
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

A CASE ANALYSIS ON MOB LYNCHING AND COW VIGILANTISM- Ashima Mishra¹**ABSTRACT**

There's a saying "It takes no time for a savior to turn into a destroyer. This fit apt in the current situation that prevailed during that time when mob lynching dominated the country everywhere in the name of cow protection. In the year 2018, the act of cow vigilantism is a thread of lies spread by Hindus to pose a threat to affect the secularism of the nation. Mob violence and lynching gradually became red threats in the name of cow protection by Hindu people to harass the non-Hindus who sold or consumed beef in India, especially in the Northern parts. This is an analysis of the case filed by social activist Tehseen Poonawala related to the mob lynching that prevailed in different parts of India which rose to a peak in the year 2018. It also deals with how the Hon'ble Court dealt with the matter taking into consideration all the material aspects. This case was a step taken by Mr. Poonawala to draw the attention of the court to the targeted violence against a targeted group. Before this case, also the court ordered the state to look into the matter and prevent lynching and violence by cow vigilantes.

TEHSEEN POONAWALA VS. UNION OF INDIA**Name of the parties:**

Tehseen Poonawala and others..... Petitioners

Versus

Union of India Respondents

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(2018) 9 SCC 501

Citations of the case:

Writ Petition (Civil) No. 754/2016 with 764/2016, 732/2017,

Writ Petition (Criminal) No. 122/2017 and (2018) 9 SCC 501

Coram of Judges: A three-judge bench consisting up Chief Justice Dipak Mishra, Justice AM Khanwilkar, and Dr. DY Chandrachud JJ.

Date of Judgement: 17th July 2018

Relevant Provisions: section 12 of the Gujarat Animal Prevention Act 1954, Section 15 of the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act 1964, Section 13 of the Maharashtra Animal Prevention Act 1976, Article 15, 21, 32, 256, 257 of the Constitution.

Facts of the case:

There's a saying "It takes no time for a saviour to turn into a destroyer. This fit apt in the current situation that prevailed during that time when mob lynching dominated the country everywhere in the name of cow protection. The act of cow vigilantism is a thread of lies spread by Hindus to pose a threat to affect the secularism of the nation. Mob violence and lynching gradually became red threats in the name of cow protection by Hindu people to harass the non-Hindus who sold or consumed beef in India, especially in the Northern parts.

Three major incidents became the very important pieces of evidence upon which the writ petition was filed by the Petitioner:

- Seven Dalits were flogged in the Una District of Gujarat
- Mob Lynching cases in Rajasthan and Uttar Pradesh
- Brutal hanging of two people in Jharkhand.

The very reason for such lynching was either killing cows or selling or consuming beef.

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Based on the above scenario, the writ petition was filed by a famous social activist and lawyer Mr. Tehseen Poonawala along with Mohan Bai Hamir Bhai Bedva and a Dalit rights activist named Matin MacEwan.

The petitioner challenged the fancy cow protection laws which were serving as a protector of mob lynching offenses in six states i.e. Gujarat, Jharkhand, Maharashtra, Rajasthan, Karnataka, and Uttar Pradesh. Some specific provisions of the Acts were challenged because of their constitutionality which protected the individuals from legal liability for actions performed in good faith.

A writ petition filed under Article 32 of the Constitution of India was filed where the respondent was expected to initiate necessary action immediately against those vile cow protection groups who in the name of religion and humanity took laws into their hands and killed innocent people ruthlessly and also were asked to restrain them from posting any negative content on social media platforms.

Issues framed by the Supreme Court:

1. Whether the States and the Centre should frame effective and immediate action plans to be undertaken against these violent cow protection mobs and whether they frame a victim compensation scheme to address the issue of lynching.
2. Whether the State and the Centre make separate laws addressing the offense of lynching?
3. Whether state cow protection laws such as Section 12 of the Gujarat Animal Prevention Act, 1954, Section 13 of the Maharashtra Animal Prevention Act, 1976, and Section 15 of the Karnataka Prevention of Cow Slaughter and Cattle Prevention Act, 1964 which protects cow vigilantes acting in 'good faith' are constitutional?
4. Whether the State and the Centre issue a further direction to remove the violent social media content uploaded by these groups?

Arguments and contention by parties:

In this writ petition, the petitioners were represented by Senior Advocates Indira Jaisingh, Kapil Sibal, Colin Gonsalves, and Sanjay Hegde whereas Senior Counsel and Solicitor

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General Tushar Mehta along with Ranjit Kumar, Hemantika, and Shreyas Jain represented the state.

Petitioner: Advocate Hegde argued that no individual gets the authority to get themselves involved in such an act of lynching in the name of cow protection. Such nuisance is also to be suppressed by the executive by following the legal procedure. As no one has the right to take the law into their own hands.

Further, Advocate Indira Jaisingh argued that there remains a duty on the part of the union and states to take effective and immediate measures to prevent such crimes.

It was also contended that the Centre has the power to intervene in the powers exercised by the state government given under section *Article 256* and *Article 257* of the Indian Constitution.

Respondent:

Mr. Ranjit Kumar stated that as mob lynching leads to the breaking of law and order, and that these two come under the state subject, the Union is not liable for the same but it also condemns such brutal activity.

Further, it was argued by Tapes Kumar that legal actions were taken against those offenders involved in such crimes. Similarly, Ms. Hemantika Wahi talked about the steps taken by the Gujarat government to arrest such offenders.

Held:

The Apex court in its final hearing held that there remains an obligation on the part of the state to ensure protection for its citizens and also emphasized the “**pluralistic social fabric**” of the country. Further, the three-judge bench stated that laws should be effective enough to deal with such incidents and also create a sense of fear in the minds of offenders. Few guidelines were framed to tackle such sensitive issues in the country.

In the 2018, mob lynching incident, the Hon’ble Supreme Court directed the states to implement three measures to stop mob lynching. These three measures were *preventive* followed by *remedial* and *punitive* respectively.

Along with that few guidelines were issued by the Hon’ble Apex Court: -

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- Appointment of a nodal officer in each district not below the rank of Superintendent of Police for the prevention of mob lynching as well as cow vigilantism.
- A time period of three weeks is to be granted to the respective state government after the date of judgment to identify the affected areas where such incidents have taken place.
- A direction was given to the State Government to form a mob violence victim compensation scheme under section 357 A of CrPC within one month from the day of judgment.
- FIR is mandatory under section 153 A of the IPC against those who incite people and spread fake news on social media handles.
- The fast-track courts in each district have to try mob violence or mob lynching cases and it shall be done within 6 months.
- Limitation on WhatsApp forwarding messages to only five chats to discourage false rumors.

Critical Analysis: The incidents behind cow vigilantism and mob lynching have taken the shape of targeting people based on religion and caste. These are carried out in the guise of “Cow protection” primarily by empowering some groups of people with social, moral, and legal authority which gives them an undue privilege to promote violence across society. The usage of the phrase “horrendous act of mobocracy” by the Hon’ble Supreme Court of India in the Tehseen Poonawalla verdict speaks the volume and gravity of the incident. The court took this incident very seriously and also asked the parliament to create a separate offence of lynching along with strict penal measures.

Cases referred by the Court:

- Krishnamoorthy Vs. Sivakumar and Others²
- Shakti Vahini Vs. Union of India & Others³
- Nandini Sundat and Others Vs. State of Chattisgarh⁴
- Archbishop Raphael Cheenath S.V.D. Vs. State of Orissa and Another⁵
- S. Rangarajan Vs. P. Jagjivan Ram and others⁶

²(2015) 3 SCC 467

³2018 (5) SCALE 51

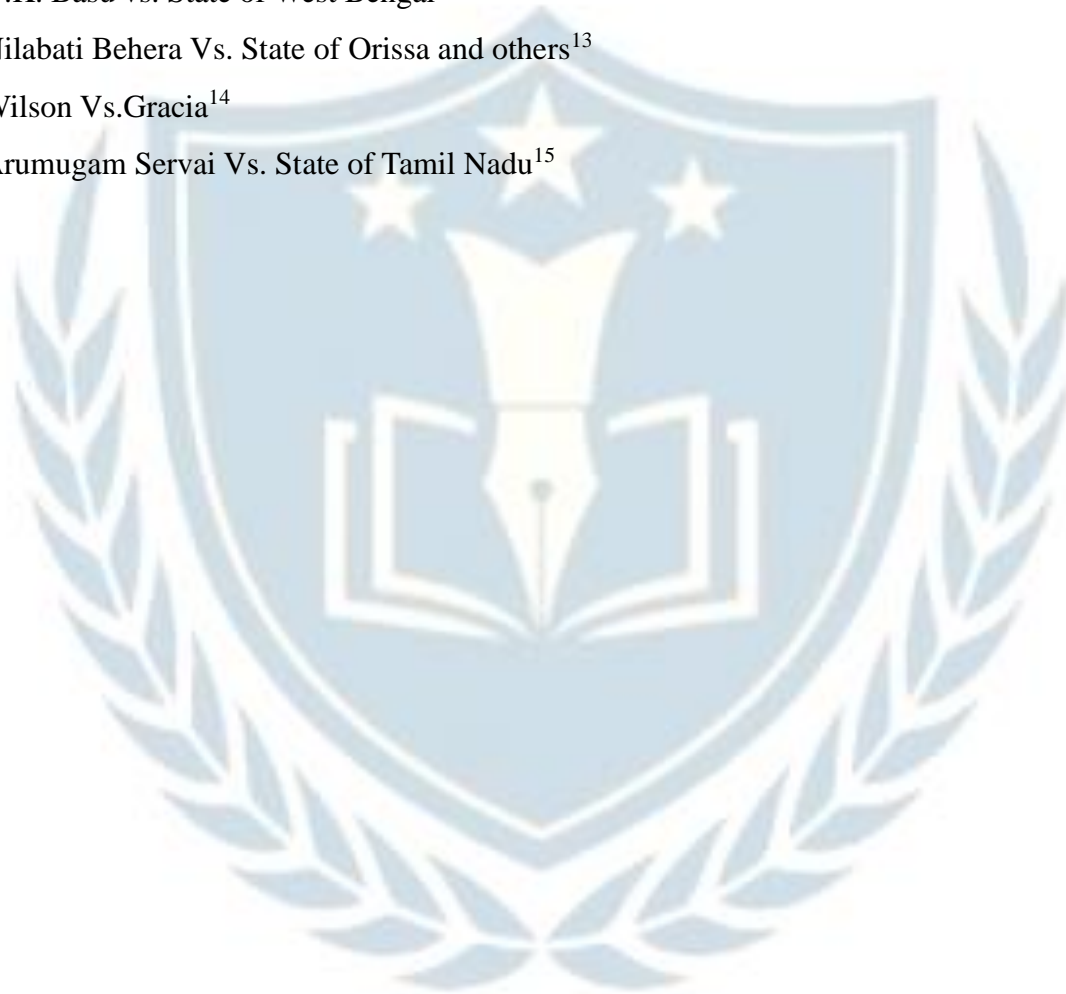
⁴(2011) 7 SCC 547

⁵(2016) 9 SCC 682

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- Handyside Vs. United Kingdom⁷
- St. Stephen's College Vs. University of Delhi⁸
- Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi, and others Vs. State of UP and others⁹
- State of Karnataka and another Vs. Dr. Praveen Bhat Thogadia¹⁰
- State of Uttar Pradesh Vs. Lalai Singh Yadav¹¹
- D.K. Basu vs. State of West Bengal¹²
- Nilabati Behera Vs. State of Orissa and others¹³
- Wilson Vs. Gracia¹⁴
- Arumugam Servai Vs. State of Tamil Nadu¹⁵



⁶(1989) 2 SCC 574

⁷1976 EHRR 737

⁸(1992) 1 SCC 558

⁹ (1997) 4 SCC 606

¹⁰(2004) 4 SCC 684

¹¹(1974) 4 SCC 213

¹²(1997) 1 SCC 416

¹³ (1993) 2 SCC 746

¹⁴471 U.S. 261 (1985)

¹⁵(2011) 6 SCC 405

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