

# LYNCHING A BRUTAL MURDEROUS ATTACK ON THE STANDARDS OF DEMOCRACY IN INDIA: WHETHER A SPARK OF PASSION IN JUDICIARY IS A VANISHING PHENOMENON

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## ABSTRACT

*This article examines mob lynching in India that depends upon on many factors like the suspected thief, suspected kidnapping of girl and on other grounds. In the course of study, the paper points out and discusses the judicial recommendation and guidelines in relating to preventive measures and for rehabilitation measures. The methodology employs in this paper from the relevant materials. The paper begins with outlining the nature of lynching and a critical literature review. Then, it proceeds with analysis of judicial contribution. This article connects duty bound need to enact a Anti lynching Act. This paper finds out the result that we have plenty of provisions in criminal law in order to punish this kind of wrongdoers but the prevailing incidents of lynching make us think immediate need for specific law to handle this crime with clear definition in this regard as for as the preventive Measures and for rehabilitation measures in post violence stage.*

**KEY WORDS:** *Collective violence, rule of law, democracy, criminal justice system, social justice.*

## INTRODUCTION

The collective mob violence claimed the lives of women and children. The Prevailing of the collective violence profoundly impacts the credibility and fairness of the administration of criminal justice system and contaminates the integrity of social justice in a democratic country. Lynching resulted in widespread fear and contaminated retaliation thought. Lynching consists of serious of violent crimes which violates the Right to life which is guaranteed and ensured under Article 21 of Indian constitution law. This kinds of crimes make the marginalised in shadow of fear. In order to give effect to the democratic obligations regarding intolerance which is contemplated in international instruments the appropriate Government should make an anti-lynching legislation to make sure as stringent as to put them in a tight corner. The specific legislation should have complete and effective provisions as that of stringent provisions for the prosecution and for appropriate sentences.

## OBJECTIVES

- ❖ To study the causes and physical and psychological impact of lynching in people at large
- ❖ To analysis the duty and responsibility of the democratically set up government.
- ❖ To know the judiciary's positive step towards the issue of mob violence.

## RESEARCH QUESTIONS

- What effect does different legal approaches having on the people who commit mob lynching in different countries?
- How this interpersonal violence has to be defined as behaviour by persons against persons with intentional infliction of physical or psychological harm?
- How can combat these atrocities?

## CAUSE AND IMPACT OF LYNCHING

Violence is not an uncontrollable or inevitable occurrence. Many factors behind the occurrence which are mainly contributed by both the individual and the society. To the use violence and manipulate of these factors are within their (criminals) powers and they can do (overcome) it. Freud the founder of psycho-analysis published "Group Psychology and the Analysis of the Ego". As per the view of Freud concept of "libido" which unifies human relations.

"Thus, the group appears to us as a revival of the primal horde. Just as primitive man survives potentially in every individual, so the primal horde may arise once more out of any random collection; in so far men are habitually under the sway of group formation we recognize in it the survival of the primal horde. We must conclude that the psychology of groups is the oldest human psychology; what we have isolated as individual psychology, by neglecting all traces of the group, has only since come into prominence out of the old group psychology, by a gradual process which may still, perhaps, be described as incomplete. We shall later venture upon an attempt at specifying the point of departure of this development." (Freud,1921).

"Group psychology is therefore concerned with the individual man as a member of a race, of a nation, of a caste, of a profession, of an institution, or as a component part of a crowd of people who have been organized into a group at some particular time for some definite purpose. When once natural continuity has been severed in this way, if a breach is thus made between things which are by nature interconnected, it is easy to regard the phenomena that appear under these special conditions as being expressions of a special instinct that is not further reducible - the social instinct (herd instinct, group mind), which does not come to light in any other situations"(Freud,1921).

'In the individual's mental life, someone else is invariable involved, as a model, as an object, as a helper, as an opponent; and so, from the very first individual psychology, in this extended but entirely justifiable sense of the words is at the same time social psychology as well (Freud,1921, p.69).

Prejudice and hostility among the people which are the main factors, and that would lead to this kind of serious of crimes and hate speeches which promote hate crimes.

It is reality that the emotional and psychological impact of this mob crimes and hate speech extends beyond the victim and affects the public at large especially who are marginalised. Social injustices such as prejudice, economic inequality and violence influences on early Childhood when they are exposed to mob violence. When the child imposed to such adverse social circumstances that will directly or indirectly impact the sets norms for behavior and not only that but also provides a sense of group cohesion that is vital to a child's growth and development in order strengthening the protective factors that keep the vast majority of youth from turning to violence as a response to social conditions. If the children come in to contact with such adverse social experiences, their risk in future involvement with violence would definitely increases.

When children are exposed to this adverse scenario it would affect their behavior which includes;

- ❖ Access to firearms;
- ❖ Involvement and addict with drugs;
- ❖ Involvement with anti-social elements, like street corner groups, thinking that they would protect them from future similar events;
- ❖ A great chance for engaging with delinquent groups or violent groups;
- ❖ And Involvement in violence in retaliation what they experienced and exposed that would inevitably leads them to violence.

The degree of risk is prevalent in case of use violence in the form of retaliation in other circumstances by the children who were strongly influenced by violence and aggression. Chance of later involvement in some serious violence is more possible as for as the children exposed to the mob violence.

### **Law should be made for appropriate sentences to hate crime and hate speech offences**

Our Constitution has guaranteed its people a established society which is based on democratic values and fully cherished with social justice, human dignity, equality, non-racialism and ensured that everyone has inherent dignity. State having the responsibility to promote the constitutional imperatives enshrined in the Constitutional provisions. When making the definition for lynching the Government should consider the matters like, whether lynched or murdered? Whether Lynched by (of) three or more persons? Whether the lynched person a suspected or accused of a crime? Whether they were forewarned of their presence too dangerous for their own stable life? Do they act in collusion with the killers?

“Any kind of assembling of three or more persons which shall commit or attempt to commit by physical mental or violence and without authority of law , punishing or threatening to punish any person or persons with the intention of their act will cause the consequence of prevailing apprehension of such person or persons, shall constitute a ‘mob violence’- that should be within the meaning of the proposed Act. Any such violence by a mob which results in the death or maiming of the victim or victims thereof shall constitute ‘lynching’. The crimes may be in the form of as it is defined in Indian penal code like as rape or attempted rape, murder, insulting woman, stabbing, molesting.

### **Responsibility of criminal justice administration**

Preventive action in preventing this kind of heinous crimes should deliver justice to the victims.

In Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501,

Supreme court of India has suggested preventive measures and punitive measures<sup>1</sup>.

- The State Governments shall designate, a senior police officer, not below the rank of Superintendent of Police, as Nodal Officer in each district<sup>2</sup>.
- The Nodal Officer shall also make efforts to eradicate hostile environment against any community or caste which is targeted in such incidents<sup>3</sup>.
- It shall be the duty of every police officer to cause a mob to disperse, by exercising his power under Section 129 of Cr Pc.<sup>4</sup>
- The Central and the State Governments should broadcast on radio and television and other media platforms including the official websites of the Home Department and Police Department of the States that lynching and mob violence of any kind shall invite serious consequence under the law<sup>5</sup>.
- The police shall cause to register FIR under Section 153A of IPC 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 of any kind<sup>6</sup>.

<sup>1</sup> In Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501

<sup>2</sup> In Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501

<sup>3</sup> In Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501

<sup>4</sup> In Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501

<sup>5</sup> In Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501

<sup>6</sup> In Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501

As for as the remedial measures are concerned the SC gives the following guidelines

If it comes to the notice of the local police that an incident of lynching or mob violence has taken place, the jurisdictional police station shall immediately cause to lodge an FIR, without any undue delay, under the relevant provisions of IPC and/or other provisions of law.

It shall be the duty of the Station House Officer, in whose police station such FIR is registered, to forthwith intimate the Nodal Officer in the district who shall, in turn, ensure that there is no further harassment of the family members of the victim(s).

Investigation in such offences shall be personally monitored by the Nodal Officer who shall be duty bound to ensure that the investigation is carried out effectively and the charge-sheet in such cases is filed within the statutory period.

The State Governments shall prepare a lynching/mob violence victim compensation scheme in the light of the provisions of Section 357A of Cr. PC within one month from the date of this judgment. In the said scheme for computation of compensation, the State Governments shall give due regard to the nature of bodily injury, psychological injury and loss of earnings including loss of opportunities of employment and education and expenses incurred on account of legal and medical expenses.

The said compensation scheme must also have a provision for interim relief to be paid to the victim(s) or to the next of kin of the deceased within a period of thirty days of the incident of mob violence/lynching.

The cases of lynching and mob violence shall be specifically tried by designated court/Fast Track Courts earmarked for that purpose in each district. Such courts shall hold trial of the case on a day to day basis.

The trial shall preferably be concluded within six months from the date of taking cognizance. This direction shall apply to even pending cases.

**Punitive Measures:** The Supreme court of India, in order to facilitate the speedy investigation and effective implementation of its guidelines given by it, suggested punitive measures for the noncompliance of the directed guidelines given by it in following words,

“ Wherever it is found that a police officer or an officer of the district administration has failed to comply with the aforesaid directions in order to prevent and/or investigate and/or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence and/or misconduct for which appropriate action must be taken against him/her and not limited to departmental action under the service rules. The departmental action shall be taken to its logical conclusion preferably within six months by the authority of the first instance. The States are directed to take disciplinary action against the officials concerned 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.”

### **Recommendation for law**

The Supreme court recommended the Government to create a separate offence for lynching and provide adequate punishment that would instill a sense of fear of law amongst the people who involve themselves in such kinds of activities.

### **DISCUSSION AND CONCLUSION**

Supreme court in its guidelines pointed out that it should be the duty of the State Governments and the Nodal Officers have to see vigilantly that the prosecuting agency strictly carries out its role in appropriate furtherance of the trial. It will help to maintain the accountability of the prosecuting agency in particular and will ensure the speedy investigation which is the prime criteria of the criminal justice system.

Supreme court vehemently support the stringent punitive justice in cases conviction of the accused person(s) of mob violence and killings. So, the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC. The Supreme court advised the courts trying the cases of mob violence and lynching may, as it deems fit, protect and for conceal the identity and address of the witness. It is a very laudable advice of the higher judiciary for the witness protection is the prominent issue as for as the criminal justice system as per the (Maliyath committee report.) witness should be free from threat and fear from the mob that is important element of justice.

As for as the victims are concerned the Supreme court urged that(they) victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall be given timely information and notice of any court proceedings. And they shall be entitled to be heard at the trial in respect of applications such as bail, discharge, release and parole filed by the accused persons. They shall also have the right to file written submissions on conviction, acquittal or sentencing. By this guideline the Supreme Court ensured the participative criminal justice system. The Supreme court pointed out that the victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987. Thus, Supreme court had given a complete frame work for the preventive, remedial as well as punitive measures for extra-legal violence and killings.

The impact and the consequences of failure to prevent such kind of serious violations would amount to great massacre of human rights principles. These crimes would definitely lead to immense sufferings to the affected at large especially the children. This violence should be seen and handled with overall view as in socio, economic, and psychological angle. For this violence leaves a strong scars and rampage on societies and that will take times to heal. Really this crimes do not causally happen in a sudden or spontaneous manner. Some of the factors acting behind the crimes are like hate speech messages in the social media that would cause spreading of hostility and igniting people to commit violence against a particular communities or section of people. The concerned Government has to take stringent step to stop hate speech. The religious leaders should speak in comply with the reasonable restrictions as prescribed in the constitution. And they do not involve in the incitement to violence by their hate speech and that should be prohibited.

In a democratically set up Government, the concerned Government should take necessary steps where tensions are high and make preventive efforts as a primary responsibility. The Government may take in to consider the following issues in framing the policy to prevent the violence i.e to ensure a stringent specific anti-lynch law , Education, Religious freedom of speech without target vulnerable groups , Harsh penalties for Lynchers effective law enforcement agency and criminal justice system. Psychologist and NGOs should take efforts to reduce the hostility and prejudices prevailing among the groups and make them to live a quality of life. The guaranteed safe environment, implementable effective policies and programs to prevent violence are mandatory on the part of democratic set up government.

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