

# THE NEED OF ANTI-LYNCHING LAWS IN INDIA: A CRITICAL COMPARATIVE ANALYSIS

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**Abstract:** Lynching as a phenomenon is not new but deep rooted in different civilizations. Lynch law is believed to be enacted in 1782 in America by Charles Lynch in the village Lynchburg (Virginia). But this issue being as old as the law which might have been persisted long before than the law itself exists and has been a matter of discussion not only in America but in different countries like Israel, Afghanistan, Europe, South Africa etc. In India, several such incidents have been noticed but such lynching has spiked in the recent times. By observing several incidents and by drawing a comparison in America and India; where the cases of lynching in America is due to the race alone. In India, the reasons vary from race, religion, caste or as fickle as a widely spread social media post.

**Keywords:** Lynching, Magna Carta, UDHR, Indian Constitution, Indian Penal Code.

*“It may be true that the law cannot make a man love me, but it can keep him from lynching me, and I think that’s pretty important.”*

- *Martin Luther King, Jr.*

Lynching by its dictionary meaning is defined as ‘killing, by a group of people of someone for an alleged offence without a legal trial or by taking law into their own hands’. With passing time lynching has emerged as a serious criminal offence and the number of cases are increasing day by day. In context of the present Indian scenario anti-lynching laws is an inescapable need of the society.

The need of law of anti-lynching law is related to the inherent human right to life with dignity and personal liberty. Jurisprudentially roots of which can be traced in John Locke’s theory of natural rights; Thomas Paine, John Stuart Mill and Hegel’s theory of universality of rights and Immanuel Kant’s principle of ‘categorical imperative’. Whereas this right can be traced in the Magna Carta, 1215 which states that ‘No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land’<sup>2</sup>.

It also finds place in International Humanitarian Law in various documents like U.S. Declaration of Independence<sup>3</sup>, Declaration of the Rights of Man and of the Citizen<sup>4</sup>, United States Bill of Rights<sup>5</sup>, Universal Declaration of Human Rights<sup>6</sup>, European Convention Human Rights<sup>7</sup>. It also finds its place in constitution of

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<sup>2</sup> Clause 39 of Magna Carta, 1215.

<sup>3</sup> July 4, 1776.

<sup>4</sup> 1789.

<sup>5</sup> 1791.

<sup>6</sup> 1948.

<sup>7</sup> 1950.

America, United Kingdom, Canada, Australia, New Zealand and Republic of Ireland. America even has enactment related to lynching.

In Indian context, Part III of The Indian Constitution provides for Right to Life and Personal Liberty in Article 21 which is also a fundamental right but the increasing incidents of lynching is encroaching upon the inherent and fundamental right of people to life. Despite progress in recent times towards the working of elimination of lynching, the lack of any such provision in India either in Indian Penal Code, 1860 or any particular enactment related to lynching is a big threat to each and every individual and also to society at large.

The main contribution to these incidents is a feeling of hatred and bigotry against certain communities and lack of political will and political motto which adds fuel to such situations. It also infringes people's right to live in peace. Eventually due to rise in such lynching cases congress activist Tehseen S. Poonawala filed a PIL in Supreme Court of India as a result of which Supreme Court laid down guidelines in '*Tehseen S. Poonawalla v. Union of India & Ors*<sup>8</sup>' to curb such incidents but all of which is turning out to be futile due the sinister motive of some men and certain political agendas is exploiting the individuals inherent right to life and also the destroying the very social fibre of the society.

#### **JURISPRUDENTIAL ASPECT:**

The idea of Natural Rights is very old. In the classical literature of Ancient Greece from 5<sup>th</sup> B.C. we come across a striking expression of the belief in the power exercised by the gods on human society, based on law<sup>9</sup>. Similarly, the idea of liberty which is somewhere inclusive and has a hidden notion of individual rights was supported by John Stuart Mill against the wide accepted theory of utilitarianism propounded by Bentham.

According to Mill "society progresses from lower to higher stages and that this progress culminates in the emergence of a system of representative democracy. In the past, liberty meant primarily protection from tyranny. Over time, the meaning of liberty changed along with the role of rulers, who came to be seen as servants of the people rather than masters. First, there is the liberty of thought and opinion. The second type is the liberty of tastes and pursuits, or the freedom to plan our own lives. Third, there is the liberty to join other like-minded individuals for a common purpose that does not hurt anyone."<sup>10</sup>

It was Mill who first talked about the freedom of thought and emotion, individuals' rights against majority etc. Mill's idea was supported by many other philosophers with some modifications. Through these ideas it is clear that the idea of a person's right against majority was there in 17<sup>th</sup> century, which makes it clear that this idea is not a new concept; it just needs to be recognized.

<sup>8</sup> W.P. no. 754 OF 2016.

<sup>9</sup> Frade Castberg "Natural Law and Human Rights- an idea- Historical survey", International Protection of Human Rights (Proceeding of the 7<sup>th</sup> Noble Symposium, Oslo, Sept. 25-27, 1967), Asbjorn Eide and August Schou (eds), Inter Science Publishers, New York, 1968, p. 13.

<sup>10</sup> John Stuart Mill, "On Liberty", ed. Of 1859 (Reprint 2015), Martino Fine Books.

**INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE:**

- **Magna Carta, 1215:** Magna Carta (Great Charter) is a charter of rights agreed to by King John of England at Runnymede, near Windsor, on 15 June 1215. After John's death, the regency government of his young son, Henry III reissued the document in 1216, stripped of some of its more radical content, in an unsuccessful bid to build political support for their cause. At the end of the war in 1217, it formed part of the peace treaty agreed at Lambeth, where the document acquired the name Magna Carta, to distinguish it from the smaller Charter of the Forest which was issued at the same time. Short of funds, Henry reissued the charter again in 1225 in exchange for a grant of new taxes. His son, Edward I, repeated the exercise in 1297, this time confirming it as part of England's statute law.

Looking at Magna Carta as a document of historical and legal significance, Professor Justin Fisher explores the evolution of our rights and freedoms, and examines the relevance of the Great Charter today, “Magna Carta is a cornerstone of the individual liberties that we enjoy, and it presents an ongoing challenge to arbitrary rule. But over time, while not envisaged at the time of its drafting, Magna Carta has for many been seen not only as a foundation of liberty, but also one of democracy. And this broader notion of the wider significance of Magna Carta makes it especially relevant today. It is perhaps easiest to think of Magna Carta in two ways: first, as a document of historical and legal significance; and secondly, as a principle underlying how we live, through equality under the rule of law and through accountability.”<sup>11</sup>

- **United States Bill of Rights, 1791:** The first 10 amendments to the American Constitution make up the Bill of Rights. James Madison wrote the amendments, which list specific prohibitions on governmental power, in response to call from several states for greater constitutional protection for individual liberties. The Bill of Rights was strongly influenced by Virginia Declaration of Rights and Magna Carta, the Petition of Rights and the Massachusetts Body of Liberties.

It talked about several right as to freedom of speech, double jeopardy, equality before law and individuals right to life. And once again a clearer picture emerges through this reference that life of a man was as important back then as it is in 21<sup>st</sup> century, the idea existed and with passing time it has only taken new shapes.

- **Universal Declaration of Human Rights, 1948:** The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

It was the result of experience of the Second World War, with the end of which the creation of the United Nations, the international committee vowed never again to allow atrocities like those of the conflict

<sup>11</sup> Justin Fisher, “Why Magna Carta still matters today”, The British Library (Mar. 13, 2015), <https://www.bl.uk/magna-carta/articles/why-magna-carta-still-matters-today>, last visited on Feb. 20, 2020.

happen again and the World leaders decided to complement the UN charter with a road map to guarantee the rights of every individual everywhere.<sup>12</sup>

Article 3 of the UDHR states that “*Everyone has a right to life, liberty and security of person*”. This became the very basis of the Article 21 of the Indian Constitution. Also, all countries at least the members who were a part of this charter were to abide by this.

- **European Convention of Human Rights,1950:** The European Convention on Human Rights has played an important role in the development and awareness of Human Rights in Europe. ‘The development of a regional system of human rights protection operating across Europe can be seen as a direct response to twin concerns. First, because of the Second World War and drawing inspiration of the UDHR,1948. Second, it was a response to rising communism in Central and eastern Europe.’<sup>13</sup>

Where Article 2 of the ECHR talks about ‘right to life’, Article 10 talks about ‘right to freedom of expression’.

Therefore, the importance of discussing here above-mentioned documents is to realize that ‘right to life’ is not a new concept, also, it needs to be prevented as man’s life is of paramountcy. Looking at these now it will be easier to discuss why anti-lynching is a threat to man’s right to life and why it needs to be regulated by a stringent law.

#### **ANTI-LYNCHING LAWS IN AMERICA:**

Lynching is defined as ‘killing, by a group of people of someone for an alleged offence without a legal trial or by taking law into their own hands’<sup>14</sup>. It is ‘a term descriptive of the action of unofficial persons, organized bands, or mobs, who seize persons charged with or suspected of crimes, or take them out of the custody of the law, and inflict summary punishment on them without legal trial, and without the warrant or authority of law’<sup>15</sup>

The word “lynching” originated in mid-18th century in America. Origin of “lynching” is traced to two people named Charles Lynch and William Lynch, who lived in Virginia in the United States. Lynching in the United States rose in number after the American Civil War in the late 1800s, following the emancipation of slaves; they declined in the 1920s but have continued to take place into the 21st century.

**Historical Background:** A major motive for lynching, particularly in the South, was the white society's efforts to maintain white supremacy after emancipation of slaves following the American Civil War. It punished perceived violations of customs, later institutionalized as Jim Crow laws, which mandated racial segregation of whites and blacks, and second-class status for blacks. A 2017 paper found that more racially segregated counties

<sup>12</sup> History of the Document, Universal Declaration of Human Rights, <http://www.un.org/en/sections/universal-declaration/history-document/index.html>, last visited on Feb. 24, 2020.

<sup>13</sup> European Convention of Human Rights (1950), <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>, last visited on Feb. 25, 2020.

<sup>14</sup> Oxford Dictionary of English (18<sup>th</sup> ed., Oxford University Press, 2010).

<sup>15</sup> Black’s Law Dictionary (10<sup>th</sup> ed., Thomson West; Aspatore Books, 2014).

were more likely to be places where whites conducted lynching.<sup>16</sup> And sadly it has continued till now in the form of police brutality in the case of George Floyd.

From 1882 to 1968, nearly 200 anti-lynching bills were introduced in Congress, and three passed the House. Seven presidents between 1890 and 1952 petitioned Congress to pass a federal law. No bill was approved by the Senate because of the powerful opposition of the Southern Democratic voting bloc.

For most of the history of the United States, lynching was rarely prosecuted, as the same people who would have had to prosecute and sit on juries were generally on the side of the action or related to the perpetrators in the small communities where many lived. When the crime was prosecuted, it was under state murder statutes. In *U.S. v. Sheriff Shipp*<sup>17</sup>, Shipp was found guilty of criminal contempt for doing nothing to stop the mob in Chattanooga, Tennessee that lynched Ed Johnson who was in jail for rape.

**Enactment:** Starting in 1909, federal legislators introduced more than 200 bills in Congress to make lynching a Federal crime, but they failed to pass, chiefly because of Southern legislators' opposition. The Senate Democrats formed a bloc that filibustered for a week in December 1922, holding up all national business, to defeat the Dyer Anti-Lynching Bill It had passed the House in January 1922 with broad support except for the South. Representative Leonidas C. Dyer of St. Louis, the chief sponsor, undertook a national speaking tour in support of the bill in 1923, but the Southern Senators defeated it twice more in the next two sessions.

The Southern Democratic block in the Senate prevented the passage of any anti-lynching bill during this period. In 2005, by a resolution sponsored by senators Mary Landrieu of Louisiana and George Allen of Virginia, and passed by voice vote, the Senate made a formal apology for its failure to pass an anti-lynching law "when it was most needed".<sup>18</sup> After, rejecting the bill for almost 240 times on various grounds, finally on June 30, 2018 three Senators (Kamala Harris, Cory Booker and Tim Scott) introduced the "*Justice for Victims of Lynching Act*" which would make lynching a federal hate crime.<sup>19</sup>

## INDIAN SCENARIO:

The situation in India related to lynching is not very similar to that of America, For the past 18 years, India has been witnesses an unusual increase in crime related to mob violence, in the name of religion, kidnapping etc. Though, the epidemic spread in the form of vigilante against cow slaughter, later in spread to kidnapping and other sorts of crimes. According to unofficial estimates around 120 people have killed through the country.

<sup>16</sup> Cook; Lisa D.; John M., "Racial Segregation and Southern Lynching", NBER Working Paper No. 23813, Sept. 2017.

<sup>17</sup> *U.S. v. Sheriff Shipp*, 203 U.S. 563.

<sup>18</sup> W.W. Norton, "Lynching in America: Confronting the Legacy", Equal Justice Initiative, ed. 3<sup>rd</sup>, July 4, 2017.

<sup>19</sup> S. 3178, Justice for Victims of Lynching Act, 2018, 115<sup>th</sup> Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/senate-bill/3178/text?format=txt>, last visited on Feb. 26, 2020.

The last incidents are a proof that mob violence has threatened not just the Muslim community but also other minorities; 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. Attacks on Christians remain under-reported, but incidents involving churches and priests accused of converting Hindus to Christianity continue.<sup>20</sup>

In America where the lynching incidents were mainly related to racism, in India its majorly based on religious grounds but here it doesn't only end here whereas it extends to lynching because of superstitions of witchcraft or apprehension of criminal activity.

- **Right to Life (Article 21) & Freedom of Speech and Expression (Article 19):** These two aspects come into consideration when we talk about lynching in Indian context as lynching is directly opposite to what inalienable right of 'right to life' is. Whereas the answer to the question that "What is the nexus of Article 19 which talks about freedom of speech & expression with incidents of lynching?" is that many of the incidents reported were due the messages spread through social media apps such as Facebook, WhatsApp etc. have a huge impact and is one of the main driving force in lynching incidents. As 'right to life'; freedom of speech and expression is also a fundamental right which is subject to certain "reasonable restrictions" which needs to be looked into.

In the last one year, 28 people across nine Indian states have been lynched in separate incidents, which have been triggered by rumours spread on social media. Of these, more than 20 people were victims of mob lynching in the last two months alone. The latest such incident occurred on 15 July 2018 in Karnataka when a software engineer was beaten to death on the suspicion of being a kidnapper.

While the information technology ministry has asked WhatsApp to take immediate action against the spread of misinformation, the company has expressed its inability to tackle the problem on its own. "However, it has put in place some measures to curb the spread of false information. The company has said that it will limit how many times messages can be forwarded in India. Groups on WhatsApp can have a maximum of 256 people. Many of the messages that are believed to have triggered violence were forwarded to multiple groups, which had more than 100 members each. Under the new rules a single person would be able to forward one message only five times."<sup>21</sup>

**Whether Indian Penal Code,1860 enough? "Unless the court strives in every possible way to assure that the constitution, the law, applies fairly to all citizens, the Court cannot be said to have fulfilled its custodial responsibility." – Hamid Ansari**

<sup>20</sup> Apoorvanand, "What is behind India's epidemic of mob lynching?", July 6,2017, <https://www.aljazeera.com/indepth/opinion/2017/07/india-epidemic-mob-lynching-170706113733914.html>, last visited on Feb. 26, 2020.

<sup>21</sup> Rishi Iyengar, "WhatsApp is adding new restrictions as killings continue in India", CNN, 20 July 2018, <https://money.cnn.com/2018/07/20/technology/whatsapp-india-mob-lynching/index.html>, last visited on Feb. 28, 2020.

Incidents of lynching are generally reported under IPC section 302 for murder, IPC 307 for attempt to murder, IPC 324 for causing hurt, IPC 147 for rioting and so on.<sup>22</sup> The seriousness and heinousness of this crime should be thoroughly investigated. The criminal law is not enough in preventing the cases of lynching as the hate element of it is not addressed. An amendment could be passed in this direction if not a law is being passed related to such incidents.

**Status after Tehseen S. Poonawala v. Union of India & Ors.:** Devastated by the rise in lynching cases and laws as well as the public administration appearing to be insufficient to deal with such incidents Congress social activist Tehseen S. Poonawala filed a writ petition in the Supreme Court as a result of which the Court condemned the practice of cow vigilantism, lynching and mob violence, and issued guidelines plus remedial and punitive measures and deterrent punishment which a person will be liable to if he/she convicted for lynching.

The *guidelines* in gist were related to the public administration, remedial and punitive measures, regulation through reasonable restrictions of technology and social media platform through laws and has also provided for deterrent punishment for ones convicted under such cases of lynching.

Still, there has been almost no change in the situation and it is worsening day by day. There is a need of stringent law to regulate such incidents and the Government should have a strict attitude towards such incident because lynching incidents in a way is hindering the basic fibre of the society and in a way, is threat to the national integrity of the country and has a negative impact on the society.

**SUGGESTIONS:** Taking into consideration the situation in India and by comparing it with the situation in America the researcher would suggest that the lynching incidents in America were due to maximum three to two factors but when we talk about the Indian scenario the contributing factors in such incidents are numerous and social media is the most influencing factor in today's date and it needs to be regulated.

Though there have been certain guidelines<sup>23</sup> given by the Supreme Court and certain restrictions have been imposed on the circulation of such messages but it all is turning out to be futile. Thus, even the researcher wants to give *suggestions* which are as below:

1. The states can designate a police officer who will set up a task force to be assisted by other officers for taking measures to prevent mob violence and lynching. The task force can gather intelligence reports on people likely to commit such crimes or who are involved in spreading hate speeches, provocative statements and fake news.
2. The nodal officer can hold regular meetings with the local intelligence units in the districts and station house officers to identify tendencies of vigilantism and mob violence.

<sup>22</sup> The Indian Penal Code, 1860, Act 45 of 1960.

<sup>23</sup> Tehseen S. Poonawala v. Union of India & Ors. W.P. no. 754 OF 2016.

3. All police officers can ensure the dispersal of mobs that have a tendency to cause violence or lynch in the garb of vigilantism or otherwise.
4. The central and state governments can broadcast on radio, television and other media platforms, including the official websites of the home department and the state police, that lynching and mob violence will invite serious consequence. Also, the Centre shall issue appropriate directions to the states on the gravity of the situation and the measures to be taken.
5. The police can register FIRs under Section 153A of the IPC (promoting enmity among people) and/or other relevant provisions against the perpetrators.
6. The investigation in such offences can be personally monitored by the nodal officer, who can be duty-bound to ensure that the investigation is carried out effectively and the charge sheet filed within the statutory period.
7. The states can prepare a scheme to compensate lynching and mob violence victims. While calculating the compensation, the state governments should give due regard to the nature of bodily injury, psychological injury, loss of earnings and expenses incurred on account of legal and medical expenses.
8. The trial court must ordinarily award the maximum sentence under the provisions of the IPC for incidents of lynching.

Therefore, these suggestions are by the researcher after doing a critical comparative analysis of lynching incidents and laws of America and India. The researcher would want to draw attention that these are mere suggestions and there is a need for a new comprehensive law related to lynching.

By critically comparing and analysing the situation of India and America it is evident that though in America the Lynching Bill was rejected 200 times on the same notion that lynching cases can be dealt under criminal laws or Jim Crow laws of America it failed to curb and stop the incidents of lynching and at last had to enact "*Justice for Victims of Lynching Act*" in June, 2018 and made it a federal hate crime. "Also, the situation of lynching in America arose only because of racialism which later on in late 90s also started occurring due to matters related to eve teasing, theft etc."<sup>24</sup>

Whereas in India the lynching incidents are increasing day by day, which basically deals with to aspects "right to life" and "freedom of speech and expression". On one hand the incidents of lynching is a direct encroachment on an individuals' right to life and on the other hand along with the contributing factor which is not only the racial and religious motto but a serious motive to spread hate and disturb the national integrity of the country through social media; it needs to be looked into that how far a person has a "right to freedom of speech and expression" and does this not needs to be regulated through the reasonable restrictions provided itself in the Indian Constitution.

The conclusion reached that there is a need for a comprehensive legislation related to lynching as the existing laws are not sufficient to deal with the incidents of lynching. Also, in this technological era there has to be

<sup>24</sup> Jamiles Lartey and Sam Morris, "How white Americans used lynching to terrorize and control black people" (Apr. 26, 2017; 07:00 BST), <https://www.theguardian.com/us-news/2018/apr/26/lynchings-memorial-us-south-montgomery-alabama>, last visited on Feb. 28, 2020.



certain stringent restrictions to be imposed on such hate spreading messages. Though the Supreme Court laid guidelines but still there exists certain loopholes which cannot be unseen and the Government should take cognizance of such matters and expediently pass a law related to lynching.

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