



MOB LYNCHING IN INDIA: A NEW NORMAL UNDER THE INDIAN LEGAL SYSTEM

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Abstract

Mob Lynching is the current burning topic in India. Lynching is not defined under the Indian Legal System and there are no punishments in regards of lynching. However, the word lynch has been originated during the American Revolution by Charles Lynch. In India lynching was first reported in the Khairlanji Massacre, 2006. But, last year incidences of mob lynching again got the lime light as total 8 cases were observed out of which 5 were happened in the month of June. Lynching is a serious crime and a punishable offence and it should be included under various offences given in the Indian Penal Code. Recently the Supreme Court in the Poonawala case issued certain rules keeping in view the disturbing ascent in the occurrences of lynching and directed states to maintain law and order accordingly. It is the duty of the Government to punish a criminal; a layman should not take law into his own hands. As it is the high time for legislation to passed law against mob lynching in the country. The paper focus on the current legal system in relation to curb mob lynching, effective measures required by the state to safeguard the people and conduct awareness programs should be created so that the people are aware that lynching is a serious offence and not to take part in it

Lynching has become another ordinary in India. News of lynching comes from various parts of the whole country. If it would have occurred concurrently, it would have shaken the world into retaliation. The outrageous act of lynching has become a part of the society as people have mindset that they can do justice themselves.

Several innocent people are savagely tortured and a few even lost their lives being a victim of hordes. The rise of slaying in Republic of India shows an odd barbarous behavior of human throughout the twentieth century. The construct of Hindutva among their Hindu community is appropriate however one cannot force Hindutva everywhere. While Republic of India it restricts a person's freedom to practice its own faith under Article 25 and is also a kind of discrimination towards the minority on the grounds of faith, race, caste, etc. under Article 15 of the Indian Constitution. This paper is addressing a study on varied cases concerning the act of lynching everywhere in India, focus on the current legal system on mob lynching, effective measures required by the state to safeguard its people and need of awareness programs in order to aware people that lynching is a serious offence and not to take part in it.

Origin and Definition of Lynching

The starting point of the word 'lynch' is said to have begun amid the American Revolution expressed as 'Lynch Law' which is a discipline without preliminary. The word 'lynch' or 'lynch law' has been derived from two Americans known as Charles Lynch and William Lynch who

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were from Virginia.¹ During 1782, Charles Lynch had wrote that the 'Loyalist' or 'Tories' who were supporters of British side were provided Lynch Laws to deal with the 'Negroes'.²

As per English lexicon, lynch intends to execute, particularly by hanging, by horde activity and without lawful expert. At the end of the day, lynching is an unlawful murder by an irate crowd of individuals.

Lynching is characterized as executing (as by hanging) by crowd activity without legitimate endorsement or consent. It remains for extrajudicial discipline -, for example, open executions - by a casual gathering, for example, swarm, to rebuff an affirmed transgressor. At its centre it is an extraordinary type of casual gathering social control, with a float toward the general population scene.³ Lynching is one form of vigilantism, itself the act of law enforcement undertaken without legal authority by a self-appointed group of people⁴.

Rise of Mob Lynching in India

Swarm brutality and lynching are not new to India, yet rather have a long history in the nation, frequently connected to authentic

treacheries, for example, those identified with the standing framework. Crowd viciousness has customarily taken three frames:

i. 'witch-chasing', of crowds lynching slow-witted ladies in parts of provincial India, blamed for kidnapping and some of the time killing kids, the Hindi expression for witch being 'dayan'. An evaluated 2097 such murders were submitted somewhere in the range of 2000 and 2012 in around 12 states of the nation.

ii. Caste based viciousness against Dalits, including assault, kill, and different types of physical assaults, all by mobs.⁵

iii. Finally swarm brutality in cases of communal conflicts, for example, against Sikhs (1984), Christians (Kandamahal, 2009, and different occasions) and against Muslims, in Gujarat (2002), Muzaffarnagar (2013), and Baksa (2015), generally as of late.

In any case, the present spate of crowd viciousness and lynching speaks to production of another classification of brutality and new targets. Lynching deaths being 97 percent of these have happened over the most recent 3 years.

INCIDENCES RELATING TO MOB LYNCHING IN INDIA

1. Kherlanji Massacre 2006

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

⁵Una case of cow lynching, where 7 dalit youth were publically flogged by GauRakhsak Dals for skinning a dead cow in Gujarat (20 July 2016), was one of the first bovine related lynching.

¹ Michael Quinion, "Lynch" (World Wide Words, 2008) <http://www.worldwidewords.org/qa/qa-lyn1.html> accessed on 2 September, 2018

² Waldrep, Christopher. Lynching and Mob Violence. In Finkleman, Paul. Encyclopedia of African American History 1619-1895. 2. New York City: Oxford University Press, 2006, 308

³ Wikipedia, 'Lynching' (Wikipedia) <https://en.m.wikipedia.org/wiki/Lynching> accessed on 4 September 2018

⁴ Cambridge English dictionary, 'lynching' (Cambridge English dictionary) <https://www.google.co.in/amp/s/dictionary.cambridge.org/amp/english/lynch.html> accessed on 4 September 2018



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 them⁶

2. Dimapur Lynching 2015

On 5th March 2015, in Dimapur a district of Nagaland, a person named Syed Farid Khan was accused of rape. A group of angry mob broke into the Dimapur Central jail and lynched the accused⁷.

3. Dadri Lynching 2015

On 28th September 2015, an incident of lynching occurred at Bisara village, Uttar Pradesh. 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. This was the first case of a Hindu Mob lynching a Muslim in the name of cow or beef⁸

4. Chatra District Lynching 2016

On 18th March 2016, Mazlum Anvari (32 years old) and Imteyaz Khan (15 years old)

were brutally lynched by a mob known as 'GauRakshak' who is cow vigilantes at Chatra a district of Jharkhand. They were accused of cattle smuggling but in reality they had a cattle market and were on their way to sell eight oxens⁹

5. Alwar, Rajasthan Lynching 2017

On 5th April 2017, Similar to the previous case, Pehlu Khan and 14 others were accused of cattle smuggling and were lynched by cow vigilantes. The disturbing part of the case was that the police had filed a case against Khan who had a Government permit to transport cows¹⁰.

6. Jharkhand Lynching 2017

On 18th May 2017, in the districts of Jharkhand we had observe seven men being accused of child lifting and was lynched by the people. The violence occurred due to circulation of warning messages in WhatsApp regarding child lifters around the district. Four of the accused were Muslims while the other three were Hindus¹¹

⁶ FirstPoststaffs,'Khairlanji Massacre: On 10yr anniversary of brutal attack on Dalits, Maratha agitation gains momentum' (First Post, 2016) www.firstpost.com/politics/khairlanji-massacre-on-10-yr-anniversary-of-brutal-attack-on-dalits-maratha-agitation-gains-momentum-3023870.html accessed on 10th September 2018

⁷ Sandip Roy,'Don't touch 'our' women; Dimapur lynching was never about justice'(First Post, 2015) www.firstpost.com/india/dont-touch-our-women-the-dimapur-lynching-was-never-about-justice-2143305.html accessed on 10th September 2018

⁸ Internet Desk,'The Dadri lynching: How events unfolded'(The Hindu, 2015)<www.thehindu.com/specials/in-depth/the-dadri-lynching-how-events-unfolded/article7719414.ece> accessed on 10 September 2018

⁹ Manob Chowdhury,'Cow Vigilantism: Families contest Jharkhand Government's claims on Latehar Lynching'(2016, Scroll.in) www.scroll.in/article/805548/latehar-lynchings-good-step-to-stop-cow-slaughter.html accessed on 12 September 2018

¹⁰ Sachin Saini, Deep Mukherjee,'Alwar lynching: Pehlu Khan, killed by cow vigilantes, was no cattle smuggler'(Hindustan Times, 2017)www.hindustantimes.com/india-news/alwar-lynching-pehlu-khan-killed-by-cow-vigilantes-was-no-cattle-smuggler/story-oHFwJT3e8R8kJn396KEGOO.html accessed on 12 September 2018

¹¹The Wire Staff, 'Two Arrests, Protests Follow After WhatsApp Rumours Lead to Lynching of Seven in Jharkhand'(The Wire, 2017) <www.thewire.in/138667/whatsapp-message-turns-tribals-violent-leaves-seven-dead.html> accessed on 12 September 2018



7. Delhi Lynching 2017

On 25th 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 driver¹²

8. Pratapgarh, Rajasthan Lynching 2017

On 17th June 2017, at the district of Pratapgarh, Zafar Khan, an activist found a Government civil official taking pictures of woman defecating in public and stopped him from taking such photos. An argument arose where people say the activist was lynched but police state that his death was due to heart attack and post mortem shows no sign of murder¹³

9. Haryana Lynching 2017

On 22nd June 2017, three muslim brothers were travelling in an EMU train from Tughlakabad to Ballabgarh. At times Public transport in India becomes over crowded making it difficult for people to travel and at times experiences bumps against co-passengers. While the brothers

¹² Pallavi Rebbapragada, 'Delhi e-rickshaw driver killed: Rising mob rage incidents at DU's North campus are a worrying trend' (First Post, 2017) <http://www.firstpost.com/india/delhi-e-rickshaw-driver-killed-rising-mob-rage-incidents-at-dus-north-campus-are-a-worrying-trend-3514707.html> accessed on 11 September 2018

¹³ PTI, 'Activist Zafar Khan lynched to death in Rajasthan's Pratapgarh for objecting photography of women defecating in open' (The Indian Express, 2017) <http://indianexpress.com/article/india/activist-zafar-khan-lynched-to-death-in-rajasthans-pratapgarh-for-objecting-photography-of-women-defecating-in-open-4707822/> accessed on 11 September 2018

were travelling an argument arose over train seats. The brothers were also accused of being muslims, anti-nationals or terrorist or Pakisyanis and also that they were the ones consuming beef and they might be carrying it right now, by the argument where they were lynched by a mob of Hindus. Juniad was stabbed to death while his brother survived even after multiple stabs¹⁴

10. Srinagar, Jammu and Kashmir Lynching 2017

On the same day that is June 22, a group of angry mob outside Nowhatta's Jamaai Masjid had lynched a Deputy Superintendent of Police, Mohammad Ayub Pandith. Some reports say that he had opened fire on few people who caught him taking picture of the masjid while other report say he was on his duty while he got attacked by a mob which he used his pistol as self defence¹⁵

11. Jalwe, Jharkhand Lynching 2017

On 29th June 2017, Mithun Hansda who was an accused of rape and murder of an eight year old girl was allegedly trashed to death by an angry mob of villagers¹⁶

¹⁴ Bikram Vohra, 'Muslim teen lynched in Haryana: The barbarians are not at the gates, they're in your kitchens' (FirstPost, 2017) <http://www.firstpost.com/india/muslim-teen-lynched-in-haryana-the-barbarians-are-not-at-the-gates-theyre-in-your-kitchens-3743609.html> accessed on 12 September 2018

¹⁵ Sandipan Sharma, 'DSP Ayub Pandith lynched in Srinagar: Barbaric event shows Kashmiris have abandoned cultural, religious ethos' (First Post, 2017) <http://www.firstpost.com/india/dsp-ayub-pandith-lynched-in-srinagar-barbaric-event-shows-kashmiris-are-stepping-away-from-their-cultural-religious-ethos-3738975.html> accessed on 10 September 2018

¹⁶ Dev Goswami, 'Jharkhand: Man accused of raping, killing 8-year-old lynched by mob.'



12. Thoubal, Manipur Lynching 2017

On 29th June 2017, Md Rakib Ali (19years) Md Anish (20years) by an angry mob in Thoubal district, Manipur. The very next day a video clip was posted on Facebook by the Chief Minister Nongthombam Biren Singh on his page¹⁷

As per the cases identifying lynching in India has watched an extreme increment amid this year. The general population acted as a vigilante towards the blamed. Is it in light of the fact that the Government has not done their part in making a move against these hoodlums? Is there no administration of law in the country today? The demonstration of lynching isn't the correct method to manage a charged person in light of the fact that the blamed might be an innocent individual.

WHY SHOULD MOB LYNCHING BE STOP?

In India all people are given equal treatment as stated by our constitution, 'every person has the Right to equality'. A person has the right to prove innocence of the crime for which he is charged at the court. If a lower court passes an order stating that he has been found guilty, he can appeal towards a higher court. Sometimes the process of punishing a person can be a long process were years are being taken to give a proper judgment to

prove a criminal guilt or to bail him out of prison. This system of slow process of final judgment by the judiciary is done as to make a careful statement towards judging a person.¹⁸ It is for the benefit of all people but some fail to understand the system. In some cases, it leads to anger of the people enraging them to protest and take law into their own hands as we have observed in the Dimapur lynching case during the year 2015. It is not the duty of a layman to take law into their own hands and punish the criminal in the most brutal of ways. If the people are not satisfied with the functioning of the judiciary, they should approach the judiciary itself. The nation is for the people and the people if they get together and mend the judicial system by giving in solutions and ideas of how to function well would be a more professional manner. But our people fail such sort of education and decency to think of solutions without violence.

IS PRESENT INDIAN LAWS ARE SUFFICIENT TO CURB MOB LYNCHING?

A legitimate method for teaching our residents towards lawful instruction ought to be the initial step however to satisfy this, the training framework in India should change by acquiring handy investigations more than savants.

As many people today are not aware of what rights and duties they are provided by the constitution. The people should also be aware that the Indian judicial system follows

2017'(indiatoday.in, 2017)<http://indiatoday.intoday.in/story/jharkhand-man-accused-of-raping-girl-lynched/1/990795.html>accessed on 12 September 2018

¹⁷Biren Singh N, 'Manipur Mob Violence-a clear failure of police on duty'(The Northeast Today, 2017)<https://thenortheasttoday.com/watchmanipur-mob-violence-a-clear-failure-of-police-on-duty/.html>accessed on 11 September 2018

¹⁸Nina Berman, 'MM 2014. It was a Kind of slavery'<<http://www.motherjones.com/politics/2014/02/returning-to-dozier-florida-school-for-boys/.html>> accessed 3rd Sept, 2018



a systematic way to process its orders. Punishing of a criminal is one of their main functions which can take a long time to prove a criminal guilty as a criminal is also given his right to appeal against an order given by a lower court. A criminal can be punished under offences relating to rape, murder, illegal activities of cattle smuggling, animal cruelty, and those which affects the rights of another living being. The kinds of punishments given to these criminals may be given towards the crime they have committed starting from fine, imprisonment, fine with imprisonment and if a serious crime is committed the person will be given life imprisonment.

A criminal should be punished but the practise of mob lynching is not the way to punish a criminal. Lynching is a serious crime as it deals with a murder of a person by a group of angry mob without any legal authority. Any person acting against the legal authority is an illegal act and can be punishable by the court. The Indian Legal system has no definition and punishment regarding lynching. Thus it is a need of an hour for a law based on lynching as it also falls under a crime committed to a person against the governments wish.

Supreme Court's observation on Mob Lynching

The apex court bench comprising of Justice Dipak Mishra, Justice A.M. Khanwilkar and Justice D.Y Chandrachud on account of *Tehseen Poonawalla versus Union of India*¹⁹ issued certain guidelines to the Parliament for enacting a legislation for preventive, remedial and punitive measures keeping in view the disturbing increase in lynching or mob violence so as

to secure the constitutional rights of vulnerable people, to punish demonstrators of lynching/mob violence and to give rehabilitation to the victims.

A. PREVENTIVE MEASURES

1. Each state ought to choose a senior cop, not beneath the rank of Superintendent of Police, as the Nodal Officer in each District. The nodal officer will guarantee that preventive measures are taken against episodes of crowd savagery/lynching. In playing out his capacities, the nodal officer will be helped by the Officer accountable for the police headquarters of the concerned territories.
2. Hostile material or some other means utilized so as to advance lynching of a specific individual or gathering of people.
3. The state government shall identify districts, sub-divisions or villages where instances of mob lynching have been reported in the recent past, e.g., in the last five years. The Secretary, Home Department of the concerned States shall issue directives/advisories to the Nodal Officer of the concerned Districts for ensuring that special care is taken to prevent incidents of lynching/mob-violence in identified areas
4. Every police officer, directly in charge of maintaining law and order in an area shall take all reasonable steps to prevent any act of lynching including its incitement and commission. In doing so, he shall make all possible efforts to identify and prohibit instances of dissemination of offensive material or any other means employed in order to incite or promote lynching of a particular person or group of persons
5. Every cop, straightforwardly accountable for keeping up lawfulness in a territory

¹⁹Tehseen Poonawalla versus Union of India(2018) 6 SC 72.



will try every single conceivable push to distinguish examples of brutality in the region under his locale, that show event of targeted viciousness, including the creation or presence of unfriendly condition against a man or gathering of people.

6. It will be the obligation of each cop, directly responsible for keeping up peace in an area, to practice his power on the crowd so as to make it scatter. In exercise of his power, such a cop may utilize such powers as vested in him under Section 129 of the Code.

B. REMEDIAL MEASURES

1. If an episode of lynching/swarm brutality happens despite of the measures taken by the state, the jurisdictional police headquarters will promptly hold up a F.I.R. under the suitable arrangements of law. Implication of the enrolment of the FIR will be immediately given to the Nodal Officer in the area who, thusly, will guarantee that investigation and examination is done.
2. Cases where a charge sheet isn't recorded within the time of three months from the date of the First Information Report will be reviewed by the Nodal Officer. The Nodal Officer may pass orders for a fresh investigation by another officer not underneath the rank of Deputy Superintendent of Police when he is of the considered believe that the same is essential.
3. Immediate steps will be taken by the district administration to give security to the victim of lynching/crowd savagery and his/her family.
4. The State Government through the office of the Chief Secretary will give

Compensation to victims of lynching within 30 days of the incident. Where the demise of a man has happened as an outcome of lynching, the pay for such passing will be paid to the closest relative of the expired.

5. While figuring out amount of compensation, the State Government must give due respect to the substantial damage, mental damage, material damage and loss of income including misfortune chance of business and instruction, costs bared for medical and legal assistance.
6. Wherever it is discovered that a cop or an officer of the district administration has purposely not followed these bearings or has neglected to practice the power legitimately vested in him to anticipate or research an act of lynching/horde savagery, such activity will be viewed as wilful carelessness/unfortunate behaviour. Disciplinary action according to rules must be taken against the same. An enquiry in regards to the same must be conducted within a half year.

C. Measures for an Effective Trial

1. Incidents of lynching/swarm viciousness will be tried by the assigned fast track courts in each area. Such a Court will hold the trial of an offense on an everyday premise. The trial will ideally be finished up within a half year of the date of taking cognizance of the offense.
2. A Designated court may, on an application made by a witness in any procedures tried by it or by the Public Prosecutor in connection to such movement, accept such measures as it considers fit for keeping the personality and address of the witness anonymous.



3. A victim will have the privilege to accurate, reasonable and timely notice of any court proceeding. He or she will have right to be heard at any proceeding under this Act in regard of bail, release, discharge, parole, conviction or sentence of a blamed.
4. A victim will be entitled to get free legal aid in the event that he/she so picks and to engage any lawyer under the Legal Services Authorities Act, 1987 and the Legal Aid Services Authority set up under the said Act will pay all costs, expenses and fees of the advocate appointed by the victim according to the guidelines of the act.
5. It shall be the duty of the State Government for making arrangements for protection of victims who suffer wrath from mob lynching.

CONCLUSION

Since, first major lynching incident, Kherlanji massacre there has been a gradual increase in the number of lynching cases in India. There has been shoot up in the number of cases because of the ideology carried by people in India that they can lynch someone whom they feel has done wrong or has hurt the sentiments of people. This takes place due to the mindset of the public that by taking law into their hands would save the public and society at large in a short span of time instead of going for a suit in court for that matter. In contrast to their prediction of welfare, it further leads to public disorder in the country. Thus, it is high time that legislation needs to be passed to curb mob lynching in the country. Awareness should be spread that lynching is a serious act against humanity and hampers law too.

RECOMMENDATIONS

The following are some recommendations that can be used to prevent lynching in India-

Individual Cases

1. Speedy investigations and inquiries of perpetrators and instigators involved in lynchings.
2. There shall be independent investigation for inaction by the police for vigilantism, hanging, assault, murder or rape.
3. Provisions shall be made for relief and rehabilitation for victim's families, which shall also include victim compensation and witness protection.
4. Provide justice to the victims of lynching and legal aid services.

Law

1. Revocation of Centre's notification under Prevention of Cruelty to Animals (Regulation of Livestock Market Rules, 2017) which bans sale of cattle for slaughters which have taken away livelihood for many of the workers in this trading and business.
2. Need for changes in the cattle/cow protection laws in the various states as there is no requirement of private protectors like GauRakshak Dals. Transparent systems and permits for conduct of such business and trading.
3. Hate speech laws are required, to prosecute hate violence instigators and perpetrators.
4. Publishing of data which are of hate crimes and hate speech.

Civil Society

1. Document hate crime and violence including reports to those appropriate



audience to create awareness regarding these practices and bring up issues in the public domain.

2. Advocacy with executive, legislative and judiciary improves the outcomes for victims of lynching.
3. Create wider acceptance that lynching is heinous crime and harms the society.
4. Provide legal awareness and provide legal training to victims, and vulnerable communities on hate crime, accessing justice, obtaining compensation;
5. Provide legal aid, other support to victims to be able to fight cases and obtain justice.

International community

1. Encouragement to India for investigation and prosecution of lynchings and other such crimes against minorities, perpetrator or instigators.
2. For now, India needs a support system to help form a legal framework against mob lynching.
3. Encourage India to abide by the relevant international instruments used to deal with such issues and problems.


