

THE PALGHAR INCIDENT: LAWLESSNESS NECESSITATING A SEPARATE LAW

Written by *Shaily Nagar*

3rd Year BCOM LLB Student, Institute of law Nirma University, Ahmedabad, India

INTRODUCTION

Over the past few years, India has been stunned by growingⁱ number of extra-judicial killings or public executions denominated by the term “Mob Lynching”. However, recently it has become so gruesome as to cause a collapse of faith in our law and order system. The Hon`ble Supreme Court in a recent case,ⁱⁱ is reported to have justly termed lynching as a “horrendous act of mobocracy”. It is believed that the claim that lynching is a “horrendous act” is fully warranted by facts. The incident took place on the night of April 16, when two ascetics decided to go to Surat via Palgarh District to attend a funeral.ⁱⁱⁱ Both the ascetics and their driver were dragged out of their vehicle and subjected to brutal assault due to suspicion of them being child kidnapers and organ dealers.^{iv} The mob that aggressed them is estimated to be more than 100 locals in the area, including some juveniles too.^v The three men were brutally lynched by axes, stones and lathis in front of the police who were seen standing mutely in the videos of the incident. Incidents like this, results in a heightened sense of insecurity among the people and also indicates that there is a dire need of specificity with regard to the legal provisions for mob lynching. But before dwelling into the dynamics of the laws relating to mob-lynching and finding what law lacks, it is imperative to understand what this phenomenon is.

Understanding the phenomenon

The term “Lynch” is said to have originated from the times of American Revolution, commonly phrased as “Lynch Law”.^{vi} According to Oxford English Dictionary, “lynching” is the act of killing(s) undertaken by a mob without any legal authority or due procedure involved.^{vii} The forces that primarily guide the mob to commit lynching is the intent of majority to merge minorities` acts with their expectation and the other is constantly decreasing faith in our judicial system. Thus, it is always either a group of people bothered by bad governance and lack of

access to justice system, who take law in their own hands or a group of people who identify themselves with a reason and starts a parallel justice delivery system based on what they perceive as morally right or wrong.^{viii}

PRESENT LAW REGIME AND ITS INADEQUACY

Under Indian legal regime, there no specific provision which relates to mob lynching. Even the word lynching is nowhere defined in Indian laws. The commonly used definition of lynching by the NAACP (National Association for the Advancement of Coloured People) is that:

- i. “There must be evidence of a person killed.
- ii. The person must have died illegally.
- iii. A group of three or more persons were involved in the killings; and
- iv. The killing was carried out in public.”^{ix}

However, currently mob lynching is reported under various provisions of Indian Penal Code, typically involving section 302^x (murder), section 307^{xi} (attempt to murder), section 323^{xii} (voluntarily causing hurt) or section 146^{xiii} (rioting). Additionally, the provisions relating to the several persons in mob are section 141^{xiv} (unlawful assembly) and section 34^{xv} (acts done in furtherance of common intention). However, the existing framework does not fully accommodate the factum of hate sentiment shared by the mob.

Section 141 which deals unlawful assembly, for instance, does not consider the fact that the violence was instigated by a mob with an end result in mind. While Section 34 which deals with common intention imposes vicarious liability on the persons requiring prior arrangement of minds, the question is whether section 34 is a sufficient answer. In elaborating, the meaning of the term “common intention” the court has opined that the term implies the pre-arranged plan or prior consultation among the persons forming the group.^{xvi} Thus, the question that arose is whether it is really feasible to prove prior arrangement in case where more than hundred people are involved in an incident. Additionally, section 34 in its essence requires that the offender must be physically present at the actual commission of the crime.^{xvii} While, the real offenders in the case of mob-lynching are not only the ones who commits it but also the ones who instigate it through passing hateful messages on social media platforms. Spreading rumours plays an important role in manufacturing hatred, which leads to death and violence.^{xviii}

Thus, the disseminators of such hatred also share the common intention but they are left acquitted merely on the ground that they were not physically present at the time when lynching was committed.

Importantly, it also needs to be considered that while provisions such as Section 146 which deals with rioting, tries to address the force or violence used by the mob, there is a huge difference in an unlawful assembly engaging in a riot and one engaging in a lynching. However, the damage caused can be similar and often these incidents are not isolated. Lynching is more sinister. In fact, it has been argued that lynching has replaced the age-old communal riots and is significantly more demoralizing.^{xxix} Thus, the seriousness and heinousness of mob lynching goes unnoticed when it gets recorded under section 146. The reason why lynching cannot be seen as rioting is that it is an act of extra-judicial killing which involves hate towards a particular identity of a person.^{xxx} This presence of hate which goes unnoticed and unaddressed is so eminent that certain people take law in their own hands to lynch other humans. Therefore, due to the presence of hate element, lynching is more demoralizing because the targeted ones are often one or two people, representing a particular community.

Moreover, it is well established through time and again that any person who commits a crime can only be punished through the procedure established by law. The same principle has been the essence for Rule of Law^{xxxi}, which emphasizes that no person can be punished without due authority of law. This very concept has been enshrined under Article 14^{xxxii} of the Indian Constitution. Thus, lynching one human without authority of law is in direct contravention with Art 14, which guarantees every person equality and equal protection before law. Incidents like Palghar are in derogation with Article 21^{xxxiii} which clearly demands protection of life except under procedure established by law. Thus, mob-lynching is a federal crime which affects federation and cannot be described as merely affecting “law and order” but as crimes that are in contravention with constitution.^{xxxiv} Constitution needs adequate laws in place to protect it, though one may argue that Indian Penal Code provides for sufficient provisions^{xxxv}, but as a matter of fact those provisions only punish for the end results and does not address the hate sentiment shared by mob.^{xxxvi} For instance, academicians have drawn an analogy between the acid attack and mob lynching. It was justified by the legislative body that even though acid attacks were being recorded under provisions of grievous hurt^{xxxvii} but the nature of offence was as such that it needed a separate law. Similarly, the punishments given for the offence of lynching in the code does not suffice for the physical and mental trauma suffered by the

victim.^{xxviii} As a result the fundamental nature of the offence of mob-lynching is left unaddressed and perpetrators are only charged for murder or hurt which is nothing but merely the result of their actions.

Moreover, it has also been analysed from the various cases that in these cases victim dies as a result of injuries caused to him by the mob and the culprits are not easily identifiable due to large scale of mob.^{xxix} As a consequence, trial of all persons consumes a considerable time. In this context, it should be considered that the main focus should be on preventive measures and not on punitive measures. Thus, it should be realised that present laws neither provide for preventive actions nor provide for police inactions. Indian Penal Code and Code of Criminal Procedure cannot be trusted to ensure preventive measure as they speak minimum in this regard. It has been duly stated by Hon`ble Court in *Tehseen S. Poonawalla case*^{xxx} that state must take preventive measures and police inactions should be made criminally liable. Still, there has been no sign of implementations of these measures by the state. In Palghar itself, there were incidents before the ascetics were attacked^{xxxi} still there were no precautions deployed rather police were seen standing mutely at the spot. Therefore, a new law, should be focused towards police liability so that such inhuman acts should be prevented at any costs.

Furthermore, the present law does not provide for adequate compensation apart from what is given under Section 357A CrPC.^{xxxii} That compensation is given out of the fine charged to the convict and constantly in almost every case, the accused files an appeal against the order in which he was asked to pay fine. As a result, the injured or his family doesn't get compensation for the trauma they suffered for years. As per the report of UP Law Commission^{xxxiii}, it takes almost 10 years for a criminal case to settle in its entirety. Therefore, to ensure remedial measure a separate law must inculcate adequate remedial provisions which will ensure timely financial assistance to the victim or his family.

CONCLUSION

Mob Lynching is rapidly gaining ground, which is quite dangerous for a socially knitted democracy like India. There may be different categories of mob-lynching but the end results are the dents in the rule of law for any democratic country. As the need of the hour demands for a specific and robust lynching law, *Tehseen Poonawalla* and the subsequent developments

have marked the admission of the mob-lynching in India's legal system. It provided the much-needed legal and institutional guidelines but how far those guidelines have taken seriously is still not clear. However, making law is not an end in itself. To begin with, it is firmly believed that the ultimate remedy for lynching is a strong public sentiment against it.^{xxxiv} In pursuance to this, citizens should be made aware of their rights and duties through different modes. Secondly, police should be made duly accountable for their deeds, reason being police discretion deployed in case of mob-lynching can manipulate the prosecutions' case^{xxxv} and can result into grave injustice being caused to the injured. Thirdly, onus should be placed on social media platforms that help in socially producing hate, by onus the focus should not be on finding original content creator but on preventing further dissemination of such hate.^{xxxvi} The aim should be on better digital literacy so as to ensure no such hate-oriented rumours spread. Citizens should be made aware of difference between true news and hate speeches. It's high time to act decisively and to adopt a zero-tolerance approach towards the inhuman acts of mobocracy.

ENDNOTES

ⁱSyed Ubaidur Rahman, *Mob Lynching in India-The Menace is Growing*, SIFY.COM (Sep. 03, 2018), <https://www.sify.com/news/mob-lynching-in-india-the-menace-is-growing-news-columns-sjdmxGjejfeig.html>.

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

ⁱⁱⁱZeeshan Shaikh, *Palghar Lynching: A Recap of What Happened*, THEINDIANEXPRESS (Apr. 24, 2020), <https://indianexpress.com/article/explained/palghar-mob-lynching-mahant-kalpavruksha-giri-6370528/>.

^{iv} *Id.*

^v *Id.*

^{vi} Arnold HT Sangma, *Mob Lynching: An Uprising Offence Needed to be Strenuous Under Indian Legal System*, 2 INT'L. J. ACAD. RES. DEV. 30, 30 (2017).

^{vii} OXFORD DICTIONARY OF INDIA (2nd ed. JOHN SIMPSON ED. 1989).

^{viii} Shilpa Jain, *Vigilantism: A Facist Symptom*, 96 PL (HR), (2017).

^{ix} Christopher Waldrep, *War of Words: The Controversy over the Definition of Lynching, 1899-1940*, 66 J. S. HIST. 75, (2000).

^x The Indian Penal Code, 1860, No. 45, Act of Parliament, § 302.

^{xi} The Indian Penal Code, 1860, No. 45, Act of Parliament, § 307.

^{xii} The Indian Penal Code, 1860, No. 45, Act of Parliament, § 323.

^{xiii} The Indian Penal Code, 1860, No. 45, Act of Parliament, § 146.

^{xiv} The Indian Penal Code, 1860, No. 45, Act of Parliament, § 141.

^{xv} The Indian Penal Code, 1860, No. 45, Act of Parliament, § 34.

^{xvi} Mahbub Shah v. Emperor, AIR 1954 PC 148.

^{xvii} Molazim Tewari and Ors. v. The State, 1961 2 Cri LJ 266.

^{xviii} Veena Daas, *Specificities: Official Narratives, Rumour and the Social Production of Hate*, 4 SOC. IDENTITIES 109, (1998).

^{xix}Ziya Us Salam, *Why Lynchings Have Become Substitute for Communal Riots*, HUFFPOST (Feb. 08. 2019), https://www.huffingtonpost.in/entry/why-lynchings-have-become-a-substitute-for-communal-riots_in_5c5d6f2ce4b0a502ca34c148.

- ^{xx}Boom Live, *Mob Lynchings: Absence of Data Allows Governments to Live in Denial*, NEWSLAUNDRY.COM (Jul. 20, 2017), <https://www.newslaundry.com/2017/07/20/mob-lynchings-absence-of-data-allows-governments-to-live-in-denial>.
- ^{xxi}Brian Z. Tamanaha, *The History and Elements of the Rule of Law*, SINGAPORE J. LEGAL STUD. 232, 247 (2012).
- ^{xxii}INDIAN CONST. art 14.
- ^{xxiii}INDIAN CONST. art 21.
- ^{xxiv}Indira Jaysingh, *Why Government Should Make New Law on Lynching*, THE ECONOMIC TIMES (Jul. 22, 2018), <https://economictimes.indiatimes.com/news/politics-and-nation/why-government-should-make-new-law-on-lynching-soon-before-its-too-late/articleshow/65085294.cms?from=mdr>.
- ^{xxv}Vakasha Sachdev, *Is MASUKA Really an Answer to India's Mob Lynching Epidemic?*, THEQUINT (Jul. 01, 2017), <https://www.thequint.com/news/india/is-masuka-the-answer-to-mob-lynching>.
- ^{xxvi}Mahima Balaji, *Palghar, Alwar and Beyond: The Anatomy of Lynching Necessitating a Legal Framework*, CCLSNUJ (Aug. 06, 2020), <https://criminallawstudiesnluj.wordpress.com/2020/08/06/palghar-alwar-and-beyond-the-anatomy-of-lynching-necessitating-a-legal-framework/>.
- ^{xxvii}The Indian Penal Code, 1860, No. 45, Act of Parliament, § 320, 322, 325 & 326.
- ^{xxviii}Naeesha Halai, *MOB FRENZY AND LYNCHING ...#NOT IN MY NAME*, 3 INT'L. J. MGMT. APP. SCI. 40, 42 (2017).
- ^{xxix}Nithya Nand Pandey, *Mob Lynching: A New Crime Emerging in Indian Society*, 5 IJRAR 808, (2018).
- ^{xxx}Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501.
- ^{xxxi}Shaikh, *supra* note 3.
- ^{xxxii}Code of Criminal Procedure, 1973, No. 2, Act of Parliament, § 357-A.
- ^{xxxiii}*Seventh Report of VII Law Commission on Mob Lynching*, State Law Commission Lucknow (Aug. 26, 2019).
- ^{xxxiv}Duane Mowry, *Lynch-Law and Lynching*, 17 GREEN BAG 638, 639 (1905).
- ^{xxxv}M. Mohsin Alam Bhat, et al., *The Crime Vanishes: Mob Lynching, Hate Crime and Police Discretion in India*, JINDAL GLOBAL L. REV., (2020).
- ^{xxxvi}Chinmayi Arun, *On Whatsapp, Rumours and Lynching*, 6 ECON. & POL. WKLY. 30, 32 (2019).