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Gujarat High Court refuses to take cognizance of attack on foreign students :

An Extensive case Analysis

Abstract: *This research paper has been written to disclose and analyse the incident that took place at the Government run Gujarat University's hostel. This thesis paper examine closely the Role of police officer in investigation, Secularism which is a part of the Preamble, order that was passed or direction given by the Hon'ble Gujarat High Court, matters or case which come under the head of PIL and role of Judiciary in ensuring proper Justice. This paper recognises the rights of the five foreign students who were attacked by the mob of people .*

Key words : Fundamental rights, Consulate ,Separation of power, Cognisable offence, Investigation

Introduction

In our daily life, while we read the newspaper we had often heard about the news of people assaulting another person. Mob violence is also part of news nowadays. Mob violence is the one form of violence against one or two persons where charges are filed or they are booked under the Indian Penal Code, 1860 (45 of 1860). This can happen or occur for different types of issues or matters concerning it. New Criminal laws passed by the legislature has now put heavy penalty on the assailants or offenders.

The High court division bench which was headed by the Chief Justice Sunita Agarwal in Companionship with Justice Aniruddha P Mayee made it clear that they are not police personnel or police officers, they are not allowed to perform the functions of the police officers. There is no provision under any type of statute, which directs the court to do the functions of an investigation agency.

The Division Bench said :

“Our effort is that justice be done. But don’t make us an investigation agency. We are not doing that. We still want to remind ourselves that we are Constitution courts”

“We will definitely take into cognizance if such a matter comes in, but this is not one of those”

About two dozen people entered in an unjustified and illegal way into the government-run Gujarat University's hostel in Ahmedabad on the Saturday who were from foreign countries offering namaz near the facility block where they were staying. One student from Sri Lanka and another from Tajikistan were hospitalized after the occurrence of the incident which took place in the A-block hostel.

“Don’t substitute this court with inspector of police. Don’t make us the inspector of police. We are not investigating officers.” CJ. Agrawal said. ¹

It’s the duty of the court to give directions and pass orders, not to go beyond its allotted share of functioning by Constitution and render proper justice to everyone.

Quote

“ Realize that everything, connects to everything else ” – Leonardo da Vinci

“ we need leaders not in love with money but in love with justice. Not in love with publicity but in love with humanity ” – Martin Luther King Jr.

Role of Police officers and other probe agencies

Investigation agency is required to investigate and prosecute offences affecting the sovereignty , security and integrity of the nation. The primary role of investigating agencies in discharging of the functions of collecting evidence against the accused person cannot be ignored. There are different probe agencies in our country and those are – NIA (National Investigation Agency) , ED (Enforcement Directorate), CBI (Central Bureau of Investigation), CID(Criminal Investigation Department), ATS(Anti-terror squad), etc. The Crime Branch, Crime investigation Department (CB-CBI) is amongst the most essential and important units of the police organization. The Crime Branch which is referred here deals with or is chiefly concerned with matters pertaining to crime, investigation, prosecution and collection of criminal evidence, whereas, the state special Branch is primarily concerned with the collection, collation and dissemination of intelligence on and about various political communal, terrorists, etc with relation to the various law and order issued. SIT (Special Investigation Team) stands for requirement of the police department. It is specially appointed under the Court order during urgent or emergency situations.²

SIT can be brought by the Special order from parliament to cooperate with the existing State police and investigate in a case Suo moto.Under CrPC containing the section 157 which provides for the preliminary inquiry method. According to this, after receiving the information about the crime, the officer in charge of the police station is empowered to investigate the case and to send the report of the same to the magistrate, who would take the matter in consideration. The collection of the evidence is a crucial Stage in any investigation. The police employ various kinds of methods to gather evidence, such as forensic analysis, examination of physical objects, interviewing witnesses, and reviewing CCTV footage or relevant documents. The police may also issue orders requiring individuals connected to the case to appear before them for questioning. This allows the police to gather additional information, and obtain statement which helps in finding the truth. Interrogation is also a part of police investigation of criminal matter. The officers put various tricks and techniques to extract the information out from the accused that will help them in solving the case Or directing them to the true criminal. That police officer has no right to torture, ill-treat Or abuse the accused during interrogation or questioning round.³

The Courts cannot perform the above stated functions . It is supposed to discuss and judge the case and deliver proper justice. After hearing the arguments from both sides, they deliver the judgment which is in favour of either party. It cannot violate the Constitution of India.

It has the basic and fundamental aspect of court leadership is an understanding of the purposes and responsibilities of the court. To ensure access to the court process for all who seek it, to promote proper justice in individual cases. It has to provide an impartial forum for the resolution of legal disputes. It has to protect individuals against the arbitrary use of government powers. It has the duty to direct the jury and both lawyers in a correct way, and to provide formal record of legal status.

Secularism

This term could be found in the preamble and has been incorporated into it through the Constitution (42nd Amendment) Act, 1976. This term denotes that the state will not have any religion of its own. It provides that the state shall give protection to all religions and should not interfere with its practice. All groups of people with different religion shall live in peace and harmony, maintain a good environment. According to Article 14 of the Constitution also every religion must be treated equally in a fair manner.

In the decided case law of *S. R. Bommai v. Union of India, (1994)*, the Supreme Court of India, comprising of a 9 judges bench, held in its judgment that Secularism is the basic structure of the Constitution of India. Where a state government follows non-secular policies or any other action which are opposite or contrary to the concept of Secularism, such policies and actions shall be held as against the Constitutional mandate.⁴

What type of matters are taken as *Suo Moto* ?

Judiciary is always there to protect the rights of the citizens and interest of the common people of the nation. It is one of the pillar which ensures that thing. Taking matter on its own is a tool of judiciary to address the issues. *Suo moto* is a power of the courts to start then judicial procedures without being appealed to by a bothered party. Matters which are of immense importance and diligently requires the attention of judges. Through the help of *suo moto*, courts have come forward by itself to deal with the urgent issues to which the interest of all people are tied to. Through the way of *suo moto* courts have frequently stepped in to fill holes that could be present in the rules and regulations made by the legislature. In our country, Courts are always in a position and have the authority to take the matter by way of *suo moto* cognizance in different circumstances or situations. Interest of common people must get priority before the Hon'ble Courts. There are

different or various matters where courts utilizes suo moto like resuming of old cases which are of high importance ordering probes for new cases to protect the rights of the affected persons, suo moto can be used where contempt of court is done, it can also include environmental issues , political issues , and those issues which if not addressed can take a bigger form and can threaten the peace of the country . In this case, it was a correct and right decision by the Hon'ble division bench of Chief Justice Sunita Agarwal and Justice Aniruddha P mayee ,to refuse taking up of suo moto cognizance of the incident. Since, it was not fulfilling the elements of suo moto case and does not threaten the peace of the nation, does not contain spreading nature of this issue and maximum duties still lies with the police which need to be exercised, it was not right to take the case suo moto without proper investigation or in the absence of any probe. This incident does not touch the level of sensitivity to be referred as a sensitive case, and it's not a big case. All matters can't be taken suo moto by the courts. It would be enough if police thoroughly investigate the case and it's within the control of police, arrest must be done to give Justice to the five foreign students who were attacked by group of people at their hostel. Murthal rape case, cases related to Covid-19, Air pollution in Delhi, order passed by the single-bench of Calcutta High Court which ignored division bench stay on CBI probe, case where women with locomotor disability was denied entry into restaurant and made to sit outside in cold temperature, etc these are instances or the related cases which were sensitive in nature and have gross violation of rights and interest of people.⁵

What kind of offences and laws in relation to this case?

Mob violence is one of the offence which has been denoted as a punishable offence under Indian Penal code, 1860 (45 of 1860). There are many cases of mob violence or mob lynching that has taken place in our country. Rumors, social division, distrust, in the legal system, etc are the sole causes of this kind of offence. This offence is not limited to the victims, it affect the society as a whole. This violence causes fear in the hearts of the common people . It can result in major or minor injuries and even casualties or death. In this case, mob violence has taken place where two dozen people came in a group and charged over the five students. This group of people took the law into their own hands to punish the person or persons. Mob lynching is punishable under section 223(a) of the CrPC and also punishable under section 307 of attempt to murder, under section 304 of Culpable homicide causing hurt, under section 323 of punishment for voluntarily causing hurt , under section 325 of punishment for voluntarily causing grievous hurt, under section 34 it deals

with the punishment to several persons with the common intention. Under section 141 of the IPC deals with the punishment for the unlawful assembly without any type of permission from any competent authority. If a group of people conspire to commit this kind of offence with criminal conspiracy is punishable under section 120B of the Indian Penal Code, 1860 (45 of 1860).

In this case, the group of people could be charged under the offence of destroying private property which has been mentioned under section 425 of mischief under Indian Penal Code , 1860 (45 of 1860) . The offence of assaulting any person to cause serious harm has been held as punishable under section 351 of the Indian Penal Code, 1860 (45 of 1860). Anyone who wilfully causes a disturbance or disruption during a religious gathering or disruption during a religious gathering or ritual is charged under section 296 of the Indian Penal Code, 1860 (45 of 1860). The group of people who indulge in an activity that is likely to cause or is causing a disturbance in maintaining peace and harmony within the society, is punishable under section 504 of the Indian Penal Code, 1860 (45 of 1860).⁶

What type of rights given for religious practice and religious freedom?

Everybody in this country has got fundamental rights contained in Part 3 from Art. 12-35 of the Constitution of India. Every citizen has got the right to practice his or her religion in a peaceful way without any type of interference from the government. Articles 25 to 30 and 325 of the Constitution contain the secular provisions. The central provisions are given in articles 25 and 26 , which deal with individual and corporate freedom of religion. All religion shall be given preference over the other citizens are free to preach, practice and propagate any religion of their choice. Right to freedom of religion is well described in the Articles 25,26,27 and 28 of Indian Constitution. The objective of this right is to sustain the principles of secularism in India.⁷

What type of matters come under the PIL (Public Interest Litigation) ?

Public Interest Litigation (PIL) is a case Or suit Or petition filed before the supreme Court or the High Court. It is filed for the protection of “Public Interest” or for redress of public wrong or injury. It is always for the benefit of the public at large and solve the issues of the society. It is the rights of the people belonging to the society, or group of people or a particular class of the community. These are filed to resolve the problem affecting the legal rights or the fundamental

rights of the community or public at large. These are required to safeguard group interests and not private or individual interest. It has now become a powerful tool to enforce the legal obligation of the legislature as well as executive. It has to perform or fulfil the primary objective to provide the justice to all and promote the welfare to the people. Anyone can file a PIL for any matter affecting the interest of the public, such as road safety , pollution, terrorism, etc. PIL has a significant role to play for issues of society and could be considered as an important tool to enforce the human rights of those people who do not have access to them due to poverty or any other legitimate reasons.

It aims to facilitate common people to access the courts to seek redress in legal matters. It is required for social change and to get suitable or proper justice and to uphold the rule of law. Supreme Court of India has given the compliance of guidelines to be followed for entertaining letters or petitions which would be received in the Court as PIL. Those petitions which would involve individual matter and personal matter but does not come under the categories of exception mention by the apex court shall not be entertained as a PIL matter.⁸

What could be the role of MEA (Ministry of External Affairs) in this case?

Ministry of External Affairs has got a huge role to play and has got many responsibilities on its shoulders. It has to give attention to the matters or cases which are related to the citizens of foreign nations or countries, i.e. Foreigners, who have travelled to India either as a traveller or as a foreign student to pursue his or her desired undergraduate or post graduate courses and are already studying in India for that particular purpose.

There is no person, whom we can say that he or she is immune from unexpected or unfortunate events which may occur, especially in abroad. If someone is in any type of serious or difficult or emergency situation, i.e. have a life-challenging situation , or immediately need assistance while living in a foreign country, it is your home country's embassy whom we can trust and act as our superhero, and provide guidance and give directions related to the issue or problem faced. They can also reach out to their near-by consulates which are typically located in the large cities, and these consulates are led by consulates general (CG). It has to assist citizens of it's home country living, working or travelling overseas. Therefore, embassies and their branches (known as "consulates") are necessary for the routine administration as well as emergency situations. There are many foreign students studying in Indian to build their career. They are from Nepal,

Afghanistan, Sri Lanka, and African countries, etc. Foreign nationals and students are from 170 nations who are currently enrolled in various courses available in India. In this case, the rights of the five foreign students who were attacked by around two dozen people or group of men, while they were in the government-run Gujarat University hostel in Ahmedabad, must be taken into consideration by the local authorities, nearby consulate and their respective home country embassies.⁹

Why Courts cannot investigate in a matter?

Courts cannot take up the functions of investigation agency and all the investigation agencies have to perform their duties in a just and fair manner. Investigation agencies cannot act according to their whims and fancies. According to the Section 156 of the code of criminal procedure, 1973 has given police the power to investigate a cognizable offence. There is the concept of separation of power in a federal type of government as in India, among the Judiciary, Legislative and Executive. In this case, Hon'ble Justice Sunita Agarwal along with Justice Aniruddha P Mayee on a High Court division bench conveyed the opinion or idea that it's not an executive and cannot perform the function and duties of an investigation agency. It was observed that they are not police inspectors, emphasising their role as Constitutional courts. Courts are bound by the rule of law, they are not allowed to breach the law or go beyond their functions and duties instead, they are the system which only brings about the right Justice or proper Justice for the victims of the case. Judiciary is totally independent in our country, other organs of the government are not allowed to interfere with the functioning of the system of judiciary. It has to play a very significant role to ensure that both legislature and executive do not exceed their constitutional boundaries and to prevent any type of arbitrary exercise of powers. Our Constitution makes it sure that judiciary remains independent from the influence of the legislature as well as executive. It was the observation of the Supreme Court of India, which is the apex Court of the country, that a High Court does not have the power even under Article 226 of the Constitution of India or section 482 of the code of criminal procedure, 1973 a magistrate has the full authority to monitor the investigation and if, the investigation is not going on in a proper or in a fair manner, the magistrate has got the authority to interfere in it. Courts has the power to issue direction regarding investigation to the investigating officer to make further investigation or to direct the supervisory

officer to take appropriate action for proper investigation. Therefore, performing the investigation is always in the hands of Police and this portion is not within the authority of the court.¹⁰

Conclusion

In this case, we have seen how the mob lynching took place and how the court interpreted the case, which was lacking proper investigation. How different types of rights were violated, what type of provisions were attached to it and the importance of the term Secularism, Right to freedom of religion. In what ways, the Ministry of External Affairs and the ways in which government could help or provide aid to the five foreign students or International students who were attacked while they were offering their Namaz in the Hostel. The matters which come under PIL and cases which could be taken as Suo moto. All those measures must be taken by the authorities to prevent a situation like this and to handle the situation in a proper manner. There should be no delay in making the arrest. Therefore, harmony and peace must be maintained in the society.

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