

# LYNCHING A THREAT TO DEMOCRACY

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## ABSTRACT

*Indian Constitution is a majestic document which has provided this country the status of being sovereign, democratic and republic. In a democratic country, the people have right to live freely, eat freely, trade freely and have their own privacy. But today these fundamental rights are at stake for certain religious and caste based minority. The Muslims, The Dalits and The Tribals who add to the secular and diverse nature of this country are under constant threat. They fear being beaten up and killed for what they eat or trade in. The principle of unity and integrity of the nation which is incorporated in the Preamble of our Constitution just seems to have vanished into thin air in the present scenario.*

*Recently India has fallen prey to rising number of lynching incidents. A large number of incidents have been reported since 2014. Cow vigilantism has led to communal unrest in the society and has further induced fear in the minds of the people for what they consume. The right to life and liberty which are paramount for the democratic society have weakened today for the largest democracy in the world as right to livelihood, right to eat and right to privacy are at stake for certain religious and caste based society in the Northern part of India.*

*The executive has further failed to curb this violence by not investigating and prosecuting properly in majority of incidents reported. These targeted victims have been denied their basic human rights and even their right to life enshrined in our Constitution*

*The author through this paper aims to understand the underlying cause of lynching and its paralysing effect on the constitutional rights of religious and caste based minorities in India. The author further critically examines the current law and goes on to recommend steps to bridge the gap between law and its effective implementation.*

## **INTRODUCTION**

Lynching has been defined as, “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 upon them, without legal trial, and without the warrant or authority of law.”<sup>i</sup> Hence, one can deduce that lynching is just another name for brutal murder.

Lynching has always existed in the world. The history of lynching can be traced back to the 17<sup>th</sup> century i.e. 1877 to 1950 where blacks were ruthlessly lynched by whites in the United States of America. The southern part of America witnessed 3800 deaths alone due to mob violence. The overwhelming majority of victims, 84 percent, were African Americans who met their fate at the hands of white lynchers. Men were vastly more likely to be the target of Judge Lynch’s vengeance, with 3.1 percent of the victims being women of either race. Although all southern states experienced lynching, Georgia and Mississippi together accounted for over one third of the victims of southern mob violence during this period.<sup>ii</sup> In most of the incidents, the victims were brutally tortured to death in broad day light before hundreds of spectators, were hanged from trees or shot with bullets. One of the famous instances of American lynching is the incident that occurred in March 1931, where a crowd of 500 people had gathered threatening to lynch nine black teenagers who were charged with raping two white women aboard a train. In response and as a precaution, National Guardsmen were stationed around the jail to discourage any violence. Later, they had to escort the accused out of town to a safer location.<sup>iii</sup> As per the reports and documentaries, general decline in the incident of lynching was observed owing to the acts of courageous executive authorities, strict legal regimes and civilian third parties’ intervention. Post World War II, the local authorities in America actively took steps to eradicate such incidents of lynching.

Recently India has witnessed frequent killings in the name of cow protection which has spread fear amongst certain class of people. India Spend has analysed and released a report stating that from 2010 to 2017, 57% of the victims of mob violence attacks were Muslims.<sup>iv</sup> Most of these attacks happened on mere suspicion or rumours relating to cow slaughter with no evidence. “The violence started with cow-related vigilantism but it is now building up more violent behaviour--from small to big reasons anything could be the trigger,” psychologist Upneet Lalli, deputy director of the Institute of Correctional Administration in Chandigarh,

told **IndiaSpend**. Large number of videos were circulated where victims were tied up and were begging the mob to spare their life. Social media has also further aided in increase of lynching incidents across the country and has helped fuel hatred in the society. Crime knows no religion and it is the duty of the state to protect its subjects irrespective of their caste, class, race, sex or religion.

Lynching is in blatant violation of rule of law which cannot become the order of the day, be it in the name of cow protection, or alleged smuggling or cruel treatment being meted out to cows. Mob violence is a reflection of intolerance in a democratic society due to the dogmatic thoughts of certain group of people. In recent years, some unfortunate incidents of mob violence have lead us to think if our country has lost its ability to sustain its diverse culture. These incidents also raise the question regarding our commitment to being secular, which is a basic and fundamental tenet guaranteed in the Preamble of our Constitution. Each individual has an equal right to live with dignity, humanness and integrity in the society and Lynching violates this inherent right to life protected under Article 21 of the Constitution. This heinous act is an encroachment of their personal liberty to eat within the four corners of their wall or in any public space.

## **MOB LYNCHING AND INDIAN LAWS**

We can define lynching as murder committed by unlawful assembly. Though Indian Penal Code has well defined both the offences and their punishments respectively but these do not seem to be enough to curb the mob violence. The similar prayer was mentioned in Supreme Court in July 2018 in the famous case *Tehseen S Poonawala v Union Of India*<sup>v</sup>.The bench stressed on the importance of drafting new laws regarding lynching and in consequence of that, Rajasthan became the first state to pass a bill against lynching in its assembly. “The Rajasthan Protection from Lynching Bill 2019” punishes the convict with life imprisonment and a fine of up to Rupees 5 lakhs in cases of mob lynching resulting in the victim’s death. Indian criminal jurisprudence has struggled to criminalise lynching as there is no express provision regarding the same but the following provisions of Indian Penal Code cover various aspects of lynching:

- Section 302 IPC punishes accused for committing murder.

- Section 34 of IPC. This section defines common intention. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.
- Section 304 IPC describes culpable homicide not amounting to murder.
- Section 307 explains attempt to murder.
- Section 325 of IPC deals with punishment for causing voluntary grievous hurt.
- Section 141 and Section 149 of IPC deal with unlawful assembly and makes every member of unlawful assembly guilty of offence committed in prosecution of common object.
- Section 120B of IPC defines criminal conspiracy.
- Section 223(a) of CrPC punishes persons commit same offence in the course of same transaction.

## **PROTECTION UNDER CONSTITUTION**

The food orientation of people in India is interlinked to the caste they belong to. It was well explained by Ambedkar in the following para “Even a superficial view of the food taboos of the Hindus will show that there are two taboos regarding food which serve as dividing lines. There is one taboo against meat eating. It divides Hindus into vegetarians and flesh eaters. There is another taboo which is against beef eating. It divides Hindus into those who eat cow’s flesh and those who do not. From the view point of untouchability, the first dividing line is of no importance. But the second is. For it completely marks off the Touchable from Untouchables<sup>vi</sup>”.

In 2014, a national survey claimed that 2/3<sup>rd</sup> of India was non vegetarian in its food habits. The highest number of Hindus eating beef/buffalo meat eating are found in Andhra Pradesh, followed by Tamil Nadu, Kerala and Karnataka<sup>vii</sup>. It is surprising to know that largest beef consuming state is not the Muslim majority Jammu and Kashmir but Meghalaya where more than 80% of the population consume beef. It has been observed that most of these incidents are confined to Northern parts of India. India is becoming a state where rules and regulations are imposed on the basis of class based society. It can be deduced that Muslims, Dalits and Tribals are being targeted unnecessarily and are falling prey to so called cow protection groups. It is

really dangerous to know that people can be merely lynched in India on the suspicion of what they consume. Article 21 of the constitution is blatantly violated as their very right to live freely in the society has been snatched away from them. The right to privacy has been infringed as they cannot freely eat. Right to privacy is blatantly violated when a person is questioned or instructed about his choices regarding what to eat or what not to eat. The Supreme Court has set the rules on right to privacy which is the cornerstone of any liberal society. It has emphasised the need to give an expansive interpretation to the term “personal liberty” under Article 21 of the Constitution. Justice Chandrachud explained that life and personal liberty are not creations of the constitution. These rights are recognised by the constitution as inherent in each individual as an intrinsic and inseparable part of the human element which dwells within<sup>viii</sup>. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. One needs to understand that life is sustained by food which is a very important aspect that governs life and food has different meaning for different type of people. Hence, no one has the right to stop citizens of the country from eating beef or any other food item. Further it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public space mentioned by Justice Chandrachud in Puutaaswamy case<sup>ix</sup>. Therefore, a person cannot be merely lynched for eating beef in a public space like mall as his right to privacy still exists about what to eat or what not to eat irrespective of place of consumption. Privacy attaches to the person since it is an essential facet of the dignity of the human being. Hence, we can now deduce that Muslims, Tribals and Dalits suffered blatant violation of Article 21 as they were deprived of their personal liberty and life. Lynching is an unlawful offence as no individual has right to violate another’s dignity.

Article 25 of the constitution has also been expressly violated for them as they are under constant threat to practice their religion for they are being targeted on the basis of caste. The minority is being targeted for the simple reason that their way of life, beliefs and religious practices is not in accordance with the mainstream. But our constitution recognises their rights as sacred as those conferred on other citizens to protect their freedom and liberties.

Article 19 of the constitution has been directly attacked not only for Muslims but Hindus also. Farmers often sell unproductive and aged cattle as it is costly to feed them. The cow slaughter laws have not only affected cattle trade and agricultural economy but also leather industry and meat export industries. The Human Rights Watch NGO interviewed Shahbudeen, from Alwar

District who stated that most of his transporters were Muslim but they could not trade in the same business as it was a huge risk to their lives to not only carry cow but even buffalos as cow protection groups damage vehicles and kill driver.

## **HISTORY OF COW PROTECTION IN INDIA**

The debate<sup>x</sup> of cow protection was one of the heated discussions in Constituent Assembly during the framing of the constitution. The discussion was if prohibition of cow slaughter could be a fundamental right as it was a matter of religious beliefs for certain class of people but on the other hand there was a class of society which was dependent on cow slaughtering for its livelihood.

Art 48<sup>xi</sup> previously article 38A of the Draft Constitution was highly discussed in the Constituent Assembly where most of the members suggested to ban cow slaughter and include it as a Fundamental Right. Pandit Bhargava Das a member of the constituent assembly stated that cow slaughter should be banned so as to solve agricultural and food problem of the country. He further brought a religious perspective claiming that Lord Krishna used to consider cow as “gau mata” and later during Mughal Ruling of Akbar and Aurangzeb, cow slaughtering was not practiced in India as it was unprofitable to them.

President Rajendra Prasad had constituted a committee to check if number of cattle could be increased in India by completely banning their slaughter. The whole committee unanimously agreed to the same by proving that banning the slaughtering of buffaloes, goats and cows could be a great profit to this country. Cow be it a milch or not, is a moving manure which shall help us in increasing agricultural produce. Hence, majority of members requested to ban cow slaughter and include it plainly as a Fundamental Right.

Syed Muhammad Saidulla appreciated the majority views and requested the house to let them sacrifice the cows and other animals on the occasion of Bakri Eid without violence. He further asked the majority to clearly state the above in the law so that Muslims could know what exactly the position was on cow slaughter.

Finally, after the controversial debate, the Constituent Assembly managed to find a place for cow slaughter in the constitution as a directive principle where state could make laws regarding the same but not as a fundamental right.

Hence, Article 48 was born with the Constitution which left the whole nation unsatisfied and ambiguous about the position of law.

If we look at Article 48 minutely, it is very limited in its scope which only prohibits slaughter of cows and calves and other milches. The prohibition is meant for scientific purposes and hence complete ban was never intended.

## **ROLE OF STATE IN PREVENTING COW VIGILANTISM**

Executive authorities have failed to provide justice by not investigating and prosecuting properly. The rule of natural justice has failed miserably at the executive level itself. In many cases, it has been observed that police authorities instead of supporting and protecting the victims against cow vigilantism, have filed a complaint against the victims' families itself in order to create fear in their mind to pursue justice in our legal system.

“In the killing of Imteyaz Khan and Mazlum Ansari in Jharkhand, the police arrested eight men, who all confessed to the killings and said they were members of a cow protection group that had previously threatened Muslim cattle traders. The police filed charges against all eight in May 2016, but did not include a prominent member of the local cow protection group, the only accused who had been named in the FIR filed by a witness to the case. In a glaring failure of procedure, none of the statements of the accused were recorded in front of a magistrate, even though a confession made to a police officer is not admissible as evidence under Indian law. The victims' families told Human Rights Watch when the eight accused were released on bail in June 2016, they were scared for their safety. In December 2018, a court in Jharkhand convicted all eight accused and sentenced them to life in prison.”<sup>xii</sup>

Many such cases have been observed where justice could not be given to the victims as procedure was tampered by the police authorities. In consequence of such acts, the Supreme Court through Tehseen Poonawala <sup>xiii</sup>judgement directed the central and state government to make statements in public that “lynching and mob violence of any kind shall invite serious

consequence under the law”. The Supreme Court came up with preventive measures where state government is directed to designate a senior police officer in each district to prevent cow vigilantism. But unfortunately such measures just remain documented and its practical application is not implemented. It is sad to witness that central and state government has failed to protect the minorities rights over religious belief.

## **RECOMMENDATIONS**

A country can successfully accommodate all its citizens with the support of executive authorities functioning purely on the basis of natural justice in its procedure.

- Each state should have a separate anti- lynching law
- Fast track courts should be set up for each district so as to decide on the lynching cases and cases should be disposed of in a time bound manner in order to avoid tampering of evidence.
- The state governments should make rules for police authorities so as to ensure proper implementation of anti -lynching laws.
- It has been observed that victims in such cases are generally economically backward and belong to the minority, hence their kin or victims if alive should be compensated adequately and rehabilitated if their properties are destroyed.
- The police administration has to be improved tremendously as they are not following very basics of criminal system of justice like registering FIR smoothly.
- Awareness programs should be played in the theatre, malls and various public spaces to create fear in the minds of public against cow vigilantism.
- Article 48 of the constitution should be reconstructed so as to confine the ban imposed on slaughtering to that of milch cattle only. aiming at banning of slaughtering of milch cattle.



## CONCLUSION

The author through this paper concludes that in order to save the democratic and secular nature of our country, lynching has to be completely eradicated. The implementation of laws has to be ensured in an effective manner and simultaneously media coverage has to be controlled in order to promote communal peace in the society. We need to remember that a country is responsible to protect the minorities rights also in an absolutely equal manner as it does for majorities.

## REFERENCES

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- <sup>ii</sup> Stewart E. Tolnay and E. M. Beck, *Festival of Violence: An Analysis of Southern Lynchings, 1882–1930* (Urbana: University of Illinois Press, 1995)
- <sup>iii</sup> Daniel T. Carter, *Scottsboro: A Tragedy of the American South* (Louisiana State University, 2007)
- <sup>iv</sup> IndiaSpend, *Hate Crime: Cow related Violence in India*, <https://lynch.factchecker.in/index.php>
- <sup>v</sup> Tehseen S. Poonawala v Union Of India 2018 9 S.C.C 501 (India)
- <sup>vi</sup> Ambedkar, 1948: 318- 319
- <sup>vii</sup> National Sample Survey Office, 2014
- <sup>viii</sup> Justice K.S. Puttaswamy(Retd) v. Union of India 2017 10 S.C.C 1
- <sup>ix</sup> Justice K.S. Puttaswamy(Retd) v. Union of India 2017 10 S.C.C 1
- <sup>x</sup> 24<sup>th</sup> November 1948
- <sup>xi</sup> *The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.*
- <sup>xii</sup> Human Rights Watch: Vigilante ‘Cow Protection’ Groups Attack Minorities in India ( Feb 19 2019) <https://idsn.org/human-rights-watch-vigilante-cow-protection-groups-attack-minorities-in-india/>
- <sup>xiii</sup> Tehseen S. Poonawala v Union of India 2018 9 S.C.C 501 (India)