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Constitutional Morality & Mob Lynching: The Contradictions

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ABSTRACT

Recently, there is a rapid hike in the incidents of mob lynching in India. It reflects the implementation of the retributive theory of punishment showing sheer barbarism, completely devoid of the concept of constitutional morality. The Constitution of India is the supreme law of the land in our nation where, there is no place for arbitrariness. Miserably, the rising incidents of mob lynching illustrates a quite different portrait. The author, in the present research paper attempts to analyse different instances of mob lynching in India and the probable factors responsible for them. The author also appraises the existing legal framework to curb mob lynching. The author further seeks to analyse the directives given by Hon'ble Supreme Court to curb the menace of mob lynching. Furthermore, the author assesses the measures implemented by the States to eliminate the devil of mob lynching alongwith the probable suggestions.

Keywords: Constitution, mob lynching, morality.

I. INTRODUCTION

Mob Lynching, even though is a new glossary in Indian scenario, but has been coming from time to time through the world society for centuries.² Often, it is used to characterize informal public executions by a mob in order to punish an alleged transgressor, convicted transgressor, or to intimidate a group.³ The Merriam Webster dictionary describes lynching as, "Putting to death by mob action without legal approval".⁴ The verb comes from the phrase "Lynch Law", a term for a punishment without trial. It likely originated during the American Revolution. Charles Lynch, an American Revolutionary is likely to have coined the phrase. Lynching is an egregious manifestation of prejudice, intolerance, and contempt towards the rule of law.

Over the last few years, India has seen an outbreak of hate crimes, with an average of one happening every week. Many of them have drawn mass protests, social media outrage, hashtags

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² Nitya Nand Pandey, "Mob Lynching: A New Crime Emerging In Indian Society" 4 *IJRAR* 808 (2018).

³ *Lynching* (2023) *Wikipedia*. Available at: <https://en.wikipedia.org/wiki/Lynching> (Accessed: 07 November 2023).

⁴ *Lynch definition & meaning* (no date) *Merriam-Webster*. Available at: <https://www.merriam-webster.com/dictionary/lynch> (Accessed: 07 November 2023).

and even a response from the government. But one particularly heinous case has fallen through the cracks and has drawn little attention and outrage, despite the brutality and injustice experienced by the victims. A new form of primitive propaganda is manufactured to forge a collective majoritarian identity. It has been analysed that the lynching or public disorder spiked up from five percent to over twenty percent.

The framers of our Constitution have felt the misery of masses during the British reign. They did not want their forthcoming generations to feel that misery again on the grounds of caste, colour or creed etc. They appraised different Constitutions of the world and incorporated their best features as a whole Part devoted to Fundamental Rights. The increase of Lynching in India shows a strange barbarous violation of right to life. It completely defeats the purpose of our Constitution makers and injures the spirit of our Constitution. The existing laws are being proved insufficient to deal with the problem of mob lynching and it needs a special law exclusively dealing with it.

II. INCIDENTS OF MOB LYNCHING IN INDIA

On 29th September 2006, the first case reported in India relating to lynching. It occurred at Bhandara district in the state of Maharashtra. The lynching was due to a land dispute where a mob of at least 50 villagers barged into the house of the victim beating four members of the family and parading naked the wife and their daughter before they murdered them.⁵ Between 2016 and 2019, National Human Rights Commission registered 2,008 cases where minorities/Dalits were harassed, including cases of lynchings. Of these, Uttar Pradesh alone accounted for 869 cases.⁶ There are numerous cases of mob lynching in the name of ‘Gau Raksha’ (cow vigilance), theft, child stealing, witch hunting etc. Some of the incidents are briefly discussed here.

III. MOB LYNCHING IN THE NAME OF COW VIGILANCE

In India, where cows are venerated by a large segment of the population, cow vigilante violence involving mob attacks in the name of “cow protection” targeting mostly illegal cow smugglers, but in some cases even licensed cow traders, has swelled since 2014. From 2012 to 2019, total 81 incidents of cow related violence have happened & 43 people were killed and 144 were

⁵ Seema Uikey, Nidhi Dubey, “Mob lynching in India: What’s app as social media to ‘anti’ social media” 4 *IJHSSR* 35 (2018).

⁶ *With 43% share in hate crimes, up still most unsafe for minorities, dalits* (2019) *India Today*. Available at: <https://www.indiatoday.in/india/story/dalits-minorities-harassment-attack-cases-uttar-pradesh-india-1570980-2019-07-19> (Accessed: 07 November 2023).

injured.⁷ On September 23, 2019, in Khunti, Jharkhand, Three tribal men were beaten by Bajrang dal on the suspicion of selling beef. Among three one was dead.⁸ Recently, on August 9, 2019, A driver was assaulted by five persons, including a woman, they broke the windows of the vehicle, overturned it and disrupting traffic, who were later arrested by the police. The driver was transporting carcasses of dead cattle to disposal plant in Chhajarsi village, Greater Noida, U.P., but the cow vigilantes were spreading fake news about cow slaughter to the crowd which created ruckus.⁹ On June 01, 2019, Four including two Muslim labourers were beaten by Mob for allegedly eating meat in Bareilly, U.P. However, labourers said they were eating vegetarian food. Police started their investigation to arrest the attackers. On April 7, 2019, A Muslim man was harassed, humiliated, insulted and beaten by the mobs over beef in Assam. The mob suspected 68-year-old Shaukat Ali of selling beef and cornered him, thrashed him, and proceeded to force-feed him pork.¹⁰ On August 30, 2018, seventy years old Kailash Nath Shukla was taking his cattles to another village for treatment, on his way a mob stopped him and assaulted him badly and threw him in a gutter in Balrampur, U.P.¹¹

In the Alwar mob lynching, Pehlu Khan, a dairy farmer from Nuh district of Haryana, was murdered by a group of 200 cow vigilantes affiliated with right-wing Hindutva groups in Alwar, Rajasthan, India. Six others who were with Pehlu Khan were also beaten by the cow vigilantes. The state government initially charged the victims with cruelty to animals under the state law prohibiting cattle slaughter.¹² The 2015 Dadri mob lynching refers to case of mob lynching in which a mob of villagers attacked the home of 52 year old Muslim man Mohammed Akhlaq, killing him, for suspicion of slaughtering a cow. 52-year-old Mohammad Akhlaq Saifi died in the attack, and his son, 22-year-old Danish, was seriously injured. Later an Indian court found prima facie evidence of meat that may have been either mutton or beef, and ordered registration of a first information report against the slain Mohammed Akhlaq. The government's inquiry

⁷ *Cow vigilante violence in India* (2023) *Wikipedia*. Available at: https://en.wikipedia.org/wiki/Cow_vigilante_violence_in_India (Accessed: 07 November 2023).

⁸ Angad, A. (2019) *Jharkhand again: A man is lynched, two injured over suspicion of Cow slaughter*, *The Indian Express*. Available at: <https://indianexpress.com/article/india/jharkhand-again-a-man-is-lynched-two-injured-over-suspicion-of-cow-slaughter-6019451> (Accessed: 07 November 2023).

⁹ *Five arrested for causing violence in name of Cow slaughter in Greater Noida* (2019) *Hindustan Times*. Available at: <https://www.hindustantimes.com/cities/five-arrested-for-causing-violence-in-name-of-cow-slaughter/story-DbusyScpquoBukvbkzIgdN.html> (Accessed: 07 November 2023).

¹⁰ *Shaukat Ali's humiliation and the dehumanisation of the human condition* (no date) *The Wire*. Available at: <https://thewire.in/communalism/assam-mob-attack-shaukat-ali> (Accessed: 07 November 2023).

¹¹ Desk, N. (2018) *In up, Cow Vigilantes attack 70-year-old man who was taking his cow to a Vet*, *InUth*. Available at: <https://www.inuth.com/india/cow-vigilantes-strike-again-thrash-70-year-old-up-man-whos-taking-his-cow-to-a-vet/> (Accessed: 07 November 2023).

¹² Raj, S. (2017) *Hindu cow vigilantes in Rajasthan, India, beat Muslim to death*, *The New York Times*. Available at: <https://www.nytimes.com/2017/04/05/world/asia/india-cow-mob-hindu-vigilantes.html> (Accessed: 07 November 2023).

concluded that he was not storing beef for consumption.¹³ On April 24, 2017, A family of five, including a 9-year old girl, were attacked and injured; police arrested 11 so-called cow vigilantes in connection with the attack. The five-member family was moving with their livestock in Jammu and Kashmir state's Reasi district when a mob assaulted them on Friday. Among the injured were a 75-year-old man and a nine-year-old girl.¹⁴

IV. MOB LYNCHING IN SUSPICION OF CHILD THEFT

The attacks on innocents by mobs have suddenly intensified in various areas of the country, especially in relation to 'child theft' cases. Recently, in Delhi's Harsh Vihar, a crowd beat up a mute-deaf pregnant woman on suspicions of being a child-lifter. An elderly woman carrying her grandson in Loni, Ghaziabad was beaten up by people on the suspicion that she was kidnapping the child. In Sambhal, a man taking his nephew to the hospital was also beaten up based on similar doubts, while the girl's maternal uncle was attacked in Rewari. Such cases have been going on for the last several years, and they are absolutely terrible.

(A) Other cases

Between 2001 and 2016, there were 623 cases of women being declared as "dayan" or witch and killed by mobs. This is almost a quarter of the 2,557 such cases across the country, according to National Crime Records Bureau (NCRB) reports on crime in India for these years. NCRB has not published reports after 2016.¹⁵ On July 21, 2019, Four villagers in Jharkhand's Gumla district were lynched to death by a group of 10-12 men on suspicion of them practising black magic.¹⁶ A 52-year-old tribal man was beaten to death by errant villagers on suspicion of practicing witchcraft in Lohardaga district's Jhaljamira village of Jharkhand. This incident, police said, happens to be the sixth case of mob lynching in Jharkhand in less than three months.¹⁷ On June 17, 24-year old Tabrez Ansari was returning home in the remote Seraikela-Kharsawan district of Jharkhand when he was accosted by some people and accused of stealing

¹³ Bhatnagar, A. (2019) *Lynching accused in front row, Yogi says at Dadri: 'sp govt tried to curb our emotions'*, *The Indian Express*. Available at: <https://indianexpress.com/elections/lynching-accused-in-front-row-yogi-adityanath-says-at-dadri-sp-govt-tried-to-curb-our-emotions-5652017/> (Accessed: 07 November 2023).

¹⁴ Al Jazeera (2017) *Cow-protection vigilantes held in India over assault*, *Al Jazeera*. Available at: <https://www.aljazeera.com/news/2017/04/cow-protection-vigilantes-held-jammu-kashmir-170424081028194.html> (Accessed: 07 November 2023).

¹⁵ *Bihar: 12 incidents of mob lynching reported in 15 days* (2019) *India Today*. Available at: <https://www.indiatoday.in/india/story/bihar-12-incidents-of-mob-lynching-reported-in-15-days-1578442-2019-08-08> (Accessed: 07 November 2023).

¹⁶ Angad, A. (2019) *Jharkhand: 8 held for 'lynching' 4 tribals on suspicion of witchcraft*, *The Indian Express*. Available at: <https://indianexpress.com/article/india/jharkhand-8-held-for-lynching-4-tribals-on-suspicion-of-witchcraft-5843203/> (Accessed: 07 November 2023).

¹⁷ Roy, S. (2019) *Tribal man lynched on suspicion of practising witchcraft*, *The Pioneer*. Available at: <https://www.dailypioneer.com/2019/state-editions/tribal-man-lynched-on-suspicion-of-practising-witchcraft.html> (Accessed: 07 November 2023).

a motorbike. The mob started beating him, and forced him to chant ‘Jai Shri Ram’ and ‘Jai Hanuman’. After seven hours of bestial beating with sticks, the police took him away to lock up, recording his ‘confession’ for the theft but not mentioning the assault on him. On June 21, he was admitted to hospital and later rushed to Jamshedpur where he died the next day because of injuries.¹⁸ 12 incidents of mob lynching were reported in 15 days in Patna, Bihar and the Bihar Police is conducting to drive to make people aware so that they do not pay heed to the rumours.¹⁹

V. LEGAL FRAMEWORK

Though there is no enactment in Indian legal system specifically dealing with mob lynching. Still some section of The Indian Penal Code, 1860 impliedly touches the subject. Section 120 A & 120 B of the Code provides the offence and punishment for the offence of criminal conspiracy. Section 302 of the Code defines punishment for murder. It states that whoever commits murder shall be punished with death, or imprisonment for life and shall also be liable to fine.²⁰ Section 304 of the Code provides punishment for Culpable Homicide not amounting to murder.²¹ Section 307 of the Code provides the punishment for Attempt to Murder.²² Section 323 of the Code provides Punishment for voluntarily causing hurt.²³ Section 325 of the Code provides Punishment for voluntarily causing grievous hurt.²⁴ These punishments which is provided above have to be read with the other sections provided below be applicable for a group of people in mob lynching. Section 34 of the Code defines common intention.²⁵ If a mob committed murder, then this section will make all the persons who were part of the mob shall be liable to be punished for the offence of murder. Section 141 of the Code deals with unlawful assembly. designated an “unlawful assembly”.

Section 147 and 148 of the Code provides for the offence of rioting and its punishment. Section 149 of the Code provides for common object.²⁶

(A) Factors responsible for mob lynching

¹⁸ *Jharkhand's 14th lynching in four years, country's 266th* (no date) *NewsClick*. Available at: <https://www.newslick.in/Mob-Lynching-India-Jharkhand-Hate-Crimes> (Accessed: 07 November 2023).

¹⁹ *Bihar: 12 incidents of mob lynching reported in 15 days* (2019a) *India Today*. Available at: <https://www.indiatoday.in/india/story/bihar-12-incidents-of-mob-lynching-reported-in-15-days-1578442-2019-08-08> (Accessed: 07 November 2023).

²⁰ The Indian Penal Code, 1860, Sec. 302.

²¹ *Ibid* Sec. 304.

²² *Ibid* sec. 307.

²³ *Ibid* Sec. 323.

²⁴ *Ibid* Sec. 325.

²⁵ *Ibid* Sec. 34.

²⁶ *Ibid* Sec. 149.

Technology offers new, lightning-fast paths for rumours to travel. It lends new meaning to that old chestnut: “a lie can travel halfway around the world while the truth is putting its shoes on.”²⁷ The Social media is playing a vital role in connecting people across the globe. But if social has many advantages, then there are some disadvantages as well. It has made easier to spread rumours, wrong and false information to a large number of people in a friction of second. The phenomenon of fake news is also riding on this medium. It is behind the series of mob lynching cases.²⁸

Lethargic attitude of Police is also one of the factors behind the rapid increase of the offences of mob violence. In a survey, conducted by Common Cause, Researchers interviewed 11,834 police personnel across 105 locations across 21 states. Out of them, 15% respondents said they think mob violence over “cow slaughter” is natural. It shows the attitude of Police in such cases.²⁹ Despite the rising mob violence, the political class and bureaucracy continued remain a silent spectator. The human rights observers feel political class in behind the rise mob lynching since most of the people who are ruling the country retained or captured the power through political system which aggressive and violent. Besides, they have built their political career propagating violence against minorities, where the mobs feel empowered and strong.³⁰

VI. JUDICIAL APPROACH

In *Mohammad Haroon and others v. Union of India*³¹ in which the apex court gave the state along with intelligence agencies to prevent recurrence of communal violence. It also directed the negligent officers who either do or abstain from doing any negligent act which results in agony for the victims of lynching. In, *Arumugul Servai v. State of Tamil Nadu*³² the court ruled for action to be taken against the officers who did not prevent the violence or did not institute criminal proceedings against the accused. In, the case of *Archbishop Raphael Cheenath v. State of Orissa*³³ the supreme court laid down the guidelines for maintaining peace and order in the state.

²⁷ On WhatsApp, Rumours, and Lynchings, E.P.W., FEBRUARY 9, 2019 vol IIV no 6.

²⁸ Mukesh Kumar, SocialMedia: Spreading rumors, hatred and Violence, available at: <https://www.academia.edu/people/search?utf8=%E2%9C%93&q=social+media+spreading+hatred+rumors+and+violence>, last accessed on September 27, 2019.

²⁹ <https://www.indiaspend.com/every-third-indian-cop-thinks-mob-violence-over-cow-slaughter-is-natural-new-survey/>, last accessed on September 27, 2019.

³⁰ Adheip Rashada, Cow Violence - Historical Context and Recent Mobilization, available at: https://www.academia.edu/38132320/Communal_Violence_2018.docx?email_work_card=thumbnail, last accessed on September 27, 2019.

³¹ (2014)5 SCC 252.

³² (2011) 6 SCC 405.

³³ (2016)9 SCC 682.

In *Tehseen S. Poonawalla v. Union of India & Ors.*³⁴ the Supreme Court issued punitive, remedial and deterrent guidelines for dealing with the cases of mob lynching and recommended the parliament to enact a law to deal with this issue. The Supreme Court commented that No person has the right to be the guardian of the law. It is the responsibility of the state to stop the unwanted incident and crime. It is a joint responsibility of both central and state government to prevent the occurrence of community violence in any part of the state through their agency and administration. If the officer neglects to maintain the system or law and order, then legal action should be brought against him. The full bench has directed several measures to prevent mob lynching.

(A) Government's initiative

In the aftermath of the recent directions of the Supreme Court on the issue of mob violence, the Central Government has issued an advisory to State Governments urging them to take effective measures to prevent incidents of mob violence and lynching and to take stringent action as per law. State Governments are responsible for controlling crime, maintaining law and order, and protecting the life and property of the citizens. They have been advised to implement the directions issued by the Supreme Court. The Centre had also asked them to appoint an officer in each district at the level of Superintendent of Police, set up a special task force to gather intelligence, and closely monitor social media to prevent mob attacks on suspicion of being child-lifters or cattle smugglers. In order to formulate appropriate measures to address the situation, Government has set up a high level committee chaired by the Union Home Secretary, Rajiv Gauba to deliberate in the matter and make recommendations.³⁵

IT Minister also directed the messaging platform Whatsapp to comply with Indian laws and establish a corporate entity in the country. He had also sought the appointment of a grievance officer in India and development of technology solutions to combat the spread of violent or fake messages on the widely used social platform.³⁶ The State of Madhya Pradesh has recently passed the "Anti-cow Slaughter Amendment Act 2019" aiming at preventing growing instances of violence in the name of protecting the cow.³⁷ State of Rajasthan has also passed a Bill to

³⁴ WRIT PETITION (CIVIL) NO. 754 OF 2016, available at: <https://indiankanoon.org/doc/71965246/>, last accessed on September 27, 2019.

³⁵ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=180891>, last accessed on September 28, 2019.

³⁶ Ibid.

³⁷ *Madhya Pradesh passes law against cow vigilantism* (2019) *India Today*. Available at: <https://www.indiatoday.in/india/story/madhya-pradesh-passes-law-against-cow-vigilantism-1570569-2019-07-17> (Accessed: 07 November 2023).

prevent mob lynching.³⁸

VII. CONCLUSION & SUGGESTIONS

Mob lynching is a crime against humanity. It crushes the spirit of Indian Constitution. India is witnessing a rapid increase of mob violence. Whether it is in the form of cow vigilance, child stealing, witchcraft or some other form. According to unofficial estimates around 81 incidents have been happened since 2012 in wherein 43 people have been killed and 144 have been injured people have killed throughout the country which depicts the gravity of the issue. It cannot be left shunned. The existing criminal law is bearing out incapable to deal with the malevolence of mob lynching. All the factors direct or indirect accountable to the rapid increase of mob lynching need to be mulled over and worked on. After an incessant series of mob violence incidents, enactment of a law, specifically dealing with mob lynching is the call of the hour.

Following possible solutions are suggested to be considered to deal with the horrifying problem of mob lynching-

- Enactment of a stringent law dealing specifically with the offence of mob lynching by the Central Government as already done by the States of Madhya Pradesh and Rajasthan.
- Focus needed on social/attitudinal change through reaching out to local communities to keep peace and check trouble makers from spreading rumours, creating awareness regarding misuse of social media by mass campaigns with help of civil society etc.
- Strengthening administration and governance to ensure public confidence in state institutions by strengthening local intelligence networks, swifter response from police, proactive flagging of rumors.
- Controlling the Social media platforms, it's high time to enact a law controlling social media to check the spreading of rumors, fake news and provoking content, specially WhatsApp should change its platform to enable privacy in messages between individuals and tracking identity where forwarded message is to public.
- Adopt innovative practices as adopted in various states, For example Telangana police has trained a team of 500 police officers to tackle the fake news menace. These officers go to villages to spread awareness about social issues. Police personnel have also been

³⁸ Pti (2019) *Rajasthan Assembly passes anti lynching bill*, *The Hindu*. Available at: <https://www.thehindu.com/news/national/rajasthan-assembly-passes-anti-mob-lynching-bill/article28823205.ece> (Accessed: 07 November 2023).

added to local WhatsApp groups in villages to spot rumors that could lead to violence. The West Bengal police took to Twitter to dispel a rumor that government had sanctioned a five-day holiday on account of Eid, nixing attempts to incite communal tension.
