



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.





# **Senior Editor**

## **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

## **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



## **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

### **Dr. Rinu Saraswat**



Associate Professor at School of Law, Apex University, Jaipur,  
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



### **Subhrajit Chanda**



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ANALYSIS ON TEHSEEN S POONAWALLA VS. UNION OF INDIA**

AUTHORED BY - B THILLAI NAYAGE

## **INTRODUCTION**

Cow vigilantism is the use of absolute authority by a sizable community of people to punish someone who is suspected of slaughtering cattle or devouring beef opposed to the principles of their faith. The political foundation of India is upheld by the Indian constitution, which also safeguards the country's diverse culture. Established on the principles of egalitarianism and nondiscrimination, the constitution created a secular state. In order to foster multiculturalism and community harmony, the Indian secularist paradigm demands that the state accord each religion equal respect. Indian morality, and impartiality, and equitable state engagement in all religions are the cornerstones of the constitution. Notwithstanding this, mob lynchings are becoming far more common in India. The social structure of India is under danger due to the rising number of vigilantism cases. It is impossible to surpass the Indian Constitution's Article 21 right to live with dignity. Removal of what the law has granted may only be accomplished by legal means. It is therefore illegal for anybody to infringe upon the personal dignity of another. The country's secular community is directly impacted by cow vigilantism. It is not possible for vigilantes to override national law and establish lynching as the new norm, since the honorable courts will never let. In India, there aren't sufficient regulations that particularly address lynching; therefore, many events go unreported and the cruel people who carried them out are unknown. The politicization of this hatred is undermining the democracy of India and secularism. Rather of depending just on one solution, this issue calls for reforms to be made to all aspects of the criminal justice system as a whole. This study aims to critically analyse the judgement of Tehseen S Poonawalla Vs. Union of India.

## **BACKGROUND OF THE CASE**

In the present case petitions were filed owing to a surge in the occurrences of cow vigilantism within the borders of India, thereby giving rise to a multitude of informal executions in public. The



aforementioned acts of brutality were commonly perpetrated against Muslims and Dalit communities, primarily due to the fact that beef consumption held significant cultural and dietary importance within these groups. The individuals belonging to the aforementioned populations were subjected to acts of violence solely predicated upon speculation surrounding their purported consumption of beef or their alleged involvement in the commercialization or transportation of said meat.<sup>1</sup> As a result multitude of protests emerged in various regions of the India. These demonstrations, collectively known as the “not in my name movement”, garnered significant traction and widespread recognition throughout the aforementioned timeframe. In light of the numerous instances of distressing and merciless occurrences in the regions of Haryana and Delhi, it is noteworthy to mention that Tehseen Poonawala, a conscientious social activist and legal practitioner, took it upon himself to initiate legal action against the respective states in question. This action was undertaken through the filing of a writ petition in the Supreme Court of India, in accordance with the provisions outlined in Article 32 of the Constitution of India. This significant event transpired in the month of August in the year 2016. Tushar Gandhi has undertaken a significant attempt by initiating the second round of a Public Interest Litigation with the noble objective of compelling the various states to assume accountability for the terrible and deeply troubling occurrences of mob lynching that have plagued our society.<sup>2</sup>

## **JUDGEMENT OF THE CASE**

The Hon’ble court consisting of Chief Justice Misra and Justices A.M. Khanwilkar and D.Y. Chandrachud, asserted in judgement that legislation of this nature should possess sufficient efficacy to instil a sense of apprehension in those who commit such acts. The court expressed its astonishment at the increasing desensitisation of the average Indian citizen towards the frequent occurrences of lynchings taking place within a society that upholds the principles of the rule of law. The court emphasised that both the Centre and the States had a responsibility to ensure that individuals refrain from taking the law into their own hands or assuming the role of a self-appointed authority. The court also emphasised that the determination of compensation for the victims shouldn't depend solely on factors such as religion or caste, but rather on the severity of the harm inflicted, as anyone has the potential to become a victim of such a crime. Chief Justice Misra emphasised that it is imperative for

---

<sup>1</sup> [Tehseen S Poonawalla v. Union of India, \(2018\) 9 SCC 501](#)

<sup>2</sup> Priyadarshree Mukhopadhyay, The Epidemic of Mob Lynching in India: Analysing Tehseen S. Poonawalla v. Union of India, CCLSNLUJ, (NOVEMBER 04, 2023, 10.00 AM) <https://criminallawstudiesnluj.wordpress.com/2020/02/11/the-epidemic-of-mob-lynching-in-india-analysing-tehseen-s-poonawalla-v-union-of-india/>



the States to ensure that there is no possibility, however remote, for incidents of lynching to occur.<sup>3</sup> The Court expressed on the responsibility of the State to prevent instances of mob lynching, stating, “It is the duty of the States to ensure that no individual or organised group takes over the authority of the law.” Every individual possesses the inherent right to notify law enforcement authorities regarding the violation of legal statutes. There is absolutely no room for uncertainty regarding the primary duty of the authorities entrusted with the task of upholding law and order in the various states. It is incumbent upon them to ensure that acts of vigilantism, whether it pertains to cow vigilantism or some other kind of vigilantism, are effectively prevented from occurring.

The court additionally noted on the rise of mob vigilantism stating that when a particular group possessing a shared ideology assumes authority outside the legal framework, it precipitates a state of anarchy, leading to chaos, disorder, and ultimately the emergence of a society characterised by violence. The act of lynching is a violation of the principles of the rule of law and the esteemed values enshrined in the Constitution, regardless of its motivation or origin, has the consequence of eroding the authority of legal and established state institutions, thereby disrupting the constitutional framework. The court emphasised on the unbreakable essence of nation stating that the fundamental unity of a nation remains unbroken by the divisive barriers of caste, class, and religion, it is the responsibility of governments to prevent mob lynching and violence through the implementation of stringent measures. Additionally, the court emphasised the role of vigilant society in reporting such incidents to the state machinery and the police, rather than resorting to extrajudicial actions. The normalisation of rising intolerance and increasing division, as evidenced by a series of mob violence incidents, should not be allowed to prevail as the accepted societal norm or the standard condition of law and order within the nation. It was additionally observed that the phenomena of lynching and mob violence pose a gradual and insidious menace. This is exemplified by the increasing frequency of incidents displaying recurring patterns, wherein chaotic mobs, driven by intolerance and incorrect information by the dissemination of fake news and false narratives, perpetrate acts of violence throughout the country.<sup>4</sup>

---

<sup>3</sup> Suraj Kumar, 'Vigilantism Not Permissible': Supreme Court Seeks Data From Govts On Action Taken To Stop Mob Lynching, LIVELAW, (NOVEMBER 06, 2023, 10.00 AM) <https://www.livelaw.in/top-stories/supreme-court-india-vigilantism-mob-violence-preventive-remedial-measures-232399>

<sup>4</sup> [Tehseen S Poonawalla v. Union of India, \(2018\) 9 SCC 501](#)

The Bench also emphasised the significance of diversity and acceptance as fundamental elements of a true liberated and democratic society, and underscored the necessity of safeguarding these principles. The statement asserts that a modern democracy based on constitutional principles must strongly emphasise the inclusion of diverse perspectives and approaches in order to maintain harmony and unity. The manifestation of intolerance stemming from a rigid and inflexible mindset gives rise to societal unrest and significantly inhibits the exercise of intellectual autonomy and the ability to freely articulate ideas. Therefore, it is imperative to cultivate and implement tolerance, ensuring that it is not compromised in any way.<sup>5</sup>

The implementation of various preventive, remedial, and punitive measures was recommended by the Hon'ble Court in order to address the issue of the lynching and violence by mobs. The court has issued an order directing both the Centre and the States to execute the prescribed measures and submit reports of their compliance within a period of four weeks. The measures are as follows,

- **PREVENTIVE MEASURES**

- i. It is mandatory for the State Governments to designate a Nodal Officer in every district. A District Superintendent of Police will work with the Nodal Officer to put policies in place that will stop acts of violence and lynching. The creation of a specific task group to be charged with compiling intelligence reports should be suggested.
- ii. The State Governments have been ordered by the court to expeditiously identify those districts, Division levels, and Villages in which there have been reports of lynchings and mob violence during the previous five years.
- iii. It is the duty of the Secretary of the Department of Home Affairs in each State to give instructions or warnings to the Nodal Officers of the concerned areas.
- iv. To lessen hatred against any specific group or caste, the Nodal Officer must call frequent meetings and oversee the implementation of policies meant to stop the dissemination of objectionable information via various media.

---

<sup>5</sup> Suraj Kumar, 'Vigilantism Not Permissible': Supreme Court Seeks Data from Govts on Action Taken to Stop Mob Lynching, LIVELAW, (NOVEMBER 06, 2023, 11.00 AM) <https://www.livelaw.in/top-stories/supreme-court-india-vigilantism-mob-violence-preventive-remedial-measures-232399>

- v. The concerned States' Secretary of Home Affairs or Director General of Police shall do a quarterly inspection of all State Police Intelligence chiefs and Nodal Officers.
- vi. It is incumbent upon each police officer to utilise their authority in accordance with Section 129 of the Code of Criminal Procedure to disperse a crowd engaged in acts of lynching.
- vii. In order to prevent lynchings and mob violence against any caste or tribe, the Indian Home Department is required by the court to collaborate with state governments in order to raise law enforcement awareness and include all relevant parties.
- viii. Governments at the federal and state levels must take action to prevent and restrict the dissemination of derogatory remarks and other types of content on various social media sites that have the capacity to provoke acts of lynchings and other kinds of mob violence.

• **REMEDIAL MEASURES<sup>6</sup>**

- i. The court urges the police officials to register FIR immediately on receiving notice of the commission of instance mob lynching without any delay and the station house officer should immediately intimate the same to the nodal officer.
- ii. The Nodal officer is duty bound to oversee the investigation and need to make sure the charge sheet is filled within the timeframe given under the legislation
- iii. The State Governments are obligated by the Supreme court to prepare the victim compensation scheme in accordance with the section 357A of the CRPC within a month after the pronouncement of this judgment.
- iv. The trial courts are obligated to impose the highest possible sentence as outlined in the relevant sections of the Indian Penal Code.
- v. The courts have the authority to take appropriate measures to protect and conceal the identity and address of witnesses.
- vi. When there is mob violence or lynching, the victims or the deceased victims' legal representatives are entitled to timely notice of the court proceedings, as well as the opportunity to appear in person and provide written statements.
- vii. Fast track court need to be constituted in each of the districts to deal with the cases of mob lynchings exclusively. The trial needs to be completed in a span of 6 months.

---

<sup>6</sup> [Tehseen S Poonawalla v. Union of India \(2018\) 9 SCC 501](#)



- viii. Free legal assistance will be extended to the victims or their next of kin who have suffered fatalities as a result of mob violence and lynching incidents.

- **PUNITIVE MEASURES**<sup>7</sup>

A police officer or district administration official will be considered to have engaged in purposeful carelessness or misconduct if they fail to follow the previously described guidelines on the prevention, investigation, and prompt trial of mob violence and lynching. Under these kinds of situations, appropriate action must be taken against the officer possibly going beyond departmental action as required by service laws. Within six months, the departmental action will be completed by the initiating authority. State authorities must take appropriate measures against officials who, although knowing of an upcoming occurrence, either failed to prevent it or failed to quickly capture the culprits and file a lawsuit, according to the verdict in *Arumugam Servai v. State of Tamil Nadu* Court.

## **CRITICAL ANALYSIS OF THE JUDGEMENT**

On analysing the judgement, it is imperative to acknowledge the fact that a considerable emphasis was placed on the preventive aspect with the aim of impeding the occurrence of the mob lynching during its early stages. The Court proposed the establishment of a specialised task force with the purpose of obtaining intelligence reports pertaining to individuals who are prone to engaging in or instigating such offensive activities. The individuals holding the positions of DGP and Secretary of Home Department of the States were instructed to conduct regular meetings, occurring at least once every quarter, with all nodal authorities and the State Police Intelligence heads. Whether these meetings have actually taken place and what the outcomes have been are the questions that arise. In the event that the answer is positive, it presents serious questions regarding how well their policies would work to combat the rising rates of crime linked to mob lynching.

There have been no reported instances of initiatives, such as the presence of patrolling police cars, effectively preventing incidents. In multiple cases, individuals related to the victim and individuals who witnessed the crime have expressed that the inefficiency of law enforcement's arrival was a notable factor in exacerbating the situation, ultimately resulting in the victim's demise. It is to be noted

---

<sup>7</sup> [Tehseen S Poonawalla v. Union of India, \(2018\) 9 SCC 501](#)

that in various instances of mob lynching if there was a timely deployment of law enforcement officials, they could have potentially averted the occurrence of the crime. By only responding in response to public pressure, the administration has failed to address the issue in a proactive manner. According to the home ministry's answers to queries posed in parliament, the administration has not taken any significant action to stop mob lynching other than warning state governments a few times.

The Court further suggested that the Parliament establish a distinct criminal offence pertaining to mob lynching and prescribe appropriate penalties. Notwithstanding the Court's aversion towards a specific legislation, the Centre, failed to enact the Court's suggestion. The Union Government formed a committee of ministers with the objective of deliberating on the type of legislation to be introduced. The notion of enacting a specific legislation appears to be distant from actualization given the slow progress observed.<sup>8</sup>

The Supreme Court has not given a definitive and feasible definition of the crime of mob lynching in its ruling. Thus, the crime of mob lynching lacks a comprehensive definition, resulting in a broad approach to its handling. It is partially addressed under various sections of the Indian Penal Code, 1860. The aforementioned action has fundamentally undermined the concept of distinct criminal offences and has significantly diminished the necessary focus on the sensitivity associated with said offence. A mob lynching is considered to be a horrible crime against society. It is an act against the community rather than an individual but the guilty are being punished under various sections of the Indian Penal code. All these are the effect caused by lynching of mob, it appears unfair in the instance of mob lynching that they are punished for the effect caused by the act and not for the mob lynching as such which itself is a heinous crime. The Indian Penal Code and Criminal Procedure Code's provisions are insufficient to cope with mob lynchings since the crowd is anonymous and it is hard to punish the actual offenders of these crimes. It is significant to highlight that India lacks a thorough and explicit legislative statute against mob lynching. Victims are nonetheless protected by human rights legislation and have the right under the Constitution to seek redress. But because it is such an awful crime that it is on the rise right now, it requires an exclusive regulation. This frequently permits

---

<sup>8</sup> Khushi Saxena, ANALYSIS OF TEHSEEN S. POONAWALLA V UNION OF INDIA 2018, VOL. 1 ISSUE 4, Journal of Legal Research and Juridical Sciences, <https://jlrs.com/wp-content/uploads/2022/05/30.-Khushi-Saxena.pdf>

offenders to escape punishment.<sup>9</sup>

The Hon'ble Court has also provided measures for implementing a compensatory system and providing free legal assistance to victims. It also emphasised that victims or their next of kin in cases of mob violence and lynching should be entitled to free legal aid if they wish to pursue it. But even after the said guidelines in the case of Pehlu Khan, his families who were the victims of mob lynching in Alwar, Rajasthan in 2017, faced significant financial burdens as a result of their pursuit for justice.

The integrity of the entire verdict was compromised when an individual named Rakbar Khan was subjected to a brutal act of lynching, occurring in close temporal proximity to the issuance of said judgement. There have been numerous allegations suggesting that the lethargic behaviour of the police, coupled with their subsequent failure to promptly provide the victim with necessary medical care, has significantly contributed to Khan's demise. This case exemplifies the court's dual approach to holding both the perpetrator and the police accountable. The court recognises that not only should the perpetrator be punished, but also the police, as their timely intervention could have potentially saved the victim's life. Conversely, equal responsibility must be attributed to the police for their inaction.<sup>10</sup>

Thus, the guidelines set forth by the esteemed Supreme Court have been disregarded in relation to the failure of both the central and state governments to comply with the directive of broadcasting on radio and television platforms that acts of lynching and mob violence will be met with significant legal consequences. The final recommendation of the case proposed the establishment of a distinct criminal offence for lynching. However, it is important to note that the National Crime Records Bureau currently does not officially classify “Mob Lynching” as an independent category of crime nor does it maintain separate statistical data on this phenomenon.<sup>11</sup> Consequently, the absence of official statistical data on lynching can be attributed to the fact that it is not recognised as a distinct criminal

---

<sup>9</sup> Geetika Rathore, *MOB LYNCHING: A Desecration of the Rule of Law*, Volume 1, issue 1, CALR, (2021), <https://calr.in/mob-lynching-a-desecration-of-the-rule-of-law/>.

<sup>10</sup> Khushi Saxena, ANALYSIS OF TEHSEEN S. POONAWALLA V UNION OF INDIA 2018, VOL. 1 ISSUE 4, Journal of Legal Research and Juridical Sciences, <https://jlrs.com/wp-content/uploads/2022/05/30.-Khushi-Saxena.pdf>

<sup>11</sup> Ananya Bhardwaj, *NCRB stopped collecting data on lynching, hate crime as it was 'unreliable' Govt tells LS*, THE PRINT, (NOVEMBER 07, 2023, 10.30 AM), <https://theprint.in/india/governance/ncrb-stopped-collecting-data-on-lynching-hate-crime-as-it-was-unreliable-govt-tells-ls/785201/>.



offence within the framework of the Indian Penal Code. Thus, it becomes essential to define mob lynching so as to enable proper data collection to analyse the same. Defining mob lynching is crucial in order to establish a clear understanding of the phenomenon and facilitate effective data collection. By having a standardized definition, authorities can accurately document and analyse incidents of mob violence across various occupations and locations. This comprehensive approach will help identify patterns, root causes, and potential preventive measures to address this alarming issue.

## **CONCLUSION**

On the careful examination, it becomes evident that despite the issue of numerous guidelines by the Honorable Supreme Court, the occurrences of mob lynching or mob violence have not decreased. Therefore, it is imperative to ensure the rigorous enforcement of the court's guidelines in order to prevent such incidents. It has been five years since the Tehseen S. Poonawala case was decided, yet a significant number of states have failed to appoint nodal officers or establish Fastrack courts as directed by the court. To date, only four states have successfully enacted bills pertaining to mob lynching. Therefore, the court need to strongly advocate for the enforcement of guidelines and the fulfilment of the constitutional mandate by the States, failing which severe action to be taken against State.

WHITE BLACK  
LEGAL