



MOBOCRACY LYNCHED DEMOCRACY

By Anusha Bhatt and Zahra Naqvi
From Government Law College, Mumbai

*“When any core group with some kind of idea take the law into their own hands, it ushers in anarchy, chaos, disorder and, eventually, there is an emergence of a violent society”-
Former CJI Dipak Mishra*

On June 17th 2019 in Jharkhand, a young man named Tabrez Ansari was tied to a pole at around midnight and was brutally beaten by a mob till six in the morning. Tabrez was then rushed to a hospital where he succumbed to his injuries four days later. A mob of similar nature killed Inspector Subodh Kumar Singh in Bulandshahr, while he was trying to control a mob that was fuelled with anger because some cow carcasses were found in the nearby jungle. The above incident took place in 2018 and back then lynchings happened in the name of cows. However, when the same cows were starving to death in official shelters, these cow protectors abandoned the cows. Now, the project of propagating fear and violence has shifted towards the slogan of ‘Jai Shri Ram’. The mob battered Tabrez to chant ‘Jai Shri Ram’, and even though he did, it did not help him save his life.

‘Mob’ is not just a word. It is made up of tens, hundreds, thousands of people. People who beat and kill; who record the beating and killing on their phones; who stand and watch but do not speak. It was no ordinary event

when shouts of ‘Jai Shri Ram’ rang in the Lok Sabha while Asaduddin Owaisi took his oath. The chants were not for the love of Ram rather they were to intimidate and mock Owaisi. The provocation and the reaction was an affirmation that communalism is being legitimized as patriotism.¹

Origin of Lynching

The Cambridge Dictionary defines the term ‘lynching’ as ‘The act of killing someone without a legal trial, usually by hanging’. There are multiple definitions of this word available, but the gist remains the same i.e. a man being killed sans legal approval and defying the due process of law. There have been speculations regarding the origin of the term ‘Lynching’, where some believe it to be derived from the name of Charles Lynch, an American revolutionary who used to preside over an irregular court which was formed to punish the suspected loyalists who were uprising in Southwest Virginia.

His unauthorised punishments, called the ‘Lynch Laws’ included whipping, property seizure, etc. Though the origin of the term remains disputed till date, the act of lynching as we understand today can be traced back to the year 1835 where a man named Francis L. McIntosh was brutally killed by a mob in St. Louis, Missouri. However, the rise of lynching was witnessed majorly after the American Civil War, where the whites in the United States of America felt the need to enforce their supremacy over the African Americans and, hence subjected the latter to brutal and inhuman lynching which acted as a tool of suppression.

¹ Ravish Kumar, ‘The Free Voice- On Democracy, Culture and the Nation’



Statistics show that from 1882-1968, a total of 4,743 registered cases of lynching occurred in the USA out of which 3,446 people belonged to the African American Community.² False accusations of raping white women, murder, theft were some of the chief justifications given by the mob who lynched. A notable African American Journalist Ida B. Wells, was one of the very few people who took the initiative to expose the most prevalent myth about the black men raping white women. In a speech given by her in the National Negro Conference, she emphasised on three major points. First- "*Lynching is a colour line murder*"; Second- "*Crime against women is the excuse and not the cause*"; Third- "*lynching is a national crime and requires a national remedy*".³

The whites in the United states were acculturated and socialised into seeing blacks being tortured, abused, mistreated, burnt alive in front of many. No one questioned anyone or anything, for they believed that the blacks deserved it and black lives did not matter. History echoes with the fact that the African American community has lived in pain for many years and is still going through that pain today.

History of Lynching in India

India, a beautiful country is one of the most religiously and ethnically diverse nations in the world. With the Forty-second Amendment of the Constitution of India enacted in 1976, the Preamble to the Constitution asserted that India is a secular nation. Despite the Indian Constitution being

secular and religiously tolerant, India has witnessed multiple cases of religious violence since its independence in the year 1947. The Partition gave rise to religious violence in the form of mob attacks. The victims of such attacks were the minorities in India as well as Pakistan.

Muslims, who constitute about 14% of the Indian population have faced brutal acts of mob violence since the partition and Independence.

Another major cause of hate crimes in India is the deep rooted casteism. The Dalit or Scheduled Caste/Tribe segment of the Hindu population has been facing atrocities ever since they were classified as Dalits by the Aryans.⁴

The gravity of the heinous acts towards the Dalits can be understood when one reads about the Khairlanji case. On September 29, 2006 four members of the Bhotmange family belonging to the Mahar community were killed by a mob of 40 people belonging to the politically dominant Maratha Kunbi caste in Khairlanji, a small village in the Bhandara district of Maharashtra. The Bhotmanges were stripped naked and paraded to the village square where the sons were ordered to rape their mother and sister. When they refused to do so, their genitals were mutilated and they were brutally murdered.⁴

It is evident that religious violence in India has existed for a long time, but the phenomena of 'lynching' has witnessed a rise in the last decade. Of these, mob lynchings in

² NAACP Report <https://www.naacp.org/history-of-lynchings/>

³ Ida B Wells Reported Speech 'Lynching is color-line murder': the blistering speech denouncing America's shame

⁴ Khairlanji Massacre https://en.wikipedia.org/wiki/Khairlanji_massacre



the name of ‘Protection of Cows’ or “Cow vigilante” constitutes the most. Many vigilante groups say they feel empowered by the victory of the Hindu Nationalist BJP in the 2014 elections.⁵ “Violent, triumphalist majoritarian dominance is on lurid display across this new India” observes Gopalkrishna Gandhi, grandson of Mahatma Gandhi who worries about a second partition, a division this time not of the country but of the mind.⁶

Rise of Lynching in India

Since the past ten years, India has experienced an unusual rise of mob lynchings. The horrendous act of beating or stoning a person to death publicly, escalated from the year 2014, the time when the Bharatiya Janata Party won the Lok Sabha elections. It was due to the rise in religious intolerance and influence of Hindu nationalist ideology on the masses that increased the instances of mob lynching across the country.

One of the striking incidents that shook the country took place on September 28, 2015, in Dadri, Uttar Pradesh. Mohammad Akhlaq was accused of consuming and storing beef in his house and because of this accusation, Akhlaq, along with his two sons, was lynched by an enraged mob. The sons survived to live through the horror of that night their entire lives, however, the world lost another soul to lynching that day. Reason: a mere false accusation.

One of the cardinal principles of criminal law states that no one is guilty until proven. This

is the reason why there is a procedural law regarding the illegal activities that take place in the society. This is the reason why we have honourable jurists to impose penal actions for the wrong done by others.

But what happens when people take law in their own hands, set their court of law in public, and masses become mere spectators?

It leads to annihilation of law. The same rule of law that protects the sanctity of our country and its citizens.

According to an analysis conducted by ‘India Spends’ in June 2017, 97% of the attacks of mob lynching occurred after Prime Minister Narendra Modi won the 2014 Lok Sabha election. More than 84% of the attacks were inflicted on Muslims and the rest were on Hindu, Christian, LGBTQ minorities and other vulnerable groups. What is horrifying is that most of the lynchings were based on rumours. A mere hearsay was capable of inciting rage that killed or grievously injured the victim.

In June 2019, Amnesty International Organization published a report which documented a total of 902 incidents that took place between 2015 and 2019 which were based on hate crimes. A total of 619 and 612 incidents of hate crimes were forced upon Dalits and fuelled caste inequalities.

Out of those 902, a total of 113 alleged hate crimes were motivated by cow vigilantism, of

⁵ BBC News article <https://www.bbc.com/news/world-asia-india-34513185>

⁶ Quartz India article <https://qz.com/india/1518868/lynch-mobs-in-india-are-sowing-the-seeds-of-another-partition/>

⁷ Delna Abraham and Ojaswi Rao, ‘84% Dead in Cow-Related Violence’; 97% Attacks after 2014’, IndiaSpend, <https://archive.indiaspend.com/cover-story/86-dead-in-cow-related-violence-since-2010-are-muslim-97-attacks-after-2014-2014>



which 89 were directed towards Muslims.⁸ The image ‘Figure 1’ below shows hate crimes committed across the country between September 2015 to June 2019 categorized according to the identity of victims.⁹

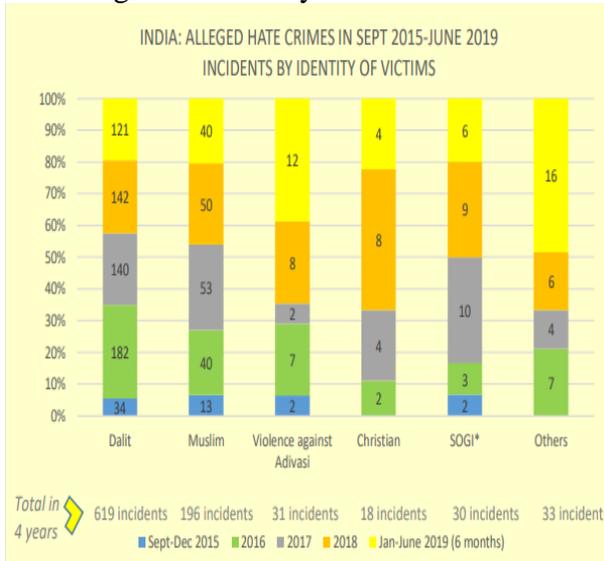


Figure 1

The crime statistics further implicate the BJP led government, because the highest number of cases came from the BJP ruled states. Without any doubt, Uttar Pradesh was leading amongst others with 216 cases of hate crimes against vulnerable groups.

The State of Tamil Nadu, Gujarat, Haryana, Rajasthan and Karnataka followed the list with 80, 79, 61, 59 and 48 incidents respectively. Shockingly, the highest number of alleged hate crimes took place between January 2019 to June 2019 in India. ‘Figure 2’ given below depicts the State wise data of crimes committed against minorities in the country.¹⁰

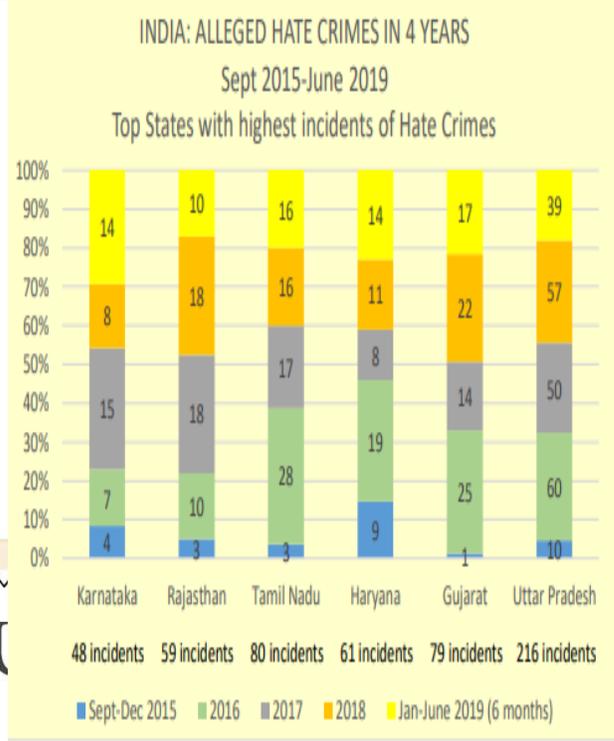


Figure 2

Rise of Cow Vigilantism

The onset of Bharatiya Janata Party in 2014 brought with itself a wave of religious nationalism and propagated hatred towards other factions of the society. The ideologies of few political leaders and their parties instituted a sense of pseudo nationalism in the minds of the majority Hindu class. This in turn, created fear in the minds of other minorities, which is why 98 percent of mob lynching incidents fuelled due to bovine related rumours, have occurred after 2014.

On 18 March 2016, two Muslim cattle herders were attacked and killed by a group of cow vigilantes while they were on their way to sell bulls in an animal fair that was

⁸ Amnesty International India, ‘Hate Crime Reports on an Alarming Rise- Reveals Amnesty International India Halt the Hate’, 4 October 2019, <https://bit.ly/3cRCUoy>

⁹ Halt the Hate, Amnesty International India, <http://haltthehate.amnesty.org.in/>

¹⁰ Amnesty International India, supra note 4



being held in the State of Jharkhand. Mohammed Mazlum and Imteyaz Khan were wrongly accused of selling cattle for slaughter due to which they were miserably beaten to death.

These bovine related attacks across the country have been led by cow protection groups (Gau Rakshaks) supposedly affiliated with Hindu militant groups that have ties with the BJP. Hindus consider cows sacred due to which these cow protection groups have been boldly attacking minorities, mostly Muslims and Dalits all across the country.

According to a survey conducted by New Delhi Television (NDTV)¹¹, there was a 500 percent increase in the use of communal divisive language between 2014 and 2018, 90 percent of which came from the elected members of the BJP. Their speeches had a common theme that revolved around cow protection, thereby creating a rift between Hindu and Muslim communities.

Rumour Has It

India has in various instances fallen prey to rumours since before independence. It was the rumour regarding the cartridges that instigated the first war for independence, popularly known as the 'Revolt of 1857'. Nowadays, technology acts as a medium for wider and faster spread of rumours.

The Northeastern exodus in 2012, the Muzaffarpur Riots in 2013 and the lynchings that have taken place post 2014 have occurred due to rumours spread across social media platforms. It was in 2018, that the rise

of fake news and messages that instilled violence among the masses increased rapidly.

A number of alleged hate crime cases were happening due to social media platforms, primarily Whatsapp and Facebook. The home delivery of hate messages against vulnerable groups on our phones is reason enough to incite a faction of people to project violence towards the accused. It is because of these social media platforms, young hearts are being filled with flames of hatred, they are being transformed into human bombs walking in our midst. Such human bombs trapped in the vicious circle of rumours become a participant of the crowd that kills a Pehlu Khan or Mohammad Akhlaq or Junaid Khan or any other innocent life that belongs to one of the vulnerable groups in the country.¹²

Another reason for mob lynching has been the increase in amount of child-lifting rumours. On 16th April 2020, two Hindu Sadhus along with their driver were lynched by a group of vigilantes in Palghar district of Maharashtra.

The incident took place while the country was in complete lockdown and was instigated due to a Whatsapp rumour that was being spread among the people of the vicinity. Since 2014, there have been a total of sixty nine mob attacks due to child lifting rumours

¹¹ Jayshree Bajoria, 'Violent Cow Protection in India', Human Rights Watch, <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>

¹² Chinmayi Arun, 'On Whatsapp, Rumours, Lynching and the Indian Government', Economic and Political Weekly vol. IIV no. 6, Forthcoming, <https://bit.ly/2MNPMBQ>



in which thirty three people have lost their lives.¹³

In all these cases, the victims were assaulted on accusations that were later proved to be baseless. The Home Ministry in 2018 directed all the states to keep a check on rumours being spread through social media. However, in the first six days of July itself, the country witnessed nine cases of mob violence over child lifting rumours. The image *Figure 3* below depicts the number of cases of mob lynching related to rumours of child lifting as well as deaths occurred in the same between 2017 and 2018.¹⁴

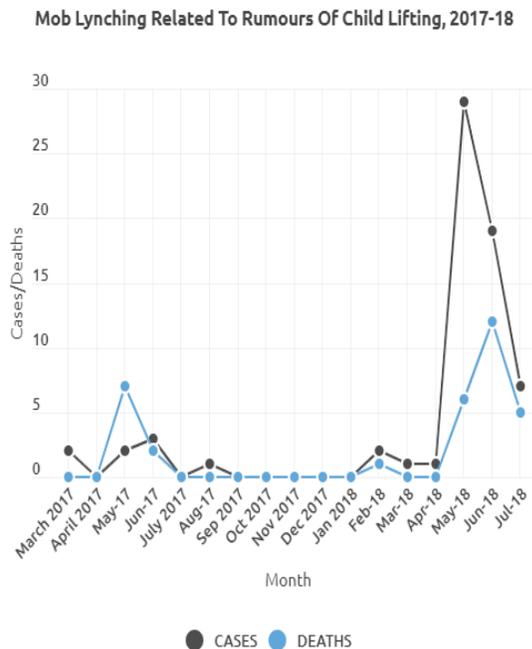


Figure 3

Response of the Judiciary- Tehseen Poonawalla v. Union of India

¹³ Alison Saldhana, Pranav Rajput & Jay Hazare, ‘Child Lifting Rumours’, IndiaSpend, <https://www.indiaspend.com/child-lifting-rumours-33-killed-in-69-mob-attacks-since-jan-2017-before-that-only-1-attack-in-2012-2012/>

¹⁴ IndiaSpend, supra note 8

To address the rise in mob lynching cases occurring across the country, the Hon’ble Supreme Court delivered its judgement in two writ petitions filed by Tehseen Poonawala and Tushar Gandhi.

The Hon’ble Court laid down certain guidelines pertaining to preventive, remedial and punitive measures in order to curb the atrocities of lynching. The first petition filed by social activist Mr. Tehseen Poonawala challenged the constitutionality of the “good faith” clauses laid down in cow protection legislatures where the action of private citizens are awarded legal immunity.¹⁵ The second petition was filed by Mr. Tushar Gandhi who sought the intervention of the Union Government to curb the increasing incidents of cow vigilantism. The three judge bench headed by Former CJI Dipak Mishra, comprising Justice A.M. Khanwilkar and Justice D.Y. Chandrachud, heard the petitions and on 22 July 2018, laid down certain guidelines for limiting the increasing incidents of mob lynching in India.

Former CJI Dipak Mishra stated that in *Krishnamoorthy v. Sivakumar & Ors.* it was held that “*the majesty of law cannot be sullied simply because an individual or a group generate the attitude that they have been empowered by the principles set out in law to take its enforcement into their own hands and gradually become law unto themselves and punish the violator on their own assumption and in the manner in which they deem fit*”.¹⁶

¹⁵ ‘Cow Vigilantism’, Supreme Court Observer, <https://www.scoobserver.in/court-case/cow-vigilantism/cow-vigilantism-case-plain-english-judgment>

¹⁶ Tehseen S. Poonawalla v. Union of India and Ors, (2018) 9 SCC 501



He also emphasized on the responsibility of the State Administration in association with the intelligence agencies of both the State and Centre to prevent recurrence of communal violence in part of the State.

The learned counsel for the petitioner Ms. Indira Jaising quoted Martin Luther King Jr. and stated that “*the law may not be able to make a man love him, but it can keep the man from lynching him*”. She stressed on identifying areas like highways where the crime could take place and implementing patrolling in sensitive areas during the night time. Mr. Hegde, learned counsel for one of the petitioners highlighted the need for preventive, remedial and punitive measures and placed reliance on the recent judgement rendered in *Shakti Vahini v. Union of India & Ors.*

Analysis and Implementation of the Judgement

The guidelines laid down under Section 153, and 295A of the IPC by the three judge bench in *Tehseen Poonawala v. Union of India* have been discussed below:¹⁷

(i) Appointing a Nodal Officer (NO), not below the rank of superintendent of police, in each district to function as the head of a special task force and to procure intelligence reports about the people who are likely to commit such crimes and keep an eye on people who are involved in spreading hate speeches, provocative statements and fake news.

(ii) Identification of sensitive areas in the village/district, where instances of lynching

and mob violence have been reported in the recent past.

(iii) The Nodal Office has been directed to conduct regular meetings, in order to identify the existence of tendencies of vigilantism, mob violence or lynching in the district and take steps to curb the same.

(iv) It is the duty of the Nodal Officer to disperse the mob if it has the tendency to cause violence or disrupt public tranquility.

(v) Central as well as State Governments should broadcast messages and relevant information on radio and television and other media platforms, including official websites of the home department and police of states regarding lynching and mob violence and aim at preventing the occurrence of same in their respective areas.

(vi) It is the duty of the central and state governments to take steps to curb and stop dissemination of irresponsible and explosive messages, videos and other material on various social media platforms which have a tendency to incite mob violence and lynching of any kind.

The apex court further directed the State Governments to prepare a mob lynching compensation scheme for the victim within one month of the judgement. The Court also directed the Centre to form a specialized offence for mob lynching and allot adequate punishment for the same. The Supreme Court reflecting on the punitive measures held that a police officer who neglects his duties will have to face departmental action within six months.¹⁸ As a remedial measure, the court directed the jurisdictional police station to immediately lodge an FIR under the relevant sections of the Indian Penal Code, without undue delay. Surprisingly, in reference to the

¹⁷ Supra note 11

¹⁸ Venkatsubramanian, ‘Mob Lynching: Loopholes in the Law’, Indian Legal Live,

<https://www.indialegallive.com/constitutional-law-news/supreme-court-news/mob-lynching-loopholes-in-the-law-70241>



trial courts, the court held that the lower courts should award maximum sentence as provided for various offences related to mob lynching under the sections of the IPC.

A year later in July 2019, the apex court issued notices to the Centre and various State Governments asking them to submit a report of the steps taken by them towards implementing the measures laid down in the landmark judgement. A bench headed by the then Chief Justice of India Ranjan Gogoi sought responses from the Centre and various State Governments about a petition that was filed claiming the failure of implementation of guidelines laid a year ago by the Hon'ble Court.¹⁹ However, the response of the Government was disappointing. Former CJI Dipak Mishra in the landmark judgement stated that *"in the times of chaos and anarchy, the State has to act positively and responsibly to ensure the protection of the constitutional promises to the citizens. The horrendous act of mobocracy cannot be permitted to inundate the law of the land"*.²⁰ He held that the State cannot turn a deaf ear to the growing rumbling of its people, where its primary concern, quoting Woodrow Wilson, must ring with the voices of the people.²⁰

Tardiness of the State Governments

The Apex court vide its order dated 17 July 2018, directed the State Governments to assume the responsibility of legislating their own state laws within four weeks to curb the rising cases of mob violence. To much of our surprise, out of 28 states, only 11 states so far have acted in accordance with the directives of the Supreme Court. Almost two years have

passed by and the lethargic effort of the State Governments has clearly shown their minimal concern regarding the rise of these odious crimes in their respective states.

Here is the list of the states that have taken measures in accordance of the issued guidelines: -

Manipur

Manipur, a small state in the North East was the first to respond to the directives of the Apex court. In November 2018, the Governor of Manipur promulgated an ordinance in lines with the guidelines of the Apex court and soon after that the State Legislature passed the '**Manipur Protection from Mob Violence Act**'.

The act defines "Lynching" as any act or series of acts of violence or aiding, abetting such act/acts thereof, whether spontaneous or planned, by a mob, on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds or on mere suspicion of commission of a cognizable crime not amounting to a heinous one. The act further lays down that in the event of death of the victim, the offender would undergo a rigorous punishment for life and fine which may extend to five lakh rupees.

West Bengal

In August 2019, the Government of West Bengal had passed '**The West Bengal (Prevention of Lynching) Bill, 2019**' which majorly incorporated most of the guidelines laid down by the Supreme Court. The bill

¹⁹ Indian Legal Live, supra note 13

²⁰ Tehseen S. Poonawalla v. Union of India and Ors, (2018) 9 SCC 501



proposes a maximum punishment of life imprisonment and fines ranging from Rs 1 lakh to Rs 5 lakh for any offences committed within the ambit of the act. It defines lynching as any attempt or act of violence by a mob on the “grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity, or any other ground”.

Rajasthan

In August 2019, the Parliamentary Affairs Minister Mr. Shanti Dhariwal had introduced the ‘**The Rajasthan Protection from Lynching Bill, 2019**’. The bill provides for life imprisonment and a fine from ₹1 lakh to ₹5 lakh to those convicted in cases of mob lynching leading to victim’s death. Abiding by the guidelines laid down by the apex court, the State Legislature also empowers the State police chief to appoint a state coordinator of the rank of Inspector General of Police to prevent the incidents of lynching in the State with the district Superintendents of Police acting as the district’s coordinator, to be assisted by a Deputy Superintendents of Police, for taking measures to prevent incidents of mob violence and lynching.

As stated by the Parliamentary Affairs Minister Mr. Shanti Dhariwal - “After 2014, 86% cases of mob lynching reported in the country happened in Rajasthan. The State is considered a peaceful State and such incidents have put a blot on it”.

Uttar Pradesh

According to Amnesty International India’s ‘Halt the Hate’ report, Uttar Pradesh has recorded the highest amount of hate crimes between September 2015 to June 2019. The total number of crimes in the aforesaid period was 218. Despite the increasing rate of

crimes in the state, the government of Uttar Pradesh is yet to come up with an Anti Lynching law.

In July 2019, a 128 page report was drafted by the Law commission of U.P chaired by Justice (Retd.) A.N Mittal and submitted to the Chief Minister of Uttar Pradesh. According to the records, 50 incidents of mob violence have taken place in the State since 2012. Eleven of the 50 victims have died in the attacks. Half of these incidents dealt with cases of major assault, including those by cow vigilantes. Due to the rising cases Sapna Tripathi, the Secretary of the Law Commission, observed- “In the backdrop of this situation, the commission took up the study suo motu and accordingly recommended the State government the need for having a comprehensive law to combat lynching,”

Bihar

Till date, the state government of Bihar has not passed any law regarding the lynching. The state has remained ignorant towards the directives issued by the Apex court.

However, instead of legislating, we see the state adopting a different approach to deter a capable offender. The State government has announced that those accused in lynching cases will no longer be eligible for government jobs and if in case the offender already holds a position in a government office, then they will be removed from the same.

Approaches like these may deter people to some extent but it cannot rule out the necessity of a permanent law.

Need of the Hour



As there is no central legislation on lynching, the odious act of lynching is currently governed by the relevant provisions of the Indian Penal Code which are: Section 302 (Murder), Section 307 (attempt to murder), Section 323 (Causing voluntary hurt), Section 147 (Rioting), Section 148 (rioting with deadly weapon), Section 149 (Unlawful Assembly).

One may ponder as to why do we need an additional law for lynching when there are provisions of IPC that can be applicable to a case of lynching and enacting a separate law would not only increase the amount of laws but could also result in overlapping of laws. To answer this, it is weighty to mention that the enactment of The Scheduled Castes and Tribes (Prevention of Atrocities) Act has resulted in decrease in the number of crimes against the SCs and the STs as the act clearly lays down the punishment for the offenders.

A clearly laid down law on a subject clears the ambiguity and acts a deterrent for the future offender. In 2017, the National Campaign against Mob Lynching proposed a new law called Manav Suraksha Kanoon (MASUKA) to tackle the problem, however, it could not emerge as a solid law and still awaits its implementation.

Article 21 enshrined in Part III of the Indian Constitution states that, “No person shall be deprived of his life or personal liberty except according to procedure established by law” which lays the foundation for other rights on similar lines. Life is a prerequisite for other available rights to enjoy. For a person whose life and liberty have been deprived, for him, all other rights would be meaningless as the

latter only adds quality to the former. Therefore, Article 21 is considered to be the primary right and all the other rights help in the enhancement of life of an individual.

Recent events of lynching have portrayed our democratically elected government as a mere spectator. The statistics clearly shows the dire need of lynching laws with stringent penalties because the act of spreading hate towards a particular community, instilling fear in the minds of vulnerable groups and ultimately bashing them to death violates the fundamental rights of victims.

As stated in *Shakti Vahini v. Union of India*²¹, the bench laid stress on the unconstitutionality of mob lynching in reference to Khap Panchayat which has a similar structure as that of a mob. The bench stated that, “*The ‘Khap Panchayats’ or such assembly should not take the law into their own hands and further cannot assume the character of law implementing agency, for that authority has not been conferred upon them under any law. For example, when a crime under the Indian Penal Code is committed, an assembly of people cannot impose it. They have no authority. They can neither affect others’ fundamental rights nor cover up their own illegal acts*”.

Universal Declaration of Human Rights propagates basic and fundamental human rights such as inherent dignity and equal protection by law. Article 7 of UDHR provides for equal protection before the law and protects the citizens against any form of discrimination. The Indian Supreme Court in *Railway Board v. Mrs. Chandrima Das* held that the basic human rights mentioned in the

²¹ *Shakti Vahini v. Union of India* (2018) 7 SCC 192



UDHR have also been inculcated in Article 21 of the Indian Constitution.²² Therefore, the Government is under strict obligation to follow the rules of the UDHR and protect its citizens against atrocious instances of mob lynching that blatantly violate human rights.

Moreover, violation of international obligations does not end here. India further violates Article 20(2) of the International Covenant on Civil and Political Rights and Article 2 of International Covenant on Economic, Social and Cultural Rights which prohibit all forms of racial or religious discrimination or any kind of incitement leading towards discrimination and violence.²³

The instances of mob lynching are a big blot on our democracy and judiciary.

Our country, an epitome of cultural and religious diversity is leaning towards religious intolerance paving way for hate crimes against minorities. The very base of our country, our ideals of secularism are being defied and challenged by vigilante groups and various political parties. The media focuses its attention towards increasing the Hindu-Muslim gap and has been igniting hatred between the communities since the onset of 2014.

In fact, the Supreme Court in *Subramaniam Swamy v. Union of India* admitted to the fact that a crime is a moral wrong and which is inimical to the general moral sense of the

community. The court stated, “A crime affects the society. When we talk of society, it is not an abstract idea or a thought in abstraction. There is a link and connection between individual rights and the society; and this connection gives rise to community interest at large. It is a concrete and visible phenomenon. Therefore, when harm is caused to an individual, the society as a whole is affected and the danger is perceived”.

Lynching is not just a crime against the victim, the act also impacts the community at large to whom that person belongs. In an article, Indira Jaising, an Indian lawyer who is noted for her legal activism in promoting human rights causes observes- “The public nature of the crime is intended to make it an impact crime, to teach not only the person lynched a lesson but to make an entire community afraid of exercising its civil rights”.²⁴

In a country like India, whose constitution guarantees every citizen fundamental right such as Right to Equality, Right to Freedom, Right to Freedom of Religion, no person should feel any sense of inferiority or fear. Vigilante groups have mushroomed over the years and the government is seen shirking its responsibility towards curbing the same. These groups claim to have a strong network of informers and say they “feel empowered” because of the ruling Hindu nationalist BJP government in Delhi.²⁵ Statements like these draw a question mark on the executives.

²² Gaurav Chaliya & Suvam Kumar, ‘Call for Red Letter- Explicating the Human Rights in the Backdrop of Mob Lynching’, Groningen Journal of International Law, <https://grojil.org/2020/03/04/call-for-red-letter-explicating-the-human-rights-in-the-backdrop-of-mob-lynching-in-india/>

²³ Groningen Journal of International Law, supra note 22

²⁴ Economic Times article Why government should make new law on lynching

²⁵ BBC article Why the humble cow is India's most polarising animal



The question arises: Why isn't there a law already? Why is it taking so long for the State governments to pass a law despite having clear directives from the Supreme Court?

The silence of the government on this subject is worrisome for the country. One has to note that the enactment of a law on this subject is the need of the hour and the Centre should be answerable for its negligent attitude towards hate crimes.

