



CRIMINALISATION OF MOB ASSAULTS AND LYNCHING: A CRITICAL ANALYSIS

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“For me, no ideological or political conviction would justify the sacrifice of a human life. For me, value of life is absolute, with no concessions. It’s non-negotiable.”

Edgar Ramirez

Currently the world has become a dejected place to live in, a place where humans are killing other humans for no reason. Importance of human life has downgraded to a whole new level. Mob violence is one such phenomenon which has increased manifold in the recent past. The anguish against this recent mob violence has been very evident amongst a larger section of the citizenry. Private individuals, how exalted so ever may be their station and influence in the community, or how grievous so ever the offence, they cannot constitute to be the executors/agents of the judiciary for punishing those guilty.¹ India has in the recent past witnessed a humongous increase in this barbaric behaviour that is being demonstrated by the human race in the 21st century. Lynching involves causing injury or even murder of a person who is accused of a crime against the community.

INTRODUCTION

¹ Gibbons, J. Card, *Lynch Law: Its Causes and Remedy*. 181 THE NORTH AMERICAN REVIEW, 502–509 (1905).

² Seema Uikey & Nidhi Dubey, *Mob lynching in India: What’s app as social media to ‘anti’ social media*. 4, 35-40 (2018).

The origin of the word ‘lynch’ traces its root back to the time of the American Revolution termed as ‘Lynch Law’ which is accompanied by an extra-judicial punishment. The sources of the terms ‘lynch’ or ‘lynch law’ have been two Americans known as Charles Lynch and William Lynch who belonged to Virginia. During 1782, Charles Lynch had wrote that the ‘Loyalist’ or ‘Tories’ who were supporters of British side were given the framework of Lynch Laws to handle any ‘Negroes’ related issues.² A mob under the pretext of administering justice puts a presumed offender through various kinds of tortures and even corporal mutilation instead of following due process of law. This phenomenon of violence is known as lynching. How is the death of the accused been executed is least of the concerns and does not matter; mobs have used Fire, clubs, ropes, guns, and probably ample number of such other means in order to end the victims’ lives. Every lynching is grim; even the simplest hanging can be agonizingly slow, choking the victim to death over a half-hour or longer.³ Lynching is not a recent phenomenon, but has always existed across the world. Men and women in Massachusetts were ruthlessly hanged during Salem Witch Trials in 17th century; typical lynching in America during 1870s was meant to terrorise Black Americans into submission, and into an inferior racial caste decision; systematic violence against Jews; atrocities committed by Ku Klux Klan is yet another example from the history.⁴

³ 16 ROBERT W. THURSTON, *LYNCHING AMERICAN MOB MURDER IN GLOBAL PERSPECTIVE* (2016).

⁴ Dr. Shilpa Jain & Nikita Aggarwal, *Mob Lynching: A Decent in Majesty of Law*, PL (HR) (2018).



Lynching has been prevalent in the society since time immemorial and our *vedas* provide for such events. To many people lynching was not an everyday act but back in the 19th century to the whites it served a purpose. They believed it was an essential activity to protect white women. Lynching's originated in America with an intention of white mobs of instilling a fear in the minds of Black Americans of not crossing any historically embedded boundaries. It has been what you can call the most horrendous of custom followed by these lynching mobs were they would assault the victim with the most flagrant public display. For instance, just to draw attention of majority of white families in the executions by guillotine in medieval times, lynching's would often be advertised in newspapers. This was that phase of vigilantism where the southern white men assumed themselves to be at this powerful position and felt as if it was their duty to protect the women of their society and their way of living.⁵ With all these incidences in the past lynching had crept into our society and has since then spread all throughout. The recent wave of lynching is a decentralised communal violence. Earlier the organised acts of mass violence used to be seen. Currently decentralised acts are coming with a few are being attacked at a place.⁶ It is being done by a few over different places. The perpetrators want the violence to be known to the people, circulating the information, an intended warning of controlling the social behaviour expected from the minority community. It is a kind of violence that can

pop up anywhere. It is never a mass killing but a decentralised violence of a large extent.⁷ In India, the majority population through lynching tries to display to the minorities that law is incapable of protecting them. According to various studies the intent behind such mob lynching's is a social intent of establishing a sense of superiority socially, politically and economically.

DECODING THE RATIONALE BEHIND THE OCCURRENCE OF MOB VIOLENCE

As a society aiming at vanishing crimes like mob lynching it becomes essential for us to understand and figure out the reasoning that lies behind criminology of these mob lynching's. It becomes vital to understand the psychology as to why these mobs come together and commit such horrendous crimes. The irregular behaviour of the crowd is seen during crisis. When class hatred and suspicion become overburdened, when persuaded with passion and prejudice and blew by an iniquitous crime, the erstwhile law abiding community of a society turns into a destructive force that become deaf to the voice of reasoning, humanity and mercy.⁸ Strong Partisanship is a leading factor of collective violence. For strong partisanship among the mob it becomes necessary that the third parties of the mob (1) support one side over the other and (2) solidarity among themselves.⁹ The partisanship tends to be weak from a side and strong from another

⁵Lynching in America, AMERICAN EXPRESS, January 20, 2003.

⁶ Shrashti Jain , *The dynamics of Lynching in India: Is it a New Normal ?*, 8 CNLU LJ 245 (2018-2019).

⁷ Seema Chishti, *Lynch Mobs Seem to Know Nothing will Happen to Them, They're Implicitly Meeting*

Approval from Higher-Ups:UCLA Scholar, THE INDIAN EXPRESS, July 28, 2017.

⁸ Luther Z. Rosser, "*The Illegal Enforcement of Criminal Law*", 7 Va. L. Rev. 569, (1921),

⁹ Shrashti Jain, *supra* note 6, at 245.



side. If the partisanship is strong or weak on both sides lynching is unlikely to occur.¹⁰ Mob lynching being a collective group crime makes the identities of all individuals to appear as one entity making it difficult to figure out the pattern of emotions and intentions that each person possessed while committing the wrong. This is precisely the reason why such mobs gather the courage to indulge into such a ghastly act with complete impunity. All others also take part in this process of violence with acquiescence. A mob just needs an igniting factor which is now-a-days provided through the rumours. This simply leads in attacking the victim and assaulting him to death. Often mob lynching or mob violence is a resultant of instigation by extremist groups.¹¹ They acts are not always spontaneous. These violent attacks are created by the political campaign which is being considered as spontaneous actions of aggressive groups. The consistent atmosphere of hatred and suspicion against the minorities or the targeted communities make them a product of mob anger.¹²

According to Vishwanathan, it is the silence of the state that has made the conditions worse, *“You will notice there is never any investigation, no follow up. Silence is bought with monetary compensation. The only people who remember a lynching after 15 days are the family members of the victim. State silence becomes a chorus for the mob.”*¹³ Pratap Bhanu Mehta says, *“Even the*

*hypocrisy of the top leadership set the norm. Condemning these violent incidents even for the sake of it can influence the followers on the ground, which is lately absent.”*¹⁴

As per the statistics broadcasted by the recent analysis of Pew Research Centre Analysis, India has a shambolic record of religious violence.¹⁵ Nimesh Desai who is currently a psychiatrist and a director of the Institute of Human Behaviour and Allied Sciences in Delhi, had a very interesting statement to make in regard of the recent happenings where he said, *“For centuries, emotional or ideological issues have acted as a vehicle for violent behaviour that individuals won't resort to themselves,”* Mr. Desai also insisted on portrayal of his analysis as a sociological deduction and not as a political analysis.¹⁶ He went on further to say that the phenomenon of lynching is not a phenomenon in India. *“Conflict between majorities and minorities or tension between social groups has historically been the ground for most mob violence across the globe.”*¹⁷

Dehumanising is one such element that has accounted as a major reason for mob frenzy. Homer-Dixon says dehumanisation de-individualises and externalises members of the other group and does not regard them as participants of his/her moral community. In the instances of mob lynching, it is seen that the disregarded members suffer a strong sense of alienation caused by a group of people who distance themselves to the extent

¹⁰ Robert Senechal de la Roche, *“Why is Collective Violence Collective?”*, 19 SAGE J. 126 (2001).

¹¹ Shrashti Jain, *supra* note 6, at 245.

¹² Apoorvanand, *What is Behind India's Epidemic of Mob Lynching?*, AL JAZEERA, October 8, 2019.

¹³ Snigdha Poonam, *The String of Lynchings Point to a National Dysfunction*, THE HINDUSTAN TIMES, July 1, 2017.

¹⁴ Appu Suresh, *Changing Face of the Mob: New Narrative of Nationalism has Created Dangerous Public Emotion*, THE HINDUSTAN TIMES, June 27, 2017.

¹⁵ Rukmini S., *On Religious Hostilities, India Ranked Just Slightly Better than Syria: Pew Study*, HUFFPOST, April 14, 2017.

¹⁶ Snigdha Poonam, *supra* note 13.

¹⁷ *Ibid.*



of forming a strong sense of condemnation which often translates in brutal violence.¹⁸ In *Less Than Human: Why We Demean, Enslave, and Exterminate Others*, Homer-Dixon says those who commit mob violence are guided by group loyalties consider themselves as higher and the others a less than humans. Further, a theory by Allport suggests a common stimulus prepares two individuals for the same response and when they are so prepared, the sight of one making that response releases and heightens that response in the other. The second principle is that of inter stimulation.¹⁹

The very prominent yet basic of all reasons that stand behind these ever increasing hate crimes is exemption from punishment. A sense of impunity prevails in the minds of these mobs that they have the superpowers to commit any kind of wrong and no one inclusive of the government would be able to have a catch hold of them assuming everyone especially the government to be inferior to them.²⁰ Some of the elements that lead and ignite mob violence are: Breaking the law of the land based on some meaningless rumours and hearsay under the pretext of justice; Based on their whims and fancies assuming an individual to be guilty because of his appearance and way of life; Most interestingly the law and peace bearers and our governmental authorities would turn their faces around and just give it the name of law and order breakdown because of the

situations created by the opposition government.²¹

A FESTIVAL OF VIOLENCE IN INDIA?

“India is slipping beyond the pale. It is unfathomable that the ancient Hindu horror at the taking of life, any life - the very same doctrine of ahimsa, or non-violence that governed the beliefs of men like Mahatma Gandhi and the Rev Dr Martin Luther King Jr - should in our time be used as a justification for murder”²²

Lynching is a blot on our Indian society and the entire human civilization. It degrades the civic and morality standards not only in the society but also amongst the foreign nations being an insult and menace to the law of the land.²³ India has always been a victim of this dreadful poison. Lynching in India include that of those accused of petty crimes, individuals accused of murder and rape, also the individuals perceived by mob as deviants. Apart from these, about 2097 lynching deaths have been a result of witch-hunts²⁴ barbaric caste system in the country is another prominent reason behind lynching.

Lynching is just another name for the brutal crime of murder. What encourages them to act so brutal? Are only perpetrators at fault? Why are law enforcers not able to combat these increasing incidents of lynching?²⁵ One of the major reasons for a mob taking the law in its own hands can be linked back to the

¹⁸ G.S Bajpai, *Decoding the anatomy of mob lynching*, TRIBUNE INDIA, Jul 16, 2019.

¹⁹ *Ibid.*

²⁰ Tarique Anwar, *Psychology of a lynch mob*. NEWS CLICK, 03 Jul 2019.

<https://www.newsclick.in/psychology-of-lynch-mob-india>

²¹ Tabish Khair, *The pathology of lynching*, THE HINDU, April 16, 2017.

²² Aatish Taseer, *Anatomy of a Lynching*, THE NEW YORK TIMES, April 16, 2017.

²³ Gibbons, J., *supra* note 1.

²⁴ Ashwaq Masoodi, *Witch hunting | Victims of superstition*, 23 Feb 2014.

²⁵ Dr. Shilpa Jain & Nikita Aggarwal, *supra* note 4.



lack of trust of the citizens in the State's competence in delivering justice. The widespread corruption in law enforcement agencies, unconscionable delays in the disposal of cases by the judiciary and the unfair advantages to the rich and the dominant in the judicial system contribute to the people's complete loss of trust in the system.²⁶

Spates of mob lynching's roots were traced back to messages that had been circulated on WhatsApp groups. With the data that is available at hand these events of violence have been given the name of rumours that are being spread over various social media platforms especially WhatsApp which are about child kidnappings and this has given these mobs the inducement of attacking strangers. Lynching has been a new trend in India. We have been observing a number of cases regarding lynching in India. Some of the reasons are fair yet some are valueless. Many innocent have been brutally tortured and some even lost their lives.²⁷ One of the most prominent reasons for lynching presently is cow slaughter, cattle smuggling or beef consuming. Mostly the victims of Lynch in India are minorities of that particular area such as Dalit's and Muslims.

MAJOR REASONS FOR A SUDDEN INCREASE IN LYNCHING IN INDIA:

In the recent past there have been several incidents of mobs attempting at endangering someone else's life based on their religious or cultural beliefs. Sadly, many of these lynching's have also been based on some baseless rumours. Other entities like media have also played a vital role in being

worldwide platforms to spread such rumours and hate amongst the entire country. What aggravates the crime of Lynch law is the circumstance that not unfrequently it sentences to death an innocent person, while the guilty person escapes.²⁸

RISE OF COW VIGILANTE

India is a Hindu dominated country. Hindu's consider cow as their holy animal and hence worship it. In order to respect the religious sentiments of the community cow slaughter is forbidden majorly in India. However, over the past some Hindu nationalists have been complaining and leading campaigns over the fact that the government authorities have not taken sufficient steps to ensure the enforcement of the ban that was put and neither have they taken care of the cattle smuggling situation.²⁹ Where on one hand the judiciary is taking steps and declaring that even animals have fundamental rights now³⁰ on other hand these vigilantes are taking away the fundamental right of life of their fellow human's. These mobs are beating cattle traders and transporters which have resulted in life threatening injuries. These so called *gau-rakshaks* have left no stone unturned to trouble and assault some of the Muslim men and women at all possible places.³¹

On 1.04.2017 Pehlu Khan along with his sons Arif and Irshad were returning to their village in a pickup van which had two cows which all three intended to sell. At 7 pm while on their way, at Bethroad approximately 200 people forcefully stopped their van and assaulted all three of them. While the assault

²⁶ *Ibid.*

²⁷ Seema Uikey & Nidhi Dubey, *supra* note 2, at 35-40.

²⁸ Gibbons, J. Card., *supra* note 1.

²⁹ *Violent Cow Protection in India Vigilante Groups Attack Minorities*, Feb 18, 2019.

³⁰ *Karnail Singh & ors v. State of Haryana* (2019).

³¹ *Supra* note 29.



some names were called out which were pointed out by Mr. Pehlu in his statement. Meanwhile, another pick up van which was being driven by Ajmat and Rafiq reached there with three more cows and they were also assaulted by this mob.³² Pehlu khan died after staying critical for some days in the hospital. What should have been an open and shut case surprisingly resulted in acquittal of the six people against whom FIR was registered.

In an another heart-breaking incident where on September 2015, a mob killed Mohammad Akhlaq, who was 50 years old, in the state Uttar Pradesh, India. The old man was and critically injured and so was his beloved son who had just turned 22-years old, over mere allegations that the Muslim family had been dealing in selling of cow meat and had recently slaughtered a calf for selling his meat. Which further lead to a chaotic situation as some Hindu supporters decided to respond to the situation by causing damage to public property and went ahead to burn a police van and some other vehicles. It was alleged that some of the eminent BJP leaders had acted in support of these people and had backed their actions. As a consequence of which the victim's family had to no other option but to leave the village under fear for their own safety and welfare. Three years flew by and the trial is yet to begin. For now all of the accused have been released on bail, which has increased the fear in the mind of the victims' families.³³

Living in a democracy yet having not a soul answerable or accountable for such horrifying events makes India see the shallowest of its days so far. And this does

not end here the vigilante attacks by these *gau rakshak* groups and more stringent laws on cow slaughter and transportation have led to nothing but disruption of the conditions in which the cattle's are and degraded India's rural agriculture economy and also the cattle trade.

In July 2018, the Apex Court in *Tehseen S. Poonawalla & Ors*³⁴ asked the central and state governments to publicly make statements and spread the message that "*lynching and mob violence of any kind shall invite serious consequence under the law.*"

It wouldn't be wrong to conclude with the given situation at hand that it is the failure on the part of Indian government as they have failed in their duty to protect the minority communities from such horrendous communal attacks by the cow vigilantes. Also, the executive, judiciary and legislative organs of our country who have failed to take adequate steps to prosecute those who are behind these acts snatching the rights to life, equal protection and treatment of law, non-discrimination and to freely be able to pursue a livelihood.

SILENCE OF POLITICAL CLASS

Since 2010, these mob lynching's have gained a rise. Till the passing of some bills by some states in the country the government, political parties and the bureaucrats remained silent. But some politicians did not remain silent instead they chose to fuel the fire of hate amongst such mobs more by passing certain statements publically. The Indian government in order to make their job easier have just shifted the entire blame and have put the onus of such a heinous crime on the

³² Anjana Prakash, *The (Not So) Strange Case of Pehlu Khan*, 26 Sep 2019.

³³ *Supra* note 29.

³⁴ *Tehseen S. Poonawalla & Ors. v. Union of India & Ors* (2018) 9 SCC 501.



pillar of “fake news”, asking WhatsApp to come up with some remedies.³⁵ However, this blame game is doing no favour at solving the problem existent in the *status-quo*. In the Alwar lynching case the current UP chief minister Yogi Adityanath publically announced quite blithely that the Congress is making a mountain out of a molehill with reference to lynching’s per se, as though such incidents are no big deal. He further went on to say that “*Humans are important, so are cows*” this was his political message.³⁶ The most heart-breaking incident of lynching was witnessed on in June 2017 when the Chief Minister of Thoubal district, Manipur, Mr.Nongthombam Biren Singh posted a video clip on his Facebook page of a 19 and a 20 year old boy being lynched.

And examples, of such insensitivity demonstrated by politicians all over India is a never ending list. These politically eminent personalities on whose shoulders lies the responsibility of our nation doing nothing but simply instilling fear and doubt in the minds of citizens and giving an open license to these bloodthirsty mobs.

RUMOURS OF CHILD LIFTERS

Another source of ignition for mob violence is owed to the hearsay and rumours of child kidnappers that is alleged to have been circulated on WhatsApp groups which consist of over more than a hundred people. This has been witnessed by the states of Odisha, Karnataka, Telangana, West Bengal etc. These rumours have claimed various

precious innocent lives. A 32-year-old Google employee in Karnataka's Bidar was lynched by a mob of over 30 people³⁷ over rumours of child lifting. As per the statistics released by the home ministry 54,723 child kidnapping cases have occurred in 2016, 41,893 in the year 2015 and 37,854 cases in the year 2014. The executive organ here has been majorly at fault as the police has not only been able to detect the source of these rumours but has also failed in getting hold of these kidnappers.

FAKE NEWS TO BE HELD RESPONSIBLE?

“*A lie can travel halfway around the world while the truth is putting its shoes on*” Technology has become the new source of hearsay and rumours that are being spread faster than lightning. Rumour’s connection with violence has already been explored by Indian scholars in relation to the violence against *Sikhs* in 1984. The literature on this relationship continues to be relevant even though rumour now travels in new vehicles. In another way, it is just to say that the idea behind the thought that a rumour withholds the power so strong that it can trigger violence is older than the inception of WhatsApp, and digital communication.³⁸

In the year 2013 during the Muzaffarnagar communal riots there was a high number of people who suffered casualties, the reports showed that a total of sixty people had died and thousands of them were displaced, social media platforms have been reported to have played a significant role in spreading false

³⁵ Chinmayi Arun, *On WhatsApp, Rumours, and Lynchings*, ECONOMIC AND POLITICAL WEEKLY (2019).

³⁶ Bikram Vohra, *Lynching cases in India: Politicians' inaction and silence has turned peaceful symbol like the cow into cause of illogical brutality*, Jul 26, 2018.

³⁷ *Hyderabad Techie Lynched Over Child-Lifting Rumours*, Aug 15, 2018.

³⁸ Chinmayi Arun, *supra* note 35.



news and baseless propagandas.³⁹ For no sound reason an anonymous source had posted a video online mentioning incorrect facts stating that a Muslim mob was lynching a bunch of Hindu's and the video expressly displayed two men being assaulted and the beaten to death.⁴⁰ In certain similarly, a Muslim man was beaten to death by a mob in Pune after which some morphed images of him were circulated all over the social media especially through Facebook and with the help of various Internet messaging applications on smartphones.⁴¹

Currently there are over more than 200 million users of WhatsApp in India. WhatsApp permits about 256 users to be a part of one group where users exchange various kinds of messages, photo and videos.⁴² This practice is being followed maximum in India. There are majorly two flaws with rumour that are being spread over WhatsApp: *one* is disinformation and *second* is incitement to violence. Both are grave in their respective ways, but for different reasons.⁴³ Nine out of ten times the violence can be traced back to these fake social media messages. Inevitably these mob attacks and vigilantism are on an unstoppable rise in India and the primary reason for fuelling these actions have been fake messages being circulated on various social media platforms.

One sad incident on the 29th September, 2006, the first case of lynching in India was reported. The disappointing incident took place because of a land dispute in Bhandara, Maharashtra. A mob of approximately fifty villagers barged into the house of the accused and assaulted all four family members and it did not end here. The wife and the daughter of the accused were forced to walk naked in the entire village before being murdered.⁴⁴ Another incident of lynching because of fake news was seen in UP in 2017. Namely seven men were being alleged of child lifting were assaulted badly out of which four were Muslim and the other three were Hindus.⁴⁵

All these cases of lynching mentioned seem to have been based on disinformation—false information circulated deliberately to deceive people⁴⁶—rather than fake news. This from nowhere implies that “fake news” never causes violence.

Blaming WhatsApp or any other social media platform for these lynching's would not be just. As clearly, violence is a much bigger problem with a more complex solution that social media can offer.⁴⁷ Why these mobs are doing such things and the major reason for these lynching's needs to be traced. It is a state of shame for us to have witnessed incidents like a cow carcass being responsible for triggering violence amongst the mass, such events where transportation vehicle driver being attacked for a reason that

³⁹ Wajahat Habibullah, *Social media fanning communal intolerance, misuse needs checking*, DNA INDIA, Jan. 13, 2014.

⁴⁰ Sreenivasan Jain, *The Mystery of Kawwal: Were Muzaffarnagar riots based on distortion of facts?*, NDTV, Sept. 14, 2013.

⁴¹ Amruta Byatnal, *Techie dies after attack by Hindutva group*, THE HINDU, June 4, 2014.

⁴² Seema Uikey & Nidhi Dubey, *supra* note 4.

⁴³ Arun, Chinmayi & Nakul Nayak: *Preliminary Findings on Online Hate Speech and the Law in India*,

The Berkman Klein Center for Internet & Society Research Publication Series (2016).

⁴⁴ Vivek Surendran, *Politics of lynching, the new normal in India*, Jun 27, 2017.

⁴⁵ Choudhury, Ratandip: *Man From UP Killed In Tripura after Child Lifting Rumours Fuel Mob Fury*, NDTV, 29 June, 2018.

⁴⁶ Lazer et al 2018.

⁴⁷ Chinmayi Arun, *supra* note 35.



they were carrying buffalo, and then the minority groups like that of Dalits being attacked for skinning a dead cow.⁴⁸ All such incidents are lacking the influence of WhatsApp. This clearly establishes the fact that not all lynching incidents can be solely attributed to WhatsApp or other social media. However, whatever role and contribution social media has in igniting such incidents needs to stop.

WHAT ARE THE CURRENT PROVISIONS OF LAW REGULATING MOB LYNCHING'S?

Presently, there is no specific law dealing with mob lynchings. However, there have been efforts from the judiciary and the state governments to pass certain guidelines or laws which pertain specifically to mob lynching.

PRESENT CRIMINAL PROVISIONS-The Criminal law of India has certain provisions currently in practice which according to the author are sufficient for dealing with the mischief at hand. For instance, under the Indian Penal Code, 1860 we have provisions covering hate speech and hate crime under Sections 153A and 153B and also Section 147 which talks about riots, Section 148 which covers rioting armed with deadly weapons, Section 149 which talks about unlawful assembly, Section 302 which prescribes punishment for murder, Section 307 which talks about attempt for murder, Section 323 covering punishment for voluntarily causing hurt, Section 325 which covers punishment for voluntarily causing

grievous hurt and finally Section 505 which prescribes to statements conducing to public mischief. Then under the Code of Criminal Procedure, 1973 we have Section 223(a) which talks about a mob involved in same offence in the same act can be tried together. Apart from these laws we have certain anti-lynching bills that have been passed by several states to protect their resident's from any kind of violence.

PROTECTION PROVIDED UNDER THE CONSTITUTION- Mob lynching and vigilantism are in direct contradiction with the provisions laid down in the law of the land of India and they are also violating the fundamental rights of individuals and curbing all their freedoms. Article 14⁴⁹ guarantees all people within India equality before laws along with equal protection of laws. Then there is Article 15⁵⁰ which condemns discrimination of communities based on caste, sex, race or religion. Most importantly we have Article 21 which talks about right to life-*"No person shall be deprived of his life or personal liberty except under procedure established by law."*⁵¹

INTERNATIONAL CONVENTIONS RATIFIED BY INDIA- Apart from the domestic laws of India there are certain International treaties that India has ratified which makes these activities of lynching violative of such treaties and conventions. Universal Declaration of Human Rights which is founded on the principles of equality⁵² and fraternity amongst all humans. International Covenant of Civil and Political Rights provides *"Every human being has the*

⁴⁸ Rai, Sandeep: *Mob Attacks UP Village after Cow's Carcass Found in Pond*, TOI (Meerut News), 26 August, 2017.

⁴⁹ Art. 14, Constitution of India, 1950.

⁵⁰ Art. 15, Constitution of India, 1950.

⁵¹ Art. 21, Constitution of India, 1950.

⁵² United Nations, <http://www.un.org/en/universal-declaration-human-rights/> (accessed Oct.08, 2019).



inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁵³

JUDICIAL PRONOUNCEMENTS- In 2018, the Supreme Court condemned the increasing number of incidents of mob lynchings across the country, calling them “*horrendous acts of mobocracy*” and had then asked the Parliament to make lynching a separate offence.⁵⁴ The Apex Court in the case of *Tehseen S. Poonawalla*⁵⁵ laid down guidelines which were punitive, remedial and deterrent in nature to tackle the incidents of mob lynching and said “*vigilantism cannot, by any stretch of imagination, be given room to take shape, for it is absolutely a perverse notion.*” In a separate pronouncement the apex court declared in the case of *Nandini Sundar*⁵⁶ that the state owes a duty to the citizens to take any such steps that are required to prevent internal disturbance and to take steps to ensure public order. The same has been provided under Article 355⁵⁷ which clearly establishes the duty of the Union to protect states against any external aggression or internal disturbance. Further the Supreme Court⁵⁸ 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 lynchings. This judgment was upheld in the case of *Arumugal Servai*.⁵⁹ In the state of Orissa owing to the

failure on part of the police to maintain law and order which lead to unrest in the district of Kandhamal and murder of Swami Laxmananda. The Supreme Court⁶⁰ laid down some guidelines in this case for restoring the peace and order in the society and to make sure that no individual’s fundamental rights are infringed. In the case of *National Human Rights Commission v. State of Gujrat and others*⁶¹ the Apex Court held that-

“Communal harmony is the hallmark of a democracy. The Constitution of India, in its Preamble refers to secularism. Religious fanatics are’ no better than terrorists who kill innocent for no rhyme or reason in a society which as noted above is governed by the rule of law.”

MASUKA Manav Suraksha Kanoon: It is a law proposed on 7th July, 2017 by the National Campaign against Mob Lynching (NCAML) against mob lynching’s. NCAML was headed by Senior Advocate of the Supreme Court Mr. Sanjay Hegde along with various other eminent personalities who aim to provide India with an anti-lynching legislation.

The draft defines “lynching⁶²” as:

“Any act or series of acts of violence, whether spontaneous or planned, committed to inflict extra judicial punishment, or as an act of protest and caused by the desire of a mob to enforce upon a person or group of

⁵³ United Nations, <http://www.un.org/en/universal-declaration-human-rights/> (accessed Oct.08, 2019).

⁵⁴ Vijaita Singh, *Two anti-lynching Bills being examined by Centre*, Sept. 11, 2019.

⁵⁵ *Supra* note 34.

⁵⁶ *Nandini Sundar v. State of Chhattisgarh* (2011)7 SCC 547.

⁵⁷ Art. 355 Constitution of India, 1950.

⁵⁸ *Mohammad Haroon and others v. Union of India* (2014) 5 SCC 252.

⁵⁹ *Arumugal Servai v. State of Tamil Nadu* (2011) 6 SCC 405.

⁶⁰ *Archbishop Raphael Cheenath v.State of Orissa* (2016) 9 SCC 682.

⁶¹ (2009) 6 SCC 342.

⁶² The Draft of the Protection from Lynching Act, 2017.



persons any perceived legal, societal & cultural norms/ prejudices.”

The draft has clearly laid down that the punishment for hurt due to lynching, grievous hurt due to lynching and death due to lynching shall all be punished separately.

The draft is nowhere dealing with the offence of massacre. The offence of massacre and lynching can be equated to be equally heinous in nature and it can be said without a doubt that the degree and nature of these offences make them almost similar kind of offences.⁶³ MASUKA also mentions the duties of a police officer under Section 3 and 4 failing which he shall face punishment. According to the proposed draft under Section 196 and 197⁶⁴ no sanction of the government is required by the court in order to take cognizance of the offence against any police officer. The draft provides witness protection schemes and also about rehabilitation of the victims and/or their families by providing them with certain compensation packages. And this shall be the duty of the State government as a mandatory measure to be adhered to and an optional fee collection process is to be carried, from the accused, if found guilty. Fast track courts for the same have also been suggested with an idea of getting the cases of mob lynching to be solved at the earliest possible.

Currently, the central government is examining two bills on anti-lynching laws passed by the state of Rajasthan and West Bengal. On 5th August, 2019 the state assembly of Rajasthan passed an anti-lynching law called the **Rajasthan Protection from Lynching Bill, 2019**.⁶⁵ The

bill prescribes a punishment of life imprisonment and a fine of Rupees 1lakh to 5 lakh for those held guilty of being the cause of victim's death. In those cases where the victim suffers from grievous hurt the punishment would be a fine of Rupees 25000 to 3lakh and jail for a period of 10 years. In cases of simple injuries it would be jail for 7 years with a fine up to Rupees 1 lakh. Definition of the term "lynching" under the bill is as follows:

"an act or series of acts of violence or those of aiding, abetting or attempting an act of violence, whether spontaneous or pre-planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation or ethnicity".

The West Bengal (Prevention of Lynching) Bill, 2019 was passed by the West Bengal Assembly on 30th August, 2019. It provides for a punishment of three years to life imprisonment for any individual who is involved in assaulting and injuring a victim.⁶⁶ These have been some efforts on the part of the states to curb this increasing menace of mob lynching's and vigilantism. However, no separate act has been passed until present neither have other steps been taken to reduce these lynching's.

CONCLUSION

A peaceful society is the answer to a progressive nation and a practical efficient criminal law is the answer to a peaceful society. Living in the 21st century yet witnessing barbaric actions is an embarrassing condition for any country to

⁶³ MOB-LYNCHING AND MASSACRE, THREATS TO THE NATION: CAN "MASUKA" ADDRESS THE ISSUE? RLR Volume IV Issue II.

⁶⁴ The Code of Criminal Procedure, 1973.

⁶⁵ PTI, Rajasthan Assembly passes anti lynching Bill, Aug05, 2019.

⁶⁶ *Supra* note 54.



witness. The current state of violence in the Indian society is dangerously alarming and requires urgent attention.

The author is of the belief that it would be a better idea to remove a cause than to repair its evil effects. We need to act upon the identified reason for these lynching's and vigilantism and eradicate it. From the data at hand it can be seen that there have been countless killings of innocents under the pretext of religion, faith and baseless rumours. If somehow these deep-rooted beliefs amongst Indians regarding their personal biased can be removed and some awareness is spread then maybe something can be done about the situation.

Currently India is a lawlessness state. There are just some bills that have been passed by the states and another bill i.e. MASUKA that is into consideration for anti-lynching laws. But the author is of the view that the current penal provisions are sufficient to deal with this mischief. For the parts of the mischief which aren't covered in the present laws can be introduced through amendments instead of introducing a whole new law. Also, this should be done centrally instead of approving bills of separate states in order to have parity in the laws of the country for a crime. India in the past with introduction of mischief specific laws like POSCO has seen that the problem cannot be ended with it. So, instead of investing time, money and energy on introduction of a new law the country should focus on better enforcement of the current laws and ensure:

- Effective implementation of the laws;
- Speedy trial of the cases concerning mob lynching which can be achieved by establishing fast track courts;
- Registration of FIR without any delay;

- Efficiency of the police administration should be drastically improved as they are the important pillars of the justice system;
- Imposition of penalties on the public servants who fail to perform their duties;
- Rehabilitation and free legal aid should be provided to all the victims and also to the immediate family members of the dying individual;
- Creation of a compensation scheme for the victims;
- Actions should be taken over curbing the practice of spreading fake news, messages and videos and community awareness through multimedia campaigns should be organized to check fake news;
- Efficient checks and balance system with appropriate strict punishments establishing a fear in the mind of the wrong-doers.

To ensure the protection of the rule of law and the democratic characteristic of the nation, mob lynching needs to put to an end. All those at power should use their position to create awareness, rising above your own political motives and bias; the citizens need to gather courage and should step forward to stop these hooligans; the media needs to be more careful while portraying such sensitive incidents and most important of all, the executive branch should ensure effective implementation of the laws. Also, the larger and most important responsibility lies on the shoulders of the State to rebuild citizen's trust in itself so that it does not tread onto the path of jungle justice.

The government needs to realise that one main reason that people have taken law into their hands is because of the fact that they have lost faith in the justice system. With the



giving increase in the rate of crimes public is not to be blamed solely. Now is the time that the government should take corrective measures to end this horrendous condition that the country is in.

