ceremony called Pansadha in which the winner was given the title Jagatguru by Akbar. Having heard of the virtues and learning of Hir Vijaya Suri in 1582 the Emperor sent an invitation to him through the Mughal Viceroy at Ahmedabad. He accepted it in the interests of his religion. He was offered money by the Viceroy to defray the expenses of the journey but he refused. The delegation consisting of Hir Vijaya Suri, Bhanu Chandra Upadhyaya and Vijaya Sen Suri started on their journey and walked on foot to Fatehpur Sikri and were received with great honour befitting imperial guests. Hir Vijaya Suri had discussion with Abul Fazl. He propounded the doctrine of Karma and an impersonal God. When he was introduced to the Emperor he defended true religion and told him that the foundation of faith should be daya (compassion) and that God is one though he is differently named by different faiths.

54. The Emperor received instruction in Dharma from Suri who explained the Jain doctrines to him. He discussed the existence of God and the qualities of a true Guru and recommended non-killing (Ahinsa). The Emperor was persuaded to forbid the slaughter of animals for six months in Gujarat and to abolish the confiscation of the property of deceased persons, the Sujija Tax (Jeziya) and a Sulka (possibly a tax on pilgrims) and to free caged birds and prisoners. He stayed for four years at Akbar\022s court and left for Gujarat in 1586. He imparted a knowledge of Jainism to Akbar and obtained various concessions to his religion. The Emperor is said to have taken a vow to refrain from hunting and expressed a desire to leave off meat-eating for ever as it had become repulsive. The Emperor presented to him Padma Sundar scriptures which were preserved in his palace. He offered them to Suri as a gift and he was pressed by the Emperor to accept them. The killing of animals was forbidden for certain days.

55. If the Emperor Akbar could forbid meat eating for six months in a year in Gujarat, is it unreasonable to abstain from meat for nine days in a year in Ahmedabad today?

56. Emperor Akbar was a propagator of Suleh-i-Kul (universal toleration) at a time when Europeans were indulging in religious massacres e.g. the St. Bartholomew Day massacre in 1572 of Protestants, (called Huguenots) in France by the Catholics, the burning at the stake of Protestants by Queen Mary of England, the massacre by the Duke of Alva of millions of people for their resistance to Rome and the burning at the stake of Jews during the Spanish Inquisition. We may also mention the subsequent massacre of the Catholics in Ireland by Cromwell, and the mutual massacre of Catholics and Protestants in Germany during the thirty year war from 1618 to 1648 in which the population of Germany was reduced from 18 million to 12 million. Thus, Emperor Akbar was far ahead of even the Europeans of his times.

57. Emperor Akbar himself abstained from eating meat on Fridays and Sundays and on some other days, as has been mentioned in the Ain-I-Akbari by Abul Fazl.

58. It was because of the wise policy of toleration of the Great Emperor Akbar that the Mughal empire lasted for so long, and hence the same wise policy of toleration alone can keep our country together despite so much diversity.

59. We may give another historical illustration of tolerance in our country. In the reign of Nawab Wajid Ali Shah of Avadh, in a certain year Holi and Muharrum coincidentally fell on the same day. Holi is a festival of joy, whereas Muharrum is an occasion for mourning. The Hindus of Lucknow decided that they would not celebrate Holi that year out of respect for the sentiments for their Muslim brethren. On that day, the Nawab joined the Muharrum procession and after burial of the Tazia at Karbala he enquired why Holi is not being celebrated. He was told that it was not being celebrated because the Hindus out of respect for the sentiments of their Muslim brethren had decided not to play Holi that year because it was a day of mourning for the Muslims. On hearing this, Nawab Wajid Ali Shah declared that since Hindus have respected the sentiments of their Muslim brothers, it is also the duty of the Muslims to respect the sentiments of their Hindu brethren. Hence, he announced that Holi would be celebrated the same day and he himself was the first who started playing Holi on that day and thereafter everyone in Lucknow, including the Muslims, played Holi, although it was Muharrum day also. It is this kind of sentiment of tolerance which alone can keep our country united.

60. We are making these comments because what we are noticing now-a-days is a growing tendency of intolerance in our country.

61. Article 1(1) of the Constitution states \023India i.e Bharat is a Union of States\024.

62. It may be mentioned that during the Constituent Assembly debates some members of the Constituent Assembly were of the view that India should be described as a Federation. However, instead of the word "Federation" the word "Union" was deliberately selected by the Drafting Committee of the Constituent Assembly to indicate two things, viz., (a) that the Indian Union is not the result of an agreement by the States, and (b) that the component States have no freedom to secede from it.

63. Moving the Draft Constitution for the consideration of the Constituent Assembly on November 4, 1948, Dr. Ambedkar, Chairman of the Drafting Committee explained the significance of the use of the expression "Union" instead of the expression "Federation":-

"It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is federal, does no violence to usage. But what is important is that the use of the word "Union" is deliberate. I do not know why the word "Union" was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting Committee thought that it was better to make it clear at

the outset rather than to leave it to speculation or to dispute".

64. The Drafting Committee thus clearly attached great importance to the use of the term "Union" as symbolic of the determination of the Assembly to maintain the unity of the country. This was evident from the discussions on draft article 1 in the Assembly on November 15, 1948.

65. Thus India is not an association or confederation of States, it is a Union of States and there is only one nationality that is Indian. Hence every Indian has a right to go any where in India, to settle anywhere, and work and do business of his choice in any part of India, peacefully.

66. These days unfortunately some people seem to be perpetually on a short fuse, and are willing to protest often violently, about anything under the sun on the ground that a book or painting or film etc. has \023hurt the sentiments\024 of their community. These are dangerous tendencies and must be curbed with an iron hand. We are one nation and must respect each other and should have tolerance.

67. As the great Tamil Poet Subramaniya Bharati wrote :

\023Muppadhu kodi mugamudayal
Enil maipuram ondrudayal
Ival Seppumozhi padhinetudayal
Enil Sindhanai ondrudayal\024

Which means \026

\023This Bharatmaata has thirty crores of faces!
But her body is one.
She speaks eighteen languages!
But her thought is one\024

68. The great Tamil poet Kaniyan Pookundranar wrote :

\023Yadhum oore yaavarum kelir\024

Which means-

\023All places are my own places
All people are my own kith and kin\024

69. Similarly, the great poet Saint Tiruvalluvar in Chapter 74 verse 735 of Tirukkural wrote:

\023Palkuzhuvum paazhseyyum utpagayum
Vendalaikku kolkurumbum illadhu nnadu\024

Which means \026

\023That alone can be called as a prosperous country
which is free from separatist tendencies
and people who harm its sovereignty\024.

70. In the Shanti Parv of Mahabharata Bhishma Pitamah tells Yudhishthir:

Hksns x.kk fous\022kqfg fHkUukLrq Lkqt;k% ijSS% k
rLEkkr la|kr;sxsu iz;rsju x.kk% lnk kk

(Chapter 107/108 Shloka 14)
Which means-

\023Republics have been destroyed only because of internal divisions, it is only when there are internal divisions between the people, that an enemy can destroy it, hence a republic should always try to achieve, unity and good relations between its people."

In the same Shanti Parv, Bhishma Pitamah also said :

rs"kkeU;ksU;fHkUukuka
Lo'kfRdeuqfr"Brke kk
fuxzg% Ikf.MrS% dk;Z% f{kIzkeso
g?kkur% k

Which means \026

\023The intelligent authorities of a republic should suppress those leaders of factions who try to divide the people\024.

(Chapter 107/108 Shloka 26)

71. In the present case we have seen that for a long period slaughter houses have been closed in Gujarat for a few days out of respect for the sentiments of the Jain community, which has a sizable population in Gujarat and Rajasthan. We see nothing unreasonable in this restriction.

72. As already stated above, it is a short restriction for a few days and surely the non-vegetarians can remain vegetarian for this short period. Also, the traders in meat of Ahmedabad will not suffer much merely because their business has been closed down for 9 days in a year. There is no prohibition to their business for the remaining 356 days in a year. In a multi cultural country like ours with such diversity, one should not be over sensitive and over touchy about a short restriction when it is being done out of respect for the sentiments of a particular section of society. It has been stated above that the great Emperor Akbar himself used to remain a vegetarian for a few days every week out of respect for the vegetarian section of the Indian society and out of respect for his Hindu wife. We too should have similar respect for the sentiments for others, even if they are a minority sect.

73. In view of the above, the appeal is allowed. The impugned judgment is set aside and the impugned resolutions of the Municipal Corporation of Ahmedabad are held to be valid. There shall be no order as to costs.

74. Resultantly, all the connected appeals stand allowed. There shall be no order as to costs.