

# Time to revisit India's Criminal Justice System

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## Abstract

The Criminal Justice System in India carries forward the legacy of Britishers. The purpose of criminal justice system is to protect the rights and personal liberty of individuals and the society against its invasion by others. Criminal procedure code; Indian Penal Code; Evidence Act are the basic constituents of India's criminal justice system. Apart from these there are several other laws relating to anti social activities. The criminal justice system is focused on the relationship between crime and punishment; which is based upon the principle of rule of law. The main components of criminal justice system are police, courts, and prisons. Their primarily role of components of criminal justice has diverted from protection of rights and liberties of individuals towards furtherance of the cause of the ruling party and striking terror among masses. Mob lynching has become order of the day in India and in absence of legal provisions is ultimately displaying the harsh reality of even an imperfect protective State withering away. The Indian Penal Code doesn't have any provision to punish a murderous collective.

This paper presents the analysis of the country's Criminal Justice System, relating to mob lynching, role of police in protecting life and personal liberties of victims of mob lynching and role of authorities in protecting offenders involved in mob lynching. Finally in the light of the Malimath Committee recommendations analysis is made whether there is need for reforming the system.

Keywords: criminal justice system, criminal law, crime, punishment, Indian Penal Code, personal liberty

*"Mob lynchings in India are 'horrendous acts of Mobocracy'"*

## Introduction

Lynching, a form of mob violence in which a presumed offender is tortured, under the pretext of administering justice without trial. The term lynch law refers to a self-constituted court that imposes sentence on a person without due process of law<sup>1</sup>.

According to Cambridge dictionary mob lynching means, "A group of people who want to attack someone who they think has committed a serious crime".

Oxford English dictionary defines lynching, "the act of killing/s done by a mob without any legal authority or process involved".

<sup>1</sup> www.civilserviceindia.com April 26, 2019 8:10 P.M IST

## Origin of Mob Lynching

The word "lynching" originated in mid-18th century America. Origin of "lynching" is traced to two people named Charles Lynch and William Lynch, who lived in Virginia in the United States. Before American Civil War brought an end to slavery, several instances of black slaves being lynched were reported in the US. In some cases, whites were also lynched for opposing slavery of black people. Lynching is not a problem that is limited to the US and India. Various UN reports refer to lynching cases from Sudan, Nigeria, Haiti and other countries. According to a 2013-UNPOL (UN Police) report, lynching is widespread in Haiti. The number of known cases of lynching increased from 90 in 2009 to 121 in 2012 in that country<sup>2</sup>.

## Statistics of Mob lynching in India

The incidents of mob lynching have increased drastically during last five years. **India Spend** analysis of news reports from across India in 2014, when 3 Incidents in which 11 people were victims and 0 died in 11 major assaults and 0 minor injuries. 100% of victims were male and 0% were females. In 2015, when 13 Incidents in which 49 people were victims and 11 died in 34 major assaults and 4 minor injuries. 95% of victims were male and 5% were females. In 2016, when 30 Incidents in which 67 people were victims and 9 died in 40 major assaults and 18 minor injuries. 75% of victims were male and 14% were females. In 2017, when 43 Incidents in which 108 people were victims and 13 died in 64 major assaults and 31 minor injuries. 85% of victims were male and 9% were females. In 2018, when 31 Incidents in which people were 57 victims and 13 died in 17 major assaults and 27 minor injuries. 93 % of victims were male and 3% were females. In 2019, when 4 Incidents in which people were 7 victims and 1 died in 6 major assaults and 0 minor injuries. 86 % of victims were male and 14% were females<sup>3</sup>.

## Causes of Mob lynching in India

Since past few years India has been spectator of an abnormal raise in crime related to mob lynching, in the name of religion, rumors relating to kidnapping etc. Though, the wave spread in the name of cow, later on extended to kidnapping and other sorts of crimes.

## Religious fanaticism and Communal polarization

Lynching serves the same purpose as riots did in past.<sup>4</sup> According to India Spend, a data-journalism website, 86% of those killed in lynching incidents in 2017 were from Muslim minority. In response to a Public Interest Litigation, the Supreme Court in September 2017, directed all State governments to take preventive measures against vigilantism in the name of cow protection. However, hardly such incidents have witnessed a downfall. In fact, on the other hand it has spread from Uttar Pradesh, Jharkhand and Haryana to Gujarat, Rajasthan, Madhya Pradesh and West Bengal. Hate violence has also occurred around festive seasons such

<sup>2</sup> P.K.Dutta. "What is lynching and why killer mob goes unpunished" www.indiatoday.in April 26, 2019 8:18P.M IST

<sup>3</sup> lynch.factchecker.in/ April 26, 2019 8:45 P.M IST

<sup>4</sup> Ziya Us Salam, "Lynch Files: The Forgotten Saga of Victims of Hate Crime" Sage Publication 2019 www.huffingtonpost.in April 28, 2019 8:40 P.M IST

as Ram Navami (Bihar and West Bengal), provocations over *azaan* and *namaz* (Gurugram in Haryana) and violence against Muslims (U.P. and Haryana trains); belonging to weaker economic background.<sup>5</sup>

The threat of mob violence is not restricted to Muslim minority alone but even other minorities are victimized. In 2016, seven members of a Dalit family were attacked by cow vigilantes in the state of Gujarat, which led to mass protests by the Dalit community. Christians too are being attacked but remain under-reported, incidents involving churches and priests accused of converting Hindus to Christianity persist.<sup>6</sup>

### Political silence

More than 40 novelists, essayists, playwrights and poets have given back awards from the country's most prestigious literary institution, the Sahitya Akademi.<sup>7</sup> In protest against policy of intolerance prevailing in India and increased incidents of mob lynchings. In 2017, Shambhu Lal Regar, a man in the northern state of Rajasthan, hacked a Muslim worker Mohammad Afrazul and later burnt him alive while his nephew recorded the whole incident and later uploaded on social media. He was appraised for the brutal act instead of being punished.<sup>8</sup>

Pratap Bhanu Mehta (Political analyst), has expressed that 'the current spate of mob lynching is qualitatively different and is setting a new benchmark'. Political parties are reluctant to take action or speak against such incidents. Rarely some leader tweets merely condemning the attack but is negligent in visiting the victims. The political class has been conquered with imaginary fear of majority failing to realise that we are living in a secular nation<sup>9</sup>.

### Rumors through social media

The so called social media platform has claimed several lives of innocent victims through mob lynching due to rumors. Rumors of child trafficking have claimed 31 lives in 10 states in India.<sup>10</sup> Between January 1, 2017, and July 5, 2018, 33 persons have been killed and at least 99 injured in 69 reported cases. In July alone, there have been nine cases of mob violence over child lifting rumors and five deaths, which amount to more than one attack recorded every day.<sup>11</sup> WhatsApp has set new rules after mob killings<sup>12</sup> a message cannot be forwarded to more than five contacts at a time. Police have arrested 25 people in India after WhatsApp lynching<sup>13</sup>.

### Laws relating to Mob Lynching in India

In order to deal with mob lynching certain provisions of Indian Penal Code (IPC) and Criminal Procedure Code (Cr. P.C) are applied such as

Section 302 IPC (murder),

<sup>5</sup> Z.Hasan, "Wages of Vigilantism" Pune 23, 2018 www.thehindu.com Accessed on April 28, 2019 8:44 P.M IST

<sup>6</sup> Apoorvanand, "What is behind India's epidemic of 'mob lynching'?" July 6 2017 www.aljazeera.com April 28, 2019 8:53 P.M IST

<sup>7</sup> www.theguardian.com accessed on April 28, 2019 9:26 P.M IST

<sup>8</sup> www.telesurenglish.net April 28, 2019 9:40 P.M IST

<sup>9</sup> Supra note 7

<sup>10</sup> www.news18.com April 28, 2019 9:48 P.M IST

<sup>11</sup> www.business-standard.com April 28, 2019 10:48 P.M IST

<sup>12</sup> BBC NEWS July 20 2018

<sup>13</sup> Supra note 8

IPC Section 307 (attempt to murder),

IPC Section 323 (causing voluntary hurt)

IPC Section 147 (rioting),

IPC Section 148 (rioting armed with deadly weapons) and

IPC Section 149 (unlawful assembly).

Section 223 (a) of (CrPC), allows to try two or more accused for conducting a crime as a “same transaction”.

### **The Protection from Lynching Bill, 2017<sup>14</sup>**

A bill has been proposed to curb mob lynching in India; which defines words like "mob", "lynching" and "offensive material", and has tried to address wider issues relating to the responsibility of district administration, to prevent acts leading to mob lynching, obstruction of legal process, protection of witnesses, trial procedure and possibilities for appeal. It also seeks to penalise spread of "offensive material" with an imprisonment of less than one year to three years and a maximum fine of Rs 50,000.

'The Protection From Lynching bill, 2017' also seeks compensation of Rs 25 lakh for victim of mob violence and stresses on strict accountability and active role of the police authorities and district magistrate in handling the incidents of mob lynching or any such apprehensions Under the proposed law, a police officer failing to perform his duty shall be tried in accordance with the provisions of Police Act. There are provisions even for conspirators or abettors of mob lynching.

The draft is based upon the provisions of Code of Criminal Procedure, 1973 for investigation, prosecution and trial, but seeks additional measures like investigation of mob lynching by senior police officers and prosecution of erring police officers without any sanction.

There are provisions for trial of offenders of ‘mob lynching’, under the jurisdiction of a 'Designated Judges' appointed by the elected government. The draft also has the provision of constituting ‘review committee’ which will review the cases ending in acquittals and subsequently issue orders for filing appeal. The bill proposes to entitle victim of ‘mob lynching’, with free legal aid and a lawyer of personal choice from the legal aid panel. It also provides provision for maintaining secrecy in victim’s identity.

The contains penalties for "hurt" and "grievous hurt" caused to a person in mob lynching incident with imprisonment of 7-10 years along with a fine of Rs one lakh-three lakh.

### **Judicial Pronouncement in cases involving mob lynching**

The Indian judicial system has attempted to counter mob killings and emphasized on the rule of law and values enshrined in the Indian constitution through the cases which came before it.

The Supreme Court in *National Human Rights Commission v. State of Gujrat and others*<sup>15</sup> held that “Communal harmony is the hallmark of a democracy. The Constitution of India, in its Preamble refers to

<sup>14</sup> Available on [www.legal-tools.org/doc/f0b548/pdf/](http://www.legal-tools.org/doc/f0b548/pdf/) Accessed on April 27 2019 at 7:56 P.M IST

secularism. Religious fanatics are' no better than terrorists who kill innocent for no rhyme or reason in a society which as noted above is governed by the rule of law." In *Krishna Sradha v. State of Andhra Pradesh*<sup>16</sup> it held that, "A right is conferred on a person by the rule of law and if he seeks a remedy through the process meant for establishing the rule of law and it is denied to him, it would never sub serve the cause of real justice."

And in *Cardamom Marketing Corporation v. State of Kerala*<sup>17</sup> it said that "The Rule of Law reflects a man's sense of order and justice. There can be no Government without order; there can be no order without law"

In writ petition filled by *Tahseen Poonawla v. U.O.I*<sup>18</sup>, the apex court Condemned the rising incidents of lynching cases in India, and has instructed Parliament to come up with a new law which would deal with offences of mob-lynching and gave following guidelines to deal with mob lynching;

- It shall be obligatory for the central government and the state governments to take measures to curb and stop dissemination of irresponsible and explosive messages, videos and other material on various social media platforms inciting mob violence and lynching.
- The police should register FIR under Section 153A of IPC (promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc) and/or other relevant provisions of law against persons who disseminate irresponsible and explosive messages and videos having content which is likely to incite mob violence and lynching.
- The state governments should come up with victim compensation scheme in the light of the provisions of Section 357A of Cr.P.C within a month from the date of judgment.
- The cases of lynching and mob violence shall be specifically tried by designated court/fast track courts earmarked for that purpose in every district.
- Deterrent punishment should be given to convicts.
- Action must be taken at departmental level against the police officer failing to comply with the duties due to negligence or misconduct.
- The states are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident has already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.
- It made it obligatory for the state to ensure maintenance of law and order and to preserve secular ethos and pluralistic social fabric in country.

### **An overview of India's Criminal Justice system**

The aim of the Criminal Justice System (CJS) is to protect the rights and personal liberty of individuals and the society against its assault. The Indian Penal Code 1860, the Code of Criminal Procedure 1973, along with parts of the Indian Evidence Act 1872, constitute the essence of India's criminal justice system. There are

<sup>15</sup> (2009) 6 SCC 342

<sup>16</sup> (2017) 4 SCC 516

<sup>17</sup> (2017) 5 SCC 255

<sup>18</sup> Writ Petition civil 754 of 2016



several other special and local legislations to curb other antisocial activities. The criminal justice system is essentially an instrument of social control: society considers some behaviors so dangerous and destructive that it either strictly controls their occurrence or outlaws them outright. It is the duty of the agencies of justice to prevent these behaviors by questioning and punishing transgressors. Although social control, of moral misbehavior is acceptable but for legal misbehavior legal and administrative control is desirable. Only the criminal justice system has the power to control crime and punish criminals.

The fundamental link between crime and punishment is the foundation of the rule of law, but unfortunately the linkage is broken in affected areas in recent times. Lengthy Trials, abysmal Conviction rates have become order of the day. Witnesses routinely turn hostile with no objectionable consequences. Forensic facilities are insignificant. Prisons are often overcrowded and safe havens for law violators. Police instead of helping victims is negligent in registering FIR'S except for wealthy or powerful people. The rule of law, and procedure established by law are hardly witnessed in India's criminal justice system. Under the existing criminal justice system even the hard core criminals are given the opportunity of fair hearing and due process of law is followed to prosecute them; but unfortunately under the rule of mobocracy the victims are punished without trial; without giving them the opportunity of being heard; thereby violating the principles of natural justice.

It is ironical that we have laws to punish single offender but not for mob offenders. Dearth of laws for mob offenders is helping the mobs go unpunished Whether it's cow- or caste-related lynching, or lynching of suspected 'child-lifters' or if a lawbreaking pickpocket is caught is beaten to death by 'law-abiding' citizens, the machinery of the State is allowing vigilantism under different pretext to become an accepted and thereby imparting the justice delivery mechanism.

### **Issues and Concerns**

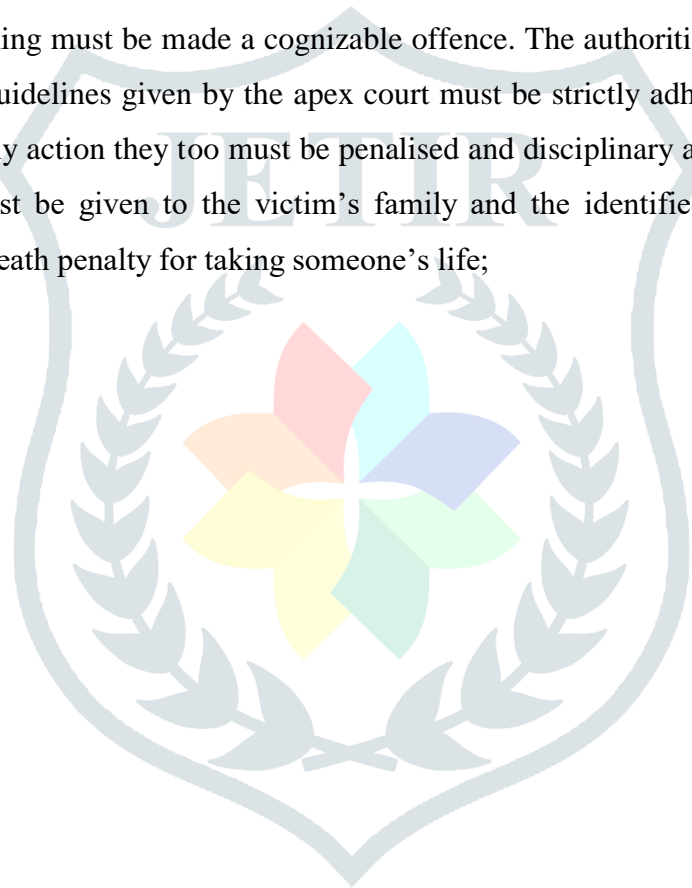
Under the present criminal justice system 'mobocracy' is mocking the 'democracy'. Though the constitution guarantees right to life, Freedom of trade and profession and likewise; but these freedoms are seldom being respected by the mobs. Sometimes in the name of cow-vigilantism or child lifters etc; people's life is at stake and the administration is acting as a mute spectator by allowing the offenders take law at their whims and fancies. At least the apex body in hierarchy has come to the rescue of victims of mob lynching by directing the concerned government to take measures to curb the evil by enacting law and at the same time directed the lowest body of hierarchy (police) to register FIRs and take timely action.

The issues are where is this malignant evil is leading the society towards? Who is responsible for this? Why all of a sudden there has been rise in incidents of mob lynching? Whether existence of minorities is a stake in India? Is democracy being perverted into Anarchy? How long will it take to enact legislation to curb the deadly menace? Whether criminal justice system is being administered as per rule of law or according to whims and fancies of those in power? Whether these incidents amount to violation of principles of natural justice or not?

## Conclusion and suggestions

The recent incidents of mob lynching are depicting ‘Hobbes State of nature’ in which man was brutal and nasty. The mobs going unpunished are presenting the social contract of Hobbes in which there was rule of uncivilized over civilised.

The ‘Malimath committee’ was set up way back in 2000 to suggest reformative measures for India’s criminal justice system. It submitted its report in 2003<sup>19</sup> with 158 recommendations. Among several other recommendations the key highlight was victim’s compensation and it classified certain offenses against women like adultery, bigamy, domestic abuse and rape. At the time when Malimath committee submitted its report the incidents of Mob lynching were scarce hence were not considered but now as the incidents are increasing to a considerable extent it is desirable that it should be placed under specific category of crime. The incidents of mob lynching must be made a cognizable offence. The authorities should pay heed towards the rising incidents. The guidelines given by the apex court must be strictly adhered with. If the concerned authorities fail to take timely action they too must be penalised and disciplinary action must be taken against them. Extra protection must be given to the victim’s family and the identified offenders must be given deterrent punishment like death penalty for taking someone’s life;



<sup>19</sup> Available at mha.gov.in .pdf