

LAW AND LYNCHING

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ABSTRACT

The following paper is related to the Mob lynching. Mob lynching is considered one of the most contemporary issues in India. It has been observed in the studies that there is no specific provision for Mob lynching committed by the mob.

Therefore through this paper the researcher aims to suggest some measures which can be opt to penalize the offender for the offence and also answering the need of the legislature to make provision for punishment.

INTRODUCTION

Lynching is premeditated extra judicial killing by a group. A mob lynching is what, when a lawless mob attempts to take justice into their own hands, rather than following legal due process. Although it is not new or shocking crime as we all aware about this from our childhood. But it will be shocking to us that our India is having number of laws but nowhere the term mob lynching has been covered or defined not even in the IPC. Although it is a crime against person, society ,property ,community etc. killing or beating a person for a reason is different but for no reason is totally unacceptable. People gathered without any common intention and outburst their anger against the innocent is also violating the human rights of the victim. This type of crime is called hate crime.ⁱ It is an offence which manifests evidence of prejudice based on race, religion, ethnicity, disability or sexual orientation. The peculiar feature of hate crime is absence of motivation, in terms mental state of the perpetrator or the nature of harm, caused. Hate crime may therefore be defined as the hate violence committed because of victim actual or perceived race color religion disability sexual orientation or origin.ⁱⁱ Briefly stated, hate crime involve victimization of minorities due to their racial or ethnic identity by members of the majority. The key factor in hate crime is emphasis on group and not the individual identity of the victim.ⁱⁱⁱ

MOB LYNCHING IN INDIA

In India the most targeted victims of mob lynching are racial or religious minorities and particular vulnerable caste people. Mainly the minor community targeted on the name of cow vigilantes, anti-nationalist, child trafficking, etc. Supreme Court termed lynching as “horrendous acts of mobocracy”. According to the Reuters Report and India spend 2017 most cases are related to cow terror attack and 97% of lynching on the name of gau rakshaks come after 2014. It will be not shocking that 98% victims are of cow protection vigilantes. Although there is no proper static data provided by the NCRB regarding the violence.

WHY? There are so many laws but still the government can't handle the cases of mob lynching although may be the laws are not sufficient or the execution of the laws are not properly

disposed As in the case of Tabrez Ansari we can see the diplomacy of the government that the deceased wife was not ready to accept the judgement and want to take her life by giving the threat of suicide

CAUSES OF MOB LYNCHING IN INDIA

There is no single cause of mob lynching in India. Because all the cases of mob lynching is totally different but the most of the cases of mob lynching caused due to:

1. Child theft and trafficking
2. Cow vigilantes
3. Religious faith
4. Silence of government
5. Ignorance by police
6. No proper laws
7. Caste discrimination

ROLE OF PUBLIC OR MOB

It is a saying that the public has no face. But it is also true that the real power of our country is vested in the hand of public. As in our Indian constitution we the people of India have power to change the democracy of our country. The power to elect the government of our choice. But when it comes to the matter of the punishment then we are supreme to provide justice to the society although it may be comes under the category of offence. It is the sole duty of the society to take revenge from the victim for the mistake which he has done or not done yet to be decide. People are still facing the discrimination for caste and religion and now a new concept is also introduced for the intelligent society to take crime in their hands^{iv}.

Everybody wants to be a part of everything, said Dr Aditi Kaul, a Puducherry-based psychology professional.

She added that people with "no voices" tend to engage more in mob violence as they feel empowered.

"People from higher economic strata, with better exposure and educational opportunities, move in circles where they can be heard... Lower segments tend to raise voices in a crowd."^v

"No one is legally bound to actively intervene when they see a person being attacked. You can only attach moral responsibility to a situation, which is a subjective construct... Putting one's own life in danger by Intervening is not something the law obliges you to do..."^{vi}

ROLE OF POLICE

The police force in India was created in colonial rule to cater to the needs of the British. The British used it as a tool to suppress any kind of agitation or uprising against them. However, even after 70 years of independence, there is no change in the character of the police. In fact, colonialism has shifted to caste and communal bias with just a few exceptions.^{vii} Police are considered as the executive body of the state and it's the core responsibility of the police to maintain law and order in the society and maintain peace. There are certain rules and law provided for the better administration of executive body but they are not followed. As the police are only for those who commit theft, trespasser in short they are performing their duty but for those offences which are not heinous crime. A mob includes number of person and if we see in case of Dadri 2015 there were more than 100 people who attacked Akhlaq for the sake of gau raksha. How it can be possible that police was not aware for the incident. If we see the other incident the deceased Tabrez was tied up for 7 hour and still no action was taken by police for his safety. How it can be possible that the news circulated to whole of India within 3 hours but no police were there to save him. The perpetrators were aware that delay in police actions was the only opportunity to achieve their goals.

ROLE OF MEDIA

Media play a vital role in our society. As it is considered as the fourth pillar of our Indian democratic society. Media is responsible for establishing the relationship between the government and the governed. And maximum numbers of the people are heavily dependent on the media coverage. Starting from the issues relating to common man, their feelings, their necessities, their expectations and every aspect of their life are closely associated with the media. Media keeps the people awakened and there is no denying the fact that it has become one of the major instruments of social change.

JUDICIAL APPROACH TOWARDS THE CONVICTION OF MOB LYNCHING

In a landmark with far reaching consequences, the supreme court 3 judge bench in *Tehseen S Poonawalla Vs. Union of India and other in writ petition^{viii}*, 2018 comprising CJI Dipak Misra, Justice AM Khanwilkar and Justice Dr. Chandrachud recommended that the parliament may enact a special law against lynching, asserting that “fear of law and veneration for the command of law constitute the foundation of civilized society”.^{ix} We all have seen that the last few years there has been a sharp hike in the incidents and speculations which many times are completely baseless. Those who indulge in mob lynching cannot be allowed to get away under the garb of ‘mob getting angry’ over cow killing or any other cause and must be made to pay the price for their dastardly acts by ensuring that they are either hanged or made to spend their whole life behind bars.

PUNISHMENT FOR LYNCHING

The legal provisions present in our country currently have no laws to deal with lynching or mob attacks, however, the punishment for mob lynching is provided under the ambit of the following laws currently-

- Section 302 of Indian Penal Code–

This section of IPC deals with punishments related to murder i.e. the person who commits murder is punished either with a punishment of death or imprisonment for life. In many cases, the convict may even be liable to penalized.

- Section 304 of Indian Penal Code–

This section deals with punishment for culpable homicide not amounting to murder which may be

- Life imprisonment for life
- imprisonment for a term which may extend to ten years, and shall also be liable to fine in case the act is done with an intention to kill or cause injury that is likely to cause death.
- imprisonment for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death or the injury that is likely to cause death, but without any intention.
- Section 307 of the Indian Penal Code–

This section deals with the punishment in case of attempt to murder. A person who does an act with an intention or knowledge that his action may cause death would be guilty of murder and is to be punished with imprisonment of either for a term of up to ten years and also be liable to fine.

- Section 323 of the Indian Penal Code

This section defines the punishment for causing hurt voluntarily. Whoever, except if provoked as per section 334, voluntarily causes hurt, is bound to be punished with imprisonment which may extend to one year, or with fine (up to one thousand rupees), or with both.

- Section 325 of the Indian Penal Code

This section deals with punishment for causing grievous hurt voluntarily. Under the provision of this section, if a person, except in case of provocation (as provided for by section 335), voluntarily causes grievous hurt, is likely to be punished with imprisonment of either for a term of up to seven years and also payment of fine.

- Section 34 of the Indian Penal Code

This section highlights the punishment for Acts done by several persons in furtherance of common intention. When a criminal act is done by several persons in regard to a common intention, each of such persons is liable for that act in the same manner as if it were done by him alone.

- Section 120 B of the Indian Penal Code

This section mentions the punishment for parties participating in a criminal conspiracy. In case the

- Conspiracy is done for an offence which is punishable with death or life imprisonment or with imprisonment for 2 years or more; the offender is to be punished in the same manner as in case of abetment of the offense.
- In case of conspiracy for an offense that is not punishable with death, life imprisonment or imprisonment for 2 years or above, the offender is liable to be punished with imprisonment for up to six months, or with fine or both.
- Section 143 of the Indian Penal Code

Section 141 defines 'unlawful assembly' as an assembly of 5 or more people in order to use/show criminal force or to resist the execution of law or criminal trespass etc. which is punishable under Section 143 of the code with imprisonment for up to 6 months, or with fine, or both.

- Section 147 of the Indian Penal Code

Section 146 of the code defines 'rioting' as an offense where an unlawful assembly or a member uses force or violence in the prosecution of a common object of the assembly. Section 147 of

the code identifies every member of such an assembly guilty of the offense of rioting and is awarded imprisonment for up to 2 years, or with fine, or both. In case of rioting involving deadly weapons the punishment prescribed is for imprisonment for up to 3 years, or with fine, or both.

- Section 149 of the Indian Penal Code-

This section identifies every member of an unlawful assembly to be guilty of an offence committed in the prosecution of a common object if the members of that assembly knew to be likely to be committed in prosecution of that object.

CONCLUSION

By the above discussion and incidents it is clear that the value or the existence of human being is now dispersed. Anyone can take law in their hands and can kill a person according to their will and wish. It is just like that people are becoming the witness, lawyer and judge in their own. No need to start a long procedure of court proceeding. Just kill them like an insect. Although there are several steps were taken by the government to control these crimes but it is not an issue of particular law. At present there is no specific law or act made by the government to control the crime.

SUGGESSTIONS

1. There should be uniformity in law within, regarding mob lynching.
2. Our country our law for mob lynching.
3. There should be proper execution and implementation of law.

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ENDNOTES

ⁱ Prof. N.V PARANJAPE, *the Concept of Crime*, Criminology and Penology with Victimology. pg.10

ⁱⁱ Hudson David L.: *Hate Crimes*. Chelsea pub. (2009) p.12

ⁱⁱⁱ Nazi's hatred for Jews in Germany, Saddam Husain, a devout ruler of Iraq's hate for shia's , Hindu Muslim riots during India's partition in 1947 are examples of hate crimes.

^{iv} Radhika Sharma, View: Lynching's in the time of voyeurism and social media misuse, THE ECONOMIC TIMES, (Jul 25, 2018)

^v Radhika Sharma, *View: Lynching's in the time of voyeurism and social media misuse*, THE ECONOMIC TIMES, (Jul 25, 2018)

^{vi} Souvik Mukherjee, assistant professor, Amity Law School, Kolkata.

^{vii} VIVASHWAN SINGH, *Role of the Police: To Protect the Victims or Rule With the Mob?*, The Citizen (27 JUNE, 2018)

^{viii} (civil) No. 754 of 2016 dated july17

^{ix} Indian Bar Review, journal, Vol. 46 (2) 2019 pg. 119.