

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. 732 OF 2017**

**IN THE MATTER OF:**

Tushar Gandhi

**... Petitioner**

**VERSUS**

Union of India & Ors.

**... Respondents**

**WRITTEN SUBMISSION ON BEHALF OF THE PETITIONER**

**BY MS. INDIRA JAISING, SENIOR ADVOCATE**

**ADVOCATE FOR THE PETITIONER: SHADAN FARASAT**

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*“The law may not be able to make a man love me, but it can keep him from lynching me” – Martin Luther King, Jr.*

**Introduction: Nature and extent of targeted lynchings.**

1. Lynching is defined as a group of people killing a person for an alleged offence without a legal trial.
2. Over the last 3-4 years, India has witnessed a number of cases where citizens belonging to the minority community (Muslims/Dalits) have been victims of targeted violence. This targeted violence has occurred mainly on the false suspicion of carrying cattle for slaughter or on the pretext that they were consuming beef. The present petition filed in public interest to prevent and end targeted violence/lynchings of Muslims/Dalits in the entire country. The Petitioner has filed Interim Written Submissions before this Hon'ble Court and the same is

annexed. A true copy of the Interim Written Submission of the Petitioner filed before this Hon'ble Court in Writ Petition Civil No. 732 of 2017 is annexed herewith as **Annexure A-1** at pages **19** to **31**.

3. Between 2014 and August 2017, more than 70 cases of targeted lynchings were reported in reliable newspapers and have been put on record by the Petitioner in the Writ Petition as Annexure P-2 at pages 47 to 61 and annexed herewith again for the easy reference of this Hon'ble Court. A detailed list providing the facts and circumstances of these lynching attacks as well as the name of victims is annexed herewith and marked as **Annexure A-2** at pages **32** to **46**. In addition to the table already put on record by the Petitioner, data published by a reliable news portal namely IndiaSpend on 08.12.2017. A true copy of the data published by a reliable news portal namely IndiaSpend on 08.12.2017 is annexed as **Annexure A-3** at pages **47** to **57**.

4. Targeted violence is defined as violence with the motive of targeting a particular category of people based on race, sex, religion or caste. It is submitted that Article 15 forbids discrimination bases on sex, caste, religion, and race. The said categories are considered vulnerable communities and it is summited that in all societies minorities are in danger of being dominated by majorities

and this is the very reason why all constitution's guarantee the rights of minorities. The Indian Constitution also protects all the said categories and in fact provided affirmative action for them recognizing to serve their unequal position. The right to freedom of religion and the right to preserve ones own culture are provided by Article 25 and Article 29 of the Constitution of India. It is submitted that the failure to protect the minorities violated their fundamental rights. It is further submitted that the States and Central governments have a duty to protect and of due diligence to the people of the country and hence must be held in breach of this duty.

5. Articles 14 and 21 of the Constitution of India make the right to life and equality salient. However, in the recent past, self-proclaimed cow protectors have taken law unto themselves and have targeted the citizens of the minority community on the false pretext of possessing cows for slaughter/eating beef/dressing in a particular manner. The exponential increase in targeted violence and mob violence over the last 3-4 years points to the failure of the State Governments and also of the Union Government to prevent the said violence leading to the inference that there is dereliction of duty on their part. Even after orders by this court to appoint nodal officers, Hapur on the outskirts of Delhi witnessed a cow vigilante murder of

Qasim for which contempt petitions are pending. The Respondents have displayed an inability to implement orders of the court for reasons best known to them.

6. There is no doubt that these lynchings are targeted as is evidenced by the data provide in reliable reports as well as research based articles, several of which have been appended to the Writ Petition. More specifically, Muslims were the target of 51% of violence centred on cow vigilantism over nearly eight years (2010 to 2017) and comprised 86% of 28 Indians killed in 63 incidents. 97% of the attacks targeted on Muslims/Dalits centering on cow vigilantism were reported in the last 3-4 years. These attacks include mob violence, attacks by vigilantes, murder and attempt to murder, harassment, assault and even rape. A true copy of the news report dated 28.06.2017 published by IndiaSpend is annexed as **Annexure A-4** at pages **58** to **63**.

**Parallels between lynching in India and the United States of America.**

7. Between the American Civil War and the World War II, the US witnessed an era of racial subordination and segregation where thousands of African Americans were lynched on the basis of their race and color. Lynching in the US was a tool to reinforce the Jim Crow laws that enforced the principles of racial subordination and

segregation by restricting civil liberties and civil rights of the African Americans which paved way for white supremacy or, in simple terms, imposed a post-slavery system of racial dominance. The lynchings in the United States can be categorized as having one or more of the following features:

- a)** Lynchings that resulted from a wildly distorted fear of inter-racial sex
- b)** Lynchings in response to casual social transgressions
- c)** Lynchings based on allegations of serious violence crime
- d)** Public spectacle lynchings
- e)** Lynchings that escalated into large-scale violence targeting the entire African American community
- f)** Lynchings of sharecroppers, ministers, and community leaders who resisted mistreatment.

**8.** Similarly in India, the suspicious circumstances of murders/killings of the numerous citizens in Indian belonging to the minority community (Muslims/Dalits) involve one or more of the following features:

- a)** False pretext of carrying/possessing cow for slaughter/ eating beef
- b)** On the basis of the apparel, which may include either a kurta or a prayer cap '*taqiyah*'



c) On the basis of their appearance, including keeping a beard.

9. For instance, an incident took place on 18<sup>th</sup> June, 2018 in Pilakhuwa, Hapur district in Uttar Pradesh where one man was beaten to death and another was severely injured by a mob for allegedly attempting to engage in cow slaughter and cattle smuggling. The families of the victims have stated that Qasim, the deceased, was a cattle trader who had left his house upon receiving a call from an alleged cattle seller. Sameyddin, the injured victim, had left his house to collect grass for his cattle. They were targeted and attacked on the false pretext that they were involved in cow slaughter. The incident took place in a field between two villages. A video recording from the incident clearly shows Qasim lying on the ground with visible injuries and torn clothes, pleading for water, while surrounded by a group of cow vigilantes. The surrounding crowd's voices can be heard threatening Qasim and saying that he has been beaten by them because he was going to slaughter cows and he would have done so if they had not arrived in time. The victim was declared dead upon being taken to a hospital. A second video shows the injured victim already having sustained injuries being beaten repeatedly by men while insisting that he was not involved in the slaughter of

cows. In both videos, verbal expletives directed at the men can be heard. The Petitioner has filed additional documents on 28<sup>th</sup> June, 2018 to bring this incident to the notice of this Hon'ble Court.

- 10.** In December 2017, a similar and outrageous incident took place wherein a 47 years old Muslim man, namely Mohammad Afrazul, was killed brutally by a man claiming to be the protector of 'Hindu' religion in Rajsamand in Rajanagar District of Rajasthan. The perpetrator in the video was seen to be attacking the victim from behind with what seemed to be a pickax and was striking him over and over again as the victim was pleading for mercy. The victim was then burnt after he was beaten to death and the entire incident was shot by the perpetrator's teenage friend and was uploaded on social media. It is evident from the video that the lynching of the man Afrazul was to send a message to the entire community of Muslims by the perpetrator. Thereafter, the incident was followed by a protest against the arrest of the perpetrator/accused. This incident is shows that India today is entering an era similar to the period between 1880s and 1960s in the United States where lynchings of persons belonging to the minority community was normalized by a large section of the society. Hence, immediate action is required to be taken jointly by the

judiciary, executive and the legislature to prevent this targeted violence against the Muslims/Dalits. The Petitioner had filed additional affidavit on 4<sup>th</sup> January 2018 bringing this incident to the notice of this Hon'ble Court.

- 11.** The above stated two incidents are gruesome and prove that lynching of Muslim in India have become a badge of honour for the perpetrators.

To add insult to injury, the victim is shown as the perpetrator in the FIR leading to endless litigation for quashing the FIR and recording a correct one.

- 12.** Similarly, in the United States, between the 1880s and the 1960s, the lynchings of African Americans was legitimized by the society. Burnt, mutilated, injured bodies of lynched African Americans were photographed and converted into postcards which were sent to family and friends along with cheerful messages. Some of these postcards also contained the confident poses struck by the lynchers as a mark of victory and of the bystanders. The fact that these lynchers and bystanders took pride after lynching an African American only showed that lynchings were perceived to a legitimate action and not a crime as the perpetrators did not feel the need to hide their identities. (Submissions of this paragraph are heavily drawn from: *Equal Justice Initiative*, 'Lynching in

America: Confronting the Legacy of Racial Terror, Second Edition, 2015).

**13.** The substantial increase in the number of lynchings in India over the last 3-4 years has in no small measure been encouraged by politicians belonging to the majority BJP is alarming and requires immediate intervention of this Hon'ble Court. Several statements by senior BJP leaders as well as police officials have been attached to the Writ Petition and the other additional documents filed with it. In Jharkhand, on 6<sup>th</sup> July 2018, 8 convicts of the of the Ramgarh lynching case were greeted by Union Minister, Jayant Sinha, and were facilitated with garlands after they were granted bail by the Hon'ble High Court. A true copy of the news report dated 06.07.2018 published by India Today is annexed as **Annexure A-5** at pages **64** to **66**.

**14.** The common definition of 'lynching' developed by the NAACP (National Association for the Advancement of Colored People), which is used is that:

- 1) there must be evidence that a person was killed;*
- 2) the person must have met death illegally;*
- 3) a group of three or more persons must have participated in the killings; and*

- 4) *the group must have acted under the pretext of protecting justice or tradition.*”

An article published by the Al Jazeera titled ‘A history of American lynchings’ dated 09.05.2017 is annexed as **Annexure A-6** at pages **67** to **83**.

15. In the United States, three Civil Rights Statutes were enacted to provide the African Americans with rights and to safeguard their interests. At first, the Civil Rights Act, 1866 was enacted which outlawed the Black Codes and provided that all persons were to enjoy the same rights as white persons to the full and equal benefit of all laws and proceedings for the security of persons and property. Thereafter, the Civil Rights Act, 1871 proscribed the activities of the Ku Klux Klan, which through violence and intimidation had been terrorizing blacks and their white supporters in the South during the period of Reconstruction. Section 3 of the Civil Rights Act, 1871 states:

*“That in all cases where insurrection, domestic violence, unlawful combinations, or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and*

*secured by this act, and the constituted authorities of such State shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, .... it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia or the land and naval forces of the United States....”*

- 16.** However, the Supreme Court of the United States, in a series of decisions, beginning with the *Slaughter-House Cases (1873)* and eventually culminating with the *Civil Rights Cases (1883)* limited the scope of rights guaranteed by the Civil Rights Statutes.
- 17.** The Congress never passed any federal anti-lynching bill and instead surrendered to the argument that such legislation constituted racial favoritism and violated states' rights. The Southern states, however, passed their own anti-lynching laws to show that a federal legislation is not necessary, but never enforced these laws. In the 1900s, only 1% of the lynchers were convicted of murder of an African American person.

18. At first, it was the formation of the NAACP and campaigning lynchings as ‘American’s shame’ and for a federal anti-lynching legislation that helped turn the tide of public opinion. The continuous efforts of the African Americans to combat racial violence between 1900s and 1940s forced the ‘forward-looking whites’, in the mid 1930s, to adopt a position that lynching was barbaric and disgraceful, even as they continued to defend white supremacy. Even after the end of the era of racial violence against the African Americans, they continued to face violent intimidation when they transgressed social boundaries or asserted their civil rights, and the criminal justice system continued to target people of color and victimize them. In addition to this, lynchings and other forms of racial/targeted violence inflicted deep traumatic and psychological wounds on survivors, witnesses, family members, and the entire African American community. The whites who participated in or witnessed gruesome lynchings and socialized their children in this culture of violence were also psychologically damaged. (Submissions of this paragraph are heavily drawn from: *Barbara Holden-Smith*, ‘Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era’, Issue 1 Volume 8, *Yale Journal of Law & Feminism*, 1995).

**19.** From 1882-1968, 4,743 lynchings occurred in the United States. Of these people that were lynched 3,446 were black. The blacks lynched accounted for 72.7% of the people lynched. These numbers seem large, but it is known that not all of the lynchings were ever recorded. Out of the 4,743 people lynched only 1,297 white people were lynched. That is only 27.3%. Many of the whites lynched were lynched for helping the black or being anti lynching and even for domestic crimes. (Submissions of this paragraph are heavily drawn from Article attached as Annexure A-7) A true copy of the report of NAACP on the statistics of lynching in America is annexed as **Annexure A-7** at pages **84** to **87**.

#### **Cases of Lynchings in the US**

**20.** In the Michael Donald Lynching Case, a nineteen-year-old Michael Donald was on his way to the store in 1981 when two members of the United Klans of America abducted him, beat him, cut his throat and hung his body from a tree on a residential street in Mobile, Ala. The two Klansmen who carried out the ritualistic killing were eventually arrested and convicted. Convinced that the Klan itself should be held responsible for the lynching, Center attorneys filed a civil suit on behalf of Donald's mother, Beulah Mae Donald vs. United Klans. In 1987, the Center won an historic \$7 million verdict against the



men involved in the lynching. The verdict marked the end of the United Klans, the same group that had beaten the Freedom Riders in 1961, murdered civil rights worker Viola Liuzzo in 1965, and bombed Birmingham's 16th Street Baptist Church in 1963. (Submissions of this paragraph are heavily drawn from Article attached as Annexure A-8) A true copy of the article on the Michael Donald Lynching Case published in 1987 by the New York Times Magazine is annexed as **Annexure A-8** at pages **88** to **89**.

### **Lynchings in India**

**21.** It should be noted that at least 100 incidents of lynchings, mostly enabled by vigilante groups have been reported across the states of Maharashtra, Gujarat, Uttar Pradesh, Rajasthan, Jharkhand, Haryana, Karnataka, Madhya Pradesh, Jammu & Kashmir, Delhi etc. It must be reiterated that the table attached here is not exhaustive, and the Petitioner has reason to believe that more incidents have actually occurred that have been reported in vernacular media. Therefore, these are not isolated incidents but have become quite frequent over the past two years. These are mostly targeted against Muslims and Dalits.

**22.** These frequent episodes of lynching demonstrate that the state has not only completely failed to protect its citizens

but also refused to take action against the perpetrators of these crimes. In some cases, it has been reported that the police refuse to register FIRs when members of the victim's family approach them. It was only subsequent to pressure from media and other civil society groups that an FIR is even registered in these cases. This abdication of their duty to protect by the Government, local administration and police officials has only emboldened these vigilante groups, who are instigating these lynchings further.

- 23.** By failing to prevent the vigilante groups from lynching/extra judicially killing citizens of this country, the Government has violated the fundamental guarantees provided in the ... of India, including Right to Life (Article 21) and Right to Equality (Article 14).

The police who are responsible for law and order and the prevention of crime behave like bystanders turning a blind eye. This spells the death of the rule of law and indicates the total politicization of the police in the country. It is submitted that the Commissioners of Police and the Minister in charge of Home Affairs must be held responsible for dereliction of duty.

### **Responsibility to protect**

- 24.** The responsibility to protect also emanates from International Law obligations of India including under the

ICCPR (International Covenant on Civil and Political Rights). The ICCPR specifically provides for the protection of minorities under Article 27:

*“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”*

**25.** The International Criminal Law and Human Rights jurisprudence that has evolved subsequent to the Nuremburg Trials has also consistently emphasized upon the protection of minorities. Even the ICTY (International Criminal Tribunal for Yugoslavia), ICTR (International Criminal Tribunal for Rwanda) and the ICC (International Criminal Court) have strictly prohibited acts that systematically target any ethnic or religious community. The principles under International Law find resonance in the constitutional jurisprudence of India.

### **Conclusion**

**26.** The year of 2017 has been termed by many media houses as the year of hate crime in India due to the sheer number of lynchings that have taken place in one year. Further, the circumstances in which the citizens of minority community have been lynched are evident of the

fact that these victims of lynchings were either identifiable as Muslims/Dalits or were known to be Muslims/Dalits. For example: the targeted killing of a sixteen year old Junaid Khan on a train from Faridabad that occurred on a crowded Mathura bound train wherein he was stabbed to death after repeatedly being called 'anti-national' and 'beef-eater'. The teenager was targeted by the perpetrators in a crowded train as a Muslim boy as he was wearing a skull cap – '*taqiyah*'.

- 27.** It is apparent that the lynchings of Muslims/Dalits in India, which have occurred in almost every state, is a country wide phenomena and necessarily attracts the implementation of Article 256 of the Constitution wherein the Centre takes the responsibility to direct the States to immediately put an end to the targeted violence which will only lead to a state of anarchy wherein the citizens of India at large without any authority will take law unto their hands and cause chaos. A recent example of which is evidently illustrated from the Dhule Lynching case wherein a mob consisting of 'highly inebriated people' lynched five tribals on the false suspicion that they were child lifters, which was spread through social media. A true copy of the news report dated 04.07.2018 published by the Times of India is annexed as **Annexure A-9** at pages **100** to **102**.

**28.** The fact that the actions of these lynchers have started to normalize due to the inaction of the executive, judiciary and the law makers and consequently is gaining approval from their sections of the society is only paving a way for absolute chaos where any private individual can take law unto their hands for the enforcement of criminal law in accordance to their own reasonable/unreasonable judgment.

**Settled by:-**

Indira Jaising, Sr. Adv

**Drawn By:**

Warisha Farasat, Adv.

Rudrakshi Deo, Adv

Hafsa Khan, Adv

**Filed By:**

**Shadan Farasat**

**Date:** 09.07.2018 **Advocate on Record for the Petitioner**