

MOB LYNCHING IN INDIA: SINE QUA NON OF LEGAL INTERVENTION

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ABSTRACT

The mob lynching in India has become common in recent time. Lynching means the death of someone by a mob without legal approval. The major reasons of mob lynching in India are caste, religion, region, politics, witch hunting and intolerance. Ranging from 1857 revolt, 1947 partition, community riots to religious riots have been witnessed of major cases of mob lynching. There is no national law on mob lynching; however, victims have the protection of human rights and constitutional rights to get justice. In a recent judgment of Tehseen S Poonawala, Supreme Court laid down preventive, remedial and punitive measures to restrain the violence. This paper will be dealing with a study on various cases identifying with lynching all over India and the role of legal machinery in curbing the menace.

Keywords: Mob Lynching, Violence, Religion, Caste, Legality

INTRODUCTION

Mob lynching means bypassing the legitimate means by a grope of people in order to impose what they believe is justice. There is a high rise in Mob Lynching in India in a span of time. Many innocent have been brutally tortured and some even lost their lives for no crimes at all. There are so many reasons for mob-lynching such as extremism, casteism, robbery, extortion, rape, Romeo squire, anti-nationalist, witch-hunting, class conflict, and political reasons. Mob lynching violence raises a question mark on rule of law as a bunch of people themselves become the law, judge and executioner itself.

In Mob Lynching involvement of mob is certain, the process and the kind of violence are also somehow the same though the reasons, basis, and circumstances can be different. These crimes take place when people get incited by hatred and anger and get ready to take law into their own hands. This violence is named as hate crimes based on the hate of people towards particular community, religion, region, caste or sex. It is very crucial to think that why the people suddenly consider a person harmful for the whole society and take such a drastic decision of killing him or her.

Mob lynching has not been mentioned under the Indian Legal System thereof no specific law or punishment is available for lynching. Lynching means killing someone by mob action without legal approval. The word 'lynch' or 'lynch law' has been derived by two Americans named Charles Lynch and William Lynch during the American Revolution particularly to deal with Negroes. The motive and meaning of this derivation was punishment without trial (Quinion, 2008). The Inferiorisation Process was used in Lynch law which means to target the specific group or community of the society as blacks were the objective in America. William Oliver (1989) portrayed the "Inferiorisation Process" as physical violence in a systematic form in all the political, legal, educational, economic, religious, military, and mass media arena to get all institutions under the control of Whites".

Lynching is an unlawful murder by the mindless and morally corrupt mob. Mob lynching is not a new phenomenon in India, during 1857 revolt mobs attacked British civilians, in 1947 partition mobs attacked families, individuals in villages, cities and even burned properties of people of a different religion. Lastly, mob violence during communal conflagrations, such as during Sikhs (1984), Christians Kandamahal riots (2009), Muslims, Bombay riots (1992),

Gujarat (2002), Muzaffarnagar (2013), and Baksa riots (2015), most recently (Bakshi and Nagarajan, 2017).

REASONS AND INCIDENTS OF MOB LYNCHING

Recently increased Mob Lynching in India shows a strange barbarous behavior of human. Mob Lynching incorporates the injury or murder of a person who is a criminal or accused of a crime against the community in the eyes of the Mob involved in the lynching. Some of the famous mob lynching incidents occurred in India is as per the following:

Caste and Religious motivated:

Violence on the name of caste and religion is deep-rooted in India. Presently increasing mob lynching cases are mostly result of intolerance and hatred towards other religion and caste on the name of professing, practice, traditions, and law. In 2002 five Dalits from Haryana were lynched on the rumour of cow slaughter and recent Muzaffarnagar and Kokrajhar riots demonstrate the caste and religion as a factor of mob lynching (Bakshi & Nagarajan, 2017). In September 2015, a group of Hindu Mob had lynched Mohammad Akhlaq and his son Danish accusing them of stealing and slaughtering a cow-calf and storing the meat for consuming at Bidara village of UP identified as the first case of a Hindu Mob lynching a Muslim in the name of cow or beef (The Hindu, 2015). The incident became famous as Dadri Lynching and brought shame to the country.

In March 2016, Mazlum Ansari (32 years old) and Imteyaz Khan (15 years old) were brutally lynched by a mob known as 'Gau Rakshak' who is cow vigilantes at Chatra a district of Jharkhand. They were accused of cattle smuggling but in reality, they had a cattle market and were on their way to sell eight oxen (Scroll.in, 2016). In June 2017, a Muslim boy traveled with his two brothers was killed by a mob of Hindus after accusing him to terrorist, Pakistani, anti-national and consumer of beef. Initially, the argument was started over a train seat and turned into death of a young boy (FirstPost, 2017).

In August 2018, Rakbar was transporting cows on foot along with an associate. He was attacked by the VHP's Gau Raksha on the suspicion of being a cow smuggler. He died in police custody (Express, 2018). According to a recent count, there have been 24 incidents of lynching and

vigilante violence, resulting in the murder of 34 persons and rape of 2 women, in recent years mostly after 2015, most of the victims belonging to the minority Muslim community and Dakit community. The bulk of these was in Haryana (9killed, 2 raped), Uttar Pradesh (9killed), and in Jharkhand (8 killed), West Bengal (5 Killed) (Citizens Against Hate, 2017).

Along with the Muslim community, other minority communities were also threatened by the groups of lynching. Attacks on Christians remain under-reported, but incidents involving churches and priests accused of converting Hindus to Christianity continue (Apoorvanand, 2017). 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. Historical caste violence against Dalits, including rape, murder, and other forms of physical attacks, all by mobs. Una case of cow lynching, where 7 Dalit youth were publically flogged by Gau Rakhsak Dals for skinning a dead cow in Gujarat (20 July 2016), was one of the first bovine related lynchings. (Citizens against Hate, 2017).

Economic and Political motivated:

Economy and Politics always play a great role in mob lynching. In villages, mob lynching is the easiest way to grab land and property. Maharashtra's Kherlanji Massacre case of 2006 was the first reported case on lynching. Around 50 villagers beat four members of the family and parading naked the wife and their daughter before they murdered them due to a land dispute (First Post, 2016). A certain kind of political ideology which is based on hindutva is playing a huge role in such incidents. In the case of Mob lynching it is easy to influence the crowd on the name of religion, culture, and traditions. On 24 January 2009, a radical outfit attacked a group of young women and men in a pub in Mangalore, claiming that the women were violating traditional Indian values.

It is easy to collect the mob by making religion, caste, sex, etc as a political agenda. In India, some of the political parties and groups are historically based on religion and caste which spread hatred in society to play their political card during election resulted in mob attacks. It is the cheap and best way to win the election in India as most of the population of India is a religious, superstitious and emotional fool. Beef ban, Romeo squire, Ghar Vapsi and Love jihad, etc are all politically motivated notions to polarize the society and take advantage as political gain.

Mob Justice:

Due to unawareness of legal provisions and consequences of breaching the law, less strictness from police, and slow process of legal mechanism, people of India endeavor to be judge and to do justice themselves by defining their own rules and regulations. In February 2016 the JNUSU President Kanhaiya Kumar, arrested on sedition charges, was beaten up by lawyers while he was being produced at Patiala House Court. In May 2017, an e-rickshaw driver was lynched by a mob of students from Delhi University. The incident occurred after the driver had stopped two drunken students from urinating in public which later they had returned with a group of students to lynch the driver (First Post, 2017). In June 2017, the two youths were beaten to death by a mob of at least 250 people who suspected them to be child lifter in Guwahati (Tehelka, 2018). In 2017 more than 27 persons have been killed just on the suspecting to be a child lifter. Mob justice sometimes gets back support from political parties and groups.

Witch hunting:

Witch hunting is the historical problem in India which is wholly based on mob lynching “Witch-hunting” includes branding a woman as a witch, mostly after an Ojha confirms that a woman is a witch, the process of prosecution and execution of that woman, often involving mass hysteria and lynching (The Prevention of Witch hunting Bill, 2016). Witch hunting literally means molesting and killing a woman believed to have evil magic power. In witch hunting, the involvement of the mob in torturing and killing the victim is the prima facie. The Reasons for witch hunting are noticed as grabbing land, settle scores, family rivalry, property, patriarchy, superstition, suppression, subordination, sexual advances, and caste factors.

In places where superstition and vigilantism overlap and small rumors can turn deadly, nearly 2,100 people accused of witchcraft have been killed between 2000 and 2012, according to crime records of 2014. From 2000 to 2015, around 2200 cases are registered against the witch hunting process in India (National Crime Record Bureau 2016). Most of the victims of witch hunting are Schedule Caste and Schedule Tribes women (Washington post, 2014). Researchers claimed that in the veil of superstition women are targeted and victimized in witch- hunting by some people to grab the land and settled their personal interest. Sometimes, it is used to punish women who question social norms (Laxmi, 2005).

In 2014, in Jharkhand, a 50-year-old woman and her daughter were accused of practicing witchcraft, tortured and murdered by the mob (Washington Post, 2014). In August 2015, in Jharkhand five women accused of witchcraft lynched by villagers after dragging middle-aged women from their huts, beat them to death (Aljazeera, 2015). In August 2016, a couple was lynched by a mob on the suspicion of practicing witchcraft in Assam. The Couple was dragged out of their house by a mob from the locality and lynched by the roadside. The incident took place in front of their daughter of 10 years old (Telegraph India, 2017).

In July 2015, an Adivasi woman was dragged out of her house and murdered by a mob after a local priest reportedly branded her a witch and accused her of practicing witchcraft that was "bringing ills" to the village (Telegraph India, 2017). In July 2015, Villagers attacked the family of Guru Munda, a 40-year-old tribal at Mundasahi village in Keonjhar district after accusing witchcraft practicing by the family. Munda, his wife, Budhini, two daughters and two sons were brutally murdered (Tehelka, 2018).

Kesi Chadana, a 40-year-old woman was declared witch in 2014 in the State of Rajasthan. Her fellow villagers beat her and stripped her naked, and made her wear a garland of shoes, carry heavy stones on her head, and parade through the neighboring villages on a donkey (Ahuja, 2018). Women who are branded as witches face the violence of higher degree physically and mentally. They "were forced to swallow urine and human feces, to eat human flesh, or drink the blood of a chicken" (Live Mint, 2015).

LAW AND ORDER ON MOB LYNCHING

Legislations:

Mob Lynching is a heinous crime and gross violence of human rights but there is no national law on mob lynching even though India has a long history on lynching. However, National legislation such as the Constitution of India, the Indian Penal Code and The Protection of Human Rights Act, 1993 can be linked with the lynching offences. National Crimes Records Bureau (NCRB), the principal source of official statistics on crime in India, does not record the particular cases of lynching. Section 223(a) of the Code of Criminal Procedure, 1973 provides that "persons or a mob involved in the same offence in the same act can be tried together".

However, the same provision has not been used to deliver justice so far. (Abraham and Rao, 2017).

Incidents of lynching are generally reported under section 302 for murder, 307 for the attempt to murder, 324 for causing hurt, 147 for rioting of the Indian Penal Code and so on. Provisions such as section 153A (promoting enmity between groups and acts prejudicial to maintenance of harmony); 153B acts prejudicial to maintenance of national integration), 295A (acts intended to outrage religious feelings); and 295B (words intended to hurt religious feelings) of the Indian Penal Code are considered the hate crime law in India. It is noticed that in most of the lynching cases these provisions have not included in police First Information Reports against the accused. Moreover, even where hate crime has been recorded under these sections, data is not provided disaggregated by identity groups. There is no way to know then, the difference between the ‘victim’ and the ‘perpetrator’ in these cases (Citizens against hate, 2017).

Similar is the case of ‘communal violence’ that finds mention in NCRB reports, with a little recording of the agency who was the victim, and who the perpetrators. Lastly, at best, the above are conservative laws that create an offence, when order and harmony, are disturbed and religious feelings hurt. There is little that penalizes action that is ‘hate inspired’, and which implicitly involves crimes by majority groups against a vulnerable community. “Hate crimes are acts of violence and intimidation, usually directed towards already stigmatized and marginalized groups” (Minority Rights Group, 2014:11).

In effect then, hate crime laws are not power neutral, rather they exist to protect the vulnerable. The absence of hate crime law in India was acknowledged, when the Law Commission, in its Criminal Law Amendment Bill 2017, proposed insertion of a new provision, viz. 153C in the IPC, prohibiting ‘incitement to hatred’, going beyond that to incite enmity and disturb national unity. The closest thing in the Indian legal system to a hate crime law is The Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act, 2015, which criminalizes violence and atrocities against Dalits and indigenous community the most marginalized of Indian society. Hate inspired crimes against them are then also recorded as SC/ST crimes. But SC/ST Act does not cover other socially disadvantaged groups in its ambit such as religious, ethnic, and sexual minorities and the disabled and neither does it cover groups among Muslims and Christians that consider themselves as Dalits.

Consequently, there is no counting of hate crime against these minorities. In the absence of official records, it is media reports and the odd scholarly works that are the main sources of hate crime data against religious minorities in India but these are not adequate. There are some international and national instruments which support the victims of mob lynching. Such as Article 7, of Universal Declaration of Human Rights provides Equality before the law, and equal protection of the law, and the protection against discrimination. Article 20 of the International Covenant on Civil and Political Rights also states that “any advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence shall be prohibited by law”.

International Convention on the Elimination of All Forms of Racial Discrimination also in its Article 4 regards the incitement and actions based on ideas of racial superiority or hatred, among others. Last but not the least, The Indian Constitution under Article 14 guarantees the equality before the law and equal protection by the law, under Article 15 provides Prohibition of discrimination on grounds of religion, ethnicity, and gender and under Article 21 laid down the guarantee of life and liberty to all citizens.

Judicial approach:

In Landmark judgment Tehseen S Poonawala and others V. Union of India¹ on 17 July, 2018, comprising a three-judge bench of Chief Justice Dipak Misra and Justices A.M. Khanwilkar and D.Y. Chandrachud of Supreme Court recommended that the enactment of 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”. The present writ petition was preferred under Article 32 of the Constitution to take immediate and necessary action against the cow protection groups indulging in violence. During explaining the importance of safeguarding of constitutional and statutory law, of every individual court, cited the Krishnamoorthy case.

In Krishnamoorthy² case of 2015 Supreme Court stated that “the law is the mightiest sovereign in a civilized society. The majesty of law cannot be sullied simply because an individual or a group generate the attitude that they have been empowered by the principles set out in law to take its enforcement into their own hands and gradually become law unto themselves and punish the violator on their own assumption and in the manner in which they deem fit.” The

¹ Writ Petition (Civil) No. 754 of 2016

² Krishnamoorthy v. Sivakumar and others (2015) 3 SCC 467

Court observed that “no one is allowed to take law into his own hands on the fancy of his shallow spirit of judgment. Just as one is entitled to fight for his rights in law, the other is entitled to be treated as innocent till he is found guilty after a fair trial”.

In *Nandini Sundar and others v. State of Chhattisgarh*³ 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. In *Mohd Haroon and others v. Union of India* and another⁴ case it is held that “it is the responsibility of the State Administration in association with the intelligence agencies of both the State and the Centre to prevent recurrence of communal violence in any part of the State. If any officer responsible for maintaining law and order is found negligent, he/she should be brought within the ambit of law”.

In the present case, the Supreme Court held that “Mob lynching is disrespect to the rule of law and Constitution values. We may say without any fear of contradiction that lynching by unruly mobs and barbaric violence arising out of incitement and instigation cannot be allowed to become the order of the day. Such vigilantism, be it for whatever purpose or borne out of whatever cause, has the effect of undermining the legal and formal institutions of the State and altering the constitutional order.”

In *St. Stephen's College v. University of Delhi*⁵, while emphasizing on the significance of Unity in Diversity, the Court has observed that “the aim of our Constitution is unity in diversity and to impede any fissiparous tendencies for enriching the unity amongst Indians by assimilating the diversities. The meaning of diversity in its connotative expanse of the term would include geographical, religious, linguistic, racial and cultural differences. It is absolutely necessary to underscore that India represents social, religious and cultural diversity”.

Court in the present case highlighted that there is an urgent need for intervention from State in protecting the citizen’s rights. On the rising intolerance, the apex court laid down that “a dynamic contemporary constitutional democracy imbibes the essential features of accommodation pluralism in thought and approach so as to preserve cohesiveness and unity.” Supreme Court observed that "extra-judicial" acts like "cow vigilantism or any other

³ (2011) 7 SCC 547

⁴ (2014) 5 SCC 252

⁵ (1992) 1 SCC 558

vigilantism" and lynching should be nipped in the bud and passed guidelines to the Centre and the states. Court also urged Parliament to frame special legislation to tackle the problems posed by vigilante squads and said that until then the guidelines would stand the force of law.

GUIDELINES TO CURB LYNCHING VIOLENCE

In Poonawalla case Court asserted that “with regard to numerous incidents of lynching and mob violence which need not be specifically stated since we are going to issue certain directions covering the arena of preventive, remedial and punitive measures.”

Preventive Measures

Court states that in every district there should be a Nodal Officer a senior police officer, not below the rank of Superintendent of Police for taking measures to prevent incidents of mob violence and lynching. A special task force must be appointed to get the intelligence reports about the incidents, victims and perpetrators who spread the hate speeches and fake news. The places where recently mob violence took place must be taken in good care.

The regular meetings must take place among Nodal officers, intelligence units and police personnel to find out probability and tendencies of vigilantism and mob violence in the district and take steps to prohibit instances. The Nodal Officer shall also make efforts to eradicate a hostile environment against any community or caste which is targeted in such incidents. The Director General of Police/the Secretary, Home Department of the concerned States must be informed about the strategies to control the lynching through regular meetings with nodal officer.

The Court opined that “It shall be the duty of every police officer to cause a mob to disperse, by exercising his power under Section 129 of CrPC, which, in his opinion, has a tendency to cause violence or wreak the havoc of lynching in the disguise of vigilantism or otherwise.” The Home Department of the Government of India must take initiative to implement the constitutional goal of social justice and the Rule of Law. There should be seriousness in patrolling so that the anti-social elements involved in such crimes are discouraged and remain within the boundaries of law thus fearing to even think of taking the law into their own hands.

The broadcast about the serious consequence of such incident on radio and television including the official websites of the Home Department should take place. 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 which can cause incidents of mob lynching.

Remedial Measures

The Court instructed that despite the preventive measures the incident of lynching or mob violence take place, FIR must be lodged without delay and the safety of family members of the victim must be ensured. The investigation regarding mob lynching cases must be done especially by the Nodal Officer. The victim compensation scheme including the interim relief under section 357A of Criminal Procedure Code, 1973 must be prepared by the State Governments. Fast track court must be appointed for the cases of lynching and mob violence and the maximum sentence as an example to create fear of law must be awarded to accused. Safeguarding the witnesses of the case must be paramount responsibility of court and police. Day to day report regarding trial must be given to the victims and family. The facilities of the Legal Services Authorities Act, 1987, to choose a legal aid advocate must be provided to victims.

Punitive Measures

Court Laid down that wherever it is found that “a police officer or an officer of the district administration has failed to comply with the aforesaid directions the same shall be considered as an act of deliberate negligence for which appropriate action must be taken against him/her and not limited to departmental action under the service rules”.

CONCLUSION

A number of people without having a second thought agree to kill someone shows the intolerance behavior of Indians which could be developed due to lack of education and awareness. It has been found that in the cases of mob lynching, most of the victims are male, female and even children, poor, of a low caste and minority community. This is very apparent

that these are the crimes which are against the marginalized community of the society. The situation prevailing in India demands a special law on the violence of mob lynchings.

From Human rights, fundamental rights, to moral rights all the legal instruments have been talking about the upliftment of the marginalized and excluded sections of the society. Yet, most of the crimes are taking place against them. It is an irony that intolerance of the Indians is of such a level that they consider themselves above law and create unfavorable circumstances against law and order. Such situations create panic and terrorize environment in the society which somehow restrain the growth and development of the society. Belief in the caste system, blind faith in religion and dependency on superstitions itself shows the intellectual level of the people of India.

To solve out such problems, along with stringent laws there is a need to spread quality education and awareness among people. The police investigation into most of mob attack cases in rural India revealed almost similar modus-operandi which must be improvised. Preservation of life is the most important right for an individual and the state has to protect it. The preventive, remedial and punitive measures laid down by the Supreme Court must be followed strictly. The role of media, civil societies and NGO's must enhance in a positive direction. These kind incidents are a blot on the face of our democracy because we have a democracy, not mobocracy in India.

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