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Need for New Legislation: Mob Violence and Lynching in India

Ritto Benny

INTRODUCTION

Lynching is an extrajudicial punishment to punish a person alleged to have committed a crime. It is also known as vigilante violence refers to the hate inspired violence against particular community. In the past few years there is a high rise in mob violence and lynching across India. Lynching means “to put to death by mob action without legal approval or permission”¹. Many such incidents have been occurred in various states of the country but some of them are only reported. In India, currently witnessing targeting people not as a result of what an individual has done, but what their identity or which community or religion they belong to. In India, such violence is mostly imposed upon minority religious groups suspected in bovine related matters or for any other reason, against Dalits, towards women suspected of conducting superstitious activities or against child lifters, to deliver speedy justice or to safeguard their customary values. This will destroy the basic feature of Indian constitution of ‘Rule of Law’ and the people lost their faith in law enforcement agencies and criminal justice system. Many innocents were killed through such incidents. In India, cow has been given the status of a sacred animal by a particular religious group and is worshipped at various places. The closest worldwide parallel to lynching’s in India is the racial discrimination between African-Americans in the America in the late nineteenth and mid twentieth centuries. The object of both was to target specific community to instil a fear and to transfer a message of violent dominance.

REASONS AND INCIDENTS OF MOB VIOLENCE AND LYNCHING

There were many factors which can lead to commission of mob violence. One of the main factor is the action of social media in the society. In the previous year 28 people in various districts of nine Indian states have been lynched in separate incidents which have been generated by fake news passed through social media. Other main reason for incident was religious and communal related matters. In 2015, Mohammed Akhlaq from Dadri, Uttar Pradesh, became the first victim of a new cult of violence approved by the ruling dispensation which also ensured inaction on the part of state agencies, including the police, the accusation against Akhlaq was that he had consumed beef and he was attacked by neighbours inside his home². There were vigilante groups considered as religiously motivated groups roaming throughout the country for protecting their sacred values. They are taking laws into their own hands and punishing specific individuals which deny their rights. They search the places illegally, checking the refrigerators and consider those

¹ <https://www.merriam-webster.com/dictionary/lynching>.

² Rizwan Qaisar, Politics of lynching, Frontline Magazine, June 21, 2019.

individuals as anti-national. Another incident which took place in the district of Jharkhand in 2016 was two Muslim individuals being lynched who were suspected of smuggling cows and done auction in the market. In the case of Alwar lynching happened in 2017 police filed a case against for illegal smuggling but later came to know that he had a valid license for transportation. Another incident occurred on 15 July 2018 in Karnataka where a software engineer was lynched on the doubt of being a child kidnapper. So the victims of the mob attacks have ranged from urban professionals to migrant labourers these attacks have usually took place in rural and remote areas. In the name of cow protection vigilantism in which strident gau raksha sloganeering has contributed to the environment where people believe they can get away with violence in the name of the cow, so have the stiff cow slaughter prohibitions framed by different state governments which seem to equate the taking of animal and human lives³. According to India Spend, there have been 117 gau raksha-related incidents of violence in India since 2015 and as per Quint, there have been 88 people killed in lynching since 2015 across India⁴. Most such attacks have reported in Northern parts of India. In some cases, the mob acts turned into barbaric acts also. These attacks – sometimes collectively referred to as ‘gautankwad’ a combination of the Hindi words for cow and terrorism, on social media – were reported from 19 of 29 Indian states, with Uttar Pradesh (10), Haryana (9), Gujarat (6), Karnataka (6), Madhya Pradesh (4), Delhi (4) and Rajasthan (4) reporting the highest number of cases⁵. In 2015 a village in Nagaland a person was accused of rape, a group of angry mob entered into the jail and lynched him. The person who committed rape was a Muslim whereas the girl who was raped was from Hindu background. In 2016, some Dalit youths in Gujarat were naked and beaten in the name of cow vigilantism. Undoubtedly, the political outfits and organisations behind aforesaid acts of violence harness the results of such crimes by moulding them into a political and social propaganda to brainwash one particular community against another and subsequently capitalizing the gains out of it in a manner of their choice namely elections⁶. According to a India Spend report, of the 60 attacks over eight years, 58 (96.7%) occurred after Modi’s government came to power and half the cases of cow-related violence 30 of 60 were from states governed by the BJP at the time and of the 25 Indians who died over the eight-year period, 21 were Muslim, or 84%, the political backing of such groups gives them the courage to commit the acts of violence against the minority or weaker sections of the society as

³ Editorial, Times of India, 15.6.2018.

⁴ Shoaib Danial, What has fuelled rising mob violence in India? scroll.in, Feb 23, 2019.

⁵ Delna Abraham and Ojaswi Rao, Cow-Related Violence: 86% Dead Since 2010 Are Muslim; 97% Attacks Reported After 2014, The Wire, 28 June 2017.

⁶ Aman Gupta ,MOB LYNCHING, THE CONUNDRUM OF INSTANT JUSTICE - National Law University, Jodhpur, The World Journal on Juristic Polity, Jan 2018.

in most cases none of the accused is named and the accused stay unidentified or no arrest takes place. Thus majoritarian political parties along with bigoted vigilantes are also responsible for mob lynching by creating anti-minority laws to restrict their rights and anti-minority groups and to tell them that their rights cannot be protected. 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 driver⁷. After mob lynching in the name of cow slaughter, it is rumours of child lifting that are fuelling similar incidents in Uttar Pradesh, where over 20 such cases reported⁸.

Another problem arises in the society is witch hunting. Witch-hunting consider woman as a witch the process of prosecution and execution of that woman, often involving mass hysteria and lynching⁹. The mobs will torture and kill the women suspicion of having evil power. From 2000 to 2015, around 2200 cases are registered against the witch hunting process in India¹⁰. Most of the victims of witch hunting are Schedule Caste and Schedule Tribes women. It was reported that in the cloak of superstition women were attacked and victimized in witch- hunting by some people to grab their personal properties. Sometimes, it is used to punish women who question customs. In August 2015, in Jharkhand five women accused of witchcraft lynched by villagers after dragging middle-aged women from their huts, beat them to death¹¹.

LAWS RELATING TO MOB VIOLENCE AND LYNCHING IN INDIA.

Till now there's no special provision or legislation to penalise mob lynching or even the word 'Lynching' is nowhere defined in India Penal Code. But there are another provisions associated with such violence. Section 223(a) of the Code of Criminal Procedure (CrPC) provides that the mob involved in same offence committed in the course of same transaction are often tried together. The Indian Penal Code (IPC) 1860 also given some sections which associated with such mob crimes. Sections 153A IPC talks about promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony. All hatred crimes today must dealt with Section 153A of the IPC but adding this crime requires former permission of the State government and most governments

⁷ Karan Pratap Singh, Murder over public urination: 5 students who lynched e-rickshaw driver still on the run, Hindustan Times, Jun 02, 2017.

⁸ Indo-Asian service, Uttar Pradesh: Mob lynching cases soar over rumours of child lifting, India Today, August 28, 2019.

⁹ The Prevention of Witch hunting Bill, 2016.

¹⁰ National Crime Record Bureau, 2016.

¹¹ Five women accused of witchcraft lynched by India mob, Aljazeera, 9 Aug 2015.

use this power to protect the committers of mob violence and lynching who are agents of the ruling government. Section 153B IPC provides imputation, assertions prejudicial to national integration, Section 295A provides acts intended to disgrace religious feelings of any class by insulting its religion and Section 505 IPC talks about statements conducing to public mischief are some of the sections which relate to hate crimes in India.

In most of the cases these sections are not registered in the FIR against the offenders but sections such as Section 302 defines punishment for murder, Section 304 talks about culpable homicide not amounting to murder ,Section 307 defines attempt to murder, Section 323 provides punishment for causing hurt, Section 325 provides punishment for causing grievous hurt also along with these sections apply section 34 which defines common intention, Section 141 and 149 of IPC deals with unlawful assembly and every member of unlawful assembly guilty of offence committed in prosecution of common object .So if there is a common objective of mob of punishing the cow traders will come under this section. These sections are added because of which the crime is often consider against particular individual and not towards the community. This type of procedure cannot be acceptable since occurrences of mob violence and lynching's on the basis of communal issues and specifically targeted towards certain minority groups, caste and religious groups and it's an issue of public disorder and not targeted against a specific individual. It involves crimes by majority groups against a weak community. The offence of lynching usually takes place as an organized hate crime against a community so it must be considered as a heinous offence.

The Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act, 2015 which criminalizes acts which violates the rights of the Dalits and indigenous community, the most downgraded in the Indian society. Hate violence against them are also considered as crimes on the basis of this act. But this Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act doesn't cover other socially deprived groups in its ambit such as religious and the disabled and neither does it cover Muslims and Christians groups that consider themselves as Dalits.

There are some international laws which care the victims of mob violence and lynching. Article 7 of Universal Declaration of Human Rights provides Equality before the law and equal protection of the laws and also the protection against various discriminations. Article 20 of the International Covenant on Civil and Political Rights also provides that “any support of racial or religious hatred that constitutes a provocation to discrimination or violence shall be prohibited by law”.

Article 14 of The Indian Constitution guarantees equality before the law and equal protection by the law, Article 15 provides Prohibition of discrimination on grounds of religion, race, caste, sex,

place of birth. Laws are entitled to be enforced by authorities, not by the mob. Mobs are taking laws into their hands. By this mob action infringing the fundamental right such as article 21 of Indian constitution 'no person shall be deprived of his life or personal liberty except according to procedure established by law' which includes right to have fair trial. Fair trial is the core element of criminal jurisprudence and also an important feature of Indian democracy that is directed by the rule of law.

In 2018, Manipur become the first state to pass anti-lynching law. Bill includes appointment of nodal officers, creation of special courts and also greater punishment. Lynching is defined in the bill as "any act or series of acts of violence or aiding, abetting such acts thereof, whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds" any police officer directly in charge of maintaining law and order in an area fails to prevent lynching shall be guilty of neglect of duty and will be liable to punishment of imprisonment of one year to three years and with fine that may extend to fifty thousand rupees¹². Manipur becomes the first government in the country to hold public officials criminally responsible if they fail to prevent hate crimes. Bill removes the requirement of prior permission of the government to register under section 153A of IPC. Bill also provides with rehabilitation of victim and victim compensation scheme.

In 2019 Rajasthan and West Bengal also passes anti-lynching bill. Rajasthan bill provides life imprisonment and a fine from ₹1 lakh up to ₹5 lakh to those convicted in cases of mob lynching leading to the victim's death and for hatching a conspiracy of lynching or aiding, abetting or attempting such an offence, the Bill seeks to punish the offenders in the same manner as if he actually committed the offence of lynching¹³.

The West Bengal proposes a jail term from three years to life for those involved in assaulting and injuring a person and also defines terms such as "lynching" and "mob" and also proposed the West Bengal Lynching Compensation Scheme¹⁴.

¹² Harsh Mander, Showing the way: On Manipur's new Anti-lynching law, The Hindu, 16 January 2019.

¹³ The Rajasthan Protection from Lynching Bill, 2019.

¹⁴ West Bengal (Prevention of Lynching) Bill, 2019.

JUDICIAL FINDINGS.

In *St. Stephen's College v. University of Delhi*¹⁵ highlighted the significance of Unity in Diversity. India is a country which include various geographical, religious, linguistic, racial and cultural differences. All should accept various diversities and protect the rights of other citizens.

In the case of *Nandini Sundar and others vs State of Chhattisgarh*¹⁶ the Court opined that “it is the responsibility of the States to promote fraternity and the dignity amongst all citizens which is consider as the basic feature of Indian constitution.

In *Rattiram v State of Madhya Pradesh*¹⁷ denial of fair trial is crucification of human rights and it is ingrained in the concept of due process of law.

In *Mohammed Haroon and others v. Union of India*¹⁸ and another case it was held that it is the responsibility of the State government and intelligence agencies of both the State and the Centre to prevent internal disturbance and to take steps to ensure public order. The same has been mentioned under Article 355 of the constitution of India which gives the duty on the Union to protect states against any external aggression or internal disturbance. If any police officer responsible for maintaining law and order is found negligent he should be punished within the ambit of law.

For protecting the constitutional and legislative laws, In the case of *Krishnamurthy v. Siva Kumar*¹⁹ Supreme Court indicated that the law is the supreme in a civil society and the dignity of law cannot be damaged when a group of persons believed that they are permitted to implement laws by their own hands so that they can punish the persons on their own way. Also the Court detected that no one is allowed to take law into his own hands. Everyone is enable for fair trial which is provided under Indian constitution that he is treated as innocent till he is found guilty.

In the case of *Tehseen .S. Poona Walla v. Union of India and others*²⁰ court describe the incident as ‘horrendous acts of mobocracy’. Mob lynching violates the rule of law and Constitutional values. Supreme Court delivered guidelines for dealing with the cases of mob lynching and suggested the parliament to legislate a law to deal with this problem. Guidelines includes the state governments should appoint a senior police officer such as Nodal officer in the districts where the incidents of mob violence and lynching took place, instantly identify the

¹⁵ (1992) 1 SCC 558.

¹⁶ (2011) 7 SCC 547.

¹⁷ (2012) SC 1485.

¹⁸ (2014) 5 SCC 252.

¹⁹ (2015) 3 SCC 467.

²⁰ (2018) 6 SC 72.

places where cases of lynching have been reported commonly in the recent past, social media fake news should be investigated by a special task force. Every police officer have a duty to disperse the mob which in his opinion has a tendency to cause violence in the disguise of vigilantism or otherwise, to curb and stop dissemination of irresponsible and explosive messages, videos and other material on various social media platforms²¹. The regular meetings should take place among nodal officer, intelligence units and police officers to find out vigilantism and mob violence in such areas and take measures to prohibit these occurrences. The Nodal Officer should also make efforts to eradicate situation against any particular community or caste which is targeted in such incidents. Proper patrolling should take place so that the various crime related elements involved in such crimes are dejected.

The police must register FIR against persons who spread reckless and explosive messages and videos which can cause instances of mob lynching. In most of the cases the police officers are delaying to register the FIR so that if any police officer has failed to perform his duty it will be considered as an act of proper negligence and proper action should take against them. The investigation process of mob lynching cases must be done especially by the Nodal Officer. For the prevention of harassment towards the family members of the victim the case of mob lynching should tried by specifically designated fast-track courts and it must be concluded within six months. The maximum punishment as an example to create fear of law must be given to accused. Also the victim compensation scheme must be set by the respective State Governments. It was the responsibility of the court and police officers to protect the witnesses of such case.

CONCLUSION AND SUGGESTIONS.

As there is increasing incidents of lynching in India there is no doubt regarding bringing a new law for curb this issue. The legislators should not place unawareness towards the matter of lynching in India. The Lynching is a heinous crime it can lead to death or grievous injury to a person and also these incidents will affect drastically towards the victim's family members and also unity of the nation. The victims of these attacks are usually the minority religious groups or backward class involved either in transportation or apparently slaughtering cattle or in any caste related matters. They are continuously attacked by vigilante groups. Since they are economically and socially backward class so their rights are violated. By this brutal act the basic feature of Indian constitution 'Rule of Law' was damaged.

²¹ Section 129 of Criminal Procedure Code 1973.

The National Crime Records Bureau (NCRB) till now doesn't report or collect data associated with such violence. The media reports and the research works are the main sources of mob violence and lynching. A criminal should be punished through Indian legal system but process of mob lynching is not the correct way to punish a criminal. Holland says 'that Legal rights are actually power of the state to protect the persons, compelling others compliance, capacity residing in one man of controlling, with the assent and assistance of the state the actions of others'. In India a person accused of a crime cannot be punished immediately through mob action. The accused must have the right to have fair trial and go through a trial at lower court where the judge will give a judgement whether the person is innocent or guilty of his crime. If he is found guilty, offences and punishments will be provided on the basis of the crimes he has committed. Indian Penal Code consists of absolute duties. Under the Indian Penal Code we have various offences and punishments such as offences against abetment, offences against murder, offences relating to religion etc...., we should also include offences against lynching as it very well qualifies to be included in the Indian Penal Code along with the other offences. Other reason for lynching is that people lost their trust in law enforcement agencies and judicial system since the slow judicial process. The main function of the court is to administer justice, the person has the right to appeal against an order given by a lower court, so it will take time to consider individual as criminal. Any person acting against the legal authority is an illegal act and can be punishable by the court. So the state is considered as the duty holder to maintain law and order and to protect the rights of the innocent persons. Salmond says that there can be no right without a corresponding duty and vice versa. According to this, every duty must be a duty towards a person or some person, in whom a correlative right is vested and conversely every right must be a right against some persons upon whom, a correlative duty is imposed. Every right and duty has a bond of legal obligation. A criminal can be punished under offences relating to rape, murder, illegal activities of cattle smuggling, animal cruelty which affects the rights of another human being. The punishments given to these criminals base on the crime they have committed starting from fine, imprisonment and if a serious crime is committed the person will be given life imprisonment and death. Ideally, India needs a special law against hate crimes and private discrimination on the basis of identity – any identity but the growing incidents of lynching in the last few years have created an urgent need for a law against lynching²².

In 2018 Supreme Court asked the parliament to make a law which deal with the cases of mob violence and lynching and also follow the guidelines given by Supreme Court in the process of making the law. We have a prior history of Supreme Court guidelines turned to act that is

²² Shivam Vij, A law against lynching is an idea whose time has come, The Print, 2 September 2019.

Vishaka guidelines lead to sexual harassment of women at workplace act, 2013. The new anti-lynching law should contain enhanced punishments which would provide a maximum of life imprisonment to the offenders and same should apply to the participants also. Appointment of Nodal Officers in the districts where the incidents mostly occurred. The new law should define the term 'lynching'. The new law should provide that any police officer directly in charge of maintaining law and order in an area, ignores to exercise his duty vested in them under the law, fails to prevent lynching shall be guilty of negligence of duty and will be liable to punishment. The new law should provide the time limit for the investigation and trial procedure in the court. All these lynching cases to be tried in the specially constituted FastTrack courts. While adopting the guidelines, the Centre would do well to incorporate sections in the law for penal action against doctors who stand accused of dereliction of duty, for delay in attending to victims of lynching, or submitting false reports without carrying out a proper and thorough medical examination of the victims, either under coercion by the police or due to their own prejudice against the community or religion of the victims²³. The law should come up with adequate monetary compensation to the victims or to his legal representatives. So the time has come to frame a new law against mob violence and lynching in India for safety, fairness and fraternity.

²³ M.P Nathanael, Preventing mob lynching, The Hindu, January 17, 2020.