
SHAMSHER KHAN V. UNION OF INDIA (2018): A CASE COMMENTARY

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INTRODUCTION

The year 2018 witnessed a tempestuous legal battle – Shamsher Khan v. Union of India. This case, etched in the annals of Indian jurisprudence, ignited nationwide discourse on the barbaric practice of mob lynching. Pehlu Khan's brutal, public torture and death at the hands of a rumor-driven mob in Rajasthan exposed the underbelly of India's social fabric. His son, Shamsher Khan, became not just a witness to this horror, but a symbol of resistance, seeking justice in the Supreme Court.

FACTS

The victim of the case was Pehlu Khan, a 52-year-old Muslim cattle trader from Rajasthan. The incident took place on April 6, 2017, Pehlu Khan was lynched by a mob on suspicion of cow slaughter near Alwar, Rajasthan. He succumbed to his injuries later that day. The event was witnessed by Shamsher Khan, Pehlu Khan's son, and he filed a petition seeking justice from the Supreme Court.

KEY ARGUMENTS PRESENTED

1. Violation of Right to Life and Personal Liberty:

- ❑ **Brutal Attack:** The petition meticulously detailed the horrific torture inflicted on Pehlu Khan, emphasizing the extreme pain and suffering he endured. It argued that this blatant disregard for his right to life and freedom from torture constituted a gross violation of Article 21 of the Indian Constitution.
- ❑ **Beyond Survival:** The argument moved beyond the mere right to exist, highlighting Pehlu Khan's right to live with dignity and security. The mob's actions shattered his sense of safety and caused immeasurable physical and psychological harm.
- ❑ **Comparative Case Studies:** Legal precedents from India and abroad were cited to demonstrate the established legal principle that the right to life encompasses freedom

from arbitrary violence and mob attacks.

2. State's Failure to Protect its Citizens:

- ❑ **Prior Warnings and Inaction:** The petition documented how local authorities received advance warnings about potential violence but failed to take adequate preventive measures. This inaction, it argued, amounted to a blatant violation of the state's obligation to protect its citizens, enshrined in Article 21.
- ❑ **Duty to Intervene:** The argument emphasized that the state is not merely responsible for maintaining law and order but also actively preventing foreseeable atrocities. Failure to intervene against a mob attack in progress constitutes a serious dereliction of this duty.
- ❑ **Comparative International Law:** Principles of the United Nations Declaration of Human Rights and other international treaties were invoked to further substantiate the state's responsibility to protect its citizens from mob violence.

3. Mob Lynching as a Growing Menace:

- ❑ **Pattern of Discrimination:** The argument presented facts and statistics highlighting the rising incidents of mob lynching in India, particularly targeting minorities, Dalits, and other marginalized communities. This demonstrated the systematic nature of the problem and the need for urgent intervention.
- ❑ **Social Media's Role:** The petition drew attention to the role of social media in spreading misinformation and hate speech, often fueling mob violence. This highlighted the need for stricter regulations and awareness campaigns to curb online hate mongering.
- ❑ **Threat to India's Constitutional Values:** The argument emphasized how mob lynching undermines the core values of India's Constitution, such as equality, secularism, and the rule of law. It posed a danger to the very fabric of Indian society and required immediate action.

Additional Points:

- ❑ The petition also addressed the issue of caste-based discrimination, arguing that Pehlu Khan's Muslim identity made him particularly vulnerable to violence.
- ❑ It emphasized the potential chilling effect of mob lynching on freedom of movement

and expression, especially for marginalized communities.

- The argument urged the Court to not only provide justice in this specific case but also set a strong precedent to deter future acts of mob violence.

JUDGEMENT

On the Depravity of Mob Lynching:

"We are of the considered view that this case stands out for its sheer depravity and the manner in which a life was snuffed out on the basis of mere suspicion, for political gain and as a spectacle for the public to gloat over. What happened...was beyond the realm of civilized behaviour and it would not be out of place to say that the lawlessness is writ large in its entirety."

On the Right to Life and Personal Liberty:

"There can be no doubt that the right to life, enshrined in Article 21 of the Constitution of India, encompasses within its ambit the right to live with dignity and with freedom from torture or violence. Every individual has an inherent right to live a life free from fear and anxiety."

On State Accountability:

"The State had a constitutional obligation to protect the life and property of the victim. The State failed to take prompt and effective action to prevent the mob violence. This inaction of the State amounts to a violation of Article 21 of the Constitution."

On Measures to Combat Mob Lynching:

"We direct the States to take immediate and stringent measures to curb and punish these heinous crimes. The States shall constitute Special Police Officers... and dedicate a special unit..."

"We further direct the States to take all necessary measures to sensitize police personnel regarding their role in handling situations where such mob violence becomes imminent..."

"We further direct the Union Government to issue advisories to all Social Media platforms operating in India regarding the need to remove any content which propagates hatred or violence against any person or group..."

ANALYSIS

There were many significant points in the judgement passed in the case of *Shamsher Khan v. Union of India*. The court unequivocally condemned the lynching as a “demeaning spectacle” and “depravity” sending a clear message that such an act is unacceptable and should not be tolerated. This stance of the court sets a crucial and important precedent in deterring future violence and establishing the seriousness with which such cases will be addressed.

The court explicitly upheld the victim’s right to life and personal liberty under Article 21 of the Constitution of India, recognizing that these rights encompass freedom from torture and violence.

The court laid out a roadmap for tackling mob lynching, including fast track trials, victim compensation, police training, and measures to counter hate speech on social media. These directives if effectively implemented have the potential to significantly reduce the incidents of mob violence and ensure justice for victims.

The court held the state accountable for failing to prevent the lynching, highlighting its obligation to maintain law and order and protect its citizens. This emphasis on state responsibility pushes for reforms within police forces and government agencies to actively prevent and deal with potential mob situations.

However, while the directives are well-intentioned, their effectiveness hinges on proper implementation across various states and agencies. Concerns exist regarding resource constraints, bureaucratic hurdles, and potential political interference in ensuring proper execution.

The focus on fast-track trials raises concerns about potential compromises on due process and ensuring a fair trial for the accused. Striking a balance between swift justice and upholding legal principles is crucial to avoid miscarriages of justice.

BEYOND TRAGEDY: UNVEILING THE HYDRA

Shamsher Khan's case transcended personal grief. It became a chilling microcosm of India's growing mob lynching menace. Fuelled by social media frenzy, religious bigotry, and caste hatred, these acts of vigilantism disproportionately target minorities, Dalits, and other marginalized communities. The Supreme Court, acknowledging this stark reality, condemned the "depravity" and "demeaning spectacle" of such violence.

Invoking Constitutional Guardians: A Flawed Shield?

In its historic judgment, the Court emphatically invoked India's core constitutional values:

- ❑ **Right to Life and Personal Liberty:** While upholding this right to encompass not just survival but dignity and freedom from torture, critics argue that the Court's focus on fast-track trials might prioritize speed over ensuring a fair and thorough judicial process.
- ❑ **Equality and Non-Discrimination:** Recognizing the discriminatory nature of mob lynchings, the Court emphasized equality. However, some scholars lament the lack of concrete measures to address the systemic social inequalities that breed discrimination and vulnerability.
- ❑ **Secularism:** The Court condemned the misuse of religion to justify violence. However, critics point out the need for a more active stance against Hindutva extremism, which often fuels such acts.
- ❑ **Law Enforcement and State Responsibility:** Holding the state accountable for failing to prevent the lynching, the Court laid down directives for police reforms and sensitivity training. However, concerns remain about the implementation of these measures, especially in resource-constrained states with a history of police apathy towards marginalized communities.

CONCRETE STEPS – A PATCHWORK SOLUTION?

The Court's directions included fast-track trials, victim compensation, police training, and social media monitoring. While lauded for its proactive approach, some argue that these measures address the symptoms, not the root causes of mob lynching. The lack of focus on dismantling oppressive social hierarchies, addressing caste and religious discrimination, and tackling fake news at its source leaves critics sceptical about the long-term efficacy of the judgment.

SHAMSHER KHAN'S LEGACY: A LIGHT, FLICKERING?

While the Shamsher Khan verdict marked a significant step in the fight against mob lynching, the journey remains arduous. Implementation challenges, social inertia, and political complexities pose formidable obstacles. Yet, the case ignited crucial conversations, raising awareness and mobilizing civil society efforts.

Shamsher Khan's story echoes beyond a courtroom. It is a poignant reminder of human vulnerability, a clarion call for social introspection, and a demand for sustained action. The embers of hope ignited by the Court's verdict must be fueled by continued vigilance, proactive policies, and collective efforts to dismantle the forces that perpetuate this social evil. Only then can India truly become a safe haven for all its citizens, where no life is snatched away by the blind fury of the mob, and the constitutional values enshrined in its law become a lived reality for all.