

CASE NO.:
Appeal (civil) 4937-4940 of 1998

PETITIONER:
State of Gujarat

RESPONDENT:
Mirzapur Moti Kureshi Kassab Jamat & Ors.

DATE OF JUDGMENT: 26/10/2005

BENCH:
A.K. MATHUR

JUDGMENT:
J U D G M E N T
With

C.A. No.4941-44 of 1998 and C.A. No.4945 of 1998

A.K. MATHUR, J.

I have gone through the erudite judgment by Hon'ble Chief Justice. But I regret I cannot support the view taken by Hon'ble Chief Justice.

Basic question that arises in these petitions are whether there is need to over-rule the earlier decisions which held the field right from 1958-1996, is the ground realities have materially changed so as to reverse the view held by successive Constitutional Benches of this Court or those decisions ceased to have any relevance.

It is true that life is ever changing and the concept which was useful in 18th century may not be useful in this millennium. We have gone from cartage to space age. New scientific temper is a guiding factor in this millennium. But despite the changing pattern of life it cannot be said that the decision delivered in the case of Mohd. Qureshi followed by subsequent decisions have outlived its ratio. In my respectful view the material which has been placed for taking a contrary view does not justify the reversal of earlier decisions.

The detailed history of the legislation and various decisions bearing on the subject has been dealt with by Hon'ble Chief Justice in most exhaustive and pains-taking manner. Therefore, there is no need to repeat those legislative as well as judicial history here. My endeavor in this opinion will be to show that the situation which existed right from 1958 till this date there is no material change warranting reversal of the judgments bearing on the subject from 1958-96.

The whole controversy arose in the writ petition filed in the Gujarat High Court challenging the validity of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 (hereinafter referred to Gujarat Act No. 4 of 1994). By this amendment the age of bulls and bullocks which was existed at that time that is bull below the age of 16 years and bullocks below the age of 16 years can not be slaughtered was deleted. By this amendment the age restriction was totally taken away and that means that no bull and bullock irrespective of age shall be slaughtered. This amendment was challenged before the Gujarat High Court. The Gujarat High Court after dealing with all aspects in detail held that amendment is ultra vires. Hence, the present petition alongwith the other petitions came up before this Court by Special Leave Petition.

The matter was listed before the three Judges' Bench. Thereafter, it

was taken by the Constitution Bench and the Constitution Bench realizing difficulty that there are already Constitution Bench judgments holding the field, referred the matter to the seven Judges' Bench for reconsideration of all the earlier decisions of the Constitution Benches. Hence these matters are before seven Judges' Bench.

Hon'ble the Chief Justice has already reproduced the objects and reasons for amendment therefore same need not be reproduced here. This amendment brought about to effect directive principles of the State Policy under Articles 47, 48 of the Constitution and Clause (b) and (c) of Article 39 of the Constitution.

Thereafter, Hon'ble Chief Justice has also reviewed all the cases bearing on the subject which can be enumerated as under:

1. AIR 1958 SC 731 (Mohd. Hanif Qureshi & Ors. Vs. State of Bihar)
2. AIR 1961 SC448 (Abul Hakim Vs. State of Bihar)
3. 1969 (1) SCC 853 (Mohd. Faruk Vs. State of M.P. & Ors.)
4. 1986 (3) SCC 12 (Haji Usmanbhai Hasanbhai Qureshi Vs. State of Gujarat)
5. 1996 (4) SCC 391 (Hashmattullah Vs. State of M.P. & Ors.)

In these cases, this very question was agitated & by series of decisions it was answered in the negative.

In Mohd. Hanif Qureshi's case this Court upheld a total prohibition of slaughter of the cows of all ages and calf of buffalows (male and female) & she-buffaloes, breeding bulls and working bullocks, without prescribing any test of requirement as to their age. But so far as bull & bullocks are concerned when they ceased to have draughtability prohibition of their slaughter was not upheld in public interest. Hon'ble S.R. Das, CJ speaking for the Court exhaustively dealt with all the aspects which practically covers all the arguments which have been raised before us, especially, the utility of the cow-dung for manure as well as the cow urine for its chemical qualities like Nitrogen Phosphates and Potash. His Lordship recognized that this enactment was made in discharge of State's obligation under Art. 48 of the Constitution to preserve our livestock.

His Lordship has discussed the question of reasonable restriction under Article 19 (6) and after considering all material placed before the Court, and advertng to social, religious, utility point of view in most exhaustive manner finally concluded thus :

"After giving our most careful and anxious consideration to the pros and cons of the problem as indicated and discussed above and keeping in view the presumption in favour of the validity of the legislation and without any the least disrespect to the opinions of the legislatures concerned we feel that in discharging the ultimate responsibility cast on us by the Constitution we must approach and analyze the problem in an objective and realistic manner and then make our pronouncement on the reasonableness of the restrictions imposed by the impugned enactments. So approaching and analyzing the problem, we have reached the conclusion (i) that a total ban on the slaughter of cows of all ages and calves of cows and calves of she-buffaloes, male and female, is quite reasonable and valid and is in consonance with the directive principles laid down in Art. 48; (ii) that a total ban on the slaughter of she-buffaloes, or breeding bulls or working bullocks (cattle as well as buffaloes) as long as they are as milch or draught cattle is also reasonable and valid and (iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they cease to be capable of yielding

milk or of breeding or working as draught animals cannot be supported as reasonable in the interest of the general public."

Therefore, their Lordships have summarized the whole concept of preservation of the cattle life in India with reservation that those cattle head which have lost their utility can be slaughtered specially with regard to draught cattle, bulls, bullocks & buffaloes so as to preserve the other milching cattle for their better breed and their better produce.

Subsequently in another decision, in the case of Abdul Hakim vs. State of Bihar reported in AIR 1961 SC 448 the ban was imposed by the States of Bihar, Madhya Pradesh and U.P. which came up for consideration before this Court and in this context it was observed as under:

"The test of reasonableness 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."

Their Lordship also emphasized that the legislature is the best Judge of what is good for the community, by whose suffrage it comes into existence, the ultimate responsibility for determining the validity of the law must rest with the Court and the Court must not shirk that solemn duty cast on it by the Constitution.

It was observed that the unanimous opinion of the experts is that after the age of 15, bulls, bullocks and buffaloes are no longer useful for breeding, draught and other purpose and whatever little use they may have then is greatly off-set by the economic disadvantage of feeding and maintaining unserviceable cattle.

Section 3 of the Bihar Act in so far as it has increased the age limit to 25 in respect of bulls, bullocks and she-buffaloes, for the purpose of their slaughter imposes an unreasonable restriction on the fundamental right of the butchers to carry on their trade and profession. Moreover the restriction cannot be said to be in the interests of the general public, and to that extent it is void.

Then again in the case of Mohd. Faruk vs. State of Madhya Pradesh and Ors. reported in 1969 (1) SCC 853, Constitution Bench was called upon to decide the validity of the notification issued by the Madhya Pradesh Government under Municipal Corporation Act. Earlier, a notification was issued by the Jabalpur Municipality permitting the slaughter of bulls and bullocks alongwith the other animals. Later on State Government issued notification cancelling the notification permitting the slaughter of bulls and bullocks. This came up for a challenge directly under Art. 32 of the constitution before this Court, that this restriction amounts to breach of Art. 19(1)(g) of the constitution. In that context, their Lordship observed:

"That the 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. The notification issued must, therefore, be declared ultra virus as infringing Article 19(1)(g) of the Constitution."

Then again in the case of Haji Usmanbhai Hasanbhai Qureshi & Ors. vs. State of Gujarat reported in (1986) 3 SCC 12, the insertion of Section 5 (1-A) (c) and (d) was made under the Bombay Animal Preservation (Gujarat amendment) act 1979 came up for consideration. By virtue of this insertion by the Gujarat State, it was laid down that there will be ban of slaughter of bulls, bullocks below the age of 16 years. It was contented that this prohibition is unreasonable and violative of Art. 19(1)(g). Their Lordships upheld the restriction under Art. 19(6) with reference to Art. 48 of the constitution. Their Lordships upheld the contention of the State of Gujarat that with the improvement of scientific methods cattle up to the age of 16 years are used for the purpose of breeding and other agricultural operation. But by this Act of 1994 this age restriction has now been totally taken away by the Act of 1994 (which is subject matter of challenge in these petitions).

Then again the matter came up before this Court in the case of Hashmattullah vs. State of M.P. and Ors. reported in 1996 (4) SCC 391. This time the provisions of the M.P. Agricultural Cattle Preservation Act, 1959 came up for consideration. This Act was amended by Amending Act of 1991 and a total ban on slaughter of bulls and bullocks came to be imposed. And this was challenged being violative of Art. 19 (1)(g) of the constitution.

Their Lordships after reviewing all earlier cases on the subject and taking into consideration the uselessness of these bulls and bullocks after they have attained a particular age for agriculture operation like manure as well as bio-gas and ecology, observed in para 18 as under:

"We are pained to notice the successive attempts made by the State of Madhya Pradesh to nullify the effect of this Court's decisions beginning with Mohd. Hanif's case and ending with Mohd. Faruk's case, each time on flimsy grounds. In this last such attempt, the objects and reasons show how insignificant and unsupportable the ground for bringing the legislation was. The main thrust of the objects and reasons for the legislation seems to be that even animals which have ceased to be capable of yielding milk or breeding or working as draught animals can be useful as they would produce dung which could be used to generate non-conventional sources of energy like bio-gas without so much as being aware of the cost of maintaining such animals for the mere purpose of dung. Even the supportive articles relied upon do not bear on this point. It is obvious that successive attempts are being made in the hope that some day it will succeed as indeed it did with the High Court which got carried away by research papers published only two or three years before without realizing that they dealt with the aspect of utility of dung but had nothing to do with the question of the utility of animals which have ceased to be reproductive or capable of being used as draught animals. Besides, they do not even reflect on the economical aspect of; maintaining such animals for the sole purpose of dung. Prim facie it seems farfetched and yet the State Government thought it as sufficient to amend the law."

And their Lordships declined to review the ratio laid down in Mohd. Hanif Qureshi's case & reiterated the same.

This is a survey of the judicial determination on the subject. And in the last case their Lordships frowned on unsuccessful attempt by the State to somehow nullify the ratio laid down in Mohd. Hanif Qureshi's case and subsequent decisions following Qureshi's case. But this time, the State of Gujarat has come up to seek the review of earlier decisions. Now I shall examine the material which has been placed by the State of Gujarat to justify the total prohibition of slaughter of bulls and bullocks.

Learned counsel for the appellant has brought to our notice the affidavit filed by the State of Gujarat which has been reproduced by the Hon'ble Chief Justice on page 56 in his opinion onwards. Therefore, I need not reproduce the whole of the affidavit. Mr. J.S.Parikh, Deputy Secretary, Agricultural Cooperative and Rural Development Department of the State of Gujarat has in his affidavit stated that almost in 50% of the agricultural operation by tractor is not possible because of small holdings in the State of Gujarat. Therefore, for such small holdings the draught animals are best used for cultivation purposes. It was also stated that the total cultivated area of Gujarat State is about 124 lakh hectares and a pair of bullocks is required for ploughing 10 hectares of land. Therefore, 5.481million and approximately equal number is required for carting of whole land. In accordance with livestock census, the Gujarat State has availability of indigenous bullocks around 2.84 millions that means that a State has only 25% of their requirement and it is also stated that each bull is required for this purpose. He has also stated that bull or bullocks at every stage of life supplies 3500 kg. of dung and 2000 ltrs. of urine and this quantity of dung can supply 5000 cubic feet of biogas, 80 M.T. of organic fertilizer and the urine can supply 2000 ltrs of pesticides and the use of it in farming increases the yield very substantially. That in recent advancement of technology use of biogas has become very useful source of energy and the biogas can be prepared out of the cow dung and other inputs. It was pointed out that there are 19362 biogas plants installed in the State during 1995-97.

Similarly, an additional affidavit was filed by Mr. D.P. Amin, Joint Director of Animal Husbandry, Gujarat State. He has mentioned that the number of the slaughter houses have declined during the year 1982-83 to 1996-97. The average number of animals slaughtered in regulated slaughter houses was 4,39,141. It is also stated that there is a reduction in slaughter of the bull and bullocks above the age of 16 years. Almost 50 per cent of the land holdings are less than 2 hectares; tractor operation is not affordable to small farmers. For tractors operation one should have large holding of land. Such land holders are only around 10 per cent of the total land holders. Hence the farmers with small land holdings require bullocks for their agricultural operations and transport. There is reduction in slaughter of bulls and bullocks above the age of 16 years reported in the regulated slaughter houses of Gujarat State. As reported in the years from 1982-83 to 1996-97, the slaughter of bulls and bullocks above the age of 16 years was only 2.48% of the total animals of different categories slaughtered in the State. This percentage has gone down to the level of only 1.10% during last 8 years i.e. 1997-98 to 2004-05 which is very less significant to cause or affect the business of butcher communities. He has also stated that the bullock above the age of 16 years can generate 0.68 horse power draught output while the prime bullock generates 0.83 horse power per bullock during carting/hauling draught work. Considering the utility of bullocks above 16 years of age as draught power a detailed combined study was carried out by Department of Animal Husbandry and Gujarat Agricultural University (Veterinary Colleges S.K. Nagar & Anand). The study covered different age groups of 156 (78 pairs) bullocks above the age of 16 years age generated 0.68 horse power draught output per bullock while the prime bullock generated 0.83 horse power per bullock during carting/hauling draught work in a summer with about more than 42: F temp. The study proves that 93% of aged bullock above 16 years of age are still useful to farmers to perform light and medium draught works. The importance of organic manure as a source of humus and plant nutrients to increase the fertility level of soils has been well recognized. The organic matter content of cultivated soils of the tropics and sub-tropics is comparatively low due to high temperature and intense microbial activity. The crops remove annually large quantity of plant nutrients from soil. Moreover, Indian soils are poor in organic matter and in major plant nutrients. Therefore, soil humus has to be replenished through periodic addition of organic manure for maintaining soil productivity. It was mentioned that there is number of bio-gas plants operating in the State of Gujarat.

Apart from these affidavits many more published documents have been placed on record which has been reproduced by the Hon'ble Chief Justice of India in his opinion. But all these are general datas which only provide the usefulness of cow dung for the purposes of manure as well as for biogas and likewise the urine of the cows for pesticides and ayurvedic purposes. But all those datas cannot change the reality that such an aged bull and bullocks produce huge quantity of the cow dung manure and urine which can alter a situation materially so as to reverse the earlier decisions of this court. Utility of the cow dung and urine was realized and appreciated in the earlier decision of this Court in Mohd. Hanif Qureshi's and Ors. vs State of Bihar and Ors. (AIR 1958 SC 731) The then Chief Justice has quoted from various scriptures emphasizing the importance of the cattle life. Therefore it cannot be said that the earlier decisions rendered by the Constitution Bench was oblivious of these facts.

However, so far as the affidavits filed on behalf of State of Gujarat about the use of biogas and the usefulness of the draught animals has to be taken with pinch of salt, in both the affidavits it has been admitted that urine and the cow dung of the aged bull and bullocks beyond 16 years is reduced considerably and likewise their draughtability. Therefore, it is admitted that the bullocks which have crossed the age of 16 years their output for the urine, cow dung and draughtability is substantially reduced. Therefore it is explicit from their affidavits that the age of 16 years prescribed earlier was on a very reasonable basis after proper scientific study but de hors those scientific study the State Government brought this amendment removing the age limit for slaughtering of the bulls and bullocks and totally prohibited slaughtering of the same. This decision of the State Government does not advance the public interest.

Another significant disclosure in both these affidavits is that slaughtering of these bulls and bullocks has considerably reduced in the year 1997-98 to 2004-2005. The slaughtering of bulls and bullocks beyond the age of 16 years was only 2.48 % of the total animals of different categories slain in the State prior to this period. This percentage has gone down to the level of only 1.10 % during the last 8 years i.e. 1997-98 to 2004-2005. These details reveal that in fact the slaughtering of these bulls and bullocks beyond the age of 16 years constituted only 1.10% of the total slaughtering takes place in the State. If this is the ratio of the slaughtering, I fail to understand how this legislation can advance the cause of the public at the expense of the denial of Fundamental Right of this class of persons (butchers). In view of facts disclosed in the affidavit filed by the two senior officer of the State of Gujarat speaks volume that for small percentage of 1.10% can the fundamental right of this class of persons should be sacrificed and earlier decisions be reversed. I fail to understand how it would advance the cause of the public at large so as to deprive the handful of persons of their rights to profession. On the basis of this material, I am of the opinion that the earlier decisions of this Court have not become irrelevant in the present context. The tall claim made by State looks attractive in a print but in reality it is not so. I fail to understand that how can an animal whose average age is said to be 12-16 years can at the age of 16 years reproduce the cow-dung or urine which can off set the requirement of the chemical fertilizer. In this connection reference be made to text book where average age is 12 years. It is a common experience that the use of the chemical fertilizer has increased all over the country and the first priority of the farmer is the chemical fertilizer, as a result of which the production in food grain in the country has gone up and today the country has become surplus. This is because of the use of the chemical fertilizer only and not the organic manure. It was observed in Mohd. Hanif's case that India has a largest cattle head but a lower in the production of milk. It is only because of the scientific methods employed by veterinarian which has increased the milk production in the country not because of the poor breed of the bulls. It is common experience that aged bulls are not used for purposes of covering the cows for better quality of the breed. Only well-built young bulls are used for the purpose of improving the breeding and not the aged bulls. If the aged and weak bulls are allowed for mating purposes, the off-

spring will be of poor health and that will not be in the interest of the country. So far as the use of biogas is concerned, that has also been substantially reduced after the advent of L.P.G. Therefore in my opinion, in the background of this scenario, I do not think that it will be proper to reverse the view which has been held good for a long spell of time from 1958 to 1996. There is no material change in ground realities warranting reversal of earlier decisions.

One of the other reasons which has been advanced for reversal of earlier judgments was that at the time when these earlier judgments were delivered Article 48(A) and 51(A) were not there and impact of both these Articles were not considered. It is true that Article 48(A) which was introduced by the 42nd Constitutional Amendment in 1976 with effect from 3.1.1977 and Article 51(A) i.e. fundamental duties were also brought about by the same amendment. Though, these Articles were not in existence at that time but the effect of those Articles were indirectly considered in the Mohd. Hanif Qureshi's case in 1958. It was mentioned that cow dung can be used for the purposes of manure as well as for the purpose of fuel that will be more eco-friendly. Similarly, in Mohd. Hanif Qureshi's case their Lordships have quoted from the scriptures to show that we should have a proper consideration for our cattle wealth and in that context their Lordships quoted in para 22 which reads as under:

"22. The avowed object of each of the impugned Acts is to ensure the preservation, protection, and improvement of the cow and her progeny. This solicitude arises out of the appreciation of the usefulness of cattle in a predominantly agricultural society. Early Aryans recognized its importance as one of the most indispensable adjuncts of agriculture. It would appear that in Vedic times animal flesh formed the staple food of the people. This is attributable to the fact that the climate in that distant past was extremely cold and the Vedic Aryans had been a pastoral people before they settled down as agriculturists. In Rg. Vedic times goats, sheep, cows, buffaloes and even horses were slaughtered for food and for religious sacrifice and their flesh used to be offered to the Gods. Agni is called the "eater of ox or cow" in Rg.Veda (VIII,43,11). The slaying of a great ox (Mahoksa) or a "great Goat" (Mahaja) for the entertainment of a distinguished guest has been enjoined in the Satapatha Brahmana (III.4. 1-2). Yagnavalkya also expresses a similar view (Vaj.1. 109). An interesting account of those early days will be found in Rg.Vedic Culture by Dr. A.C. Das, Chapter 5, pages 203-5 and in the History of Dharamasastras (Vol.II, Part II) by P.V. Kane at pages 772-773. Though the custom of slaughtering of cows and bulls prevailed during the vedic period, nevertheless, even in the Rg. Vedic times there seems to have grown up a revulsion of feeling against the custom. The cow gradually came to acquire a special sanctity and was called "Aghnya" (not to be slain). There was a school of thinkers amongst the Risis, who set their face against the custom of killing such useful animals as the cow and the bull. High praise was bestowed on the cow as will appear from the following verses from Rg.Veda, Book VI, Hymn XXVIII (Cows) attributed to the authorship of Sage Bhardavaja:

"1 . The kine have come and brought good fortune;
let them rest in the cow-pen and be happy near us.

Here let them stay prolific, many coloured, and
yield through many morns their milk for Indra.

6. O Cows, ye fatten e'n the worn and wasted, and
make the unlovely beautiful to look on.

Prosper my house, ye with auspicious voices, your power is glorified in our assemblies.

7. Crop goodly pasturages and be prolific; drink pure sweet water at good drinking places.

Never be thief or sinful man your master, and may the dart of Rudra still avoid you."

(Translation by Ralph Griffith). Verse 29 of hymn 1 in Book X of Atharva Veda forbids cow slaughter in the following words:

"29. The slaughter of an innocent, O Kritya, is an awful deed, Slay not cow, horse, or man of ours."

Hyman 10 in the same book is a rapturous glorification of the cow:

"30. The cow is Heaven, the cow is Eath, the cow is Vishnu, Lord of life.

The Sadhyas and the Vasus have drunk the outpourings of the cow.

34. Both Gods and mortal men depend for life and being on the cow.
She hath become this universe; all that the sun surveys is she."

P.V. Kane argues that in the times of the Rg.Veda only barren cows, if at all, were killed for sacrifice or meat and cows yielding milk were held to be not fit for being killed. It is only in this way, according to him that one can explain and reconcile the apparent conflict between the custom of killing cows for food and the high praise bestowed on the cow in Rg.Vedic times. It would appear that the protest raised against the slaughter of cows greatly increased in volume till the custom was totally abolished in a later age. The change of climate perhaps also make the use of beef as food unnecessary and even injurious to health. Gradually cows became indicative of the wealth of the owner. The Neolithic Aryans not having been acquainted with metals, there were no coins in current use in the earlier stages of their civilization, but as they were eminently a pastoral people almost every family possessed a sufficient number of cattle and some of them exchanged them for the necessities of their life. The value of cattle (Pasu) was, therefore, very great with the early Rg.Vedic Aryans. The ancient Romans also used the word pecus or pecu (pasu) in the sense of wealth or money. The English words, "pecuniary" and "impecunious", are derived from the Latin root pecus or pecu, originally meaning cattle. The possession of cattle in those days denoted wealth and a man was considered rich or poor according to the large or small number of cattle that he owned. In the Ramayana king Janaka's wealth was described by reference to the large number of herds that he owned. It appears that the cow was gradually raised to the status of divinity. Kautilya's Arthasastra has a special chapter (Ch.XXIX) dealing with the "superintendent of cows" and the duties of the owner of cows are also referred to in Ch.XI of Hindu Law in its sources by Ganga Nath Jha. There can be no gainsaying the fact that the Hindus in general hold the cow in great reverence and the idea of the slaughter of cows for food is repugnant to their notions and this sentiment has in the past even led to communal riots. It is also a fact that after the recent partition of the country this agitation against the slaughter of

cows has been further intensified. While we agree that the constitutional question before us cannot be decided on grounds of mere sentiment, however passionate it may be, we, nevertheless, think that it has to be taken into consideration, though only as one of many elements, in arriving at a judicial verdict as to the reasonableness of the restrictions."

Therefore it cannot be said that the Judges were not conscious about the usefulness and the sanctity with which the entire cow and its progeny has been held in our country. Though Article 48(A) and 51(A) were not there, but their Lordships were indirectly conscious of the implication. Articles 48(A) and 51(A) do not substantially change the ground realities which can persuade to change the views which have been held from 1958 to 1996. Reference was also made that for protection of top soil, the cow dung will be useful. No doubt the utility of the cow dung for protection of the top soil is necessary but one has to be pragmatic in its approach that whether the small yield of the cow dung and urine from aged bulls and bullocks can substantially change the top soil. In my opinion this argument was advanced only for the sake of argument but does not advance the case of the petitioners/appellants to reverse the decision of the earlier Benches which had stood the test of time.

In this connection, it will be relevant to refer the principle of stare decisis. The expression of 'stare decisis' is a Latin phrase which means "to stand by decided cases; to uphold precedents; to maintain former adjudications". It is true that law is a dynamic concept and it should change with the time. But at the same time it shall not be so fickle that it changes with change of guard. If the ground realities have not changed and it has not become irrelevant with the time then it should not be reviewed lightly. I have discussed above the reasons which have been given by the State of Gujarat for reconsideration of the earlier decisions on the subject, in my humble opinion the justification so pleaded is not sufficient to change or review the decision of the Constitution Bench by the present Bench of seven Judges.

The principle of stare decisis is based on a public policy. This policy is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e. that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law. If the courts start changing their views frequently then there will be a lack of certainty in the law and it is not good for the health of the nation.

Craies on Statue Law, 7th Edition, it was observed that:

"The rule is also founded more logically on the axiom statre decisis, which was the ground of the decision in Hanau vs Ehrlich. The case turned on the ambiguous words in the Statute of Frauds as to agreements not to be performed within a year from the making thereof. The House of Lords in 12912 decided that though it may be well doubted whether an agreement for more than one year determinable by notice within the year is within the statute, a long course of decisions going back to 1829 in the affirmative ought not to be disturbed. And in 1945 Scott L.J. refused to decide against a decision of Malins Vs. C. in 1870 on the ground that the construction placed by the Vice-Chancellor on certain sections of the Companies Act 1862 had been accepted for a long time. In 1958 Lord Evershed M.R. said: "There is well-established authority for the view that a decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision."

In 1919 Lord Buckmaster enunciated the principles on which the rule of stare decisis is based. "Firstly, the construction of a

statute of doubtful meaning once laid down and accepted for a long period of time ought not to be altered unless your Lordships could say positively that it was wrong and productive of inconvenience. Secondly, that the decisions upon which title to property depends or which by establishing principles of construction otherwise form the basis of contracts ought to receive the same protection. Thirdly, decisions affecting the general conduct of affairs, so that their alteration would mean that taxes had been unlawfully imposed or exemption unlawfully obtained, payments needlessly made or the position of the public materially affected, ought in the same way to continue."

Earlier, Lord Westbury had thus stated the rule, "We must bow to the uniform interpretation which has been put upon the statute of Elizabeth and must not attempt to disturb the exposition it has received. If we find a uniform interpretation of a statute upon a question materially affecting property, and perpetually recurring, and which has been adhered to without interruption, it would be impossible for us to introduce the precedent of disregarding that interpretation. Disagreeing with it would thereby be shaking rights and titles which have been founded through so many years upon the conviction that that interpretation is the legal and proper one and is one which will not be departed from."

The rule of stare decisis was followed in *Associated Newspapers Ltd. vs City of London Corporation*, where the House of Lords declined to overrule two old cases which established the non-ratability of certain property in the City of London on the construction of an Act of 1767, and in *Morgan vs Fear*, where the House of Lords refused to disturb a construction of the Prescription Act 1832, which had been settled and acted on for forty-six years. In *Cohen vs Bayley-Worthington* which turned on the construction of the Fines and Recoveries Act, 1833, the House of Lords refused to put on that Act a new construction, as property had been settled or otherwise dealt with for a long period of time on the faith of the older cases, and in *Close vs Steel Co. of Wales Ltd.* Lord Morton of Henryton said: "I have always understood that when this House clearly expresses a view upon the construction of an Act of Parliament and bases its decision on that view, the Act must bear that construction unless and until Parliament alters the Act."

Therefore one of the hallmarks of the law is certainty predictability and stability unless the ground reality has completely changed. In the present case, as discussed above, in my opinion the ground reality has not changed and the law laid down by this court holds good and relevant. Some advancement in technology and more and more use of the cow dung and urine is not such a substantial factor to change the ground realities so as to totally done away with the slaughtering of the aged bulls and bullocks. It is true my Lord the Chief Justice has rightly observed that principle of stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience. There is no quarrel to this proposition, but the only question is whether the earlier decisions are not logical or they have become unreasonable with the passage of time. In my humble opinion, those decisions still hold good in the present context also. Therefore, I do not think that there are compelling reasons for reversal of the earlier decisions either on the basis of advancement of technology or reason, or logic, or economic consideration. Therefore, in my humble opinion, there is no need to reverse the earlier decisions.

An argument was raised with regard to role of objects and reasons preceding the enactment. There is no two opinion that they are useful and for purposes of interpretation of the provisions whenever its validity is challenged. This aspect has been dealt with by the Hon'ble Chief Justice and I do not wish to add anything more to it.

Likewise, the Hon'ble Chief Justice has dealt in detail the relation of Fundamental Rights with Directive Principles. His Lordship has very exhaustively dealt with all the cases bearing on the subject prior and after decision in Keshwanand Bharti's case. The court should guard zealously Fundamental Rights guaranteed to the citizens of the society, but at the same time strike a balance between the Fundamental Rights and the larger interests of the society. But when such right clashes with the larger interest of the country it must yield to the latter. Therefore, wherever any enactment is made for advancement of Directive Principles and it runs counter to the Fundamental Rights an attempt should be made to harmonise the same if it promotes larger public interest.

Therefore, as a result of above discussion, I am of the view that the view taken by the Division Bench of the Gujarat High Court is correct and there is no justification for reversing the view taken by the earlier Constitution Bench decision of this Court. All appeals are dismissed. No order as to costs.