



AN ANALYTICAL STUDY FOR PREVENTION OF MOB LYNCHING IN INDIA WITH REFERENCE TO HUMAN RIGHTS

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Abstract

Mob lynching is one of the most serious evils in modern times by which human rights are abrogated or violated. This study attempts to focus on such a problem in the context of human rights. Here is also to focus on what are the existing provisions in the state and what are the challenges and measures against mob lynching. The Constitution of India includes most of the rights that are enshrined under the Universal Declaration of Human Rights. Fundamental rights are the main steps to overcome such evil. Human unlike other creatures are very desirous to liberty. We all are well aware that the freedom is one of the basic rights which is the prime choice of human. Human rights are those rights which are inherent to human by the birth. These rights don't need any boundaries. Human exists everywhere besides nationality, colour, creed etc. So, human rights need not to be specified. Hunger, poverty, carnage etc. still exists even after the declaration of the Universal Declaration of Human Rights. These rights cannot be snatched or waived as it is impossible for a person to live without them. One example of Human Rights violation is 'Mob Lynching'. It is a kind of 'punishment' in form of killing that is dictated by an unlawful assembly comprising of people with malafide intentions, upon a person, who is accused of committing a crime or anything like that. Supreme Court of India has termed it as 'horrendous acts of mobocracy' describing the injustice that is inflicted upon the sufferer.

Keywords:- Human Rights, mob lynching, social evil, lynch law, Universal Declaration of Human Rights, The Constitution of India

1. INTRODUCTION

Human Rights are regarded as those fundamental and inalienable rights which are essential for life as a human being and are possessed by every human being irrespective of his or her nationality, race, religion, sex etc. simply because he or she is a human being. The founding fathers of the Indian Constitution were vigilant enough to include the principles of ethics, fairness, reasonableness and natural justice in the Constitution to describe and define the powers of the citizens of India. They did their best to lay down an easy path for the Indians to redefine their strengths and rights in a comprehensive manner as the British rule for more than a hundred years created a sense of captivity in their minds. The focus of the framers of the Constitution was to make every citizen of India powerful by giving him the minimum rights to survive including the right to life, equality, freedom etc. However, the sociological framework has changed over a period of time and unfortunately, there have been incidents of communal clashes, violent caste conflicts and even gender

discrimination among the members of the society. All these incidents reflect a poor picture of law and order prevailing in the society. The basis of their action cannot be justified on any ground.

Mob lynching is the act of killing a person without due process of law, by a group of people for an alleged offense. In recent years, mob lynching has emerged as one of those hate crimes which target people of specific identity or forms a minority community or strangers under mere suspicion. The mob takes law into their own hands to punish the purported accused in the interest of justice without following any rules of law.

2. MOB LYNCHING IN INDIA

India has seen a considerable and sudden rise in mob lynching incidents over the last few years. The basic feature of a democracy is to protect the life and liberty of the people, but in India, the largest democracy in the world, the right to life and liberty of the people is being violated.

The word lynching is of foreign origin but it is not alien to India. "Lynching" first originated in the United States in the eighteenth century. Many historians believe that the term was first used by two Americans named Charles Lynch and William Lynch to describe extra-judicial authority expected by private people.

The causative factors of mob lynching are:¹

- Intolerance: People are intolerant in accepting the acts of law and go on to punish the alleged person assuming the act to be immoral.
- Biases based on various identities like caste, class, religion, etc: mob lynching is a hate crime that is rising due to the biases or prejudices among various castes, classes of people, and religions.
- Rise of cow vigilante: it is one of the crucial reasons that agitate the growing rise in mob lynching activities.
- Lack of speedy justice: inefficient working of justice rendering authorities is the primary reason why people take law into their own hands and have no fear of the consequences.
- The inefficiency of police administration: police officers play an important role in protecting the life of the people and maintaining harmony among the people but due to their ineffective investigation procedure, this hate crime is rising day by day.

Hence, these are some of the causes which have led mob lynching to become a threat to the integrity and growth of society as a whole. The killing of Mohammad Akhlaq in Badri by a mob on suspicion of cow slaughter, Abhijit and Nilotpal in Karbi Anglong district of Assam on suspicion of being child-lifters, the Palghar mob lynching case, Shankar Saikia murder case in Assam, and the killing of Sanatan Deka and Rituparna Pegu are a few cases that led to chaos and agitation among the people.

In *Poonawalla case*, comprising a three-judge bench of Chief Justice Dipak Misra and Justices A.M. Khanwilkar and D.Y. Chandrachud of Hon'ble Supreme Court proposed that "*the enactment of a special law on mob lynching by the parliament may take place as fear of law and veneration for the command of law constitute the foundation of a civilized society.*"²

3. LAWSON MOB LYNCHING

Mob lynching is a violation of human dignity, Article 21 of the Indian Constitution, and a gross infringement of the Universal Declaration of Human Rights. Mob lynching incidents violate the Right to Equality and Prohibition of discrimination, which are enshrined in Articles 14 and 15 of the Constitution of India. However, it is nowhere mentioned in the law of the land. It is hence simply put as murder since it has not been yet incorporated under the Indian Penal Code. The Hon'ble Supreme Court in the *Poonawalla case* aptly referred to mob lynching as a 'horrendous act of mobocracy.'³

Presently there is no codified law against this horrendous act but it has been subject to certain provisions of the Indian Penal Code which are as follows: Section 302 provides for the punishment for murder, Section 304 provides for the punishment for culpable homicide not amounting to murder, Section 307 provides for the punishment for attempt to murder, Section 323 states provisions for causing voluntary hurt, Section 325 provides for punishment for voluntarily causing grievous hurt.

These above sections have to be read with other provisions of the IPC as stated below: Section 34 defines common intention, Section 120B provides for criminal conspiracy, Section 141 provides for the unlawful assembly which is an assembly of five or more persons, Section 149 states that every member of

unlawful assembly guilty of an offense committed in prosecution of common object, Section 147 states rioting and section 148 provides for the definition and punishment for rioting, being armed with a deadly weapon, Section 302 read with section 34 can be imposed on the entire mob for the offense of murder.

Moreover, Section 223(a) of the Criminal Procedure Code says “a person accused of the same offense committed in the course of the same transaction can be tried together.”

The above laws are not enough for dealing with cases of mob lynching. Due to the lack of codified laws, there is a lack of speedy justice. No citizen has the right to take law into his own hands. The Hon’ble Supreme Court of India in the *Re Kangaroo Courts case* held that “extra-judicial murders” and specifically mob lynching, is antithetical to the rule of law.⁴

4. GUIDELINES AND SOLUTIONS TO CURB LYNCHING

The Hon’ble Apex Court in the *Poonawala case*⁵ has condemned this act of barbarism and asked the Parliament to enact a special law to deal with mob lynching that threatens rule of law and the integrity of the country. Guidelines have been issued by the Hon’ble Supreme Court to curb mob lynching until there is a proper law for mob lynching. These are as follows:

- Supreme Court has directed the state to appoint a senior police officer and other nodal officers for taking measures to prevent incidents of mob lynching.
- The nodal officers shall inform the DGP of any inter-district co-ordination issues for devising a strategy to tackle mob lynching.
- The state governments shall identify the places where mob lynching and mob violence have been reported the most in recent years.
- Supreme Court has directed central and state governments to broadcast on television, radio, and online platforms a warning that mob violence and mob lynching shall invite serious consequences.
- Registration of FIR against people who spread fake news and messages, videos, and other materials on various social media platforms.
- The state governments shall devise a compensation scheme to provide interim relief to the victims of lynching within 30 days.
- Cases of mob lynching shall be tried in fast-track courts and shall be concluded within 6 months.
- To set an example, strict punishment to perpetrators must be administered.
- If police administration and district administration failed to comply with the Supreme Court guidelines, it will be deemed deliberate negligence and proper actions will be taken against them.

In *Nandini Sundar and others v. State of Chhattisgarh*, the Court opined that “it is the duty of the States, as to strive, incessantly and consistently, to promote fraternity amongst all citizens so that the dignity of every citizen is protected, nourished and promoted. Court held that to prevent such incidents is the responsibility of the States.”⁶

Moreover, the Manipur government first introduced its bill against mob lynching in 2018 and it concurs with the Hon’ble Supreme Court guidelines. According to the Manipur law, mob lynching is defined as “any act or series of acts of violence or aiding, abetting such act/acts thereof, whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds”. The law states that there shall be nodal officers in each district to control mob violence and lynching incidents. Police officers who fail to prevent such crimes shall be liable to be imprisoned for a term that may extend from one year to three years with a fine limit of Rs. 50000. All hate crimes can be penalized under Section 153A of the Indian Penal Code, relating to foster enmity between people based on religion, race, language, and so on. The Bill specifically lays down the duties and responsibilities of the state governments to make proper arrangements for the protection of victims and witnesses against intimidation, coercion, inducement, violence, or threats of violence. It directs the state to devise a scheme for relief camps and rehabilitation for victims, and death compensation.⁷

The Rajasthan government also passed a bill against lynching in 2019, however, the government has accepted only a few guidelines issued by the Hon’ble Supreme Court and is silent on the matter regarding police officers accused of dereliction of duty. However, the police officers must be empowered to take disciplinary

action against the perpetrators in case of an emergency. They can also use the latest technologies like the internet of things (IoT) for monitoring the sensitive areas where such crimes are likely to happen.⁸ This technology works on devices without an internet connection and helps in communication. It can save the time of the police. The center should take punitive action against the police officers who are accused of dereliction of duty, for the delay in attending to the victims, investigating, submitting false reports without proper and thorough medical examination of the victims. The center must also take strict action against people who are found guilty of inciting mobs.

Furthermore, the National Campaign against mob lynching launched a draft law named Masuka. It lays down the constitutional rights of vulnerable persons and provides for punitive actions and preventive measures. It defines mob and lynching. It proposed that lynching shall be made a non-bailable offense and convicts may be sentenced to life imprisonment. Victims will receive compensation.

5. TYPES OF MOB-LYNCHING

Mob-Lynching based on the causes can be classified into five types. They are:

- Communal based
Historically caste violence against Dalits are being held with some pretext or the other which often includes Mob-lynching, however, in general such cases are under-reported or dismissed in the investigation itself. The barbaric caste system which is embedded in the very Vedic literatures gives a fillip to commit such atrocities.
- Witchcraft
Mob-lynching resulting deaths based on witch-hunting is alarming and shocking in themselves. One report indicates that 2,097 such murders were committed between 2000 and 2012 in at least 12 states.⁹
- Honor Killing
The terms honor killings and honor crimes are the incidents of criminal violence and committed against the young couple planning to marry or married with out the concern of the family members or community. Al Jazeera, Kavita Krishnan, the Secretary of the All India Progressive Women's Association defined as the "violence to prevent an eligible woman from exercising her choice either in love or marriage."¹⁰ The apex court ruling on honor crimes based violence can be linked to the following situations: (i) virginity lost before marriage; (ii) pregnancy of pre-marriage (iii) infidelity; (iv) unapproved relationships; (v) refusing arranged marriage; (vi) demanding divorce; (vii) demanding custody of children after divorce; (viii) deserting family or marital home without permission; (ix) causing scandal or gossip in the community, and (x) falling victim to rape. The Apex court has issued a detailed guidelines to prevent, manage the Mob-Lynching.¹¹
- Bovine-related mob lynching
Although the origin of this Bovine based mob-lynching is communal, however, Bovine issues based Mob-Lynching between 2010 and 2017 were reported to be glaring numbers of 63. Which is the creation of cow protection squads and restrictions on beef trade.
- Mob-Lynching on suspicion of child lifting
Death By Rumors- 20 Mob Attacks In 72 Hours Laws on mob violence in India There is currently no special provision or law to punish mob lynching or hate violence in India but there are some other provisions to prevent such violence.
- Lynching on theft cases
Mob resorted to lynching of the accused for many reasons, may be due to theft of domestic animals, jewellery, house burglary etc. A 28-year-old person was beaten to death in a small village in Tinsukia district of Assam by a mob which suspected him to be a cow thief. Police have arrested 12 people in this connection.¹²

6. PUNISHMENT FOR THE OFFENSE OF MOB-LYNCHING

In our country, there is no explicit law or legal provision dealing with lynching or mob violence. However, the following statutes, which are currently part of the Indian Penal Code, provide for the punishment of mob lynching:

Section 302 of the Indian Penal Code deals with the penalty for murder. It said that anyone who commits murder will be punished with either life imprisonment or death. In many circumstances, the convict may face further punishment.

Section 304 of the Indian Penal Code (IPC) deals with the punishment for negligent homicide that does not equal to murder. Life Imprisonment

For the crime done or likely to cause the death of a person, the defendant can be sentenced to 10 years in prison and fined accordingly.

Section 325 of the IPC outlines the penalty for causing serious bodily harm to another person will fully. Under the provisions of this section, a person who causes serious harm voluntarily, except in the case of provocation (as defined in section 335), is likely to be punished by imprisonment for a term of up to seven years and a fine.

Section 120 B of the Indian Penal Code describes the penalties for parties who conspire to commit a crime together. It specifies that: If the offender conspires for an offense punishable by life imprisonment, death, or a sentence of two years or more in prison, the offender will be punished in the same way as if the offender abets the offender while committing the offense. If the offender conspires to commit a crime that is not punishable by death, life imprisonment, or a sentence of more than two years in prison, the offender faces up to six months in prison, a fine, or both if the crime is not punishable by death, life imprisonment, or a sentence of more than two years in prison.

7. THE SUPREME COURT'S GUIDELINES

1. The state governments shall designate a senior police officer in each district for taking measures to prevent incidents of mob violence and lynching.
2. The state governments shall immediately identify districts, sub-divisions and villages where instances of lynching and mob violence have been reported in the recent past.
3. The nodal officers shall bring to the notice of the Director General of Police (DGP) any inter-district co-ordination issues for devising a strategy to tackle lynching and mob violence-related issues.
4. It shall be the duty of every police officer to cause a mob to disperse, which, in his opinion, has a tendency to cause violence in the disguise of vigilantism or otherwise.
5. The Central and the state governments should broadcast on radio and television and other media platforms including the official websites that lynching and mob violence of any kind shall invite serious consequence under the law.
6. Curb and stop the dissemination of irresponsible and explosive messages, videos and other material on various social media platforms which have a tendency to incite mob violence. Register FIR under relevant provisions of law against persons who disseminate such messages.
7. State governments shall prepare a lynching/mob violence victim compensation scheme.
8. Ensure that there is no further harassment of the family members of the victims.
9. If a police officer or an officer of the district administration fails to do his/her duty, the same will be considered as an act of deliberate negligence for which an appropriate action must be taken against him/her.

8. CONCLUSION

There is no codified law for mob violence and lynching, which gives the perpetrators the right to take the law into their own hands and kill the alleged victim on mere suspicion. Killing someone on the basis of suspicion is absolutely not justified. Strict laws to curb mob lynching are the need of the hour for a democratic country like India, home to people of various religions, castes and classes. The new law will bring about a change in the legal system and political mindset that will lead to curbing this heinous crime.

It should be applicable to all hate crimes, not just lynching (for example honour killing), regardless of the numbers of persons who participate. Since the essence of what distinguishes these kinds of crimes is not the numbers of attackers but the motivation of hate behind the crimes, therefore, the law should provision dealing with solitary hate crimes.

The law needs to prescribe a much more expansive framework of mandatory gender-sensitive reparation; the law should incorporate penal action against doctors who stand accused of dereliction of duty, for the delay in attending to victims of lynching. Under the compensation scheme for the victims, the amount should be recovered from the perpetrators of the crime. Lynchings are an abomination that must have no place in a democratic society, which India prides itself to be. Lynchings are a uniquely unsettling derailment of governance while an act of mob violence is itself a sign of failure of law enforcement; it is committed in an apparent consideration that there can be no legal recourse. In a pathological subversion of principles, the police inaction in cases of mob violence is reciprocated by an apparent public sanction of extrajudicial punishments by the police. All this bodes ill for the country. Mob violence indeed defames the country and there must be stringent intervention by the police to bring an end to this. The political leadership also has a role to play in questioning the social consent that allows mob violence.

9. REFERENCES

1. Shilpa Roy, Mob lynching: the epidemic of new India
2. Tehseen S. Poonawalla and others v. Union of India, air 2018 SCC 498.
3. Supra note 2.
4. Shilpa Roy, Mob lynching: The epidemic of new India, *Insidene*, Jun 2020, 1.
5. Supra note 2.
6. Nandini Sundar and others v. State of Chattisgarh AIR (2011) 7 SCC 547.
7. Law on Mob Lynching, *Drishti* (Sep. 2020, 18, 02:22 PM),
8. M.P. Nathanael, Preventing mob lynching, *The Hindu*, Jan 2020, 17.
9. National Crime Records Bureau report-2015
10. <https://www.opendemocracy.net/en/5050/women-demand-freedom-not-surveillance/>
11. <https://www.justice.gov/eoir/page/file/1290791/download>
12. <https://www.indiatoday.in/crime/story/man-lynched-over-cow-theft-suspicion>