

Discrimination by housing societies – need for legislation

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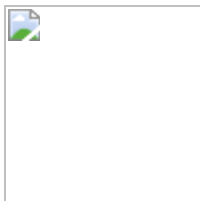
by [Tarunabh Khaitan](#)

The recent case of a majority-Jain housing society in Mumbai denying the only Muslim family living there power and water is not the only one of its kind. Since the Mumbai bomb-blasts in 1993, Muslims in particular, but ‘meat-eaters’ and ‘drikers’ as well, have been denied housing in the city. One wonders what the situation might be in post-Godhra Gujarat, and even rest of the country.

Surprisingly, the trend received endorsement from the Supreme Court in its decision in *Zoroastrian Co-operative Housing Society Limited v. District Registrar Co-operative Societies* (2005), where it allowed a housing society to rent and sell accommodation only to members of a particular religious community (in this case, Parsees) citing the freedom of association under Article 19(1)(c). The Court held that the co-operate was not ‘State’ under Article 12 and therefore was not bound by the duty not to discriminate on the ground of religion under Article 15. [Sushant, thanks for clarifying this point.] Be that as it may, a national legislation prohibiting discrimination by public and private housing societies on Article 15 grounds, as well as other grounds like food preference, disability, sexual orientation, age, gender identity, HIV-status and such other grounds is imperative. Surely such legislation aimed at securing one of the primary constitutional goals of equality will be a reasonable restriction on the freedom of association.

PS – Similar arguments can be made for prohibiting discrimination on such grounds in private employment, but that is for another post.

PSS – A passing reference is in order for the latest SC judgment in *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat* (decided on 14.03.2008). The Court agrees (para 26) that the right to eat what one wants is protected by Article 21. Yet, it upholds a Gujarat government ban on selling meat for nine days, surprisingly citing similar bans by Akbar in the past. Can protection of religious sentiments of vegetarian religious groups be a legitimate and important enough state purpose to violate fundamental rights, howsoever slightly? Isn’t there also an issue of discriminating on the basis of food-preference, which is indirect discrimination on the ground of religion and caste? I am not arguing that the state can never prohibit certain types of food, but the reasons for doing so must be secular and important enough to curb fundamental rights. [The judgment is not available online yet, but I have a copy – if you want it, email me at tarunabh at gmail dot com.] PSS – This is a news story about ghettoised housing in Gujarat post 2002. Talha, thanks for the link.



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