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“MOB LYNCHING: A Desecration of the Rule of Law”

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Abstract

This Paper provides an analysis of Mob Lynching and the criminal threat arising out of this Criminal Injustice Act to the Humanity and its aspects. It has given a major increase to unwanted issue not only within the Nation but also globally. It's a threat towards humanity, culture, nationality, cast and life. Though people that do, get involve and act as a neighborhood of this unlawful crime don't ever realise before playing such a criminal intended state of mind with law and justice that it might affect their life either Physically, Mentally or may deduct their life with an act of Lynching, Leg pulling and Raging, it's a clear cut crime defined under any Law as it's a really sensitive issue for each individual which can't be said or brought during a public at large, though it can only be felt and sensed by individual sufferer of this largely ever silent crime. Though the driven force for all communication is the freedom of speech and expression which is granted under Art: 19(1) (a) of the Indian Constitution, but it doesn't entertain any such criminal activities nor does it motivates any kind or manner of lynching, raging and leg pulling. Then, the media even plays a really solid and awful role in promoting such activities by taking the interviews of witnesses and other parties regarding the matters which are legal and aren't even taken or presented before any such courts and even though they're presented during a very less numbers and even after when the matter or issue becomes cold in public atmosphere, which undoubtly and eventually reduces its value and objective of getting justice to the victim during a legal manner before the court of law. It though not affect only to the victim/suffer but also to the administration of justice which can cause the miscarriage of justice even in upcoming future such issues or a criminal offense which takes place quietly and silently. There are even many sectors which supports directly or indirectly in such criminal injustice and unlawful activities. I was curious about the subject because it is controversial and gives rise to a chance to explore more and find a plausible solution for this deplorability in India. Here, I've have tried to gather a bunch of remedies, laws, causes etc., related to mob lynching, which must be taken into consideration to get rid of this social problem.

Keywords: *Mob, Lynching, Law, Constitution, Global Issue.*

INTRODUCTION

Mob is an English word which means unrestrained or uncontrolled crowd and **Lynching** is an Americo - Latin word, which means awarding the death sentence without any legal proceeding. As defined by the Cambridge Dictionary, a group of people who want to attack someone who they think has committed a serious crime is called **Mob Lynching**ⁱ.

In recent years, many such incidents in India have been recorded, especially in Rajasthan, western Uttar Pradesh, Madhya Pradesh, Bihar etc. The subject of mob lynching isn't uncommon, and may be a questionable one too. Mob lynching cases are for reasons of pure hatred which got just another name. There are very less or no cases with any proof of the allegation charged. This subject may be an unending one within the purview of the country India. But, despite of numerous lynching cases the country has not been ready to declare this malaise a criminal offense. Mob Lynching is against the Fundamental Right of Life granted by the Constitution of India under Article-21.

Mob Lynching is a premeditated extrajudicial killing by a group, when they think one has committed a crime. It is characterized as informal public executions by a mob so as to punish an alleged transgressor, or to intimidate a bunch. It is an extreme sort of informal group social control like Charivari, Skimmington, riding the rail, and tarring and feathering, and sometimes conducted with the display of a public spectacle for maximum intimidation. It can be considered an act of terrorism. Instances of lynching and similar mob violence are often found in every society.

HISTORY OF MOB LYNCHING

The term '**Lynching**' refers to a form of violence in which a mob, under the pretext of administering justice without trial, executes a presumed offender, often after inflicting torture and corporal mutilation, and '**Lynch Law**' refers to a self-constituted court that imposes sentence on a person without due process of law. Both these terms are derived from the name of Charles Lynch (1736–96), a Virginia planter and justice of the peace who, during the American Revolution, headed an irregular court formed to punish loyalistsⁱⁱ. The motive and meaning of this derivation was punishment without trial. The '**Inferiorisation Process**' was used in Lynch law which means to target the specific group or community of the society as blacks was the objective in America. Statistics of reported lynching in the United

States indicate that, between 1882 and 1951, 4,730 persons were lynched, of whom 1,293 were white and 3,437 were black. Lynching continued to be associated with U.S. racial unrest during the 1950s and '60s, and many were threatened and in some cases killed by mobsⁱⁱⁱ.

Vigilante justice has been practiced in many countries under unsettled conditions whenever informally organized groups have attempted to supplement or replace legal procedure or to fill the void where institutional justice did not yet exist^{iv}. Such conditions commonly give rise to acts of voluntary killing of a large number of people belonging to a particular nation or ethnic group with the objective of destroying that nation or group.

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)^v.

CAUSES OF LYNCHING IN INDIA

Recently increased Mob Lynching cases in India show a weird and barbarous behaviour of human towards another 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^{vi}. Some of the famous causes of mob lynching incidents occurred in India are as follows:

- i. *Caste and Religious motivated:*** Violence in the name of caste and religion has its deep-roots in India. Presently increasing cases of mob lynching are mostly a reaction of intolerance and hatred towards other religion and caste on the name of professing, practice, traditions, law, etc.
- ii. *Economic and politically motivated:*** Economy and Politics has always played a prominent role in mob lynching. Mob lynching is the easiest way to grab land and property, especially in villages.

Maharashtra's Kherlanji Massacre case of 2006 was the first reported case on lynching. Around 50 villagers beat four members of the family and paraded naked wife and daughter before they murdered them due to a land dispute^{vii}.

- iii. **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 endeavour to be judge and to do justice themselves by defining their own rules and regulations^{viii}.

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 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^{ix}.

- iv. **Witch Hunting:** Witch-hunting is a problem in India, based on superstitious beliefs, that results in mob lynching. 'Witch-hunting' refers to the branding of a woman as a witch, mostly after confirmation by an Ojha, and the process of prosecution and execution of that woman, often involving mass hysteria and lynching. Witch-hunting in the real sense is molesting and killing a woman believed to have evil magic power.

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. She was forced to swallow urine and human faeces^x.

- v. **Cow Vigilantism:** According to the source from internet, it has been observed a rise in mob lynching cases related to cow vigilantism by over 10%.

In 2002, five Dalits from Haryana were lynched on the rumor of cow slaughter. 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. In March 2016, Mazlum Ansari and Imteyaz Khan were brutally lynched by a mob known as 'GauRakshak' which is cow vigilantes at a district of Jharkhand. They were accused of cattle smuggling but in reality, they had a cattle market and were selling eight oxen^{xi}.

- vi. **Absence of effective laws and statutes:** It is important to note that India does not have any specific and comprehensive parliamentary law on mob lynching. However,

victims have the protection of human rights and constitutional rights to get justice. But, hence it is a heinous crime, which is rapidly increasing these days; it needs a separate set of rules and regulations. This often allow culprit to go free and unpunished.

- vii. **Poor Implementation of minority's laws:** An act of lynching reflects failure of law to guard minorities and punish the culprits. State action is vital in strict enforcement of law and punishing the culprits.
- viii. **Lack of accountability and conviction:** Mob has no face. This impunity leads mob to require extreme steps. Thus community and state role increase to prevent such crimes. Active participation of civil society against such crimes and helping state and enforcement agencies in nabbing the criminal is critical.
- ix. **Vote-bank politics:** Sometimes, political mobilisation that uses violence as a tool of politics, support such elements in society. Here community awareness and action against such politicians become necessary to stop such vote bank politics.
- x. **Police failure:** Indifferent attitude of Police leads people to take law in their own hands. Also police delays and inability to catch the criminals cause more such incidents. State should be more proactive in police reforms. Strict action should be taken against any police officials who don't record such incidents in criminal records.
- xi. **Social media menace:** Rise in penetration of Social media and its usage to spread rumours and hatred has exaggerated such incidents. A vigil community with state action on taking action against cyber criminals is must to stop fake news and rumours.
- xii. **High Unemployment rates:** High unemployment leave millions of youth unengaged. These young brains are often misguided and brainwashed through various ideologies and agendas. State action is vital to supply more employment opportunities to youth with specialise in economic development of the region.
- xiii. **Other Reasons:** There are so many reasons for mob-lynching such as extremism, casteism, robbery, extortion, rape, Romeo squire, anti-nationalist, class conflict, etc.

EFFECTS OF MOB LYNCHING ON SOCIETY

Different aspects of human life, like- economical life, social life, mental health, physical health, political life, etc., are all interwoven. One cannot isolate the effect of one from the other aspect. Similarly, when the incidences of Mob Lynching or any other crime happens in the surrounding it not only affects the whole of the victim and the accused, but also the other living being of the society.

Mob lynching, in India has been a crime with latent threat dwelling in the minds of people. It creates an atmosphere where human beings are dehumanised, freedom of speech, expression and personal choices are endangered and plurality and diversity is not accepted. Majority fear the minority and minority are afraid of majority, making it as a perpetuating thread of fear leading to the crime of Mob Lynching^{xii}. Such crime impacts social solidarity and is a major hindrance in front of the idea of unity in diversity. This creates an atmosphere of majority v/s minority. It could aggravate caste, class and communal hatred. It would divide Indian society along communal lines and threaten the unity and integrity of the nation.

It is a major threat to of the ideals of Democracy, Equality, Justice, Liberty etc. and the reputation of the country in view of world countries will also diminish which may seriously affect the political life of the country. It not only leads to the breakdown of law and order but also respect for the criminal justice system. This may create the impression that such acts may be easy to do, which may further encourage future criminals too.

Also, lynching incidents are an issue of public health. In the short-term, lynching leads to death and injury for the victims whereas in the long-term it can lead to psychological and physiological effects on present and future generations. Studies show that higher rates of lynching in an area lead to increased rates of mortality for those communities^{xiii}.

Mob lynching violence raises a question mark on rule of law as a bunch of people themselves become the law, judge and executioner itself.

SOME MAJOR CASES & INCIDENCES OF MOB LYNCHING

Following are a few cases and incidences of mob lynching as per the reports of *India Today*:

- ***KHERLANJI MASSACRE (2006)***: One of the first cases of lynching was reported in 2006, when four people were lynched over a land dispute at Kherlanji in Maharashtra's Bhandara district. On September 29, 2016, a mob of at least 50 villagers stormed into Bhaiyyalal Bhotmange's house, and lynched four members of his family. Bhotmange's wife Surekha and their daughter Priyanka were paraded naked in the village and sexually abused before brutally murdering them. The attack was after these women filed a police complaint against 15 villages who thrashed a relative. Eight out of 11 accused were convicted in January 2017.
- ***DADRI LYNCHING (2015)***: In September 2015, a 52-year-old Muslim man -- Mohammad Akhlaq -- and his son Danish, were attacked by a village mob with sticks and bricks, accusing them of stealing and slaughtering a cow calf and storing and consuming beef. Danish was severely injured in the attack. Akhlaq was thrashed till he died. This incident in Uttar Pradesh's Bisara village near Dadri, was the first case of a Muslim lynched by a Hindu mob in the name of cow and beef.
- ***ALWAR, RAJASTHAN LYNCHING (2017)***: A 55-year-old Muslim dairy farmer -- Pehlu Khan -- and at least 14 others were accused of smuggling cattle and were beaten black and blue on a national highway in Rajasthan's Alwar. Khan succumbed to his injuries in another two days. The Rajasthan Police slapped a case against Khan and others, who had government receipts that allowed them to ferry the cows, on charges of "smuggling cattle". Rajasthan's Home Minister GC Kataria blamed the goons as well as the Muslim men including Khan, who died in the attack, but admitted that his police acted against both the groups.
- ***DELHI LYNCHING (2017)***: An e-rickshaw driver -- Ravindra Kumar -- was having lunch near the GTB Metro station. He stopped two drunk DU students from urinating in public and faced their wrath the same evening. The two youngsters returned to the spot with a group of at least 20 and lynched him. Ravindra was repeatedly hit with stones and bricks.
- ***HARYANA LYNCHING (2017)***: A 17-year-old youngster and two of his brothers, Muslims, were attacked by a mob of over 20 people inside an EMU train from Delhi's Tughlakabad to Ballabhgarh on June 22. The deceased, Junaid, was killed in the

attack after being stabbed. Junaid's brother, who survived despite multiple stabs, told media that the dispute was over train seats.

- ***SRINAGAR, JAMMU AND KASHMIR LYNCHING (2017):*** Srinagar's Deputy Superintendent of Police (DSP) Ayyub Pandith was lynched by an angry Muslim mob outside Nowhatta's Jamia Masjid. Reports said Ayyub had opened fire at a group of people who caught him clicking pictures of people coming out of the mosque. Three people were injured in the firing.
- ***JHARKHAND LYNCHING (2017):*** Seven people were lynched by villagers in different parts of Jharkhand on the same day, over suspicion that they were child lifters. Two men were beaten to death in Sosomoli village, one man was lynched in the Shobhapur village, and three others were killed in Nagadih. It is a matter of shame that all it took for this kind of violence to erupt were a few WhatsApp messages warning people of some child lifters being active in the Kolkhan area of Jamshedpur. Out of the seven, four were Muslims and three were Hindus. The right-wingers slammed the media accusing them of not covering the incident since there was no 'cow' involved and since there was no communal angle, but reports said that the region saw communal clashes over child kidnapping, apart from the lynching^{xiv}.

LAWS AND OTHER REMEDIES

Steps taken by the Government:

- States such as Manipur, West Bengal and Rajasthan have passed laws against mob lynching.
- The State Law Commission of UP recommended jail terms ranging from seven years to life imprisonment for those convicted for mob lynching. In its draft legislation, the commission also recommended, “up to three year term for dereliction of duty by a police officer or a district magistrate.”
- Two high-level committees have been constituted by the Central government to suggest ways and legal framework to effectively deal with incidents of mob violence

and lynching. One of the committees is being headed by Union Home Minister and the other by Union Home Secretary.

- Central government on its part has asked states to appoint a nodal officer in each district to prevent the incidents of mob violence and lynching^{xv}.

Legal Provisions:

- Section 223(a) of the Criminal Procedure Code, 1973 contains the provision for persons being charged for an offense jointly when they are accused of the same offence committed in the course of the same transaction which is applicable on two or more people.
- The Indian Penal Code (IPC), 1860 also has some proximate sections related to hate speech and hate crimes under Sections 153A (promoting enmity between different groups and doing acts prejudicial to maintenance of harmony), 153B (imputation, assertions prejudicial to national integration).
- Section 34 of the Indian Penal Code provides punishment for acts done by several persons in furtherance of common intention, where each person is equally liable for the act.
- Section 120B (criminal conspiracy), 147 (rioting), 148 (rioting armed with deadly weapons) and 143/149 (unlawful assembly) of Indian Penal Code are some other provisions related to offences against public tranquility.
- Punishment for lynching may come under Section 302 (murder), 304(culpable homicide not amounting to murder), 307 (attempt to murder) etc^{xvi}.

Do we need for a separate law?

The need of a separate law stems due to the following reasons:

- Enforce Constitutional provisions: Lynching based on identity discriminates against a whole community and violates Article 14 and Article 15 of the Constitution of India.
- Deterrence: A dedicated law would help create enough deterrence against such heinous crime.

However, some experts feel that the lynch mob is a law and order challenge and there are enough provisions in IPC related to murder, attempt to murder, acts done by several persons

in furtherance of common intention etc. to tackle such menace if implemented strongly and effectively^{xvii}.

Judicial Approach:

In Landmark judgment *Tehseen S Poonawala and others V. Union of India*^{xviii} 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 *Krishnamoorthy case*^{xix} 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 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*^{xx} 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 another*^{xxi} 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*^{xxii}, 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 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^{xxiii}.

Manav Suraksha Kanoon:

In 2017, A bill was drafted by *National Campaign Against Mob Lynching*. The name of the bill is Manav Suraksha Kanoon (MASUKA) to begin a legal conversion against a group of people involved lynching. Prakash Ambedkar, who is a grandson of B.R. Ambedkar, and an activist Tehseen Poonawlla have drafted a law in order to accommodate new law with respect to Mob violence by amending Article 21 of the Indian Constitution. According to this bill, the concerned SHO (State House Officer) of the area shall be suspended until a time-bound judicial probe absolves him of all his charges. Moreover, this particular bill will also work in providing relief to the affected people and will also help in the rehabilitation of the families of the victim^{xxiv}.

How a layman can contribute to get rid of Mob Lynching?

- Spreading we-feeling towards other communities and promoting unity.
- Obeying laws.
- Seeking help of Judiciary and Police in case of any such incident.
- Control over forwarding fake rumors.
- Spreading more and more awareness through NGOs.
- Treating the victim in the right way.

And many other small steps can be taken by a layman which is very necessary to get rid to this problem.

Other measures which must be taken by the Government:

- Strict and specific laws must be made.
- Employment and other economic opportunities must be created as it plays an important role.
- Education must be promoted.
- Campaigns and awareness about the problem, its remedies available, etc. must be done.
- Controlling over the spread of rumors, especially through internet.
- Promoting unity through different programs.

And many other small steps can be taken by the Government which, although indirectly influence the society, but are very necessary to get rid to this problem.

CONCLUSION

A number of individuals without having a reconsideration conform to kill someone shows the intolerance behaviour of Indians which might be developed because of lack of education and awareness. It's been found that within the cases of mob lynching; most of the victims are male, female and even children, poor, of a low caste and minority community. Often these crimes are against the marginalized community of the society. This drastic situation, which is prevailing in India, demands a special law on the violence of mob lynching. From Human rights, fundamental rights, to moral rights all the legal instruments are talking about the upliftment of the marginalized and excluded sections of the society. Yet, most of the crimes are happening against them. It's an understatement that intolerance of the Indians is of such a level that they consider themselves above law and make unfavourable circumstances against law and order. Such situations create panic and terrorize environment within the society which somehow restrain the expansion and development of the society. Belief within the class structure, blind faith in religion and dependency on superstitions itself shows the intellectual level of the people of India.

To solve out such problems, in conjunction with stringent laws there's a requirement to spread quality education and awareness among people. The police work into most of mob attack cases in rural India revealed almost similar modus-operandi which must be improvised. Preservation of life is that the most vital right for a private and therefore the state has got 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 during a positive direction. These kind incidents are a blot on the face of our democracy because we've a democracy, not *mobocracy* in India.

Researcher/Scholar Index

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- ^{xviii} Writ Petition (Civil) No. 754 of 2016
- ^{xix} *Krishnamoorthy v. Sivakumar and others* (2015) 3 SCC 467
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