



MASSACRE BY MAJORITY IN THE NAME OF THE MOTHER

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*All night a bright and solitary star...
Hung pitifully o'er the swinging char.
Day dawned, and soon the mixed crowds
came to view
The ghastly body swaying in the sun:
The women thronged to look, but never a
one
Showed sorrow in her eyes of steely blue;
And little lads, lynchies that were to be,
Danced round the dreadful thing in
fiendish glee."*

-'The Lynching', by Claude McKay (1922)

Introduction

India is facing unprecedented crisis of mob lynching, which is horrendous in nature. This phenomenon is not new in the Indian context, but the rise in the incidents of lynching is utterly shocking for a democracy like India which believes and upholds all democratic beliefs and the Apex Court has given consideration to acts of lynching and termed them as "horrendous acts of mobocracy".

Mob lynching in India involves majoritarian group attacking and lynching a person or a group of persons, amounting to hate crime, on the lines of religious violence, caste-based discrimination, cow theft and child theft. An overwhelming majority of these attacks have been against Muslims, although Dalits too are targeted often. Most of these are bovine (cow and beef) related, with vigilante groups who consider the bovine, holy, accusing victims

of smuggling cattle, slaughtering cows, possessing beef, or just being beef eaters. Mob lynching is popularly labeled as instant justice, by the so-called protectors of law or the vigilantes, because they believe their actions to be need of the hour and required to do justice in order to safeguard the possible alterations in the social norms and traditions.

However, these activities result in promoting majoritarianism by propagating the beliefs of the majority by suppressing the rights of the minority. The citizens of a country taking law into their hands is unacceptable and for a country like India where citizens are granted fundamental rights, such lynching is an abuse of their right to life, right to a fair trial etc. For a country that claims to be secular, it is very important to ensure that the minority groups are safeguarded in like manner and interests of these minorities are not suppressed.

The authors through this paper have highlighted specifically on the aspect of cow vigilantism which is one of the major concerns for mob lynching. The recent victimization of Dalits and Muslims in the name of the cow vigilantism has brought the holy cow back into discussion and debate.

History

The cow is protected under Article 48 of the constitution, which says the state must impose the prohibition on the slaughter of cow and cattle. However the issue of cow protection seemed to be politicized by the Hindu conservatives backing a seat at the Constituent Assembly. The cow did not find protection in the draft constitution of B.N. Rau or draft prepared by the assembly. However, ground works was prepared to include cow in the constitution.



Members like Pandit Thakur Das Bhargava, Seth Govind Das and R.V. Dhulekar voiced their opinions that provision pertaining to prohibition on cow slaughter should be incorporated in the Fundamental Rights. It cannot be ignored that all of them belonged to the Hindu background. The supporters brought forth economic and religious arguments. The religious argument rooted the ban on cow slaughter in the reverence attached to the cow in the Hindu culture. The economic argument was based on the multifarious utilities of the cow in an agrarian economy – the medicinal value of urine, usefulness of cow dung and the like.¹ Despite the economic logic provided by members of the Constituent Assembly, cow protection was pushed for because of religious sentiments. With such motives clearly evident, emphasis on agriculture and economics were ‘predicated on a fundamental constitutive elision of the religious aspects of cow slaughter’.² Nonetheless, the most despicable blame and accusation made by the advocates of cow protection that the Muslim Community is the sole community to oppose the ban on cow slaughter.

The Supreme Court in *Mohammed Hanif Quareshi and others v. State of Bihar* in 1958 and *Mirzapur Moti Kureshi Kassab Jamat and others v. State of Gujarat* of 2005 has clearly upheld

Majoritarian sentiments in the law by acknowledging the beliefs of the cow protectors.³

The history dates back to following majoritarian opinion set in constitutional assembly debates and thereafter the Court following the so called popular sentiment in various judgments conceding to the Hindu cow protectionists group.

Raison D'etre behind the dispute

In India, majority population constitutes of Hindu, who revere cow and prohibit slaughter and consumption of beef. However, this prohibition attracts penal liability but is enforced lightly. On the other hand, the minority community in the country considers consuming beef as viable and cheaper option available for protein. However, lately with majoritarianism having gained ground, anti-cow slaughter laws have been enforced strictly. The underlying problem that prevails is that Gau Rakshak Dal, the self-acclaimed messiahs, have targeted the minority groups over cow and beef slaughter, consumption, trade and even possession. In these vigilante attacks, it is immaterial for these messiahs whether the victim possessed beef, whether cows were being transported for slaughter, or even that cows were not involved. It can be clearly seen that, for them, communal angle accompanied by a sectarian motive is the sole point of relevance. However, the bitter truth remains that if cow laws are broken, these so-called cow vigilantes feel it necessary to

¹ Lovish Garg, (2016) *Examining the Constituent Assembly Debates on Cow Protection*, “<https://thewire.in/law/unveiling-indias-long-history-of-hypocrisy-on-cow-slaughter-laws>”

² Chigateri, S. (2011) ‘Negotiating the “Sacred” Cow: Cow Slaughter and the Regulation of Difference in India’. In Monica Mookherjee (Ed.), *Democracy*,

Religious Pluralism and the Liberal Dilemma of Accommodation (pp. 137–59). Dordrecht: Springer.

³ Sambaiah Gundimeda and V.S. Ashwin, *COW PROTECTION IN INDIA: FROM SECULARISING TO LEGITIMATING DEBATES*, SOUTH ASIA RESEARCH, (Vol. 38(2): 156–176)



deliver ‘instant justice’ by killing the poor victim and that the law enforcement agencies, otherwise bridled with powers become powerless to punish these right-winged cow vigilantes. Therefore, it can be clearly said that-

1. First, that these are **hate crimes, not ordinary mob violence**, as these mostly target identified **minority communities** and **disadvantaged castes**.
2. Second, that these crimes are **tacitly or openly encouraged** by senior leaders of the political establishment.

These self-acclaimed messiahs violate the essence of rule of law in our democracy. For them, religion has become means to an end. However, the Hon’ble Apex court in the case of *National Human Rights Commission vs. State of Gujarat and others*,⁴ observed as under “Communal harmony is the hallmark of a democracy. No religion teaches hatred. If in the name of religion, people are killed, that is essentially a slur and blot on the society governed by the rule of law. The Constitution of India, in its Preamble refers to secularism. Religious fanatics really do not belong to any religion; they are “no better than terrorists who kill innocent people for no rhyme or reason in a society which as noted above is governed by the rule of law”. The rule of law can prevail only if people and institutions respect and follow the laws.

In September 2015, a mob killed Mohammad Akhlaq, 50, in Uttar Pradesh, and critically injured his 22-year-old son, over allegations that the family had slaughtered a calf for beef. Following public outrage—and because the state was then governed by an opposition party—the police made some arrests

including of a local BJP leader’s son and relatives. The suspects’ Hindu supporters responded by damaging a police van and other vehicles. Several senior BJP leaders backed the alleged actions of the suspects. As a result, Akhlaq’s family had to leave the village in fear. More than three years later, the trial is yet to begin. All of the accused have been released on bail, raising fears among the victims’ families.

Role of the Media

Media is the fourth pillar of democracy, however, in situation of cow vigilantism, this pillar of the democracy stumbles it. The acts of cow vigilantism are fuelled mainly by online rumors, which constitute only a small part of the ever-increasing role played by social media in Indian society and politics. The impact of social media in our lives remains undefined. States are not equipped to deal with the spread of misinformation and fake news on social media. Social media companies also fear that taking certain steps will burn a hole in their pockets and compromise with the freedom of speech.

To curb this nuisance, the Apex Court has in addition to series of measures, provided recommendations to parliament to create a special law to deal with such offences. Among the measures the court has directed to be put in place is a nodal officer in each district to take steps to prevent mob violence; to “curb and stop dissemination of irresponsible and explosive messages, videos and other material on various social media platforms”; and to set up fast-track

⁴(2009) 6 SCC 342



courts to hear cases related to lynching and mob violence.

Role of the Police

State plays a pivotal role in mob-lynching. It is the constitutional responsibility of the government to provide governance and maintain law and order and the responsibility lies on the state to protect life and property of the citizens. In this regard, the police have the predominant role to play. The role of the police in violating the right to life of victims, involved both acts of omission as well as commission. Instead of promptly investigating these attacks and prosecuting perpetrators, the police have in fact filed complaints against victim's family under so called prohibition of cow slaughter. The level of anarchy is displayed by intimidating the victims and witnesses. The police force clearly failed to provide law and order. Following are the instances of horrendous acts of police –

The police response to the June 2018 mob attack on Samaydeen and Mohammad Qasim in Hapur district of Uttar Pradesh exposed complicity in covering up crimes. Qasim was killed and Samaydeen severely injured and hospitalized. However, the police allegedly filed a false report attributing the death to a motorbike accident. Samaydeen's brother Yaseen told Human Rights Watch he put his signature on the FIR despite the false claim of a motorbike accident because of police threats:

The police would not tell us the hospital they had taken Qasim and Samaydeen. Then the police threatened us: "Unless you sign this FIR we will not tell you where Samaydeen is." They also threatened us with arrest under cattle protection laws, saying they would put our whole family in jail. The police said, "Don't you know whose government it is? What can happen? It's better for you all to say nothing."⁵

There have been cases where despite prior requests for security having been made by the victims; no protection was provided from the police. The victims suffered namely Alimuddin Ansari in June, 2017 and another victim namely Ghulam Mohammad in May 2017. Police inaction, both to protect as well as act against perpetrators also emboldened the latter, resulting in repeated attacks eventually leading to deaths which happened in Mohammad Akhlaq's case.

There is also a very important role played by the political parties in this. The mob alone can never take a shape of mob lynching until and unless it has a backing of the ruling government.

The political parties strategize the actions of the mob and then term it as a spontaneous act caused by the angered population. Because what can a state do when it is faced with an enraged mob? Who is to be punished when the crime committed only demanding their impulse? This is how mob violence is used to reach to the ends desired to be achieved by the majoritarian political parties, leading to dire violation of human rights of the innocent people.

⁵ Human Rights Watch- "Violent Cow Protection in India -Vigilante Groups Attack Minorities", 2019 <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>



Undoubtedly, the political outfits and organizations behind aforesaid acts of violence harness the results of such crimes by molding them into a political and social propaganda to brainwash one particular community against another and subsequently capitalizing the gains out of it in a manner of their choice namely, elections.⁶

Human Rights and Mob Lynching

The Right to Life guaranteed under Article 21 of the Constitution of India is the most intrinsic right provided to the citizens of the nation. The scope of Article 21 is very wide to include Right to Liberty, Right to Privacy, Right to Education etc.

These acts of mob violence for Cow protection in India by the vigilante groups over the minorities violated all the human rights of those citizens. The most important fundamental right i.e. Right to Life is violated with the nuisance created by the mob. The burning of houses and buses, rapes, beating people to death and many more such devastating incidents just in the name of protection of their beliefs is unacceptable. Every citizen has equal rights provided under the Indian Constitution and such instances put a huge blot on the supreme document drafted for the protection of the citizens.

These attacks have also violated Article 25 of the Indian Constitution i.e. Freedom of conscience and free profession, practice and propagation of religion. The minorities' rights have been adversely affected by such acts.

India is a signatory to the major International Human Rights law treaties that prohibit discrimination based on caste, creed, religion or race. The government is therefore obligated to protect the minority population and at the same time, prosecute the ones that cause discrimination and violence against them.

Cow protection vigilantes and livelihoods-

Cow protection groups and stringent laws on cow slaughter and transportation of cattle have seriously affected India's cattle trade and the rural agricultural economy, as well as leather and meat export industries ancillary to farming and dairy sectors.

India is the largest beef exporter in the world, exporting buffalo meat worth about US\$4 billion a year. The sadistic part remains that after the current government came to power, exports have declined to a steep level. Not only this, the leather industry has also been affected, the reason being low exports due to limited availability of cattle for slaughter.

The primary responsibility of the government is to enact laws and formulate policies restricting the cattle trade however there is a need to guard against disproportionately harming minority community. The government should ensure consonance between right to livelihood of these minority groups and the right of the cow protection groups.

The minority communities mainly Muslims and Dalits have been disproportionately affected by the laws, policies, and unlawful

⁶ What is behind India's epidemic of 'mob lynching'?
Apporva Nanda
<http://www.aljazeera.com/indepth/opinion/2017/07/india-epidemic-mob-lynching-170706113733914.html>



attacks harming cattle-related industries. Slaughterhouses and meat shops are mostly run by Muslims. Dalits traditionally carry out jobs to dispose of cattle carcasses and skin them for commercial purposes such as leather and leather goods. The resulting policies are harming entire communities, particularly farmers and laborers.

Legal Regime

Lynching is a crime which destroys the social and moral fabric of the country. Not only this, mob lynching also violates the principle of rule of law. However, under our legal regime, there is no specific provision for mob lynching. Even the word 'Lynching' is nowhere defined.

Further, 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 performing an illegal act and can be punished by the court.

However, for this barbaric crime to be punished, various provisions of IPC can be attracted related to hate speech, hate crimes because no special law persists regarding this crime. The various provisions are-

- i. Section 153A (promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony),
- ii. Section 153B (imputation, assertions prejudicial to national integration),
- iii. Section 505 (statements conducing to public mischief).

It is disheartening to see that in majority of the cases, these sections weren't imposed on the perpetrators and only sections against individuals such as Section 302(punishment

for murder), Section 307 (attempt to murder), Section 323 (punishment for causing hurt) , Section 325 (punishment for causing grievous hurt) etc. are imposed. Due to this implication, the crime is seen as an offence against individual and not against the community. This approach remains unjustified as incidents like mob lynching are seen from communal lenses and are usually targeted against a certain minority, caste, religion, gender etc. Lynching is a matter of public order and not merely an offence against an individual. It is to be understood that the offence of lynching usually takes place as an organized hate crime against a community, so the heinousness of the offence should not be disregarded.

The laws were incompetent to redress the ongoing issue therefore the Supreme Court in the case of *Tahseen S. Poonawalla v. Union of India and others* issued punitive, remedial and deterrent guidelines for dealing with the cases of mob lynching-

- The state governments shall designate a senior police officer in each district for taking measures to prevent incidents of mob violence and lynching.
- The state governments shall immediately identify districts, sub-divisions and villages where instances of lynching and mob violence have been reported in the recent past.
- The nodal officers shall bring to the notice of the Director General of Police (DGP) any inter-district co-ordination issues for devising a strategy to tackle lynching and mob violence-related issues.
- It shall be the duty of every police officer to cause a mob to disperse, which, in his opinion, tends to cause violence in the disguise of vigilantism or otherwise.



- The Central and the state governments should broadcast on radio and television and other media platforms including the official websites that lynching and mob violence of any kind will invite serious consequence under the law.
- Curb and stop the dissemination of irresponsible and explosive messages, videos and other material on various social media platforms which tend to incite mob violence. Register FIR under relevant provisions of law against persons who disseminate such messages.
- State governments shall prepare a lynching/mob violence victim compensation scheme.
- Ensure that there is no further harassment of the family members of the victims.
- If a police officer or an officer of the district administration fails to do his/her duty, the same will be considered as an act of deliberate negligence for which an appropriate action must be taken against him/her.⁷

Recommendations

There is a dire need on the part of the Indian government to take immediate actions regarding the same. For this purpose, a few recommendations have been made which are as follows:

- Police administration must register the FIR without any delay to ensure speedy justice.
- Free legal aid must be provided to the weak and poor victims of such attacks.
- Fair compensation must be paid to the victims.
- A solid legislation must be formulated in this regard which makes mob lynching a non-bailable, cognizable and non-compoundable crime.

- A time-bound trial must be enacted to provide protection to the witnesses and quick relief to the victims.

Conclusion

State is parents patriae and upholder of the law and order in the country. However, certain crimes such as mob lynching disrupts the social order, and runs antithesis to democratic principles, rule of law and secularism in the country. The only remedy available is the need for anti-lynching law and implementation of the same for curbing such menaces. With the present scenario, there is prevalence of Rule of Might. If this continues and these offenders go without punishment, the citizens will lose faith in the government. Even though Cow is worshipped in a country like ours, people don't realize that the holy one would never ask for a massacre in her name. What has also remained unchanged is the victimization of minorities in the name of the holy cow. It is high time that the state figures out a balanced approach which grants protection to the sentiments of the Hindu cow protection group and at the same time mitigates fear among the minorities and grants protection to the rights of every citizen of India.

⁷(2018) 6 SC 72