

ANALYSIS OF TEHSEEN S. POONAWALLA V UNION OF INDIA (2018)

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INTRODUCTION

In 2016, there were increasing incidents of cow vigilantism in India which led to various instances of informal public executions, commonly referred to as “Mob Lynching”. Although said to have taken place due to the speculation of the victim consuming beef, it was ordinarily found that there was absolutely no truth in the allegations which thereby led to the violence taking place against innocent people in the first place. These brutalities customarily took place against the Muslim and the Dalit community for beef was considered a staple in the two communities. People of the said communities were subjected to violence solely based on speculation of having consumed beef or being involved in the sale or transport of the same.

There were several protests in Delhi, Mumbai, Bangalore, Chennai, Lucknow, and Allahabad among other parts of the country during this period, which were popularised with the name “not in my name” which gained momentum during this period. Distraught post several ruthless and pitiless incidents in Delhi and Haryana, Tehseen Poonawala, a public-spirited social activist & lawyer filed a writ petition against the respondent states under Article 32¹ of the Constitution of India in the Supreme Court of India in August 2016. Poonawala was accompanied by Martin Macwan, a Dalit rights advocate, and Mohanbhai Hamir Bhai Bedyia, an alleged victim. Tushar Gandhi, the great-grandson of Mahatma Gandhi filed the second Public Interest Litigation (PIL)² for the States to take responsibility for such grave mob lynching incidents.

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¹ Article 32 of Indian Constitution states that “Remedies for enforcement of rights conferred by this Part (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution”

² “The expression ‘PIL’ means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected. According to the Constitution of India, the petition can be filed under Article 226 before a High Court or under Article 32 before the Supreme Court of India.

The petitions were together heard by a three-judge bench comprising Honourable Justice Dipak Misra, the then Chief Justice of India (CJI), Honourable Justice D.Y. Chandrachud, and Honourable Justice Ajay Manikrao Khanwilkar. The petitioners i.e. Tehseen Poonawalla and Tushar Gandhi were represented by Kapil Sibal, Indira Jai Singh, Colin Gonsalves, and Sanjay Hegde as their lawyers, while the Respondents i.e. the Union of India, State of Gujarat, State of Uttar Pradesh, State of Rajasthan, State of Karnataka, State of Jharkhand and the Farmer Welfare and Agriculture Department were represented by Ranjit Kumar, Hemantika Wahi, Shreyas Jain and Ranjit Kumar.

RESEARCH METHODOLOGY

The current research is predominantly based on doctrinal research. It has been chosen for the reasons that the correct sources as and when referred to can provide the most accurate understanding of the subject in matter. In order to efficiently carry out doctrinal research, the researcher has relied upon various articles, journals, and research papers that hold credible information on the topic provided. The research is not restricted to the research methodology bound within prescriptive and analytical tools but also to secondary and tertiary empirical data in hand.

ANALYSIS

HISTORY OF COW VIGILANTE VIOLENCE IN INDIA: BACKGROUND

Since its election win in 2014, the BJP has led India's federal government. Following Narendra Modi's election, radical Hindu groups launched attacks against Muslim and Dalit communities across the world. These attacks were carried out with the reported goal of defending cows. Since they are often in charge of disposing of cattle carcasses and skins, Dalit groups are especially vulnerable to such attacks. Human Rights Watch has labeled the attacks "vigilantism," with the perpetrators claiming that they are defending Hindu rights and that the police are not properly dealing with cow slaughter. Radha Sarkar, a scholar, has argued that "Cow vigilantism is not new in India, and there has been violence in the past over the safety of cows. However, the current incidents of cow-related violence are unparalleled in terms of frequency, impunity, and severity." According to Business Insider, vigilante attacks on cattle-carrying trucks have increased in Maharashtra since 2015. According to meat industry representatives, cow vigilantes have been stopping cars, extorting money, and stealing valuable livestock, according to Bloomberg. During the run-up to the 2015 Bihar

election, cow vigilantism increased as well. Sushil Kumar Modi, a BJP leader, said the election was a fight between those who eat beef and those who oppose cow slaughter.

COW PROTECTION VIGILANTE GROUP

Cow security vigilante groups had sprung up in "hundreds, maybe thousands" of towns and villages across northern India as of 2016. In the Delhi-National Capital Region alone, there were an estimated 200 such parties. Any of the larger organisations tend to have 5,000 members or more. Gangs that patrol highways and roads at night, searching for trucks that may be "smuggling" cows across state borders are one type of cow protection organisation. [26th] These gangs are often armed, which they justify by saying that cow smugglers are often armed as well. According to The Guardian, the Haryana branch of Bhartiya Gau Raksha Dal exchanged gunfire with suspected smugglers, killing many of them and losing many of its members. The gangs have been characterised as "disorganised," and gang leaders admit that controlling their members can be difficult. Volunteers, many of whom are poor peasants, make up the gangs. The volunteers are frequently young. "It's easy to inspire a youth," a gang leader says. Youth are often shown gruesome images of animals being abused in order to provide "emotional" inspiration. Cow vigilantism, according to one participant, has given him a "mission in life." Cobblers, rickshaw drivers, vegetable sellers, and other informants are often used by vigilantes to alert them to alleged cases of cow slaughter. The members of the community and their networks often use social media to disseminate information. Some vigilantes claim to work with the police, while others claim that the police are corrupt and inept, forcing them to take matters into their own hands.

THE CASE: THE ARGUMENT FROM THE PETITIONER'S SIDE

Making reference to the case of *Vahini v. Union of India* (2018), the Petitioners argued that violence and lynching should not be engaged in on the basis of mere perception and assumption that an offence had taken place. The point is that an activity that amounts to mob lynching must be verified by an executive and must be taken into notice. It was mentioned that these incidents usually took place due to the circulation of false information and rumours which again were based on mere suspicion and assumption that the victim was illegally involved in cattle trade, and transport.

Quoting Martin Luther King³ it was argued that the law shall be summoned to prevent and protect a victim from lynching. It was mentioned here that how the mob violence that had taken place recently was direct toward the minority communities of Muslims and Dalits. It was further argued that by the power vested in the Central Government by Articles 256⁴ and 257 of the Indian Constitution, the Central Government had the power to intervene in the matter by issuing directions to the State Governments for the protection and safeguard of the victims of mob violence and also to prevent such instances from occurring.

In the 2016 petition, it was argued by Mr. Sanjay Hegde that an individual cannot engage themselves in actions of violence on the basis of merely a perception of a crime. This is what should be followed. Emphasis was laid on remedial, punitive, and preventive measures. Ms. Indira Jaising argued that the law enforcement agencies have a duty to not only the First Information Report of such incidents but also prevent them from happening. Her argument also comprised of initiation of patrolling. She further went on to argue that it was both, the Centre's and the State's responsibility to ensure that the minorities are not harassed like this and are not chosen as targets for such violent activities.

ARGUMENTS FROM THE RESPONDENT'S SIDE

The Respondents were the Centre and the State governments who suitably agreed with the Petitioner and the issue at hand. It was submitted by the Solicitor General, Mr. Ranjit Kumar that these incidents were a State matter and the Centre neither supports nor tolerates vigilantism of any kind. The State of Jharkhand and the State of Gujarat submitted that the required legal action was already taken against the people involved in such atrocities. It was further argued that by the power vested in the Central Government by Articles 256⁵ and 257 of the Indian Constitution, the Central Government had the power to intervene in the matter by issuing directions to the State Governments for the protection and safeguard of the victims of mob violence.

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JUDGEMENT OF THE CASE

The judgement was delivered by Chief Justice of India Dipak Misra, who stated that private citizens cannot take justice into their own hands. Every person should "remain obedient to the command of the law," according to the ruling. Interim orders were given by the court for the recruitment of nodal officers and highway patrolling. To maintain the spirit of plurality and harmony, state governments should investigate the causes of communal strife and cultivate a spirit of tolerance. Lynching is a clear breach of the law and the constitution. Citizens' rights cannot be infringed upon in any way under Art 21. The third question, if such actions were illegal, was not addressed by the Court.

To prevent vigilantism, the court issued the following guidelines:

- 1) **Preventive Measures:** State governments should assign nodal officers and send them instructions on how to work. Police should disperse crowds under Section 129 of the Criminal Procedure Code and file FIRs under Section 153A of the Indian Penal Code. Central and state governments should avoid the dissemination of knowledge and broadcast the severe legal implications of lynching and mob violence.
- 2) **Punitive Measures:** Officers who fail to comply with the above measures should face departmental action, which would be seen as a case of incompetence or neglect, and the action should be completed within six months.
- 3) **Remedial Measures:** FIRs should be filed and the Nodal officer notified in the event of an incident, as well as effective processing by fast track courts, a victim compensation plan, and free legal aid.

⁶ S, Rukimini (3 July 2017). "[Can Data Tell Us Whether Lynchings Have Gone Up Under Modi, And Should It Matter?](#)". *Huffington Post*. London. *Can Data Tell Us Whether Lynchings Have Gone Up Under Modi, And Should It Matter?*.

PRESENT SITUATION

The Court continues to oversee the guidelines' enforcement, and all states have been required to send compliance reports. The court reprimanded the states that had not submitted the enforcement report in the first hearing after the judgement, giving them a deadline and stern consequences to face.

CONCLUSION

After a lynching in Alwar just days after the ruling, the Supreme Court promptly instituted contempt proceedings for negligence. Akhlaq's lawsuit, on the other hand, is still pending in court. Rajasthan and Manipur have passed anti-lynching legislation, but the President has yet to sign them. Despite the fact that the Court issued strict guidelines to address the problem, there are still issues with their implementation.



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