

THE HIGH COURT OF GUJARAT AT AHMEDABAD

District: Ahmedabad

SPECIAL CRIMINAL APPLICATION NO. of 2019

....Petitioners

Versus

1. State of Gujarat  
(Represented by the Home Department)

2. Commissioner of Police, Ahmedabad ...Respondents

Draft Amendment

1. The Petitioners herein craves leave of this Hon’ble Court to add the following paragraph after paragraph 2.7.

“2.7A On the basis of the notifications available on the website, The chronology of the duration of operation of orders passed prohibiting gathering of more than four people is as under:

<u>2016</u>	<u>2017</u>
	26.01.2017-09.02.2017
	10.02.2017-24.02.2017
	25.02.2017-11.03.2017
	12.03.2017-26.03.2017
	27.03.2017-10.04.2017
	11.04.2017-25.04.2017
	11.05.2017-25.05.2017
	26.05.2017-09.06.2017
	10.06.2017-24.06.2017
15.04.2016-13.06.2016	25.06.2017-09.07.2017
13.08.2016-11.10.2016	25.07.2017-08.08.2017
28.09.2016-12.10.2016	24.08.2017-07.09.2017
13.10.2016-27.10.2016	08.09.2017-22.09.2017
28.10.2016-11.11.2016	23.09.2017-07.10.2017
27.11.2016-11.12.2016	23.10.2017-06.11.2017
12.12.2016-26.12.2016	07.11.2017-21.11.2017
	22.11.2017-06.12.2017
	07.12.2017-21.12.2017

<u>2018</u>	<u>2019</u>
22.12.2017-05.01.2018	01.01.2019-15.01.2019
06.01.2018-20.01.2018	16.01.2019-31.01.2019
21.01.2018-04.02.2018	31.01.2019-14.02.2019
05.02.2018-19.02.2018	02.03.2019-16.03.2019
20.02.2018-06.03.2018	17.03.2019-31.03.2019
22.03.2018-05.04.2018	01.04.2019-15.04.2019
06.04.2018-20.04.2018	01.05.2019-15.05.2019
21.04.2018-05.05.2018	16.05.2019-30.05.2019
05.06.2018-19.06.2018	31.05.2019-14.06.2019
20.07.2018-03.08.2018	15.06.2019-26.06.2019
04.08.2018-18.08.2018	30.06.2019-14.07.2019
19.08.2018-02.09.2018	14.08.2019-28.08.2019
03.09.2018-17.09.2018	28.09.2019-12.10.2019
18.09.2018-02.10.2018	13.10.2019 -27.10.2019
03.10.2018-17.10.2018	28.10.2019-11.11.2019
18.10.2018-01.11.2018	12.11.2019-26.11.2019
02.11.2018-16.11.2018	12.12.2019-26.12.2019
02.12.2018-16.12.2018	
17.12.2018-31.12.2018	

2. The Petitioners herein further crave leave of this Hon'ble Court to add the following paragraph after paragraph 2.8.

"2.8A It is submitted that under the operation of the impugned orders, the Petitioners No 1 was detained on 16.12.2019 and Petitioner No. 2, 3 and 4 were detained on 19.12.2019"

The Hon'ble Court may be pleased to grant amendment in the Special Criminal Application and oblige.

Date: 23.12.2019

Advocate for appellant

**IN THE HIGH COURT OF GUJARAT AT  
AHMEDABAD**

District: Ahmedabad

SPECIAL CRIMINAL APPLICATION NO.                      of 2019

In the matter of Articles 226, 14,  
19 and 21 of the Constitution of  
India;

And

In the matter of Section 144 of the  
code of Criminal Procedure 1973;

And

In the matter of Section 37 of the  
Gujarat Police Act 1951;

And

In the matter between:

....Petitioners

Versus

**1. State of Gujarat**

**(Represented by the Home Department)**

Sardar Bhavan, Block No. 2, New Sachivalay,  
Sector 10, Gandhinagar, 382010

**2. Commissioner of Police, Ahmedabad**

Office of Police Commissioner

Shahibag, Ahmedabad, Gujarat 380004                      ...Respondents

To:

**THE HON'BLE CHIEF JUSTICES AND OTHER  
HON'BLE JUDGES OF THE HIGH COURT OF GUJARAT**

The humble petition of the Petitioners above named:

**Most Respectfully Sheweth:**

1. The Petitioners, by way of this petition under Article 226 of the Constitution of India, seek quashing of the orders Number A-SECTION/PERMIT165/2019 dated 13.12.2019 and order Number A-SECTION/PERMIT163/2019 dated 10.12.2019 issued under Section 144 of the Code of Criminal Procedure, 1973 and Gujarat Police Act Section 37 to enable them, the residents of Ahmedabad to exercise their right to freedom of expression, right to peaceful assembly and right to move freely under Article 19(1). Such orders are issued in the city of Ahmedabad as a matter of routine and automatic practice. The Petitioners also seeks quashing of the said orders also on the grounds that the repeated issuance of same is manifestly arbitrary and discriminatory. It is submitted that a continuous issuance of such orders also violates right to life of the Petitioners under Article 21. The Petitioners also seeks quashing of the said orders also on the grounds that the same are issued without jurisdiction. It is further submitted that the orders are also not notified to the Petitioners or the Public in general through means of radio, television, local news-papers, digital and social media leading to violation of the Notification itself and the requirement of law. (Copy of the order Number A-SECTION/PERMIT165/2019 dated 13.12.2019 and order

Number A-SECTION/PERMIT163/2019 dated 10.12.2019 is hereto annexed and marked as **'Annexure A')**

2. **Facts:**

2.1 The Petitioners are individuals and citizens of India. The Petitioners are, therefore, entitled to the constitutional rights guaranteed under Articles 14, 19 and 21 of the Constitution of India. The Respondents are **'State'** within the meaning of Article 12 of the Constitution.

2.2 The Petitioner No 1. is

2.3 The Petitioner No 2 is

2.4 The Petitioner No 3 is

2.5 The Petitioner No 4 is

2.6 The Petitioner No 5. is

2.7 It is submitted that in the City of Ahmedabad, orders u/s 144 of the code of Criminal Procedure 1973 (Hereinafter referred to as "CRPC") and u/s 37 of the Gujarat Police Act of 1951, (Hereinafter referred to as "GP Act") are issued in a routine course of manner and in the identically worded texts. It is submitted that as per Section 144(4), no order passed under this section would remain valid for more than **two months** from the making thereof. As per Section proviso to Section 37(3) of GP Act, no such Prohibition remains in force for more than **fifteen days** without the sanction of the State Government. It is submitted that routinely before the end of the period mentioned in first order, a second order is passed

for succeeding period making the operation of such orders continuous and perpetual. It is further submitted that under section 144, the authority may direct various kind of actions to be abstained from. There are at least three kinds of orders that are regularly repeated.

A) Order u/s 144 of CRPC and 37(3) of the GP Act that prohibits assembly of more than four persons.

B) Order u/s 144 of CRPC and 37(1) of the GP Act that prohibits acts that include utterances of cries, singing songs, playing music, delivery of harangues, the use of gestures or mimetic representations, and the preparation, exhibition or dissemination of pictures, symbols, placards.

C) Order u/s 144 of CRPC requiring the owner of the houses to submit certain details regarding their tenants or domestic workers to the police.

(Copy of sample notifications issued in the above mentioned three categories are hereto annexed and marked as **‘Annexure B’**)

It is submitted that most of such notifications are available on the website of Ahmedabad Police. Although as on 19.12.2019, the website shows the notifications uploaded only till 16.11.2019. (Screenshot of the website of Ahmedabad City Police is hereto annexed and marked as **‘Annexure C’**) It is further submitted that the website is neither up to date nor complete and therefore the Respondent No 2 may be required to produce all such notification before the court as and when required.

It is important to state that it is seen that at least 64 notifications are uploaded on the website which pertain to prohibition of assembly of more than four persons. Period of these notifications span from 15.04.2016 to 26.11.2019. It is submitted that the Respondents may be called to provide the total period for which this repetition of orders is continuing. It is therefore submitted that in the opinion of the authority, entire city of Ahmedabad has been perceived to be under urgent need to avert imminent and apprehended danger for years together!

It is important to state that it is seen that at least 61 notifications are uploaded on the website which pertain to prohibition of singing songs, playing music in public and exhibition and dissemination of pictures, symbols, placards. Period of this notifications span from 22.04.2016 to 18.11.2019. It is submitted that the Respondents may be called to provide the total period for which this repetition of orders is continuing.

- 2.8 It is further submitted that on 12.12.2019, the Citizenship Amendment Act, 2019 Act No 47 of 2019 was assented to by the President and published for general information in the official Gazette. Many residents of Ahmedabad have an opinion on this amendment and they wished to express the same in peaceful manner. On 16<sup>th</sup> December 2019 many residents of the city gathered outside the Indian Institute of Management to show solidarity against violence committed at the Jamia Milia University. The Police had detained many of them

immediately even before any demonstration could take place. Again, on 17<sup>th</sup> December 2019, hundreds of residents had gathered outside the Sabarmati Ashram and had debated, discussed and expressed their views in peaceful and non-violent manner. On this occasion a permission was sought for the peaceful gathering and protest and the same was granted. No incidence of any violence was reported. Again, on 19<sup>th</sup> December 2019, hundreds of residents of the city peacefully gathered outside Jhansi ni Rani Statue but as no permission of protest was granted, they were detained in the police station for few hours. It is also pertinent to state that the copy of the impugned orders u/s 144 which was cited as being violated by the protesters was not available either on website nor any other known social media including newspapers. It is also submitted that regardless of protest, the impugned orders make even a social gathering or singing song or playing music by the Petitioners anywhere in a public place in city of Ahmedabad also make an offence without notice to the Petitioners about any such orders being issued. (Copy of Newspaper reports for the peaceful protest incidents of 16.12.2019, 17.12.2019 and 19.12.2019 are hereto annexed and marked as **‘Annexure D’**)

- 2.9 It is submitted that both, section 144 of the CRPC and section 37 of the GP Act requires the authority to give public notice about the passing of the orders. Only in case of emergency or in cases where the circumstances do not admit of the serving in due time of a notice then the order may be passed ex parte under Section 144 of CRPC. It is further submitted that very



body of the orders show that there is requirement of bringing the same to the public notice by sticking them at prominent places, informing through loud speakers, advertising in the newspapers, by radio and television. It is submitted that orders u/s 144 are operating in the entire city of Ahmedabad for years without providing any notice before or after the passing of the same. The Respondent No 2 may be required to produce evidences to show how public notices were given in relation to impugned orders, orders that may have been issued for subsequent periods and the earlier orders issued since years.

2.10 The Petitioners state that the issuance of impugned orders and their perpetual repetition and the failure of giving adequate notice to Petitioners and public at large violate rights of the Petitioners in as much as it prohibits them from gathering at public places with fellow residents, and enjoy their rights of speech and expression enshrined under Articles 19 and 21 of the Constitution. The Petitioners therefore, have no other alternative but to approach this Hon'ble Court as and by way of the present petition. HENCE THIS PETITION.

3. **Submissions:**

3.1 The impugned orders and the perpetual repetition of them and the failure of giving adequate notices thereof violate rights of the Petitioners enshrined under Articles 14,19 and 21 of the Constitution.

3.2 It is submitted that the impugned orders are issued without jurisdiction. It is submitted that under section 144 of CRPC, the

power to issue orders u/s 144 is with District Magistrate, a sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf. It is submitted that the impugned orders are passed by Police Commissioner and therefore the same are without authority and jurisdiction. It is further submitted that the Powers u/s 144 are not amenable to delegation and therefore the impugned orders are bad and illegal.

3.3 It is further submitted that Article 19 of the Constitution preserve certain personal as well as group freedoms of the Citizens of India. They allow an individual; freedom of speech and movement and as a member of a group (and for the group also) the same freedoms plus the right of assembly and formation of association and unions. Such freedoms go to protect the very dignity of a human in his experiences of being alive. These freedoms are not absolute but subject to reasonable restrictions contained in clauses (2), (3), (4) and (5). It is submitted that the impugned Orders u/s 144 of CRPC and section 37 of the GP Act violate the freedoms in as much as they do not pass the test of reasonableness. It is submitted that impugned orders are blanket in character, sweeping in scope and indiscriminate in application. It bans freedom of peaceful assembly and freedom of speech for not only Petitioners but all 70-lakh people of Ahmedabad and it has banned it for years together! Therefore, it does not merely restrict but obliterates the fundamental rights enshrined under Article 19 of the Constitution of the Petitioners as well as all the citizens of Ahmedabad. It is well accepted that

in cases where "the restriction reaches the stage of prohibition special care has to be taken by the Court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the Court." (Narendra Kumar v Union of India, 1960 SCR (2) 375). In the present case, it is respectfully submitted that the stated reasons for the prohibition do not justify this blanket curtailing of fundamental rights.

3.4 It is further submitted that under section 144 it is well specified for what considerations the Magistrate may issue orders; the same are to prevent obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or disturbance of the public tranquility or a riot or an affray.

It is also submitted that the authority is mandated to state material facts of the case based upon which he has formed the opinion that an order was necessary. It is submitted that the impugned orders are completely silent regarding material facts based on which the opinion is arrived at. It simply states that in the opinion of the Commissioner there is a need to maintain public order. Such recording of satisfaction without recording material facts based on which such opinion is arrived at makes the very satisfaction illegal. It is further submitted that the opinion of the Respondent No. 2 is also imaginary, not based on any objective facts and is a mechanical repetition of statutory requirement of recording of satisfaction. It is therefore submitted that the impugned orders are completely bad and illegal.

3.5 It is further submitted that the very fact that an assembly of people is planned that by itself cannot be the material fact for recording an objective satisfaction requiring passing of an order u/s 144. It is submitted that Freedom of assembly and freedom of speech and expression are essential elements of any democratic system. At the root of this concept lies the citizens' right to meet face to face with others for the discussion of their ideas and problems – religious, political, economic or social. Public debate and discussion take many forms including the spoken and the printed word, radio and the screen. But assemblies face to face perform a function of vital significance in our system, and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history. The basic assumption in a democratic polity is that Government shall be based on the consent of the governed. But the consent of the governed implies not only that the consent shall be free but also that it shall be grounded on adequate information and discussion. Public streets are the “natural” places for expression of opinion and dissemination of ideas; Indeed it may be argued that for some persons these places are the only possible arenas for the effective exercise of their freedom of speech and assembly.

It is therefore submitted that the order u/s 144 of CRPC in as much as restricts the Fundamental Rights of the Petitioners, it has to pass the test of reasonable restrictions in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with Foreign states, public order, decency or morality or in relation to contempt of court, defamation or

incitement to an offence. It is therefore submitted that the orders u/s 144 of CRPC in as much as is not passed in the above-mentioned interests, the fail the test of reasonableness.

It is also submitted that the requirement of the kind of objective satisfaction under section 144 of CRPC is clear. It is to prevent obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray. It is further submitted that the term rioting defined in section 146 of Indian Penal Code requires as a pre-requirement, an unlawful assembly as defined in section 141 of the Indian penal code. It is further submitted that an assembly of five or more persons becomes unlawful assembly only if the common object of the persons is

First.—To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or Second.—To resist the execution of any law, or of any legal process; or Third.—To commit any mischief or criminal trespass, or other offence; or Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

It is therefore submitted that the very fact of an assembly taking place by itself cannot be the reason for arriving at an objective satisfaction that an unlawful assembly and consequently riot will take place. It is therefore submitted that the freedom of speech and expression in a peaceful assembly are fundamental rights of the Petitioners not subject to restrictions by orders u/s 144 of CRPC.

3.6 It is submitted that the impugned orders are unreasonable restriction upon Articles 19(1)(a) 19(1)(b), as they ban all form of expression, including "discussion, "advocacy" and "incitement". This distinction was recognized by the Supreme Court in *Shreya Singhal vs Union of India*, (2015) 5 scc 1, para 13, in these terms:

*“This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. ... a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most of the arguments of both petitioners and respondents tended to veer around the expression "public order".*

This distinction was recognized as early as in 1962 by a Constitution Bench of the Hon'ble Supreme Court in *Kameshwar Prasad v State of Bihar*, 1962 SCR Suppl. (3) 369, para 16 which held that "the vice of the rule ... consists in this that it lays a ban on every type of demonstration--be the same however innocent and however incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result." The impugned order violates the settled principle of law laid down by the Supreme Court that the State cannot impose overbroad restrictions on speech that is not harmful or does not lead to incitement of violence. This principle was affirmed in *Superintendent. Central Prison, Fatehgarh & Anr. v. Dr. Ram Manohar Lohia*, (1960) 2 SCR 821; *Ramesh Thapar v. State of Madras*, 1950 SCR 594.

3.7 The impugned orders do not qualify as a reasonable restriction under Articles 19(2) – (4) as it is not issued in the interest of a legitimate state interest (enumerated in Articles 19(2)-(4)). The impugned order provides no reasons at all! It simply states that there is a need to maintain public order. It has been saying the same since years together and imposing unreasonable restrictions. The Supreme Court has held in the specific context of Section 144 powers that the order must be imposed in the interests of the enumerated grounds in Article 19(2). It has held that the gist of the action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. It is obvious that the emergency

must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power. *Madhu Limaye v. Sub Divisional Magistrate*, (1970) 3 scc 746, para 24; *In Re Ram Lila Maidan Incident*, (2012) 5 scc 1, para 30). In *Clark v Community for Creative Non-Violence*, 468 U.S. 22 (1984), the Supreme Court of the United States observed that time/place/manner regulations on speech were justified only if they were "narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."

3.8 Furthermore, neither the impugned order nor any of the orders passed for years before it identifies any imminent threat to public order and tranquility. The Supreme Court has held that Section 144 can be invoked only when the threat to public order is imminent and genuine and not merely likely. *Babulal Parate v. State of Maharashtra*, (1961) 3 SCR 423, para 25; *In Re Ramlila Maidan Incident*, para 58-59; *Madhu Limaye v. Sub Divisional Magistrate*, para 24). The impugned orders are being passed for years together merely stating to be in the interest of public order. This amounts to unprecedented blow to the fundamental rights of the Petitioners.

3.9 It Is respectfully submitted that the standard for a restriction under Section 144 must be read in light of the evolution of free speech Jurisprudence of the Indian Supreme Court. Therefore,



It Is not sufficient that there be an Imminent threat to public order alone. In addition, such Imminent threat to public order must be of the variety that tends to Incitement of violence. In light of the Supreme Court's holding In Shreya Singhal(supra). It Is only when speech certainly leads to Incitement to violence or offence" can restrictions be imposed. (Superintendent. Central Prison, Fatehgarh & Anr. v. Dr. Ram Manohar Lohia, (1960) 2 SCR 821; Shreya Singhal v. Union of India, (2015) 5 scc 1, para 13; Kameshwar Prasad & Ors. v. State of Bihar, 1962 Supp (3) SCR 369). The Impugned order does not even contemplate the possibility of Imminent Incitement to violent and is in flagrant violation of the Supreme Court's consistently affirmed position of law.

3.10The impugned orders are not the least restrictive or the least invasive measure available. The Supreme Court has held in the specific context of Section 144 powers In Re Ramlla Maidan Incident (2012) 5 scc 1 para 28, 179 that the restriction must be no more intrusive than necessary to achieving that state Interest. Any restriction on freedom of speech and expression must be "narrowly tailored/narrowly interpreted so as to abridge or restrict only what is absolutely necessary" as held in Shreya Singhal v, Union of India (2015) 5 scc 1. The Hon'ble Supreme Court has clarified KS Puttaswamy v. Union of India (2019) 1 scc 1 that a restriction on fundamental rights cannot be considered necessary if there are less restrictive alternatives available. In the present case, the Respondent authorities have altogether prohibited very gathering of more than four people for any

purposes throughout city of Ahmedabad and singing or playing music for years together which is absolutely unreasonable.

3.11 The impugned order is a disproportionate restriction on the rights of Petitioners as well as other innocent civilians who are not even likely to cause an imminent threat to public order. The Supreme Court has held that Section 144 orders must be issued against the wrongdoer and not against innocent civilians merely on grounds of convenience and expediency (*Gulam Abbas v. State of UP*, (1982) 1 scc 71, para 27; *Madhu Limaye* (supra), para 24). It is important for this Court to note the Supreme Court's dicta in *Rangarajan v. P. Jagjivan Ram*, (1989) 2 scc 574 at page 599:

*Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself (emphasis supplied)*

Indeed, to completely restrict the freedoms enshrined in Article 19 of the Petitioners and other 70 lakh citizens of Ahmedabad for years after years on the basis that "some miscreants" may

cause disorder has converted the city into an indefinite war camp! The Impugned orders violate the duty of the State to protect the freedom of speech and expression, recognised by the Supreme Court in *S Rangarajan v. P. Jagjivan*, (1989) 2 sec 574; *Indibility Creative Pvt Ltd. & Ors. v. Government of West Bengal*, 2019 SCC Online SC 520. The Respondents thus may not state, with the benefit of all its state machinery and infrastructure, that they cannot protect the freedoms under Articles 19(1)(a)-(c).

3.12 The Impugned orders or any other orders passed earlier fail to state any material facts on the basis of which an imminent threat to public order and tranquility was apprehended. This Hon'ble Court has also consistently held that orders under Section 144 must satisfy the statutory requirement of stating the material facts which demonstrate the urgency and imminence of the threat which necessitate such action in the order itself. The very fact that such orders are repeated indefinitely also shows there is no real and urgent and imminent danger and all orders are passed arbitrarily. (In *Re Ramlila Maidan Incident*, supra, para 221; *PT Chandra, Editor, Tribune v. The Crown*, ILR 1942 23 Lah 510 at pg 514; *Babulal Parate*, para 22; *Madhu Limaye*, para 28; *Acharya Jagdishwaranand Avadhuta & Ors. v. Commissioner of Police & Anr.* (1983) 4 sec 522, para 16).

3.13 The impugned order suffers from non-application of mind, as it states as no basis for imposition. It is respectfully submitted that one order is passed as early as on 10.12.2019 when the new Citizenship Amendment Bill was not even assented by the

President of India. It is further submitted that there is also no application of mind for the hundreds of such orders passed earlier since many years. No material facts or materials have been indicated, to support the apprehension of imminent threat to public order in either of the specified districts. In *Shayara Bano v. Union of India* (2017) 9 scc 1, the Hon'ble Supreme Court held that state action is manifestly arbitrary if it is done capriciously, irrationally or without adequate determining principle.

3.14 The impugned orders are also discriminatory for it treats unequal equally. It is submitted that there may be some time where out of genuine apprehension of threat against public order, Order u/s 144 may be issued but the same has to be temporary in nature which stops being in operation once such threat goes away. Further the requirement of imposition of order u/s 144 must be restricted a specified area only. To treat all the residents of the entire city of Ahmedabad equally for even an apprehended danger at a particular area amounts to arbitrary and discriminatory exercise of powers. It is submitted that the perpetual continuation of such orders amounts to treating all days and all areas in the entire city of Ahmedabad for years together under a constant threat. It is therefore submitted that the impugned orders apart from being manifestly arbitrary, but also discriminatory against the citizens of the city in times without threat.

3.15 The Impugned orders and its continued operation by issuance of fresh orders are bad, illegal and also violate Article 21 of the Constitution of India. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 sec 608, the Hon'ble Supreme Court held that:

"The expression "personal liberty" occurring in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which "have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19." Therefore, personal liberty would include the right to socialize with members of the family and friends subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21."

3.16 The impugned orders and its continued operation by issuance of fresh orders violate the fundamental freedoms of citizens of Ahmedabad. Such orders are neither just, fair nor reasonable. It has been well established since the Hon'ble Supreme Court's decision in *Maneka Gandhi v. Union of India* (1978) 1 sec 248 that any restriction on the right to life and personal liberty under Article 21 must be just, fair and reasonable. It is also held in *KS Puttaswamy v. Union of India*

(2019) 1 scc 1 that such due process needs to be substantive due process. However, in the present case, the impugned orders are issued in complete violation and repeated violations of right to life enshrined in Article 21 of the Constitution.

3.17 It is further submitted that in a plethora of judicial decisions, various courts including Supreme Court has held that the orders u/s 144 can not be issued repetitively. And that is also the reason why the impugned orders are bad and illegal.

3.18 It is further submitted the order u/s 144 can not be made applicable to the entire city of Ahmedabad. It is submitted that subsection 3 of section 144 states that an order may be issued to the public generally when frequenting or visiting a particular place or area. It is therefore submitted that the purpose of this section is to identify the affected area and then isolate it from the rest of the area. Narrow tailoring in terms of affected area is embedded in the text of the law only. It is therefore submitted that impugned orders in as much as operates entirely in the city of Ahmedabad are bad, illegal and violating fundamental rights of the Petitioners.

3.19 It is further submitted that the impugned orders violate the section 144 of the CRPC itself wherein it is stated in subsection (2) that the An order under this section may be passed ex parte only in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed. The

perpetual and repetitive issue of such orders clearly violate sub section (2). Further the Respondent No 2 has failed in notifying the same to the Public at large of Ahmedabad. The order on the face of it states that the same be physically be pasted at prominent places, be printed in newspapers, be broadcast through radio and television. It is further submitted that the Ahmedabad Police has presence on social media and website as well, it is therefore important that the such order be published through means of social/digital media like Facebook, Twitter, Instagram and Website in English as well as Gujarati. It is imperative to notify people immediately about the severe orders passed u/s 144 of CRPC and section 37 of Gujarat Police Act. Only if people are notified, their cooperation in the regard of the abstinence from the Acts mentioned can be expected. It is also submitted that orders u/s 144 are issued for abstaining from various actions. It is therefore imperative to inform the affected persons which are such acts which are to be abstained. It is therefore submitted that the failure of giving amounts to abuse of power and the Respondents may be directed to publicize widely as provided in law whenever such orders are issued.

3.20 It is further submitted that the power conferred upon Section 144 of CRPC is comparable to the power conferred on the Gujarat Police under Section 37 of the Gujarat Police Act, 1951. Both the provisions are put on statute-book to achieve the objective of preservation of public peace and tranquility and prevention of disorder and both are subject to writ jurisdiction of the High Court under Article 226 of the

Constitution on the ground that it has the effect of violating or infringing a fundamental right of a citizen. The nature of the power under both the provisions and the nature of function performed under both are the same. It is therefore also submitted that the in as much as the impugned orders u/s 37 of the Gujarat Police Act violate the Fundamental rights of the Petitioners as they are issued without recording material facts for arriving at the subjective satisfaction, they are issued repetitively in a mechanical manner making its operation perpetual and are not publicized widely.

#### GROUND FOR INTERIM RELIEF

3.21 The Petitioners have a strong prima facie case in their favour and are likely to succeed before this Hon'ble Court. As submitted above, the Respondents have sought to suspend the social and civil liberties of all residents of the Ahmedabad without stating any facts of the case. The Respondents are also repeating such orders for years now. Further the Respondents are not giving public notices before or after the passing of such orders.

3.22 If the interim relief is not granted. Irreparable harm and undue hardship would be caused to the fundamental rights of the Petitioners and the general public to exercise their fundamental rights. Moreover, in the absence of interim relief, the Petition will become infructuous as the Impugned orders are applicable only till 26.12.2019 and 01.01.2020 respectively.



3.23 On the other hand, no irreparable harm would be caused to the Respondents if the interim relief is granted, as the legitimate state interests of ensuring no imminent threat to public order were already being achieved, as is also evident from the conduct of the peaceful protests in many parts of Ahmedabad in the past few days. The balance of convenience, therefore, lies in favour of the Petitioner.

4. The Petitioners have no other alternative equally efficacious remedy at law but to approach this Hon'ble Court by way of this petition.

5. The Petitioners have not filed any application or appeal before any other court of law in India in the subject matter of this petition.

6. The Petitioners submit that pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to stay operation of the impugned orders otherwise the Petitioners will suffer grave and irreparable injury which cannot be compensated in terms of money. The Petitioners have more than a prima facie case and balance of convenience is also in favour of the Petitioners.

7. The Petitioners, therefore pray that his Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to:

- (a) quash and set aside the impugned orders at Annexure- `A' to this Petition;
- (b) quash and set aside also those orders that are also passed for the same purpose and will operate for subsequent period after lapse of orders at Annexure `A'.
- (c) direct the Respondent No 2 to actively publicize every order passed u/s 144 of CRPC or Section 37 of Gujarat Police Act and in operation by physically pasting it at prominent places, printing it in newspapers, broadcasting it through radio and television, sharing the same through website, Twitter, Facebook and Instagram in Gujarati and English.
- (d) pending the admission, hearing and final disposal of this Petition, to stay implementation and operation of the orders at Annexure- `A' and any other orders already passed for the periods further thereto
- (e) pending the admission, hearing and final disposal of this Petition direct the Respondent No 2 to actively publicize every order passed u/s 144 of CRPC or Section 37 of Gujarat Police Act and is in operation by physically pasting it at prominent places, printing it in newspapers, broadcasting it through radio and television, sharing the same through website, Twitter, Facebook and Instagram in Gujarati and English
- (d) any other and further relief deemed just and proper be granted in the interest of justice;

(e) to provide for the cost of this petition.

Ahmedabad:

Dated: 22-12-2019

Advocate for the Petitioner

**AFFIDAVIT**

I, \_\_\_\_\_, the Petitioner herein, do hereby solemnly affirm and state as under:

That what is stated in paragraphs 1 and 2 are statement of facts true to my knowledge, what is stated in paragraph 3,4,5 and 6 are legal submissions and paragraph 7 is the prayer clause. That the annexure is the true copy of the original. That I have not suppressed any material facts.

Solemnly affirmed at Ahmedabad on this 22<sup>nd</sup> day of December 2019

(Deponent)