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Mob Lynching and Vigilantism: In the New Legal Scenario

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ABSTRACT

This article discusses the emergence of mob lynching and vigilantism as significant threats to India's rule of law, leading to extrajudicial punishment without due process. These acts are often fuelled by communal tensions, caste-based discrimination, and misinformation propagated through social media. Mostly target vulnerable sections of society. Also violative of the core principles of justice, such as the 'right to a fair trial', 'presumption of innocence', and the requirement of proof beyond reasonable doubt. Moreover, vigilantes are not judicially trained and are unaware of these basic principles, acting influenced by mob trends.

While early provisions under the Indian penal code (IPC) and CrPC only passively address such crimes, there is no specific legislation that directly deals with mob lynching. But in the new criminal law, i.e., Bhartiya Nyaya Sanhita, 2023, addresses the mob lynching through various sections. Earlier in the Tehseen S. Poonawala v. Union of India case, the Supreme Court commented on the need for preventive measures, fast-track trials, and compensation for victims, and the Supreme Court also condemned state-sponsored vigilantism in the landmark case Nandini Sundar v. State Chhattisgarh. However, several states have enacted anti-lynching laws.

This article also discussed international norms and highlighted the need for protecting constitutional rights and ensuring justice that is delivered through legal processes. It argues strengthening the judiciary, reforming law enforcement, and addressing societal causes such as political patronage and social media misinformation are essential for curbing vigilantism. Ultimately, mob lynching is potentially a direct challenge to Indian constitutional values, basic criminal law principles, rule of law constitutionalism, and due process.

Keywords: mob lynching, Vigilantism, BNS, Rule of law, BNSS.

I. INTRODUCTION

After Independence, Indian society aimed to architect the social norms with the democratic and welfare philosophy, which was a hurdle due to a number of social problems. Among these

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problems, discussion about mob lynching and vigilantism became significant. Vigilantism refers to an act that leads to taking the law into their own hands to enforce law beyond the established law in the land. Vigilantism is the result of a belief that the existing legal system is ineffective and ensures their own justice in society without any legal authority; they even apply violence to punish individuals whom they assume guilty without any authorised investigation. Mob lynching is a form of vigilantism that refers to an act of violent group of people, i.e., a mob attacking or killing any individual or individuals without any legal authority. Mob lynching is mostly output from rumours, misinformation, public sentiments alleged over criminal behaviour, and social, religious, or communal conflicts. In recent years, mob lynching has become a growing concern in India, with a noticeable increase in cases². This rise in cases marks a border issue of society and a weakening of trust in the existing legal system.

II. SOCIAL CONTEXT

Origins and key incidents: mob lynching and vigilantism deep-rooted in Indian society communally and socially. Repeated incidents are often triggered by religious and caste-based issues. Such issues include cow-related violence leading to brutal attacks by vigilante groups, accusing individuals of cow slaughter or beef consumption. Such incidents marked a trend that acting on rumours or suspicion and started taking the law into their own hands. These issues are particularly in regions where cow slaughter is prohibited by law.

Role of vigilantism: Certain groups, such as Gau Rakshaks (cow protectors), are involved in vigilante actions due to their belief in cultural and religious norms that they think should be safeguarded by their own. However, this leads to violence and raises concern about the enforcement of morals by unofficial groups.

Targeting vulnerable groups: these mob violences are mostly affected on certain communities, including minorities and socially marginalised groups. Sometimes individuals from these groups were victimised based on perceptions rather than facts, where prejudices and social divides can lead to violence.

(A) Reasons

Erosion of the Rule of Law: Mob lynching and vigilantism affect the judiciary's role in ensuring justice when the mobs or a vigilante act as the ultimate judge or punisher of society. Individuals are punished without the due process guaranteed by law. Moreover, these mobs or vigilantes are not judicially trained and unaware of the right to a fair trial and the presumption of

² Ishan Gupta, *Mob lynching and vigilantism in India*, 23 *World Affairs: The Journal Of International Issues* 152, 169 (2019).

innocence; even the knowledge of that deemed culprit should be proved guilty beyond reasonable doubt.

Fuelling communal tensions and casteism: in a diverse society like India, the mob lynching often exacerbates the existing communal and caste-based issues. Victims of these lynchings are mostly from minorities or lower caste communities, which proves the point above mentioned. And targeted often based on unverified accusations, mere presumptions based on patterning and generalising these groups. This intensifies social divisions and reduces trust among different groups, which leads to undermining the concept of equality and fraternity enshrined in the constitution and threatens the country's social harmony.

Economic and Social Fallout: the economic impact is particularly high in sectors like cattle farming, dairy, and leather industry, where many incidents are linked with cow slaughter, which provides livelihoods to millions, and many traders, transporters, and workers involved in these sectors face economic instability. Also, the social fear generated from the mob violence will affect the progress of society and lead to social fallout.

(B) Theoretical Assumptions

In jurisprudence, there are certain theories that evolved through different eras and keep expanding from rigid interpretation to dynamic and real-world applications and cannot be ignored completely, which are building stones of legal systems that are undeniable in criminal justice too. India follows rule of law constitutionalism, where all people and institutions are accountable to the same laws within the country or community. Hence mob lynching and vigilantism, as they violate the law of the land and due process of law, are social parasites that threaten the existence of the rule of law³. Moreover, this mobocracy also poses a threat to the basic criminal assumptions, such as the presumption of innocence that states that a person accused of a crime is considered innocent until proven guilty, and the right to a fair trial that ensures that court proceedings are fair and effective, regardless of the outcome; guilty must be proved beyond reasonable doubt. These assumptions are blown away by mobocracy and vigilantism. And the vigilantes are not judicially trained and unaware of these principles and assumptions.

Not only in conflict with these theoretical assumptions but also against the international norms that protect human rights, some of the significant norms are the Universal Declaration of Human Rights (UDHR) in 1948, which guarantees the right to life, liberty, and security of persons and

³*No man is above the law*, BOOKBROWSE.COM (Oct. 19,2024,10.04 AM) <https://www.bookbrowse.com/express>.

the right to a fair trial. Prohibits torture, inhuman, or degrading treatment or punishment⁴. Similarly, the International Covenant on Civil and Political Rights (ICCPR), 1966, and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), 1984⁵, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, state the use of force is only the monopoly of the state, and even states use the force only when there is an absolute necessity⁶.

III. LEGAL POSITION AND CASES IN INDIA

Legal Provisions: The Indian Penal Code of 1860 doesn't have any specific provisions for mob lynching and vigilantism. Usually, the main perpetrators of fatal lynching are tried for murder⁷. Also charging other sections such as rioting (section 147), rioting-armed with deadly weapon (148), unlawful assembly (149), murder (302), attempt to murder (307), intentional insult to provoke breach of peace (504) and section 153A-fostering enmity were charged from the code⁸. But by the enactment of Bhartiya Nyaya Sanhita 2023, punishment for mob lynching is recognised in Section 103(2): "When a group of five or more persons acting on concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief, or any other similar ground, each member of such group shall be punished with death or with imprisonment for life, and shall be liable to fine." Along with this, section 117(4) recognised punishment for voluntarily causing grievous hurt while mob lynching: each member of such group shall be guilty of this offence and shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to a fine⁹.

In CrPC, Section 223 allows wrongdoers in a mob to be collectively tried¹⁰. This provision was also recognised in Bhartiya Nagarik Suraksha Sanhita 2023. Section 246¹¹.

Landmark Cases: The Supreme Court in the case of Tehseen S. Poonawalla v. Union of India¹² issued punitive, remedial, and deterrent guidelines for dealing with the case of mob lynching and vigilantism and recommended the parliament enact a law to deal with the issue. The

⁴ *Peace and violence*, COUNCIL OF EUROPE (Oct. 19,2024,10.34 AM) <https://www.coe.int/en/web/compass/peace-and-violence>.

⁵ *Core international human rights instrument and their monitoring bodies*, OHCHR.ORG (Oct. 19,2024,10.54 AM) <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>.

⁶ *Private security guard* THE VYAS SECURITY (Oct. 19,2024,11.06 AM). <https://www.theyassecurity.com/private-security-guards.html>.

⁷ Ishan Gupta, *Mob lynching and vigilantism in India*, 23 World Affairs: The Journal Of International Issues 152, 169 (2019).

⁸ Indian Penal Code, 1860, No 45 of Act of Parliament, 1860 (India).

⁹ Bhartiya Nyaya Sanhita, 2023, No. 45 Act of Parliament, 2023 (India).

¹⁰ Code of Criminal Procedure, 1973, No. 2 Act of Parliament, 1974 (India).

¹¹ Bhartiya Nagarik Suraksha Sanhita, 2023, No. 46 Act of Parliament, 2023(India).

¹² W.P. No.754 of 2016.

guidelines direct the state government to designate a senior police officer in each district for taking measures to prevent incidents of mob lynching and vigilantism, immediately identify the districts, sub-divisions, and villages where instances of mob lynching and vigilantism have been reported for the past few years, and also provide compensation for the victims. The nodal officer should report to the DGP if there are any inter-district coordination issues for devising a strategy to tackle lynching and mob violence-related issues.

In the case of *Nandini Sundar and others v. state of Chhattisgarh*¹³, which claimed widespread violations of the human rights of the people in Dantewada district and its neighbouring areas in the state of Chhattisgarh with respect to the ongoing armed Maoist insurgency. The government authorities in the state hired local tribal youth as SPOs and armed them to fight against Maoists, claiming that practice was a right under the constitution to arm local youth with guns to fight the battle against extreme Maoists. The Supreme Court observed that it is the duty of the state to strive, incessantly and consistently, to promote fraternity amongst all citizens such that the dignity of every citizen is promoted, nourished, and protected.

Case Studies¹⁴:

Muzaffar Pradesh Mob Lynching Case, 2018 (India Today April 2018): A Dalit boy was assaulted and beaten to death by five people of upper caste due to suspicion of theft of some goods in Baghra village. The case has been registered under IPC and the SC/ST (prevention and atrocities) Act. This can be a clear example of Mob violence influenced by the socio-cultural context.

Another example shows how social media influence mob lynching. In Hapur, Uttar Pradesh, mob lynching case, 2018 (India Today, July, 2018). There was a rumour of cow slaughter on social media. Showing this rumour, the mob of people attacked on victims and compelled him to confess to having slaughtered a cow. Police found in its investigation that lynching occurred because of rumours on social media.

Government steps so far¹⁵:

Apart from the changes in new criminal laws, in response to the Supreme Court directives, there are state legislations enacted and proposed anti-lynching laws. Manipur was one of the first states to enact an anti-lynching law, the Manipur Protection from Mob Violence Act, 2018, which defines mob lynching and prescribes strict penalties. Rajasthan followed with the

¹³ W.P. No.250 of 2007.

¹⁴ Avanish Bhai Patel, *Is Mob Lynching A Contemporary Social Problem In India?*, 9 IJCS 315, 318 (2020).

¹⁵ Om Narayan Shukla, *Mob Lynching: An Alarming Hate Crime In India*, 11 IJCRT 262, 267 (2023).

Rajasthan Protection from Lynching Bill, 2019, which imposes life imprisonment for lynching resulting in death penalty, along with fines for offenders. Also, West Bengal passed the West Bengal (Prevention of Lynching) Bill, 2019, which includes provisions for the death penalty in cases of lynching leading to death along with other stringent punishments.

Manav Suraksha Kanon (MASUKA): The Manav Suraksha Kanon is a proposed draft law that provides a robust legal framework to prevent mob lynching and vigilantism and to provide justice to the victims. MASUKA aims at making lynching a nonbailable offence, ensuring that those accused of mob violence should undergo stringent consequences. This law also proposes protection for the families of the victims, including mandatory compensation and rehabilitation for survivors. These legislative efforts and judicial guidelines jointly aim to curb the mob lynching and ensure justice for the victims.

IV. CONCLUSION

Mob Lynching and vigilantism, as mentioned earlier, are not only violations of human rights; they are also completely against the Rule of Law and basic criminal assumptions. Moreover, it reflects the difference in society in the name of religions, cultural, caste, or community that affects the foundation of our democracy and justice. Addressing the mob lynching by the Bhartiya Nyaya Sanhita, 2023, and prescribing stringent punishment are good moves of today's society. Also, the role of state legislation in curbing the mobocracy should be welcomed; even though ending mob lynching and vigilantism needs more than enacting; it must be changing from the people's minds.
