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# Explained | States' lax response to lynching

PREMIUM

What was the petition filed by the NFIW? Is the Supreme Court's ultimatum to Centre and States the push needed for action against lynching? Are designated nodal officers the key to preventing prejudice-motivated crimes? How are States responding to the contempt petition for non-compliance with anti-lynching measures?

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**The story so far:** The Supreme Court has asked the Ministry of Home Affairs and the governments of Maharashtra, Odisha, Rajasthan, Bihar, Madhya Pradesh and Haryana to respond to a petition filed by the National Federation of Indian Women (NFIW) seeking an explanation for their “consistent failure” in the past five years to act against lynching and mob violence committed on Muslims by cow vigilantes.

A Bench of Justices BR Gavai and JB Pardiwala took only a few moments on July 28 to issue notice to the Ministry and the police chiefs of the six States to explain the “alarming rise” in lynchings despite a Supreme Court judgment in *Tehseen Poonawala versus Union of India* in 2018, which held that no right is higher in a secular, pluralistic and multiculturalist social order than the right to live with dignity and to be treated with humaneness. Vigilantism cannot become the “new normal”. No citizen can assault the human dignity of another, for such an action would comatose the majesty of law, the judgment had declared.

The NFIW has urged the court to examine whether the “rampant rise” in lynchings and mob violence against a particular religious community revealed police apathy; a direct violation of the constitutional guarantees provided under Articles 14 (equality before the law), 15 (religious non-discrimination) and 21 (right to life) of the Constitution; and the police are in breach of a “duty of care”.

The petition has sought the court to direct the Centre and the States to disburse immediate interim compensation to the victims’ families. It has urged the court to direct the government to pay a “minimum uniform amount” to the victims of lynchings and mob violence in addition to any pay-outs after taking into consideration factors such as nature of bodily injury, psychological injury and loss of earnings, including loss of opportunities of employment, education and legal and medical expenses incurred by the victims.

## What was *Tehseen Poonawala* judgment?

The judgment of the Supreme Court authored by Justice (now retired) Dipak Misra held that it was the “sacrosanct duty” of the state to protect the lives of its citizens. It said spiralling incidents of lynchings, and the gruesome visuals aired through social media have compelled the court to reflect on “whether the populace of a great Republic like ours has lost the values of tolerance to sustain a diverse culture”. Bystander apathy, numbness of the mute spectators of the scene of the crime, the 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, the court noted.

The court declared that the authorities of 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. The judgment warned that vigilantes usher in anarchy, chaos, disorder and, eventually, there is an emergence of a violent society. “Vigilantism cannot, by any stretch of the imagination, be given room to take shape”.

## **Which cases were highlighted in the NFIW petition?**

The alleged lynching of a 22-year-old Muslim man by Hindu “extremists” for transporting a cow in Haryana in January, 2023. Two men, Junaid and Nasir, who were travelling from their home were allegedly lynched and set ablaze in Rajasthan on February 15. A 56-year-old man was allegedly lynched in Bihar’s Saran district in March on the suspicion that he was carrying beef. On April 23, Asif Qureshi was allegedly assaulted in Latur, Maharashtra, in the presence of two constables and three home guards. A bus carrying Hajj pilgrims was reportedly attacked by a mob in Kota, Rajasthan on May 26. A mob allegedly attacked two Muslim men, restraining them with ropes and assaulting them savagely in Bhubaneswar, Odisha on June 17. On June 24, two men, Afan Ansari and Nasir Hussain, were allegedly intercepted by a mob on suspicion of smuggling beef and brutally assaulted. Afan died, while Nasir is currently undergoing treatment at Mumbai’s state-run KEM hospital, the petition said.

## **What were the seven remedial directions given by the SC?**

They include the appointment of a designated nodal officer, not below the rank of Superintendent of Police for taking measures to prevent prejudice-motivated crimes like mob violence and lynching. The immediate lodging of an FIR if an incident of lynching or mob violence comes to the notice of the local police. It is the duty of the Station House Officer who has registered the FIR to inform the nodal officer in the district, who in turn should ensure that the families of the victims are spared of any further harassment. The investigation of the crime should be personally monitored by the nodal officer and the investigation and chargesheet are filed within the stipulated period in law. There should be a scheme to compensate victims of such prejudice-motivated violence. Any failure to

comply with the court's directions by a police or district administration officer would 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. States should take disciplinary action against their officials if they did not prevent the incident an incident of mob lynching, despite having prior knowledge of it, or where the incident has already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

## How are States responding to the contempt petition?

The Centre and States are also facing a separate contempt petition in the Supreme Court for non-compliance with the Tehseen Poonawala judgment. In that case, an apex court Bench of Justices Sanjiv Khanna and Bela Trivedi, on July 10, directed the State governments to file by September 30 a status report giving year wise data from 2018 as to the number of complaints received, FIRs registered and chargesheets filed in lynching cases. The status report, the court ordered, should detail the steps/measures, preventive and remedial, taken by the State governments in terms of the 2018 judgment. The Bench had agreed to a suggestion made by Attorney General R. Venkataramani that the Ministry of Home Affairs would convene a meeting of the department heads of the State governments about the compliance measures (preventive and remedial) directed by the court in the Tehseen Poonawala judgment. The court directed the Centre to file an affidavit stating the outcome of the meeting and listed the case in October.



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