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Law, Morality, and Society: The Legal Stance of Vigilantism and Moral Policing in the Context of India

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ABSTRACT

"Moral policing" refers to arbitrary patrolling by police and vigilante groups or politically driven non-state actors who designate themselves as watchdogs of culture, religion, caste, ethnicity, and gender roles against foreign influences that allegedly corrupt the sanctity of traditional Indian society. Vigilantism aims at enforcing dictates of majoritarian moral codes accepted by society at large by violent means. Vigilantism and moral policing are deeply prevalent in contemporary Indian society and are continuously escalating, making it a serious cause of concern as they pose a threat to the principles of 'rule of law' and democracy, which are implicit in the Constitution of India. They also amount to and account for grave violations of human rights in India, in the form of mob lynching, honor killings, etc. This paper seeks to research the facets of moral policing while establishing a disconnection between law and morality in matters where constitutional morality reigns supreme. The paper also divulges the provisions that are misused by the police to bully people and give power to these vigilante outfits to operate in society. Further, it also seeks to throw light on various statutes, Supreme Court Guidelines, Judicial Pronouncements and International Laws which can be applied to remedy, prosecute and curb acts of violence in the name of moral policing, and safeguard human rights. Finally, the paper seeks to lay down suggestions and recommendations for reform of the current menace of moral policing. The research methodology used in the paper is analytical, descriptive and critical.

I. INTRODUCTION

"Moral policing" refers to arbitrary patrolling by police and vigilante groups or politically driven non-state actors, who designate themselves as watchdogs of culture, religion, caste, ethnicity, and gender roles, against foreign influences that allegedly corrupt the purity of patriarchal Indian society. Vigilantes aim at enforcing the dictates of majoritarian moral codes accepted by society at large. It views homosexuality, pre-marital sex, public display of

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affection, live-in relationships, interfaith marriages, beef consumption, alcohol consumption, among others as ‘immoral’ and ‘indecent’, and thus worthy of being extrajudicially brutally punished and called out, despite the absence of laws on the same. Extreme forms of moral policing aggravate encroachment on human rights and lead to mob lynchings, honour killings, and encounter killings by the general public, right-wing vigilante groups, Khap Panchayats, the media, male family members, and the police. The agents who are responsible for the protection of human rights, in turn, become violators.

Moral policing, *prima facie*, is unconstitutional and undemocratic, as it shows disregard for individual liberty, equality, and privacy, as well as the principles of the *rule of law*, which entails the *supremacy of law*. In a globalised and liberalised world, it sends across a wrong portrait of India, which is the largest democracy in the world and points to its noncompliance with international laws and conventions to which India has been a signatory.

II. CONCEPTUAL FRAMEWORK

(A) The Concept of Vigilantism and Moral Policing

Moral policing refers to a form of enforcement of moral, cultural, religious, casteist, and ethnic values, ethics, conduct, and codes, usually employed by the police, vigilante groups, Khap Panchayats operating in villages, educational institutions, and even the general public to preserve the sanctity of culture and religion from being "hijacked" and "hegemonized" by western culture, which has been allegedly contaminating the chastity of Indian culture. Perhaps, even the courts of law have not refrained from moral policing, especially, in cases concerning Live-in relationships, wherein Judges too have remarked it as being “*not morally or socially acceptable*”³, based on their personal views.⁴

Moral codes are not sanctioned by law; yet their enforcement is carried out by these groups and police taking law into their own hands, thereby disregarding the ‘rule of law’ and ‘due process of law’. At times, due to public pressure, such codes are also converted into legislation, for instance, stringent cow slaughter prevention acts and prevention of animal cruelty statutes have been passed and even transportation of cattle have been criminalized in various states, including Maharashtra, Rajasthan, Delhi, Uttarakhand, Gujarat, Haryana, Karnataka, Goa, and

³ See *Gulza Kumari v. State of Punjab*, 2021 SCC OnLine P&H 896.

⁴ Dr. Subhradipta Sarkar, *Judicial Fickleness: P&H High Court Plays Snakes and Ladders with Live-in Relationship*, TIMES OF INDIA BLOG (May 28, 2021, 2:43 PM), <https://timesofindia.indiatimes.com/blogs/sarkari-thoughts/judicial-fickleness-ph-high-court-plays-snakes-and-ladders-with-live-in-relationship/>.

Madhya Pradesh among others⁵, keeping in mind the religious sentiments of the Hindus and pressures from right-wing vigilante groups. Not only do these laws empower vigilante groups to take to hooliganism, but misuse and abuse of various provisions also to safeguard their illegitimate acts and those of the Police. Apart from 'cow vigilantism, the other forms of moral policing prevalent in society include cultural terrorism, the crackdown on interfaith couples, policing on sexuality and gender roles, among others. Under the garb of 'protecting' women from western influences, the moral police and these non-State actors paradoxically injure their fundamental rights and freedoms guaranteed by the Constitution, by harassing and assaulting them, damaging their dignity, intervening in their privacy, thereby preventing them from walking free and exercising their choice of clothes, of associating with people, choosing a life partner, traveling, among other things.

Although these groups have taken upon their shoulders to restore 'public' morality, acting as 'self-proclaimed' guardians of culture, it is not uncommon for them to barge into 'private' premises on mere assumptions and harass individuals for obscenity, without sparing an eye for what obscenity is according to law. For that matter, the courts have reiterated from time to time, that even public display of affection is not obscenity.⁶ Moreover, in the name of countering 'eve-teasing', 'stalking' and 'sexual harassment, the Police vigilantes have harassed and humiliated adult consenting and even married couples, and thereby, violated their right to life and personal liberty guaranteed under **Article 21 of the Constitution**. On the contrary, there are no laws that prohibit pre-marital sexual intercourse, and even 'nudity' per se is not punishable⁷ unless it is firstly, in a public place or accessible to the general public and, secondly, can corrupt the minds of the general public or arouse lustful thoughts in them. In *K.A. Abbas v. Union of India*⁸, the court went on to state that, "*Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral.*".

It must be noted that moral policing as a whole is not unlawful, but desired where it is employed in good faith to tackle the menace of illegal offenses, including corruption, domestic violence, etc. However, when there is a commission of these illegal acts, any organisation not authorised by law does not get an upper hand in punishing them by assaulting, lynching, or other forms of

⁵ Grey D, *Cow Slaughter Prevention Laws in India*, CJP (July 2, 2018), <https://cjp.org.in/cow-slaughter-prevention-laws-in-india/>.

⁶ See Pramod Kumar Sharma v. State of U.P. and Ors., LQ/AIHC/2021/188 .

⁷ See Aveek Sarkar and Anr. v. State of West Bengal and Ors., (2014) 4 SCC 257 ; Ajay Goswami v. Union of India, (2007) 1 SCC 143 ; Maqbool Fida Husain v. Rajkumar Pandey, 2008 CrLJ 4107 (Del); Shreya Singhal v. Union of India, AIR2015SC1523 .

⁸ K.A. Abbas v. Union of India, 1970 2 SCC 780 .

violence, and such organisations or individuals can be equally held liable for their extra-judicial acts.

(B) Forms of Moral Policing and Vigilantism

There are innumerable manifestations of moral policing in everyday life as well as concerning particular societal insecurities, which may occur sporadically, spontaneously, or locally against masses or individuals. Some of these have been elaborated, and include, but is not restricted to the following forms of vigilance by non-state actors:

1. Cow Vigilantism

"Cow vigilantism" refers to extrajudicial acts of violence committed in the name of *gau raksha*, or cow protection, a phenomenon that has gained traction as a result of the rise of Hindutva organizations that purportedly and sometimes intentionally support cow protection organizations. Incidents of mob lynching on mere suspicion of 'possession of beef' and even for 'cattle transportation' have been recorded many a time. The main victims of the barbarism of this sort are muslims and dalits. In one such incident, two people, Mazlum Ansari and Imteyaz Khan were mercilessly killed by a mob of cow vigilantes known as '*Gau Rakshak*' in Chatra, Jharkhand, in 2016. They were suspected of livestock smuggling when, in fact, they were on their way to sell eight oxen at a cattle market. Again, in 2017, a muslim teenager traveling with his two siblings was slain by a mob of hindus who accused him of being a terrorist, Pakistani, anti-national, and beef consumer. The fight began over a railway seat and culminated in the death of a youngster.⁹

The sole objective of some right-wing individuals who undertake such acts is to "send out a warning, foment civil war, or terrorize people" and fragment the fraternity in society in the name of religion. The motive of the mob behind these crimes is similar in that while both inflict only individual physical harm, the underlying intention is to intimidate an entire community. Recently, some legislations have also been passed, keeping in view the 'religious sentiments', however, this does not give absolute license to these perpetrators to execute punishment on the accused without 'due process of law'.

2. The Narrative of Love Jihad and Anti-Romeo Squads

Non-state actors also include Anti-Romeo squads, which were formed to combat the evils of eve-teasing, stalking, and harassment of women, as well as to check on interfaith marriages between hindu women and muslim men, which are referred to as "love jihad." Although such

⁹ Ishan Gupta, *Mob Violence and Vigilantism in India*, 23 WORLD AFFAIRS: THE JOURNAL OF INTERNATIONAL ISSUES 152 (2019).

surveillance is required to be done by police officers through patrol, many instances have occurred where right-wing outfits like *Hindu Yuva Vahini*, *Bajrang Dal*, and *Vishwa Hindu Parishad* have come out to prevent certain acts under the banner of Anti Romeo squads, which has further led to harassment of the supposed victims who have been incorrectly accused of conducting themselves indecently in public places, discounting their freedom and dignity.

Contrary to the protection of women's rights and liberties, these groups have also preached that the kinds of clothes women wear are "responsible for" and attract incidents like "eve-teasing" and "rape," so women ought not to wear "indecent clothes." These vigilantes have carved out their entrenched position in society and are inviolably revered and even feared. Moreover, their activities are also supported by none other than the general public.

3. Operation Majnu

Operation Majnu was an inventive programme of moral policing undertaken by the police in various states (including Delhi, Meerut, and Ghaziabad) to combat violence and crimes against women and give violators a pretty memorable lesson in the full face of the public. On a positive note, female police officers were directed to attend public locations secretly in civilian clothes, exposing themselves to "unbecoming behavior" from onlookers who may be prospective molesters, before fighting back and dragging them to the local police station. Traveling on DTC buses during the morning and evening rush hours, as well as visiting malls, public parks, and places near colleges, were all part of the "operation." In 2012, the Delhi Police department recorded 652 such cases of molestation. However, by invoking **Section 294(a) of the IPC**, these operations were turned into a crackdown on couples in public places, and individuals were recklessly harassed, thrashed, and forced to apologise not only before their parents but also before the media for their acts, which were tagged "indecent" on the whims of the police. It must be noted that Section 294(a) of IPC does not condemn 'public display of affection' acts per se, or for that matter, even confer on the police the power to prosecute and punish individuals on those grounds. The cops here clearly injured these individuals' rights to privacy and liberty under the realm of Article 21 of the Constitution.

4. LGBTQIAP Policing

The persons of lesbian, gay, bisexual, transgender, queer, intersex, and pansexual orientation are easy targets of police brutalities as well as public shaming and harassment, in spite of legal recognition. Despite the Supreme Court's judgment on Section 377 as well as strong political efforts in favor of LGBT rights, there is still a substantial level of homophobia in India, and homosexuals have been persecuted by the Police and general public alike. In the case, *S.*

*Sushama and anr. v. Commissioner of Police and ors.*¹⁰, it was iterated that the state machinery of Police has the most important job in ensuring the protection of fundamental rights, interests, and dignity of the people of the LGBTQ+ community. It directed the police officers to be taught about the offenses and penalties prescribed in the Transgender Persons (Protection of Rights) Act of 2019.¹¹ The factual background of the instant case was that a lesbian couple had eloped from their houses, and were confronting threats to their safety from their parents. Taking into consideration the facts of the case, the court ordered the police to stop harassing LGBTQ people, especially consenting adult queer couples, based on missing person reports filed by their parents, and held in favor of protecting and rehabilitating them.

Another such incident of moral policing against LGBTQIAP community took place on September 3, 2013, when the Hyderabad Police raided a homosexual party at a bar in the city. The police defended the raid by claiming that it was an act of obscenity in a public area. The raid was dubbed "a textbook example of moral policing" and discrimination against the LGBT community.¹²

5. Censorship of Films and Ban on Books and Other Artistic Works

The repression or control of ideas, free expression, and communication of information, circulated or broadcast on a larger platform, is termed censorship. Generally, the greatest concern of the censor board is the portrayal of violence and sex. The job of the censor board is to control the "corruption of the mind" and address pornographic content in films.

Unfortunately, in India, freedom of expression through publications, films, and representations is restricted on the basis of "reasonable restrictions" such as "public interest," "public order and morality," or "obscenity," without regard to the true meaning of "morality," "obscenity," and "decency" as defined by the law. At times, even films, books, and other representations that convey a positive social message, generate awareness, or are artistic masterpieces are erased from the medium. The definition of what constitutes "public interest" itself remains latent, making it prone to misuse. In the case, *Director General, Directorate General of Doordarshan and Ors. V. Anand Patwardhan and anr.*¹³, a film entitled, "Father, Son and Holy War" were permitted to be aired on Doordarshan and it was observed that a film based on reality and

¹⁰ S. Sushama and anr. v. Commissioner of Police and ors., W.P.No.7284 of 2021 .

¹¹ Prakul Khera and Jayesh Sitlani, *A Glimmer of Hope: India Court Issues Guidelines for Protection of LGBTQ Community*, JURIST (June 28, 2021, 12:30 AM), <https://www.jurist.org/commentary/2021/06/khera-sitlani-indian-courts-issues-guidelines>.

¹² Staff Reporter, *Raid on Gay Party an Act of Moral Policing, Say Activists*, THE HINDU (Sept. 5, 2013, 12:59 AM), <https://www.thehindu.com/news/cities/Hyderabad/article60428387.ece>.

¹³ Director General, Directorate General of Doordarshan v. Anand Patwardhan, Civil Appeal No. 613 of 2005 .

'social issues' such as patriarchy, violence, fundamentalism, suppression of women, etc., which carried a strong message for unity and secularism, couldn't be prevented from telecast as it neither intends to 'deprave' the minds of the general public nor fell in the horizon of 'immorality'.

It must be noted that the ambit of **S. 292 of the Indian Penal Code, 1860**, which deals with "obscenity", specifically mentions exceptions to certain publications or works, which do not fall under the purview of "obscenity". One of the grounds listed under the section as an exception to the rule states that any book, pamphlet, paper, writing, drawing, painting, representation (including films) or figure is immune from being banned if it is a work of literature, art, or useful for science and learning, or any other public good, or if it is used for religious purposes in good faith.

Thus, though the use of censorship as a means of limiting the spread of information has been relaxed in many democracies around the world, India still adheres to a structure that is in desperate need of change and requires a shift in perspective from a narrow, conservative one to a more accepting and liberal one to benefit today's filmmakers, vindicate the artists of the past, and provide an incentive to the filmmakers of the future.

(B) Consequences of Moral Policing and Vigilantism

The problem of moral policing and vigilantism, if left unaddressed, can lead to the exacerbation of communal rifts and riots, polarisation in society, caste discrimination, inequality, and gender biases, and the suppression of artistic expression. The most extreme forms of moral policing have resulted in *Mob Lynchings* and *Honour Killings*. These have been examined and elaborated upon as under.

1. Honor Killings

Honor Killing refers to acts of violence and murder, perpetrated generally by male family members and the Khap panchayat against females, who allegedly bring dishonor or shame to the family by, for instance, by marrying an inter-caste man, refusing to enter into an arranged marriage, dressing indecently, committing adultery or any other immoral act, being a homosexual, contracting divorce, or even being a victim of sexual assault.¹⁴ The notion rests on the baseless patriarchal belief that the honor of the family and community resides with the females, and males are the sole guardians of the community's honor. This practice is more

¹⁴ Seied Beniamin Hosseini and C. Basavaraju, *Study on Honor Killing as a Crime in India-Cause and Solutions*, ACADEMIA (May 30, 2016), https://www.academia.edu/25720837/Study_on_Honor_Killing_as_a_Crime_in_India_Cause_and_Solutions .

prevalent in Haryana, Rajasthan, and Western Uttar Pradesh. In the landmark case, *Shakti Vahini v Union of India*¹⁵, the Court remarked that Khap Panchayats cannot act as community guardians, perform 'moral vigilantism' and punish individuals who deviate from their moral codes.

Honor killings are a ruthless abuse of human rights. Although there is no specific legislation dealing with the same, the offenders can be held liable under **sections 299 to 304** (Murder, Culpable Homicide not amounting to Murder), **307** (attempt to Murder), **308** (Attempt to commit culpable homicide), **120A&B** (Criminal Conspiracy), **107 to 116** (Abetment of Murder and Culpable Homicide), and **34 & 35** (Criminal acts committed with common intention) of the IPC, 1860. Further, many international laws which are also applicable to India, prohibit 'honor killings. These include the International Convention on Human Rights, 1948, the International Convention of Civil and Political Rights, 1966, the Convention on the Elimination of All Forms of Discrimination against Women, 1979, and most importantly, the UN Charter.¹⁶

2. Mob Violence and WhatsApp Lynching

WhatsApp, a messaging service owned by Facebook has been used repeatedly for spreading false and misleading information that has invoked mob violence or violence by an unfettered crowd, which has resulted in deaths and severe injuries of suspected criminals (kidnappers, thieves, etc.), members of lower caste, muslims, and activists alike. As a whole, extremism, casteism, robbery, extortion, rape, Romeo squire, anti-nationalist, witch-hunting, class struggle, and political motives are all motivations for mob lynching. These kinds of acts are not short of 'organized hate crimes', since they are directed towards specific religion, region, caste, community, or gender. The 'rule of law' is called into doubt by mob lynching violence, in which a group of individuals becomes the law, judge, and executioner.¹⁷ Moreover, it alarms the grave violation of human rights, and it is deplorable that the general public takes upon themselves to administer the 'death penalty out of mere suspicion or provocation, while the bystanders watch as moot spectators.

Lynching incidents sparked by "WhatsApp forwards and messages" are so common that the term "WhatsApp Lynching" is now used to collectively refer to such incidents. The exceptionally high rate at which even a false piece of information spreads through this platform is the reason why it has been misused so widely to provoke the general public. In 2018, in the

¹⁵ Shakti Vahini v Union of India, (2018) 7 SCC 192 .

¹⁶ Mishra A, *Honour Killings: The Law it is and the Law it Ought to be*, MANUPATRA, <https://www.manupatra.com/roundup/337/Articles/Honour%20Killing.pdf>.

¹⁷Prakash Bhaswat, *Mob Lynching : A Criminal Injustice towards Humanity?* SSRN ELECTRONIC JOURNAL (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3833464.

Malegaon district of the Indian state of Maharashtra, a mob attacked five people, including a two-year-old child, as they were suspected of being child-lifters. The mob is said to have been triggered by a WhatsApp video that "warned" people to keep their children safe.

III. WHERE LAW AND MORALITY DIVERGE INTO DIFFERENT PATHS

(A) The Disconnect Between Morality and Law

To preserve order and peace in society, both law and moral codes are enforced upon individuals and communities to establish certain acceptable standards of behavior, responsibilities, and obligations. The relationship between law and morals can be portrayed by two intersecting circles, with the part inside the intersections symbolizing the 'common ground' between two spheres, and the part outside the intersections representing the different realms in which each has exclusive authority. At times, moral rules and norms augment the legal duty. However, even though law and morality share a lot of common ground, the dictates of law and morality do not have to be mutually inclusive.¹⁸ What may be morally wrong, need not be illegal. In other words, an immoral wrong may be condemned in society, but not punishable per se, which is the case in matters of 'prostitution', 'adultery', and 'LGBTQIAP sexual orientation'. In general, the rule of law necessarily doesn't entail that moral compulsions be converted into legislation and punished. More so, we live in a globalized world, where individual freedom stands at the heart of every democracy, and the mandate of law is only applicable to promote a setting for realization and development of human capability, for the welfare of its citizens and to maintain law and order, without stamping upon human rights.

Standards of law and morality are not constant in society, and the perception of morality changes from one community to another. The codification of morality is also problematic since the moral duties or moral conduct of a person cannot be forcefully sanctioned by the law, although laws are made based on moral considerations, and for the upkeep of moral values in a society. In the ideological philosophy of John Stuart Mill, the State or law must not intervene in matters of human conscience or morality, unless necessary to maintain order in society or to protect them from 'harm'. The State may punish offenders for a crime of 'murder' for it is immoral and a grave offense, however, the State cannot dictate what a person must wear, or what that individual may eat, though that may be immoral in the eyes of traditional society.

(B) Overriding effect of Constitutional Morality over Social Morality

The constitution is the supreme law of the land. If social morality, which is based merely on

¹⁸ DENNIS LLOYD, *THE IDEA OF LAW* (2000).

‘subjective beliefs’ is upheld in contravention to constitutional morality in a diverse nation like India, it would bolster majoritarianism¹⁹ and instead of rule of law, cultivate ‘rule by law’.

In *Navtej Singh Johar v. Union of India Ministry of Law and Justice Thr. Secretary*²⁰, the apex court has at many junctures stated that social morality must yield to ‘constitutional morality, which in essence, refers to respect towards the mandate of the Constitutional as well as democratic ideals. In the particular case, it was held that,

“Constitutional morality cannot be martyred at the altar of social morality and it is only constitutional morality that can be allowed to permeate into the Rule of Law. The veil of social morality cannot be used to violate fundamental rights of even a single individual, for the foundation of constitutional morality rests upon the recognition of diversity that pervades the society.”

Thus, in this landmark judgment, the same principle was acknowledged, and homosexuality, which is viewed in society as ‘immoral’, was decriminalized, and hence, section 377 of IPC was struck down.

IV. WHYS AND WHEREFORES OF OVERREACH BY POLICE AND LACUNAE IN SUBSTANTIAL AND PROCEDURAL LAWS

(A) Misuse of Powers and Legal Provisions by Police and Vigilante Groups

The main reason why the Police have indulged in ‘moral policing’ lies in the fact that they are backed by the popular support of the people who endorse it. If the Police hold on to plain enforcement of law and order, without heroically enforcing moral codes, it would lose the popular backing and veneration it derives.

Due to arbitrary exercise of its authority, the Police has time and again crossed its limits. Unmarried couples have been arrested by police at hotels/lodges and accused of prostitution, obscenity, and public indecency. Certain sections of **the Immoral Traffic (Prevention) Act of 1956** (ITPA) also enable the police the power to take such action. **Section 6** of the ITPA, which disregards consent before sexual intercourse, is particularly misused by Police against consenting couples, to justify police actions.²¹

In the case, *A & B v. State Thr. N.C.T. Of Delhi & Anr*²² (2009), two policemen accused a

¹⁹ Md Zeeshan Ahmad, *The Challenge of Constitutional Morality before the Supreme Court*, THE LEAFLET (Mar. 26, 2020), <https://theleaflet.in/the-challenge-of-constitutional-morality-before-the-supreme-court>.

²⁰ *Navtej Singh Johar v. Union of India Ministry of Law and Justice Thr. Secretary*, Writ Petition (Criminal) No.76 of 2016 .

²¹ *Right to Privacy of Unmarried Couples vis-a-vis Immoral Traffic (Prevention) Act, 1956*, 5.2 CALQ (2021) 35.

²² *A & B v. State Thr. N.C.T. Of Delhi & Anr*, CRL.M.C. 283/2009 .

married couple, who were caught roaming on a public place, allegedly “sitting in an objectionable position near a Metro Pillar” and “kissing each other”, of indecency and obscenity in a public place, which caused ‘annoyance’ to the passers-by. The couple was threatened, manhandled, dragged into a police van, and arrested. Ironically, not one passer-by’s name was stated in the F.I.R., nor was the name of the police officer who witnessed the act mentioned in it. The Delhi high court remarked that, “...*It is inconceivable how...the expression of love by a young married couple... would attract the offense of "obscenity" and trigger the coercive process of the law*”. Accordingly, considering the facts and circumstances of the case, the Hon’ble court held that the F.I.R. doesn’t make a case for an offense under **Section 294** read along with **34 IPC**, and dismissed the case with compensation and apology to the couple. This case throws light on police excesses and misuse of certain sections of the Indian Penal Code, which was drafted long back in 1860, to undertake it as their duty to be ‘self-assumed guardian of the social morality and decency’.

The police further assert that they have power under **Sections 149-151, 144 and 165 of Code of Criminal Procedure, 1973** to charge couples as a preventive measure. However, these also cannot be unlawfully employed, infringing the fundamental rights of individuals. **Section 144** is invoked to justify such arbitrary action on grounds of apprehended danger, nuisance, or public annoyance. **Section 149 and 151**, which concern the prevention of cognizable offense (here, **s. 294(a), IPC**) and arrest of the suspected potential offender without warrant or order from Magistrate respectively, are misused to unnecessarily harassing them.²³ Another issue that lies at the face of it, is that the terms, as discussed previously, ‘obscenity’, ‘public annoyance’, ‘public interest’ etc. are not well delineated and open to wide-ranging interpretations.

Moral vigilantism is usually carried out in the name of securing women's safety and defending them from eve-teasing and sexual harassment. Because the offenses are cognizable, the police have the authority to take preventative steps and actions, including arrest. But, it fails to recognize the limitations imposed by the aforementioned statutory framework. In **B. Kariyappa v. Land Tribunal**²⁴, it was found that **Section 149, CrPC** does not allow a police officer to infringe on people's civil rights for the sake of preventing criminal

²³ Devesh Kumar and Viraj Virvadia, *Revisiting Rituraj Mishra v. State of U.P. Concerning Moral Policing in India*, INDIAN JOURNAL OF LAW AND PUBLIC POLICY (Sept. 14, 2019), <https://ijlpp.com/revisiting-rituraj-mishra-v-state-of-u-p-concerning-moral-policing-in-india>.

²⁴ B. Kariyappa v. Land Tribunal, ILR 1989 Kar 671 .

V. LEGAL SAFEGUARDS AND REMEDIES, GUIDELINES BY THE SUPREME COURT, AND INTERNATIONAL LAWS

(A) Legal Safeguards Against Overreach by Police and Vigilante Groups

The police, as well as vigilante groups, are not above the law, which means that they can be prosecuted for their unlawful acts of intrusion into the privacy of individuals, and held liable for other tortious and criminal acts. As such, they can be punished u/s. **351** for ‘assault’, and **375** and **376** for ‘attempt to rape’ if any follows.²⁵ Vigilantes can also be booked u/ss. **153A** for ‘promoting enmity between different groups and doing acts prejudicial to maintenance of harmony’; **504** for ‘intentionally insulting to provoke breach of the peace’; **506** for ‘criminal intimidation; and **354** for ‘molestation or intentional use of criminal force to outrage the modesty of a woman’.²⁶

In many instances, the Judiciary has likewise stepped in to curb acts of moral policing, by placing restrictions on vigilante outfits. In *Pramod Mutalik v. The State of Goa*²⁷ (2019), the petitioner, Muthalik, the founder of the ‘Shri Ram Sena’, one such vigilante group, infamous for its acts of moral policing was barred from entering the state of Goa by the District Magistrate of South Goa and North Goa.

As specified earlier, an adult consenting couple cannot be held liable under any law for public display of affection or obscenity, if their acts are not in a public place. Moreover, an adult, i.e., an individual above 18 years of age has all liberty to choose a life partner even beyond caste or religious barriers, to practice a religion of one’s choice, to identify as queer or homosexual, etc. In the case, *Jyoti Alias Jannat v. State of U.P.*²⁸, it was reiterated that an adult is mature enough and aware of their welfare, and thus, their liberty cannot be restrained. It can be said that being an adult is itself a defense to acts of moral policing.

Moral Policing is unconstitutional to the extent that it oversteps **Articles 14, 15, 19, and 21** of the Constitution. In case acts of moral policing happen to the aggrieved individual and his or her fundamental rights are violated by police excesses, compensation for ‘reputational damage’ can be awarded by moving the Supreme court u/a. **32** or High Court u/a. **226** of the Constitution to secure these rights.

²⁵ Akash Sharma, *Moral Policing, Legally Speaking*, NEWS18 (APR. 25, 2022, 1:34 AM), <https://www.news18.com/news/india/moral-policing-legally-speaking-493632.html> .

²⁶ Express News Service, *Yet Another ‘Moral Policing’ Case in Mangaluru, Two Arrested...*, THE NEW INDIAN EXPRESS (October 9, 2021, 10:59 PM), <https://www.newindianexpress.com/states/karnataka/2021/oct/09/yet-another-moral-policing-case-in-mangaluru-two-arrested-2369756.html>.

²⁷ *Pramod Mutalik v. The State of Goa*, WRIT PETITION (CRL.) NO. 173 OF 2016 .

²⁸ *Jyoti Alias Jannat v. State of U.P.*, 2003 (4) AWC 2844 .

(B) Judicial Pronouncements and Supreme Court Guidelines

An important authority and a landmark case on vigilantism, moral policing, and mob violence in the name of ‘moral policing’ was the case, *Tehseen Poonawala v. Union of India and Ors.*²⁹. In this case, it was observed against moral policing,

*“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.”*³⁰

Similarly, in *Nandini Sundar and others v. the State of Chhattisgarh*³¹, it was decided that the states must endeavor continuously and persistently to foster fraternity among all people to safeguard, nourish, and promote the dignity of all citizens. On the same lines, in *Mohd. Haroon and others v. Union of India and others*³², it was clearly stated that the State Administration, in collaboration with the Central intelligence agencies, is responsible for preventing communal violence in any region of the State. If any officer in charge of maintaining peace and order is proved to be negligent in taking action, he or she should be prosecuted.

In the case, *Archbishop Raphael Cheenath S.V.D. v. the State of Orissa*³³, the Court stated that the State Government should investigate and identify the reasons for communal disturbance to strengthen the social fabric. It went on to say that improving the district's police infrastructure will certainly aid in preventing future community unrest. Simultaneous peace-building measures were also emphasized.

In *Arnesh Kumar v. the State of Bihar*³⁴, while condemning arbitrary arrest by a police officer, the Court stated,

“In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it required? What purpose it will serve? What object it will achieve? ...the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses to (e) of clause (1) of Section 41 CrPC.”

²⁹ Tehseen Poonawala v. Union of India and Ors., (2018) 9 SCC 501; LQ/SC/2018/1209 .

³⁰ Venkatasubramanian, *Mob Lynching: Loopholes in the Law*, INDIA LEGAL, (August 3, 2019), <https://www.indialegalive.com/constitutional-law-news/supreme-court-news/mob-lynching-loopholes-in-the-law>.

³¹ Nandini Sundar and others v. the State of Chhattisgarh, (2011) 7 SCC 547 .

³² Mohd. Haroon v. Union of India, (2014) 5 SCC 705 .

³³ Archbishop Raphael Cheenath S.V.D. v. the State of Orissa, 2016 SCC OnLine SC 761 .

³⁴ Arnesh Kumar v. the State of Bihar, (2014) 8 SCC 273 .

In the case, *Tehseen Poonawala v. Union of India and Ors.*³⁵, certain notable guidelines were also stipulated as ‘preventive measures’ against incidents of mob lynching. It provides for the designation of a Nodal officer, and his team, who would be working closely with the intelligence agencies to track down vigilante groups engaged in spreading fake news and hate speeches. Not only that, but it also postulates ‘remedial measures’ to compensate victims and register FIRs against offenders, taking into consideration bodily injury, loss of earnings, disability, and psychological injury and providing adequate monetary support medical expenses and free legal aid and quick justice. Another part of the guidelines lays down ‘punitive measures’, under which, if the administration conducts itself negligently, disciplinary action can be taken against it.

(C) International Laws on Moral Policing

India, which is a founding member of the United Nations and a signatory to various conventions, owes commitment to the protection of human rights of the minority communities, gender equality, and rights of the LGBTQ+ community.

1. Universal Declaration of Human Rights (UDHR), 1948

As a party to the "Universal Declaration of Human Rights," India owes a responsibility to defend individuals' lives, rights, and liberty, as well as to protect them from egregious crimes. **Article 16** of the UDHR holds that consenting adults have a right to marry and raise a family according to their choice, regardless of their Nationality, class, race, religion, etc., and are entitled to be shielded by the State as well as the Society. This indicates that Society cannot force moral codes about marriage or extrajudicially punish individuals in matters of marriage, and owe a duty to protect them.

2. The International Convention of Civil and Political Rights, 1966.

Being a party to this convention, the State is mandated to provide for rights to its citizens under **Article 26** for ensuring equal protection of the law to all persons and no discrimination on grounds of religion, sex, etc., and **Article 17**, which states that no individual can be subjected to arbitrary or unlawful interference with his or her privacy, and his or her honor and reputation cannot be damaged. In case of infringement of privacy, they ought to be protected by the law of the State. These articles are relevant to restrain the threat of ‘moral policing, which involves waging attacks on honor and dignity, and intrusion into the privacy of individuals.

³⁵ Tehseen Poonawala v. Union of India, (2018) 9 SCC 501; LQ/SC/2018/1209 .

3. The Convention on the Elimination of All Forms of Discrimination against Women, 1979.

India, being a party to this convention is obligated and made legally accountable to take steps to eradicate all forms of discrimination against women as mentioned in its **article 2(e)**, and per its **article 2(f)**, prohibit and criminalize gender-specific customary practices like ‘honor killing’.

4. UN General Assembly Reports

The UN Human Rights Council and the office of the High Commissioner for Human Rights set out objectives and measures to be undertaken by the State to identify, grant legal recognition, and protect the LGBTQ+ community, address violence and discrimination against them, and adopt legislation and policies for the same, besides complying with the Human Rights Council recommendations in the reports entitled, “*The law of inclusion: report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity*”³⁶, “*Discrimination and violence against individuals based on their sexual orientation and gender identity*”³⁷ and various other reports.

VI. SUGGESTIONS FOR REFORM

The social pandemic of moral policing is fast poisoning our society, and we need to address it before it causes our society to descend into lawlessness and chaos. The first and most apparent solution is to educate and inform the general public about such concerns and to inform them of their rights in circumstances where vigilantes try to harass them by contacting their parents, putting them in lock-ups, or even killing them. It can be done by implementing awareness programs. It is also primarily important to legally recognise that moral policing is unlawful. Secondly, police officials must be trained to properly comprehend the law of the land, and interpretations against misuse of certain sections of the IPC and CrPC that facilitate arbitrary power should be devised. The police must be trained to take a firm stance against any attempts at moral policing and refrain from acting as local vigilantes in the guise of law enforcement. Thirdly, new rules, regulations, provisions, and laws must be framed to counter the issue of

³⁶ Madrigal-Borloz, Victor, *Report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity : note / by the Secretariat*, UN GAOR, UN Doc A/HRC/38/43 (May 11, 2018), <https://www.pgaction.org/inclusion/pdf/resources/2018-05-Report-Independent-Expert-protection-against-violence-discrimination-SOGI.pdf>.

³⁷ UN. Office of the High Commissioner for Human Rights, *Discrimination and Violence against Individuals Based on Their Sexual Orientation and Gender Identity*, UN GAOR, UN Doc A/HRC/29/23 (May 4, 2015), <https://digitallibrary.un.org/record/797193?ln=en#record-files-collapse-header>.

moral policing. At present, there is a dearth of stringent laws in force that can be employed against the acts of moral policing or their prevention. Therefore, new suitable policies must be put into action to effectively deter moral vigilantism by both private and public organizations. Lastly, the police should be sensitised to sexual identities and be made to function and operate unbiasedly in the interest of law and order and act independently of the political, communal, and gender bias that predominate in society.

VII. CONCLUSION

To sum up, moral policing refers to the forced and unreasonable enforcement of demeaning majoritarian moral codes of conduct by non-state actors and, at times, even by the organs of the government as well as the media. It is more specifically aimed at a specific community, gender, or caste. It occurs in various forms, can lead to anarchy and chaos akin to a 'reign of terror' in society, and can also have long-term implications. It is unconstitutional as it hinders the liberty and freedom of expression, thought, action, belief, and personal choice of individuals, and defies the basic principles of 'equality before the law' and 'supremacy of the law,' and goes against the very idea of democracy, pluralism, and secularism. There is a dire need to introduce reforms to prevent police excesses and curb the authorization and approval of vigilante groups by society. Moreover, the general public needs to be cautioned, made aware, and educated of the Constitutional ideals, rights, and duties against overreach by the police.

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