Dr.Y.LAKSHMANA RAO
REGISTRAR GENERAL

AMARAVATI
(Off) : 0863 2372613
(Telefax) : 0863 2372631

ROC No. 558/SO/2023 **Dated. 21.09.2023**

To

All the Principal District Judges
in Andhra Pradesh.

Sir/Madam,

Sub: High Court of Andhra Pradesh – Judgment dated 17.07.2018 of the Hon'ble Supreme Court of India passed in Writ Petition (Civil) No. 754 of 2016 *(Tehseen S. Poonawalla v. Union of India and others)* -- Forwarded – Reg.

Ref: Letter in Rc.No.1161/L&O-III/2023, dated 05.09.2023 along with the Judgment dated 17.07.2018 of the Hon'ble Supreme Court of India passed in Writ Petition (Civil) No. 754 of 2016 *(Tehseen S. Poonawalla v. Union of India and others).*

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Adverting to the subject and reference cited, as directed, I am forwarding herewith the copy of Judgment dated 17.07.2018 passed in Writ Petition (Civil) No. 754 of 2016 *(Tehseen S. Poonawalla v. Union of India and others)* by the Hon'ble Supreme Court of India, for information and necessary action.

Further, I also request you to communicate the same to all the Officers in your Unit and the Presiding Officers of Labour Courts/Tribunals in the District working under the control of the High Court, for information and necessary action.

Yours sincerely,

J. Lakshmana Rao
21/9/2023
REGISTRAR GENERAL

DIS. 7453
6-10-23

PRINCIPAL DISTRICT COURT, EAST GODAVARI AT RAJAMAHENDRAVARAM, DATED 06.10.2023

Communicated to the all the Judicial Officers working in the Unit of District Judge, East Godavari copy of Judgment dated 17.07.2018 passed in Writ Petition (Civil) No.754 of 2016(Tehseen S. Poonawalla v. Union of India and others) by the Hon'ble Supreme Court of India, for information and necessary action.

R-8001
29.9.23

To
The All the Judicial Officers working in the unit of District Judge, East Godavari.

Principal District Judge
6/10/23

2018 INSC 617

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 754 OF 2016

Tehseen S. Poonawalla ...Petitioner(s)

Versus

Union of India and others ...Respondent(s)

W I T H

WRIT PETITION (CIVIL) N0. 764 OF 2016
WRIT PETITION (CIVIL) N0. 768 OF 2016
WRIT PETITION (CIVIL) N0. 732 OF 2017
WRIT PETITION (CRIMINAL) NO. 122 OF 2017

J U D G M E N T

Dipak Misra, CJI

Law, enacted for the benefit of the society by conferring rights on the citizens and to regulate social behaviour in many a sphere, is required to be implemented by the law enforcing agencies and the citizens are duty bound to follow the law treating it as sacred. Law has to be regarded as the foundation of a civilized society. The primary goal of law is to have an orderly society where the citizenry dreams for change and progress is realized and the individual aspiration finds space for expression of his/her potential. In such an atmosphere while every citizen is

entitled to enjoy the rights and interest bestowed under the constitutional and statutory law, he is also obligated to remain obeisant to the command of law. It has been stated in ***Krishnamoorthy v. Sivakumar and others***[1], "the law, the mightiest sovereign in a civilized society". The majesty of law cannot be sullied simply because an individual or a group generate the attitude that they have been empowered by the principles set out in law to take its enforcement into their own hands and gradually become law unto themselves and punish the violator on their own assumption and in the manner in which they deem fit. They forget that the administration of law is conferred on the law enforcing agencies and no one is allowed to take law into his own hands on the fancy of his "shallow spirit of judgment". Just as one is entitled to fight for his rights in law, the other is entitled to be treated as innocent till he is found guilty after a fair trial. No act of a citizen is to be adjudged by any kind of community under the guise of protectors of law. It is the seminal requirement of law that an accused is booked under law and is dealt with in accordance with the procedure without any obstruction so that substantive justice is done. No individual in

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1 (2015) 3 SCC 467

his own capacity or as a part of a group, which within no time assumes the character of a mob, can take law into his/their hands and deal with a person treating him as guilty. That is not only contrary to the paradigm of established legal principles in our legal system but also inconceivable in a civilized society that respects the fundamental tenets of the rule of law. And, needless to say, such ideas and conceptions not only create a dent in the majesty of law but are also absolutely obnoxious.

2. It is worthy to note that the reliefs sought in all the writ petitions have commonality, although the expression of language as well as the width of the prayer is slightly different. What really emanates as the pivotal issue requiring our contemplated consideration is the duty of this Court under the constitutional framework to deal with the primary grievance that pertains to cow vigilantism and other incidents of lynching or, if we may say so, targeted violence and commission of offences affecting the human body and against private and public property by mobs under the garb of self-assumed and self-appointed protectors of law.

3. We shall state the facts in brief, for there are asseverations with regard to numerous incidents of lynching and mob violence

which need not be specifically stated since we are going to issue certain directions covering the arena of preventive, remedial and punitive measures. We shall note the suggestions given by Mr. Sanjay R. Hegde, learned senior counsel in one of the writ petitions. We may further state that we shall refer to the facts in Writ Petition (Civil) No. 754 of 2016.

4. The petitioner, a social activist, has preferred this writ petition under Article 32 of the Constitution for commanding the respondent-State Nos. 3 to 8 to take immediate and necessary action against the cow protection groups indulging in violence; and further to issue a writ or direction to remove the violent contents from the social media uploaded and hosted by the said groups. There is also a prayer to declare 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 Preservation Act, 1964 as unconstitutional. Certain incidents have also been narrated in the Writ Petition.

5. When the matter was taken up alongwith other matters on 21st July, 2017, the Court, while not dealing with the third prayer, that is, for declaring certain provisions of the statutes

mentioned hereinabove as unconstitutional, proceeded to state thus:-

> "As far as the first prayer is concerned, on being asked, it is submitted by Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India that the controversy relates to the States, law and order being a State subject. He further submits that the Union of India does not support the activities of the vigilantes.
>
> Ms. Hemantika Wahi, learned Standing Counsel for the State of Gujarat echoing the aforesaid submission contends that certain persons who were engaged in this kind of activity, especially the incident that has been referred to in the writ petition, have been booked for relevant offences and appropriate police action is taken against them. Mr. Tapesh Kumar Singh, learned counsel for the State of Jharkhand submits that appropriate legal action has been taken and the criminal cases have been instituted against the persons who have taken law unto their hands.
>
> At this juncture, it is submitted by Mr. Sanjay R. Hegde, learned senior counsel appearing for the petitioner that the Union of India and the State Governments should file their respective affidavits. Mr. Ranjit Kumar, learned Solicitor General and the other learned counsel appearing for the States pray for four weeks' time to file counter affidavit. Needless to say, the counter affidavit shall also refer to the incidents, if any, referred to in the writ petitions.
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> As far as the prayer No.2 is concerned, Mr. Ranjit Kumar, learned Solicitor General and the learned counsel appearing for the various States shall assist the Court as to how the

> activities of the vigilantes can be absolutely curtailed and suggest ways and methods to work out the same."

6. Be it noted, when Writ Petition (Civil) No. 732 of 2017 was listed along with the main writ petition, i.e., Writ Petition (Civil) No. 754 of 2016, on 6th September, 2017, the Court, while issuing notice, noted the statement made by the learned Solicitor General on the previous occasion and, thereafter, noted the submissions advanced by Ms. Indira Jaising, learned senior counsel appearing for the petitioner and Mr. Tushar Mehta, learned Additional Solicitor General appearing for the Union of India. We think it appropriate to reproduce the said order as it contains certain interim directions:-

> "After referring to the same, it is urged by her that the law and order enforcing agencies of the States have great responsibility not only to register the First Information Report (FIR) after the incident takes place but also see to it that groups or a class of people do not take the law into their hands and indulge in vigilantism. Additionally, it is her submission that under Article 256 of the Constitution of India, it is the obligation of the Central Government to issue directions to the States so that the concept of cooperative federalism is sustained and remains stable.
>
> Mr. Tushar Mehta, learned Additional Solicitor General appearing for the Union of India shall take instructions with regard to the role of the Union of India.

> When we are going to pass an ad interim order, Mr. Tushar Mehta, learned Additional Solicitor General appearing for the States of Haryana, Gujarat, Maharashtra and Rajasthan submitted that these States will nominate a senior police officer of the Police Department as the Nodal Officer in each District, who shall ensure that these vigilantes do not take law unto themselves or behave in a manner that they are the law in themselves. If any kind of deviancy takes place, the said Nodal Officer shall take action and such vigilantes are booked in accordance with law with quite promptitude.
>
> An issue has been raised by Ms. Indira Jaising, learned senior counsel with regard to patrolling on the highways so that such crimes are stopped. Mr. Tushar Mehta, appearing for the States of Gujarat, Haryana, Maharashtra and Rajasthan 4 shall obtain instructions in this regard and also apprise what steps have been taken by the said four States. As far as Highway patrolling is concerned, the Chief Secretary of each State, in consultation with the Director General of Police shall take steps and file affidavits by the next date of hearing.
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> As far as the other States are concerned, it is directed that each of them shall nominate a senior Police Officer qua each District as Nodal Officer, who shall see to it that these vigilantes do not take law unto themselves and the deviants in law are booked quite promptly.
>
> A copy of the order be sent to the Chief Secretary of all the States."

7. On 22nd September, 2017, when the matter was listed, it was noted that the States of Uttar Pradesh, Karnataka, Jharkhand, Gujarat and Rajasthan had filed the compliance

affidavit and an undertaking was given on behalf of the State of Bihar to file the affidavit of compliance in the course of the day.

8. In pursuance of our order, the State of Uttar Pradesh has filed an affidavit annexing a communication sent by the Secretary, Department of Home (Police) to Senior Superintendents of Police/All Superintendents of Police of all the districts in Uttar Pradesh. We think it appropriate to refer to the relevant paragraphs of the said communication:-

> "I have been directed to say that while ensuring the compliance of the aforesaid orders of the Hon'ble Supreme Court of India, an effective control must be maintained over the Criminal Activities of the Vigilantes. Besides it the Designated Nodal Officer of each district shall take effective and prompt measures to curve the Criminal Activities of such Vigilantes. It must be ensured that such antisocial elements are not permitted to involve themselves in any of such criminal activities.
>
> 3. In the monthly crime meetings, this issue must be included as one of the issue to be closely monitored. It must be regularly reviewed. Besides it, the Local Intelligence Unit must be deputed to identify such Vigilante and an strict watch be maintained on their activities.
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> 4. It is further directed that while patrolling on the National Highways and other roads, the Local Police and dial 100 be directed to ensure that no Vigilante takes over Law and Order in its hands and commits a Criminal Act. Prompt enquiries be made against the unlawful

> activities of such antisocial elements and necessary legal action be taken against them through the designated Nodal Officers posed in their Districts. In case any such incidents comes to the notice of the local Police or dial 100 during the patrolling, the same may be brought to the Notice of the Nodal Officer immediately. Thereafter further legal action may be ensured promptly by such designated Nodal Officers.
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> 5. It is therefore directed that the aforesaid process is regularly adopted, reviewed and monitored from time to time and the details if any be forwarded to the Director General of Police U.P. Lucknow, who shall also designate a Nodal Officer out of the Officers posted at the Police Headquarters. This matter must be reviewed regularly in each of the monthly meetings and the necessary details after reviewing the situation be made available to the State Government latest by 10th of the each Month."

9. An affidavit has been filed on behalf of the State of Gujarat annexing orders dated 07.09.2017 and 11.09.2017 passed by the Director General cum Inspector General of Police, Gujarat State and by the Inspector General of Police, State Traffic Branch. The first order reads thus:-

> "The volunteers of the organizations associated with cow protection or compassion for animals as well as other citizens have no right to take law into their own hands to resort to violence or other illegal acts, either collectively or individually, targeted against the individuals undertaking transportation of animals or carrying on the trade in animals/meat, under the guise of cow protection, the protection of

the cow progeny or in the name of compassion for animals. With a view to effectively curb such illegal activities, the Hon'ble Supreme Court has directed vide the Order in question to nominate a senior Police Officer qua each district as the Nodal Officer. The Nodal Officer to be so nominated shall be required to make effective arrangements in his jurisdiction, especially on the highways, to obviate illegal acts and violence in the name of cow protection or compassion for animals. If some incidents does take place even after taking all precautions, the Nodal Officer shall have to ensure that prompt and effective legal action is initiated against the vigilantes involved in the incident. To achieve these objectives, the following officers are hereby nominated as the Nodal Officers in the Police Commissionerates and Police Districts in the State of Gujarat.

Area	Nodal Officer
Police Commissionerate	Concerned Commissioner of Police
Police District	Concerned Superintendent of Police
Jurisdiction of Western Railway, Ahmedabad/Vadodra	Concerned Superintendent of Police, Western Railway

2. With a view to ensure effective legal proceedings in all offences that may get registered in connection with the illegal activities under consideration, the Director General of Police, CID (Crime and Railways), Gujarat State, Gandhinagar shall undertake quarterly review of all such cases."

10. A communication has been sent by the Inspector General of Police, State Traffic Branch from the office of the Director General to all the Police Commissioners, Range Heads and Police Superintendents (including Western Railway, Ahmedabad). The relevant part of the said communication reads thus:-

> "While such incidents take place in certain specific places, specific roads and particular areas, such spots on National Highway, State Highway and other roads be identified and mapped. Further, as is known, there is a specific pattern of violent incidents taking place and such workers have their camps at particular time, particular spots and they intercept vehicles at certain specific places. Therefore, such time slots and venues be identified within area of your jurisdiction as also specific modus operandi being followed by the persons involved in transportation of cows be studied further and all police officers/personnel should be briefed about the routes, time, vehicles and methods of packing in vehicles used by such persons and instruct them to keep vigil watch on them.
>
> 3. After surveying the area, secret watch be deployed at the sensitive spots (vulnerability mapping) so identified and considering the modus operandi of transporters of Gauvansh and the practices of Cow Protectors. Further, arrangements for intensive patrolling be made and thus prevent happening such violent incidents.
>
> 4. Considering sensitivity and gravity of violent assaults on traders engaged in transportation

> of animals/meat, it should be ensured that no so-called workers or organizations must interfere in functioning of police in such cases, that no private persons should take law in their hands and make arrangements for spreading awareness among all concerned persons to prevent occurrence of such incidents.
>
> 5. It shall be ensured that all the statutes concerning cows and animals be followed by Police Department. Verification of legality or otherwise of transportation of animals/meat is authority of police department only. However, due to interference in this by individuals or organizations other than police lead to situation of conflicts and law and order issues, occurrence of violent incidents hence all possible efforts may be made to prevent the same and whenever any such incident takes place, legal procedures be initiated immediately and effective action be taken by tracing all the accused involved within further delay."

It is noticeable that Nodal Officers have been nominated. There are affidavits filed by the other States indicating how compliance has been carried out.

11. Mr. Sanjay R. Hegde, learned senior counsel appearing for the petitioner in Writ Petition (Civil) No. 754 of 2016, while substantiating the assertions made in the writ petition, submitted that no individual or vigilante group can engage himself/themselves in an activity of lynching solely on the basis of a perception that a crime has been committed. That apart,

submits Mr. Hegde, the supremacy of law has to be recognized and if a law prescribes a punishment for a crime, it has the mechanism provided under the law to do so. The procedural and the substantial safeguards are required to be followed. It is urged by Mr. Hegde, with all the emphasis at his command, that lynching or any kind of mob violence has to be curbed and crippled by the executive and no excuse can ever be tolerated. Stress is laid on prevention, remedial and punitive measures. In this regard, he has placed reliance on a recent judgment rendered in ***Shakti Vahini v. Union of India & others***[2].

12. At this juncture, we may enumerate the submissions advanced by Ms. Indira Jaisingh, learned senior counsel for the petitioner in Writ Petition (Civil) No. 732 of 2017. She has referred to Martin Luther King Jr. wherein he had said that law may not be able to make a man love him, but it can keep the man from lynching him. She submits that there has been a constant increase in the number of incidents in recent years as a consequence of which citizens belonging to minority communities have become victims of targeted violence which mainly originate on suspicion and at times misinformation that the victims were

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[2] 2018 (5) SCALE 51

involved in illegal cattle trade and such other activities. Learned senior counsel has also referred to certain specific incidents of lynching. It is additionally argued by her that the Central Government be directed to intervene in exercise of the power conferred under Articles 256 and 257 of the Constitution to issue directions to the State Governments.

13. It is urged by her that in the recent past, self proclaimed and self-styled vigilantes have brazenly taken law into themselves and have targeted citizens belonging to certain communities and lower strata of the society which cannot be tolerated and it is the obligation of the Union and the States to take immediate action warranted in law to stop such activities. She has further submitted that there have been many an incident of lynching mostly by vigilante groups across the States of Maharashtra, Gujarat, Rajasthan, Uttar Pradesh, Haryana, Karnataka, Madhya Pradesh, Jammu and Kashmir and Delhi. It is her stringent stand that action is required to be taken against the perpetrators when approached by the family members of the victim.

14. She has canvassed that it is the foremost duty of the Central and the State Governments to ensure that the members of the minorities are not targeted by mob violence and vigilante

groups and if the illegal actions of these lynchers are not totally curbed, there would be absolute chaos where any private individual can take law into his own hands for the enforcement of criminal law in accordance with his own judgment.

15. At the very inception, while delving into the rivalised submissions advanced at the Bar, it is necessary to understand that a controversy of the present nature deserves to be addressed with enormous sensitivity. We had issued certain directions as an interim measure and there has been some compliance but we are of the considered opinion that the situations that have emerged and the problems that have arisen need to be totally curbed. The States have the onerous duty to see that no individual or any core group take law into their own hands. Every citizen has the right to intimate the police about the infraction of law. As stated earlier, an accused booked for an offence is entitled to fair and speedy trial under the constitutional and statutory scheme and, thereafter, he may be convicted or acquitted as per the adjudication by the judiciary on the basis of the evidence brought on record and the application of legal principles. There cannot be an investigation, trial and punishment of any nature on the streets. The process of

adjudication takes place within the hallowed precincts of the courts of justice and not on the streets. No one has the right to become the guardian of law claiming that he has to protect the law by any means. It is the duty of the States, as has been stated in ***Nandini Sundar and others v. State of Chhattisgarh*** [3] , to strive, incessantly and consistently, to promote fraternity amongst all citizens so that the dignity of every citizen is protected, nourished and promoted. That apart, it is the responsibility of the States to prevent untoward incidents and to prevent crime.

16. In ***Mohd. Haroon and others v. Union of India and another***[4], it has been clearly held that it is the responsibility of the State Administration in association with the intelligence agencies of both the State and the Centre to prevent recurrence of communal violence in any part of the State. If any officer responsible for maintaining law and order is found negligent, he/she should be brought within the ambit of law. In this context, reference to the authority in ***Archbishop Raphael Cheenath S.V.D. v. State of Orissa and another***[5] would be useful. In the said case, while dealing with the issue of

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[3] (2011) 7 SCC 547
[4] (2014) 5 SCC 252
[5] (2016) 9 SCC 682

communal violence, the Court observed that the State Government shall do well to enquire into and find the causes for such communal unrest and strengthen the fabric of the society. It further stated that strengthening of police infrastructure in the district would undoubtedly help in curbing any recurrence of such communal violence. Emphasis was also laid on simultaneous peace-building measures.

17. There can be no shadow of doubt that the authorities which are conferred with the responsibility to maintain law and order in the States have the principal obligation to see that vigilantism, be it cow vigilantism or any other vigilantism of any perception, does not take place. When any core group with some kind of idea take the law into their own hands, it ushers in anarchy, chaos, disorder and, eventually, there is an emergence of a violent society. Vigilantism cannot, by any stretch of imagination, be given room to take shape, for it is absolutely a perverse notion. We may note here that certain applications for intervention and written notes have been filed in this regard supporting the same on the basis that there is cattle smuggling and cruel treatment to animals. In this context, suffice it to say that it is the law enforcing agencies which have to survey, prevent and prosecute.

No one has the authority to enter into the said field and harbour the feeling that he is the law and the punisher himself. A country where the rule of law prevails does not allow any such thought. It, in fact, commands for ostracisation of such thoughts with immediacy.

18. Lynching is an affront to the rule of law and to the exalted values of the Constitution itself. We may say without any fear of contradiction that lynching by unruly mobs and barbaric violence arising out of incitement and instigation cannot be allowed to become the order of the day. Such vigilantism, be it for whatever purpose or borne out of whatever cause, has the effect of undermining the legal and formal institutions of the State and altering the constitutional order. These extrajudicial attempts under the guise of protection of the law have to be nipped in the bud; lest it would lead to rise of anarchy and lawlessness which would plague and corrode the nation like an epidemic. The tumultuous dark clouds of vigilantism have the effect of shrouding the glorious ways of democracy and justice leading to tragic breakdown of the law and transgressing all forms of civility and humanity. Unless these incidents are controlled, the day is not far when such monstrosity in the name

of self-professed morality is likely to assume the shape of a huge cataclysm. It is in direct violation of the quintessential spirit of the rule of law and of the exalted faiths of tolerance and humanity.

19. Mob vigilantism and mob violence have to be prevented by the governments by taking strict action and by the vigil society who ought to report such incidents to the state machinery and the police instead of taking the law into their own hands. Rising intolerance and growing polarisation expressed through spate of incidents of mob violence cannot be permitted to become the normal way of life or the normal state of law and order in the country. Good governance and nation building require sustenance of law and order which is intricately linked to the preservation of the marrows of our social structure. In such a situation, the State has a sacrosanct duty to protect its citizens from unruly elements and perpetrators of orchestrated lynching and vigilantism with utmost sincerity and true commitment to address and curb such incidents which must reflect in its actions and schemes.

20. Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results

in a reign of terror. Extra judicial elements and non-State actors cannot be allowed to take the place of law or the law enforcing agency. A fabricated identity with bigoted approach sans acceptance of plurality and diversity results in provocative sentiments and display of reactionary retributive attitude transforming itself into dehumanisation of human beings. Such an atmosphere is one in which rational debate, logical discussion and sound administration of law eludes thereby manifesting clear danger to various freedoms including freedom of speech and expression. One man's freedom of thought, action, speech, expression, belief, conscience and personal choices is not being tolerated by the other and this is due to lack of objective rationalisation of acts and situations. In this regard, it has been aptly said:-

> "Freedom of speech is a principal pillar of a free government; When this support is taken away, the constitution of a free society is dissolved and tyranny is erected on its ruins."[6]

21. Freedom of speech and expression in different forms is the élan vital of sustenance of all other rights and is the very seed for germinating the growth of democratic views. Plurality of voices celebrates the constitutionalist idea of a liberal democracy and

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[6] Benjamin Franklin, On Freedom of Speech and the Press, from the Pennsylvania Gazette, November, 1737

ought not to be suppressed. That is the idea and essence of our nation which cannot be, to borrow a line from Rabindranath Tagore, "broken up into fragments by narrow domestic walls" of caste, creed, race, class or religion. Pluralism and tolerance are essential virtues and constitute the building blocks of a truly free and democratic society. It must be emphatically stated that a dynamic contemporary constitutional democracy imbibes the essential feature of accommodating pluralism in thought and approach so as to preserve cohesiveness and unity. Intolerance arising out of a dogmatic mindset sows the seeds of upheaval and has a chilling effect on freedom of thought and expression. Hence, tolerance has to be fostered and practised and not allowed to be diluted in any manner.

22. In ***S. Rangarajan v. P. Jagjivan Ram and others***[7], K. Jagannatha Shetty, J., although in a different context, referred to the decision of the European Court of Human Rights in ***Handyside v. United Kingdom***[8] wherein it has been held thus in the context of Article 10 of the European Convention on Human Rights (ECHR):-

> "The court's supervisory functions oblige it to pay the utmost attention to the principles

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7 (1989) 2 SCC 574

8 1976 EHRR 737, at p. 754

> characterizing a 'democratic society'. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'."

23. In a rights based approach to constitutional legitimacy, the right to life and liberty is considered paramount and, therefore, democratic governments must propel and drive towards stronger foothold for liberties so as to ensure sustenance of higher values of democracy thereby paving the path for a spontaneous constitutional order. Crime knows no religion and neither the perpetrator nor the victim can be viewed through the lens of race, caste, class or religion. The State has a positive obligation to protect the fundamental rights and freedoms of all individuals irrespective of race, caste, class or religion. The State has the primary responsibility to foster a secular, pluralistic and multi-culturalistic social order so as to allow free play of ideas and beliefs and co-existence of mutually contradictory perspectives. Stifling free voices can never bode well for a true democracy. It is

essential to build societies which embrace diversity in all spheres and rebuild trust of the citizenry in the State machinery.

24. Lynching and mob violence are creeping threats that may gradually take the shape of a Typhon-like monster as evidenced in the wake of the rising wave of incidents of recurring patterns by frenzied mobs across the country instigated by intolerance and misinformed by circulation of fake news and false stories. There has been an unfortunate litany of spiralling mob violence and agonized horror presenting a grim and gruesome picture that compels us to reflect whether the populace of a great Republic like ours has lost the values of tolerance to sustain a diverse culture. Besides, bystander apathy, numbness of the mute spectators of the scene of the crime, inertia of the law enforcing machinery to prevent such crimes and nip them in the bud and grandstanding of the incident by the perpetrators of the crimes including in the social media aggravates the entire problem. One must constantly remind oneself that an attitude of morbid intolerance is absolutely intolerable and agonizingly painful.

25. Lynching, at one point of time, was so rampant in the United States that Mark Twain had observed in his inimitable

style that it had become "the United States of Lyncherdom". The sarcasm is apparent.

26. In the obtaining situation, the need to preserve and maintain unity amongst the fellow citizens of our country, who represent different castes, creed and races, follow different religions and use multiple languages, ought to be discussed and accentuated. It is requisite to state that our country must sustain, exalt and celebrate the feeling of solidarity and harmony so that the spirit of oneness is entrenched in the collective character. Sans such harmony and understanding, we may unwittingly pave the path of disaster.

27. In ***St. Stephen's College v. University of Delhi***[9], while emphasizing on the significance of 'Unity in Diversity', the Court has observed that the aim of our Constitution is unity in diversity and to impede any fissiparous tendencies for enriching the unity amongst Indians by assimilating the diversities. The meaning of diversity in its connotative expanse of the term would include geographical, religious, linguistic, racial and cultural differences. It is absolutely necessary to underscore that India represents a social, religious and cultural diversity.

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9 (1992) 1 SCC 558

28. 'Unity' in the context of a nation means unity amongst the fellow citizens. It implies integration of the citizens whereby the citizens embrace a feeling of 'We' with a sense of bonding with fellow citizens which would definitely go a long way in holding the Indian society together. Emile Durkheim, French sociologist, has said that when unity is based on heterogeneity and diversity, it can very well be described as organic solidarity. Durkheim's view would be acceptable in the context of the Indian society as it exhibits a completely organic social solidarity.

29. The Court in ***Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and others v. State of U.P. and others***[10]. has highlighted that religious tolerance is an important facet of 'Unity in Diversity' and observed thus:-

> "Unity in diversity is the Indian culture and ethos. The tolerance of all religious faiths, respect for each other's religion are our ethos. These pave the way and foundation for integration and national unity and foster respect for each others religion; religious faith and belief. Integration of Bharat is, thus, its arch."
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> [Emphasis supplied]

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10 (1997) 4 SCC 606

30. In ***State of Karnataka and another v. Dr. Praveen Bhai Thogadia***[11], stress has been laid on 'Unity in Diversity' treating it as the ideal way of life considering that our nation is a unification of people coming from diverse cultures, religions and races. The Court further went on to say that our nation has the world's most heterogeneous society having a rich heritage where the Constitution is committed to the high ideas of socialism, secularism and the integrity of the nation and problems, if any, that arise on the path of the nation's progress are mostly solved on the basis of human approaches and harmonious reconciliation of differences. The following observations made by the Court in the aforesaid case with regard to the need to preserve the unified social fabric are also important:-

> "It is, therefore, imperative that if any individual or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seed of mutual hatred, and their proposed activities are likely to create disharmony and disturb equilibrium, sacrificing public peace and tranquility, strong action, and more so preventive actions are essentially and vitally needed to be taken. Any speech or action which would result in ostracization of communal harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws, and State action

11 (2004) 4 SCC 684

> and above all the Constitution. They have one common object, that is to promote well being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well being without communal harmony, love for each other and hatred for none."
>
> [Emphasis added]

31. Unity in Diversity must be recognized as the most potent weapon in India's armoury which binds different and varied kinds of people in the solemn thread of humanity. This diversity is the strength of our nation and for realizing this strength, it is *sine qua non* that we sustain it and shun schismatic tendencies. It has to be remembered that the unique feature of 'Unity in Diversity' inculcates in the citizens the virtue of respecting the opinions and choices of others. Such respect imbibes the feeling of acceptance of plurality and elevates the idea of tolerance by promoting social cohesion and infusing a sense of fraternity and comity.

32. In this context, the observations in ***State of Uttar Pradesh v. Lalai Singh Yadav***[12] are apt:-

> "The State, in India, is secular and does not take sides with one religion or other prevalent in our pluralistic society. It has no direct

[12] (1976) 4 SCC 213

> concern with the faiths of the people but is deeply obligated not merely to preserve and protect society against breaches of the peace and violations of public order but also to create conditions where the sentiments and feelings of people of diverse or opposing beliefs and bigotries are not so molested by ribald writings or offence publications as to provoke or outrage groups into possible violent action. Essentially, good government necessitates peace and security.."

Thus, for our nation to survive, without being whittled down, it is a necessary precondition that all must embrace the sentiment that they are the essential constituents of diversity that galvanizes for preservation of unity and respects pluralistic perceptions in cohesion with the constitutional ethos.

33. Having stated about the need of tolerance in a pluralistic society, we may refer with profit that the Court in ***D.K. Basu v. State of West Bengal***[13], after referring to the authorities in ***Joginder Kumar v. State of U.P. and others***[14], ***Nilabati Behera v. State of Orissa and others***[15] and ***State of M.P. v. Shyamsunder Trivedi and others***[16], laid down certain guidelines to be followed in cases of arrest and detention. In

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13 (1997) 1 SCC 416
14 (1994) 4 SCC 260
15 (1993) 2 SCC 746
16 (1995) 4 SCC 262

Arnesh Kumar v. State of Bihar and another[17], this Court referred to Section 41-A of the Code of Criminal Procedure and ruled thus:-

> "*7.3.* In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (*a*) to (*e*) of clause (1) of Section 41 CrPC."

34. The purpose of referring to the said authorities is that the law provides a procedure for arrest and equally for investigation and the consequential trial. That is what has been interpreted by this Court while dealing with Article 21 of the Constitution. Thus, the rights of the citizens cannot be destroyed in an unlawful manner. As the investigating agency has to show fidelity to the statutory safeguards, similarly, every citizen is required to express loyalty to law and the legal procedure. No one, and we repeat no one, is entitled to take the law into his own

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17 (2014) 8 SCC 273

hands and annihilate anything that the majesty of law protects. When the vigilantes involve themselves in lynching or any kind of brutality, they, in fact, put the requisite accountability of a citizen to law on the ventilator. That cannot be countenanced. Such core groups cannot be allowed to act as they please. They cannot be permitted to indulge in freezing the peace of life on the basis of their contrived notions. They are no one to punish a person by ascribing any justification. The stand and stance put forth in the interlocutory applications filed by the impleaded parties intend to convey certain contraventions of the provisions of statutory law but the prescription of punishment does not empower any one to authorize himself to behave as the protector of law and impose punishment as per his choice and fancy. That is the role and duty of the law enforcing agencies known to law. No one else can be permitted to expropriate that role. It has to be clearly understood that self-styled vigilantes have no role in that sphere. Their only right is to inform the crime, if any, to the law enforcing agency. It is the duty of the law enforcement agencies and the prosecutors to bring the accused persons before the law adjudicating authorities who, with their innate training and sense of justice, peruse the materials brought on record, follow

the provisions of law and pass the judgment. In the scheme of things, the external forces cannot assume the role of protectors and once they pave the said path, they associate themselves with criminality and bring themselves in the category of criminals. It is imperative for them to remember that they are subservient to the law and cannot be guided by notions or emotions or sentiments or, for that matter, faith.

35. In this context, we may reproduce a passage from ***Shakti Vahini*** (supra) which, though pronounced in a different context, has certain significance:-

> "The 'Khap Panchayats' or such assembly should not take the law into their hands and further cannot assume the character of the law implementing agency, for that authority has not been conferred upon them under any law. Law has to be allowed to sustain by the law enforcement agencies. For example, when a crime under Indian Penal Code is committed, an assembly of people cannot impose the punishment. They have no authority. They are entitled to lodge an FIR or inform the police. They may also facilitate so that the Accused is dealt with in accordance with law. But, by putting forth a stand that they are spreading awareness, they really can neither affect others' fundamental rights nor cover up their own illegal acts. It is simply not permissible. In fact, it has to be condemned as an act abhorrent to law and, therefore, it has to stop. Their activities are to be stopped in entirety. There is no other alternative. What is illegal cannot commend recognition or acceptance."

36. We may now refer to some of the authorities of the American Courts which have dealt with the menace of lynching which, at one point of time, was very rampant in the American society. The American Courts deplored this menace and dealt it with iron hands so as to eradicate the same. ***Ex parte Riggins***[18] was a case involving the lynching of a Negro citizen who had been imprisoned on the charge of murder. While he was imprisoned in jail, the mob removed him and lynched him by hanging. Thereafter, certain mobsters involved in the said hanging were indicted. A petition of habeas corpus was filed seeking the release of the said mobsters on the ground that there was no law in the United States which legalized the indictment of the said mobsters. While disposing of the said habeas corpus petition and upholding the indictment, Thomas Goode Jones, J. made the following relevant observations:-

> "When a private individual takes a person charged with crime from the custody of the state authorities to prevent the state from affording him due process of law, and puts him to death to punish the crime and to prevent the enjoyment of such right, it is violent usurpation and exercise, in the particular case, of the very function which the Constitution of the United States itself, under this clause [the 14th Amendment] directs the

[18] (C.C.N.D. Ala., 1904) 134 Fed. 404

> state to perform in the interest of the citizen. Such lawlessness differs from ordinary kidnapping and murder, in that dominant intent and actual result is usurpation and exercise by private individuals of the sovereign functions of administering justice and punishing crime, in order to defeat the performance of duties required of the state by the supreme law of the land. The inevitable effect of such lawlessness is not merely to prevent the state from performing its duty, but to deprive the accused of all enjoyment, or opportunity of enjoyment of rights which this clause of the Constitution intended to work out for him by the actual performance by the state of all things included in affording due process of law, which enjoyment can be worked out in no other way in his individual case. Such lawlessness defeats the performance of the state's duty, and the opportunity of the citizen to have the benefit of it, quite as effectually and far more frequently than vicious laws, or the partiality or the inefficiency of state officers in the discharge of their constitutional duty. It is a great, notorious, and growing evil, which directly attacks the purpose which the Constitution of the United States had in view when it enjoined the duty upon the state."

37. In ***Wilson v. Garcia***[19], the Supreme Court of the United States referred to the debates of the Parliament while enacting the Civil Rights Act of 1871 which are relevant in the present context and read as follows:-

> "While murder is stalking abroad in disguise, while whippings and lynchings and banishing have been visited upon unoffending American

[19] 471 U.S. 261 (1985)

> citizens, the local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of public tribunals are searched in vain for any evidence of effective redress.[3]"

38. Thus, the decisions of this Court as well as the authorities from other jurisdictions clearly show that every citizen has to abide by the law and the law never confers the power on a citizen to become the law unto himself or take law into his hands. The idea is absolutely despicable, the thought is utterly detestable and the action is obnoxious and completely hellish. It is nauseatingly perverse. In the aforesaid hearing, Mr. Hegde, as stated earlier, gave the preventive, remedial and punitive measures to be laid down as guidelines by this Court. Ms. Indira Jaising, learned senior counsel, has placed reliance on ***Pravasi Bhalai Sangathan v. Union of India and others***[20] to submit that these guidelines do come under Sections 153 and 295A IPC and this Court has elaborately dealt with the same.

39. There is no dispute that the act of lynching is unlawful but we are not concerned with any specific case since it has become a

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[20] (2014) 11 SCC 477

sweeping phenomenon with a far-reaching impact. It is our constitutional duty to take a call to protect lives and human rights. There cannot be a right higher than the right to live with dignity and further to be treated with humanness that the law provides. What the law provides may be taken away by lawful means; that is the fundamental concept of law. No one is entitled to shake the said foundation. No citizen can assault the human dignity of another, for such an action would comatose the majesty of law. In a civilized society, it is the fear of law that prevents crimes. Commencing from the legal space of democratic Athens till the legal system of modern societies today, the law makers try to prevent crimes and make the people aware of the same but some persons who develop masterly skill to transgress the law jostle in the streets that eventually leads to an atmosphere which witnesses bloodshed and tears. When the preventive measures face failure, the crime takes place and then there have to be remedial and punitive measures. Steps to be taken at every stage for implementation of law are extremely important. Hence, the guidelines are necessary to be prescribed.

40. In view of the aforesaid, we proceed to issue the following guidelines:-

A. <u>Preventive Measures</u>

(i) The State Governments shall designate, a senior police officer, not below the rank of Superintendent of Police, as Nodal Officer in each district. Such Nodal Officer shall be assisted by one of the DSP rank officers in the district for taking measures to prevent incidents of mob violence and lynching. They shall constitute a special task force so as to procure intelligence reports about the people who are likely to commit such crimes or who are involved in spreading hate speeches, provocative statements and fake news.

(ii) The State Governments shall forthwith identify Districts, Sub-Divisions and/or Villages where instances of lynching and mob violence have been reported in the recent past, say, in the last five years. The process of identification should be done within a period of three weeks from the date of this judgment, as such time period is sufficient to get the task done in today's fast world of data collection.

(iii) The Secretary, Home Department of the concerned States shall issue directives/advisories to the Nodal Officers of the concerned districts for ensuring that the Officer In-charge of the Police Stations of the identified areas are extra cautious if any

instance of mob violence within their jurisdiction comes to their notice.

(iv) The Nodal Officer, so designated, shall hold regular meetings (at least once a month) with the local intelligence units in the district along with all Station House Officers of the district so as to identify the existence of the tendencies of vigilantism, mob violence or lynching in the district and take steps to prohibit instances of dissemination of offensive material through different social media platforms or any other means for inciting such tendencies. The Nodal Officer shall also make efforts to eradicate hostile environment against any community or caste which is targeted in such incidents.

(v) The Director General of Police/the Secretary, Home Department of the concerned States shall take regular review meetings (at least once a quarter) with all the Nodal Officers and State Police Intelligence heads. The Nodal Officers shall bring to the notice of the DGP any inter-district co-ordination issues for devising a strategy to tackle lynching and mob violence related issues at the State level.

(vi) It shall be the duty of every police officer to cause a mob to disperse, by exercising his power under Section 129 of CrPC,

which, in his opinion, has a tendency to cause violence or wreak the havoc of lynching in the disguise of vigilantism or otherwise.

(vii) The Home Department of the Government of India must take initiative and work in co-ordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of mob violence and lynching against any caste or community and to implement the constitutional goal of social justice and the Rule of Law.

(viii) The Director General of Police shall issue a circular to the Superintendents of Police with regard to police patrolling in the sensitive areas keeping in view the incidents of the past and the intelligence obtained by the office of the Director General. It singularly means that there should be seriousness in patrolling so that the anti-social elements involved in such crimes are discouraged and remain within the boundaries of law thus fearing to even think of taking the law into their own hands.

(ix) The Central and the State Governments should broadcast on radio and television and other media platforms including the official websites of the Home Department and Police of the States

that lynching and mob violence of any kind shall invite serious consequence under the law.

(x) It shall be the duty of the Central Government as well as the State Governments to take steps to curb and stop dissemination of irresponsible and explosive messages, videos and other material on various social media platforms which have a tendency to incite mob violence and lynching of any kind.

(xi) The police shall cause to register FIR under Section 153A of IPC and/or other relevant provisions of law against persons who disseminate irresponsible and explosive messages and videos having content which is likely to incite mob violence and lynching of any kind.

(xii) The Central Government shall also issue appropriate directions/advisories to the State Governments which would reflect the gravity and seriousness of the situation and the measures to be taken.

B. <u>Remedial Measures</u>

(i) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that an incident of lynching or mob violence has taken place, the jurisdictional police station shall immediately cause to lodge an FIR, without

any undue delay, under the relevant provisions of IPC and/or other provisions of law.

(ii) It shall be the duty of the Station House Officer, in whose police station such FIR is registered, to forthwith intimate the Nodal Officer in the district who shall, in turn, ensure that there is no further harassment of the family members of the victim(s).

(iii) Investigation in such offences shall be personally monitored by the Nodal Officer who shall be duty bound to ensure that the investigation is carried out effectively and the charge-sheet in such cases is filed within the statutory period from the date of registration of the FIR or arrest of the accused, as the case may be.

(iv) The State Governments shall prepare a lynching/mob violence victim compensation scheme in the light of the provisions of Section 357A of CrPC within one month from the date of this judgment. In the said scheme for computation of compensation, the State Governments shall give due regard to the nature of bodily injury, psychological injury and loss of earnings including loss of opportunities of employment and education and expenses incurred on account of legal and medical expenses. The said compensation scheme must also have a

provision for interim relief to be paid to the victim(s) or to the next of kin of the deceased within a period of thirty days of the incident of mob violence/lynching.

(v) The cases of lynching and mob violence shall be specifically tried by designated court/Fast Track Courts earmarked for that purpose in each district. Such courts shall hold trial of the case on a day to day basis. The trial shall preferably be concluded within six months from the date of taking cognizance. We may hasten to add that this direction shall apply to even pending cases. The District Judge shall assign those cases as far as possible to one jurisdictional court so as to ensure expeditious disposal thereof. It shall be the duty of the State Governments and the Nodal Officers in particular to see that the prosecuting agency strictly carries out its role in appropriate furtherance of the trial.

(vi) To set a stern example in cases of mob violence and lynching, upon conviction of the accused person(s), the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC.

(vii) The courts trying the cases of mob violence and lynching may, on application by a witness or by the public prosecutor in

relation to such witness or on its own motion, take such measures, as it deems fit, for protection and for concealing the identity and address of the witness.

(viii) The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall be given timely notice of any court proceedings and he/she shall be entitled to be heard at the trial in respect of applications such as bail, discharge, release and parole filed by the accused persons. They shall also have the right to file written submissions on conviction, acquittal or sentencing.

(ix) The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987.

C. <u>Punitive Measures</u>

(i) Wherever it is found that a police officer or an officer of the district administration has failed to comply with the aforesaid directions in order to prevent and/or investigate and/or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence

and/or misconduct for which appropriate action must be taken against him/her and not limited to departmental action under the service rules. The departmental action shall be taken to its logical conclusion preferably within six months by the authority of the first instance.

(ii) In terms of the ruling of this Court in ***Arumugam Servai v. State of Tamil Nadu*** [21] , the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident has already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

41. The measures that are directed to be taken have to be carried out within four weeks by the Central and the State Governments. Reports of compliance be filed within the said period before the Registry of this Court.

42. We may emphatically note that it is axiomatic that it is the duty of the State to ensure that the machinery of law and order functions efficiently and effectively in maintaining peace so as to preserve our quintessentially secular ethos and pluralistic social fabric in a democratic set-up governed by rule of law. In times of

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21 (2011) 6 SCC 405

chaos and anarchy, the State has to act positively and responsibly to safeguard and secure the constitutional promises to its citizens. The horrendous acts of mobocracy cannot be permitted to inundate the law of the land. Earnest action and concrete steps have to be taken to protect the citizens from the recurrent pattern of violence which cannot be allowed to become "the new normal". The State cannot turn a deaf ear to the growing rumblings of its People, since its concern, to quote Woodrow Wilson, "must ring with the voices of the people." The exigencies of the situation require us to sound a clarion call for earnest action to strengthen our inclusive and all-embracing social order which would, in turn, reaffirm the constitutional faith. We expect nothing more and nothing less.

43. Apart from the directions we have given hereinbefore and what we have expressed, we think it appropriate to recommend to the legislature, that is, the Parliament, to create a separate offence for lynching and provide adequate punishment for the same. We have said so as a special law in this field would instill a sense of fear for law amongst the people who involve themselves in such kinds of activities. There can be no trace of doubt that

fear of law and veneration for the command of law constitute the foundation of a civilized society.

44. Let the matters be listed on 20th August, 2018 for further directions.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
July 17, 2018