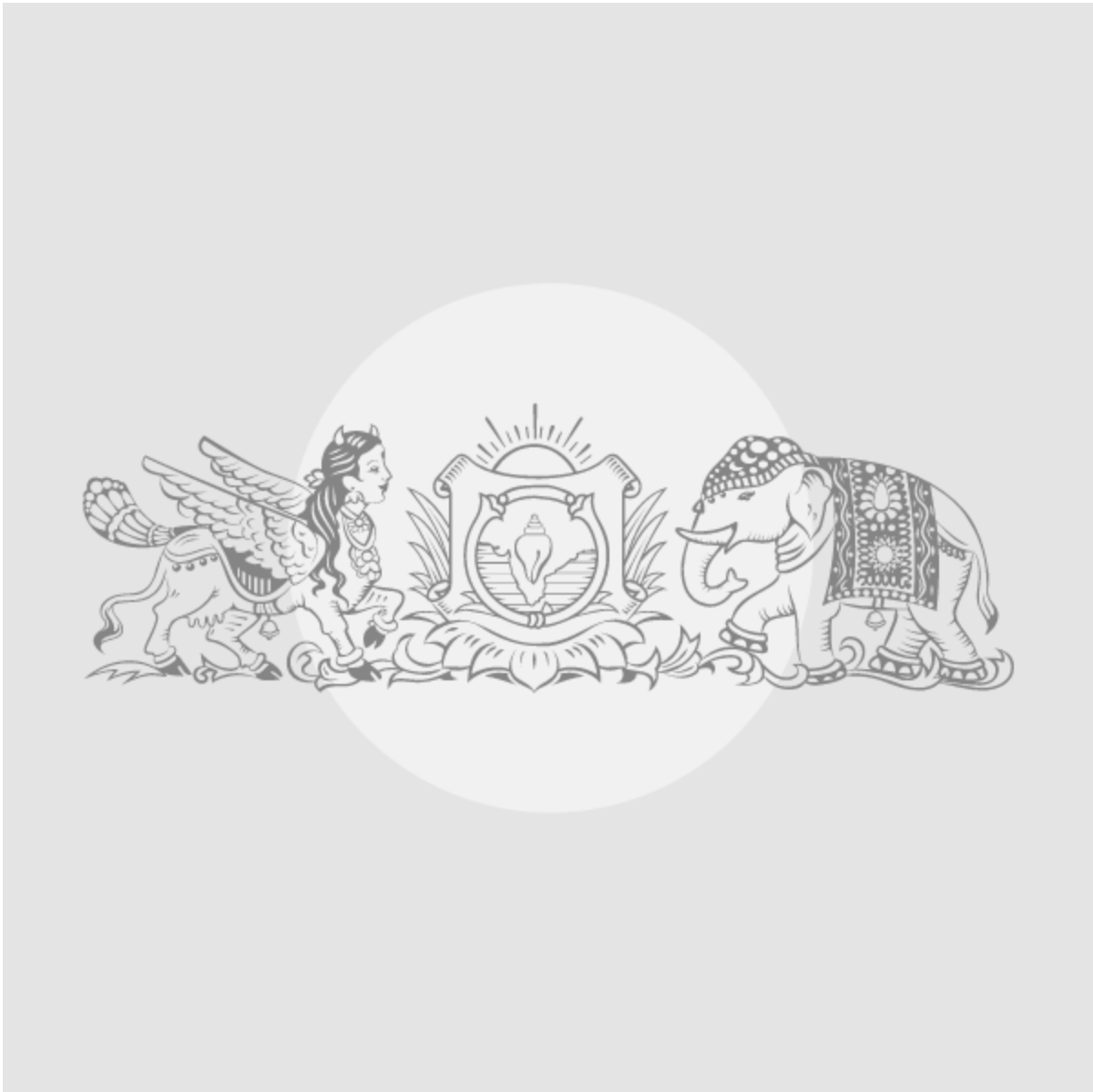


Vegetarianism, tolerance and discrimination

TH thehindu.com/todays-paper/tp-opinion/Vegetarianism-tolerance-and-discrimination/article15229609.ece

May 25, 2008



Tarunabh Khaitan

Where the executive is making intolerant orders and the courts are routinely upholding them, it is imperative that Parliament acts.

tolerate .v 1. allow the existence or occurrence of (something that one dislikes or disagrees with) without interference (Concise Oxford English Dictionary)

One of the central tenets of the Indian constitution is an injunction on the state to refrain from discriminating on the grounds of religion and caste. Recently, however, the judiciary has failed to recognise enforced vegetarianism as indirect discrimination, which although neutral on the face of it, has disproportionate impact on people belonging to particular religions and castes.

The recent decision of the Hon. Supreme Court in *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat* delivered on March 14, 2008 is a case in point. Under constitutional challenge was an order by the Gujarat government banning the selling of meat for nine days during a Jain festival. The court agreed that the right to eat what one wants to eat is a matter of personal liberty guaranteed under Article 21 of the Constitution. Yet, surprisingly, it upheld the ban saying it was a justified restriction on this right. There are several aspects of this judgment that are deeply disturbing.

On tolerance

Most of the judgment is a commendable and sincere lecture on the idea of tolerance. To quote the Court, “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.” Few of us in the right mind can disagree. But what is the notion of tolerance that the court is applying in this case?

Surely, as the OED definition quoted above reflects, tolerance must mean a recognition and respect for the beliefs and practices of others without interference. A voluntary decision to participate in the practices of other communities may evidence commendable goodwill, but it is beyond the requirement of tolerance. But forcing someone through legal sanction to participate in the practices of another community can only mean intolerance. The impugned law forces everyone else to refrain from eating meat because Jains don't eat meat for religious reasons. Wouldn't it be the same thing to require non-Christians to fast during Lent, non-Muslims to refrain from eating pork and non-Jews to eat only Kosher food? One may even envisage positive legal duties which require non-Muslims to celebrate bakr-id and non-Hindus to burst crackers on Diwali (of course, in this religious maze, an atheist is not even counted). With great respect to the Hon'ble Court, forcing the beliefs of one religious group on all others is quite the opposite of tolerance.

On religious sentiment

In this judgement (perhaps with the incidents involving Taslima Nasreen, M.F. Hussain, Khushboo and Raj Thackeray in mind) the court complains that “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 a painting or a film, etc,

has ‘hurt the sentiments’ of their community. These are dangerous tendencies and must be curbed with an iron hand.” Again, few will disagree. Note that the sceptical emphasis on the phrase “hurt the sentiments” of their community is provided by the Court and not myself.

And yet, not a few paragraphs later, the court sees no contradiction in relying on a similar ‘respect for the sentiments of the Jain community, which has a sizable population in Gujarat and Rajasthan’ to uphold the impugned law (this time, the emphasis is mine). In saying so, the Court disturbingly establishes religious sentiment as a valid basis for secular law. Further, by emphasising on the “sizable population” of Jains, it links the validity of a given sentiment to the number of people who share it.

But fundamental rights are neither about numbers nor about sentiments. If ‘sentiment’ was an adequate basis for law, why have an independent Supreme Court isolated from popular pressures? Wouldn’t the directly elected Parliament do a better job of eliciting popular sentiment? With respect, religious sentiment is precisely the type of argument that cannot justify a law in an equal, liberal and secular society. Much less can a law be justified because a ‘sizable’ number of people share that sentiment.

The point can be seen clearly if one considers that the issue is not ban on meat per se. There can be secular and non-sentimental reasons for banning the sale of meat products. The ban on sale of chicken during the bird flu outbreak is one example. To justify such bans as respect for religious sentiment is a dangerous precedent whose only logical conclusion is a minimum measure of liberty that is left after we are done respecting all religious sentiments. It also gives reasons for those ‘perpetually on a short fuse’ to remain so — if religious sentiment is a valid justification for law, what better strategy to get one’s way than to cite religious sentiment for all your demands? The Court has molycoddled those very dangerous tendencies it called for being ‘curbed with an iron hand’.

On discrimination

One aspect that the judgment is entirely silent about is that discrimination on the basis of food preference, even though facially neutral, has a disproportionate disadvantageous impact on certain religions and castes and not others. It therefore amounts to an indirect discrimination on the basis of religion and caste.

The judgment in *Hinsa Virodhak Sangh* involved discrimination by the State — it is relatively easier to argue that the State should refrain from discrimination (even though the Supreme Court did not acknowledge it). What if the discriminator is a private person? There has been also been a string of news reports in recent months on discrimination in the private housing sector. The most striking of them was reported widely in the beginning of April. Madhavi Kapoor wanted to sell her apartment in a posh housing society in Pune to a Muslim family.

She faced all sorts of obstacles and discouragement. She told a news-channel that some gentleman asked her “Toh phir aapko chalega lawn par bakri katne ko.” (“So slaughter of goats on the lawn will be ok with you?”).

How likely this (or any, for that matter) Muslim family is to slaughter goats on the lawn is questionable. This gentleman would probably have had no objection to selling the flat to meat-eating Hindus, but Farrah, my vegetarian Muslim friend, would certainly invite hostility. The incident shows how, on the pretext of vegetarianism, we are building exclusive intolerant ghettos in our cities. Sometimes, even this pretext is not present. Recently, Kanaklata Rani was allegedly beaten up by her landlord in Delhi when he discovered that she was a dalit.

Of course there are cases where vegetarianism is not necessarily a pretext for religious and caste discrimination but is a genuinely held moral objection to (somebody else's) preference for meat. Citizens have a constitutional guarantee of freedom of association which they can exercise based on this moral objection. Freedom of association of vegetarians who object to living in close proximity with non-vegetarians must get due legal consideration. But the individual harm and social exclusion that follows when certain groups are systematically excluded from housing societies must outweigh this moral objection. At an individual level, several fundamental opportunities and life choices (including where to live) are denied to non-vegetarians because of exercising the basic right to choose what to eat. More importantly, at a societal level, a widespread practice of exclusion of non-vegetarians from residential opportunities will inevitably lead to apartheid-like social ghettos (especially given the Indian context where meat-preference has a strong correlation with one's caste and religion). Restrictions on freedom of association in order to limit these resultant societal and individual harms are reasonable and will pass constitutional muster.

Need for urgent action

The judgment in *Hinsa Virodhak Sangh* is not the first of its kind. In *Om Prakash v. State of U.P.* (2004), a ban on sale of any meat, fish or eggs at anytime in the year in Rishikesh was upheld by the Supreme Court. In *Zoroastrian Co-operative Housing Society Limited v. District Registrar Co-operative Societies* (2005) the Supreme Court upheld direct religious discrimination by allowing co-operative housing societies to restrict their membership to followers of a particular religion. These are disturbing trends.

Where the executive is making intolerant orders and the courts are routinely upholding them, it is imperative that Parliament acts to prevent our cities from fragmenting completely on religious and caste lines. Recently, the Menon Committee set up by the Ministry of Minority Affairs “to examine and determine the structure of an Equal Opportunity Commission” recommended draft legislation to combat discrimination in the private sector.

The Bill makes education and employment its initial focus, but the recent events pointed out above make it imperative that combating discrimination in the housing sector should also be one of its central concerns.

(Tarunabh Khaitan is a vegetarian and researches on anti-discrimination law at the University of Oxford.)