



QUINTESSENTIAL QUESTIONS TO LYNCHING

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Lynching has been in and around the news since quite a long time. It is a phenomenon that is known to many theoretically. Recollecting the common understanding to Lynching, it is an act wherein a public spectacle is made by allegedly 'punishing' another or 'teaching a lesson to that other'. To make another group streamlined as per the standard set by one group, the *other* is oppressed in the society. Generally, the former is the minority group, and the latter is the majority group. With this knowledge, the writer aims to discuss some critical questions that do not come in ordinary discourse.

WHY MINORITY GROUPS ARE MOSTLY SUSCEPTIBLE TO LYNCHING?

This question is something which apart from researchers, every minority group seeks an answer to. Why is it that most of the time, the lyncher is from a majority community and the lynched is from minority community? Does the factor of dominance of number play a part? Is it that simple? One can be the reason that since there is dominance of number, which makes them the majority, their idea of justice or correctness or belief would be

infectious¹. They would want that a particular way should be followed since they are the deciding factor of what becomes the common societal norm on account of their number, since that would be followed by the majority². But again, it is too shallow an explanation for such a heinous crime that drive people to the extent of barbarianism. Apart from this, a reasonable society with varying beliefs and disagreements, needs to dig into the roots of the issue.

Proposed Reason 1: Othering

Caste is the major hierarchical division that exists in the society since the longest period of time³. It is one such aspect that is so deeply entrenched in the hearts and minds of the people – both upper caste and lower caste, that it is still rampantly practices all across India. It is not just that they are incapable of getting rid of this prejudice, they refuse to let go of the hierarchical mindset. But this is not the reason for their Lynching. The reason lies in the notion of inequality⁴. They are still not considered equal to the rest of the people. It is expected that the so called lower caste people would rise upto the level and standard of the so called upper caste for them to be respected alike⁵. Why can't they be of the caste or position they are of and still get respected with equal status in the society? That generally does not happen. This is because they are the 'other' caste⁶. The same was the dilemma of American Blacks when they wanted to be accepted as

¹ Aatish Taseer, *Anatomy of Lynching*, THE NEWYORK TIMES, April 16, 2018, <https://www.nytimes.com/2017/04/16/opinion/anatomy-of-a-lynching.html> Last Visited on June 06, 2020

² Aatish Taseer, *Anatomy of Lynching*, THE NEWYORK TIMES, April 16, 2018, <https://www.nytimes.com/2017/04/16/opinion/anatomy-of-a-lynching.html> Last Visited on June 06, 2020

³ Discussed in chapter 3.

⁴ Charu Gupta, *Politics of othering*, INDIAN EXPRESS, December 20, 2014, <http://indianexpress.com/article/opinion/columns/the-politics-of-othering/> Last Visited on June 06, 2018

⁵ DILIP M. MENON, BLINDNESS OF INSIGHT, 4, (2006)

⁶ Emily Wilson, *We the People, We the Mob: Linking Death, Race and Belonging*, AUSTRALASIAN JOURNAL OF AMERICAN STUDIES, 75



equal citizens as the White Americans. They were considered to be of the ‘other’ race⁷. They were the ‘other’ race because the Whites created such a distinction between them – the distinction that was conveyed loudly and brutally that Whites were the superior race and Blacks were Inferior ones. This is the same context with which Indian Caste System works. According to the hierarchical notions formed over the years, the so called upper caste people believe that they have a certain superiority from the ‘other’ caste⁸. And so, these self-acclaimed superior beings consider their responsibility to so called “cleanse” or to “correct” the society. Apart from this, racial Lynching is not uncommon in India as well. With diversified population, inflow of African Students has risen over time. A video surfaced in 2014 where 3 African Students were lynched by a mob at Rajiv Chowk Metro Station in New Delhi⁹. Religious minority in India has come under the most vulnerable radar since a year or two. Lynching in the name of cow protection by vigilante groups has become a common practice in many states. Whenever a suspicion arises of a Muslim dealing with cow or beef, or even without a suspicion

when a Muslim is seen with a cow, it is assumed by the Hindus that such man must be guilty of dealing with cow slaughter¹⁰. No need is felt by the perpetrators of such acts to strive for truth behind such allegation – since the Muslims are of the ‘other’ religion, it is assumed that such an act must’ve been committed by them¹¹. When such a suspicion spreads about a Hindu, innocence is assumed, which should be the case in every scenario¹². The seeds of distinction that were sown during partition is still very much prevalent that Muslim is the ‘other’ religion and that they are not equal to the Hindus¹³.

This is the concept of Othering – where it is believed that another is different from myself he/she is the ‘other’. That one would not have done an act which another did and for that he/she needs to be taught a lesson¹⁴. It is not just about communities or affiliations, it comes into practice in common parlance as well. For instance, in a case of road accident, when the person causing the road accident is beaten to death by the angry mob of general public, it is also included in ‘othering’. The people attacking the person takes the victim as the ‘other’. Similarly, when a man gets castrated by the angry mob for alleged attempt to rape, he is that ‘other’ person who

⁷ Mohammareza Ghanbarinajjar, *Race as a Cause for Discrimination and “Othering”*, Bernard Malamud’s *The Tenants a Case Study*, 2 CCSE, 3, 1, 2013

⁸ Jason Burke, *Lynching of boy underlines how the curse of caste still blights India*, THE GUARDIAN, October 19, 2014, <https://www.theguardian.com/world/2014/oct/19/lynching-boy-underlines-curse-caste-still-blights-india> Last Visited on June 06, 2020

⁹ Tarique Anwar, *Delhi’s everyday racism: African student recalls lynch mob attack in metro*, FIRSTPOST, October 02, 2014.

¹⁰ *Muslim Man Lynched in Central India for ‘Slaughtering Cow’*, RT QUESTIONS MORE, May 21, 2018, <https://www.rt.com/news/427258-indian-man-killed-cow/> Last Visited on May 22, 2020.

¹¹ *Supra note 42*

¹² An accused is innocent unless proven guilty.

¹³ Discussed in 2.3.2 of chapter 2.

¹⁴ Jean-Francois Staszak, *Other/ Otherness*, International Encyclopaedia of Human Geography, (2008)

¹⁵ In 2016, a dentist Dr. Narang was beaten to death in Delhi after a minor scuffle on road.

Karn Pratap Singh, *Dentist beaten to death with iron rods in Delhi after minor scuffle*, HINDUSTAN TIMES, April 14, 2016 <https://www.hindustantimes.com/delhi-news/40-year-old-delhi-dentist-beaten-to-death-over-dispute/story-6B3iRScIAoyojEXaFx1AP.html> Last Visited on June 06, 2018



gets punished for not being among the people who do not indulge in such acts¹⁶. This also takes place with LGBT community when they are outcasted and tortured. Since they are the 'other' gender according to people, the LGBT community has to suffer from violence for being different.

Proposed Reason 2: Power Assertion

In America, blacks demanded equal status after emancipation from slavery¹⁷. Whites were the sole race in power before this period and owned blacks as their slaves¹⁸. The fact that the so called inferior race – whites, demanded freedom and wanted to free away from the clutches of the white dominion – this made Whites uncomfortable¹⁹. The blacks as equal citizens rose to power and participated in direct competition for political power and positions in the American society, insecurity among the whites increased and they devised ways to maintain supremacy of power in the society. The rape myth was one such way in which blacks were forced to live in fear and under the supremacy of the White. This is how power was asserted by the White. It was not because that was the correct way of attaining power, it was obviously wrong, however apart from that, it was their fear of losing supremacy that motivated them to resort to Lynching in taking back the African

Americans to the position which they were in before emancipation.

In India as well, Hindus assert their power as a majority community on the Muslims and even on other lower caste communities depicted by a number of crimes. For instance, the notion of 'love jihad' that has risen to significant importance in the Hindu community is astonishingly sad. It has worsened to the extent that the case of Hadiya reached the Supreme Court by her own father for her marriage to be declared void on account of 'love jihad' being committed by the Muslim husband²⁰. Apart from this, honour killings are done on account of adults marrying outside their religion or community by self proclaimed Khap Panchayats which claim to be saving the community and family. Women have been the age-old victim of power assertion by the patriarchal society we live in. All the lynch crimes that are committed against women especially is mostly targeted on her dignity and respect²¹. Such sexual violence is just another way for the men to show their power over women, punishing them for not following the right social order according to men²². When a family is to be punished by lynch mobs, the women of that family is made a common target which is because in violating their dignity, men assert power. This can be

¹⁶ Emily Wilson, We the People, We the Mob: Linking Death, Race and Belonging, AUSTRALASIAN JOURNAL OF AMERICAN STUDIES, 75

¹⁷ NAACP, *History of lynchings*, <http://www.naacp.org/history-of-lynchings/> Last Visited on June 08, 2018

¹⁸ *Ibid.*

¹⁹ GLOBALIZING LYNCHING HISTORY: VIGILANTISM AND EXTRA-LEGAL PUNISHMENT FROM AN INTERNATIONAL PERSPECTIVE, 18 (Manfred Berg and Simon Wendt ed. Palgrave macmillan, 2011)

²⁰ TIMES OF INDIA, 'Love Jihad' case: SC set aside Kerala High Court order that annulled Hadiya's

marriage, March 08, 2018, <https://timesofindia.indiatimes.com/india/kerala-love-jihad-case-sc-sets-aside-kerala-hc-order-that-annulled-hadiyas-marriage/articleshow/63215330.cms> Last Visited on June 06, 2020

²¹ *Ibid.*

²² On the contrary, also see: A mob of angry women lynched a man accused of rape in Mumbai, when he was being escorted into the courthouse in Nagpur. These women were victims of the accused rapist. ASIA NEWS, *Rape victims lynch rapist*, August 19, 2004, <http://www.asianews.it/news-en/Rape-victims-lynch-rapist-1323.html> Last Visited on June 06, 2020.



witnessed from the recent Kathua Rape case wherein a minor girl was repeatedly raped and killed. It was a pre-planned act committed with the object of terrorizing and evicting a particular community from a particular region²³. This inhumanity is the gravest example wherein a group of people, in order to bring right order by evicting them committed such a barbaric, with the aim of setting an example for future generations to come²⁴. Though it fulfilled the purpose of leaving a gruesome mark on the society, but it also reached the nadir of humanity.

Some of the ways which can be deduced from the aforementioned discussion as to how power is asserted is as follows:

- *Stereotypes* affect behaviour of the people in a society. In economies where people are rigid in following patriarchal traditions, violence is inevitable at the sight of any such deviance. These are motivated by generally accepted notions of morality and manhood.
- In societies, there is a need for maintaining *Social Control and Hierarchy* among different sections of people. Women and Homosexuals constitute the minority part of the society and for men to maintain and strengthen their position in the patriarchal system that they have constructed for themselves, they showcase their superiority

as a group of people by instilling a sense of fear among the minority groups.

- The notion of ‘women of the family’ is highly *Overrated* in countries like India where honour of the family is directly linked with its women. So, if any person wants to attack a family or its honour, women become the obvious targets.

Violence on sexuality is recognized as an Individual Wrong like rape, sexual assault, stalking etc. So, a mob crime like Lynching does not fall under any kind of crime particularly. There are always complications in implementation of laws addressing these individual crimes²⁵, crime like Lynching stand less to no chance when not even been recognized in India.

Proposed Reason 3: Loss of Faith

This power surge in a few people can also exist because of loss of faith in the government law enforcement machinery²⁶. This is also the devolutionist theory as mentioned in the beginning of the article. This is when people think that the government is incapable of providing justice against an act or practice taking place in a society and because of this dissatisfaction, people take upon themselves as a responsibility to act against it²⁷. However, this does not seem to be a very stable

²³ *Kathua Rape Horror*, THE QUINT, April 04, 2018, <https://www.thequint.com/big-story/kathua-rape-murder> Last Visited on May 17, 2020

²⁴ *Kathua Rape Horror*, THE QUINT, April 04, 2018, <https://www.thequint.com/big-story/kathua-rape-murder> Last Visited on May 17, 2020

²⁵ Vasundhara Sirnate, *Good Laws, Bad Implementation*, THE HINDU, May 18, 2018, <http://www.thehindu.com/opinion/lead/good-laws-bad-implementation/article5639799.ece> Last Visited on June 06, 2020

²⁶ GLOBALIZING LYNCHING HISTORY: VIGILANTISM AND EXTRA-LEGAL PUNISHMENT FROM AN INTERNATIONAL PERSPECTIVE, 6 (Manfred Berg and Simon Wendt ed. Palgrave macmillan, 2011)

²⁷ GREGORY D. SMITHERS, GLOBALIZING LYNCHING HISTORY: VIGILANTISM AND EXTRA-LEGAL PUNISHMENT FROM AN INTERNATIONAL PERSPECTIVE, 101 (Manfred Berg and Simon Wendt ed. Palgrave macmillan, 2011)



reasoning since nothing or no amount of incapability of the state can justify the barbaric acts of violence that are committed in the name of bringing just or correct or right order in the society.

DOES LYNCHING ONLY COVER PHYSICAL VIOLENCE?

Hurt, Grievous Hurt, Murder, Assault, Rape or Destruction of Property are all instances of the physical violence or the consequences of the crime of Lynching. But it becomes a debatable issue when we bring in the mental element into picture. Here, the 'mental element' can be taken in two ways: one where we analyse the mental trauma which the victim/s has to go through and second where psychological Lynching is involved. The mental trauma which the survivor or the family of the victim goes through is horrifying to the extent that it will always be embedded in their mind their entire life²⁸. One can never get over such a terrorizing incident, the terrifying frenzy which flashes in their minds and the grief of what they have lost affect their mental health deeply²⁹. For that very purpose, the remedy of compensation is one of the rehabilitative options that are available to the victim. In case of Lynching, no victim is given any compensation upto now since Lynching is not recognized as a crime in our legal system. However, there is always the debatable

question that exists and i.e. whether one-time monetary payment suffice for the trauma lynch victims went through. According to the principle of *parens patriae*³⁰ it is the duty of the State to take responsibility of the subsistence of lynched victims and to protect them from total displacement from their livelihood. This can be done by preventing Lynching from taking place, checking dereliction by any officer, and also covering the rehabilitation and the employment aspects of the lynched victims.

Now, when it is mentioned psychological Lynching, it is the literal meaning that is taken by this study to analyse it i.e. attack on the mind as a means of so called just or right or correct order of the society. Let a true instance help to assert this point properly. In December 2017 it was reported that a girl committed suicide in Maharajpur village of the Tikampur district in Bhopal³¹. This incident was a result of her family being ostracised by the village people on account of her relationship with a Dalit boy and she being from an OBC community³². The group of people in the community of that village punished the family by breaking social ties – because of the girl's choice to have a relationship with a boy of another community³³. This led to a psychological breakdown of the girl which drove her to commit suicide. This is one of the incidents reported of the many other incidents that

²⁸ Sumaiya Shaikh, Cognitive Neuroscience of a lynching, THE WIRE, July 18, 2017 <https://thewire.in/featured/neuroscience-lynching-autoimmune-hate> Last Visited on June 06, 2020

²⁹ EJI, *History of racial injustice: trauma of lynching*, Last Visited on June 06, 2018

³⁰ *parens patriae* doctrine applies to the state's power to substitute its authority for that of natural parents over their children.

Lawrence B. Custer, *The origins of the doctrine of parens patriae*, 27 Emory L. J. 195, 1 (1978)

³¹ Desh Deep, *Girl Kills Self After Family Ostracised Over Her Affair*, TIMES OF INDIA, December 21, 2017,

<https://timesofindia.indiatimes.com/city/bhopal/girl-kills-self-after-family-ostracised-over-her-affair/articleshow/62197363.cms> Last Visited on May 20, 2020

³² *Ibid.*

³³ *Ibid.*



must be taking place all over the country. However, problem with these kinds of instances is that it does not completely fall under any specific type of crime as yet, unless Lynching is criminalized covering mental trauma as well. Taking into account the point that this article explains in the definition of Lynching – to take consequences suffered by the victim into account and establish the victim's side of the case in order to locate culpability for the crime of Lynching – will atleast get closer in imparting justice to the victim's family and even recognizing this act under the crime of Lynching. Otherwise, the nexus will be too remote to be established if the crime would be taken from perpetrator's point of view in all cases .

1.3 What makes Mob a Mob of Lynching?

Mob is when a gathering of two or more people i.e. a crowd, audience or even a queue becomes emotionally charged towards an event³⁴. Substantial amount of people become collectively charged and evokes some kind of action. This reaction can be triggered by anything and varies from mob to mob. That is how it is defined in common parlance. But what differentiates or makes it stand apart when it comes to Lynch Mobs? There can be a variety of reasons which may bring some uniqueness to the Mob indulging in the crime of Lynching. Lynch Mob is unique primarily because of its objective. It takes into account several factors like attackers, spectators and outnumbered victims³⁵. As will be discussed in the defining of Lynching that the objective may include notions of justice, enforcing social or cultural

norm or belief, or acts which leads to some consequences indicating towards a close nexus between the act and the affiliation of the person. In other words, a mob which is formed mirroring the ingredients of lynching is a lynch mob. However, let's put it differently – what makes a Mob? Who are these people? The so called lynchers – do they all carry exactly the same objective while participating in such a crime or just different versions of that objective? Gustave Le Bon published in his work that a crowd when becomes a mob become a unified entity which acts as if guided by a single collective mind³⁶. However, Forsyth states that mobs may not have a common objective every time and may be a result of the dispersed collective behavior like rumours, trends and social movements³⁷. Agreeing with Forsyth, lynch mobs may not always have a collective objective in mind, but these lynch mobs have collective consequence i.e. Lynching, similar to the concept of group liability. The mob consisting a substantial amount of people are always more prone to committing violent crimes like Lynching since, according to Philip Zimbardo's (1969, 2007) theory of deindividuation wherein under the right circumstances, the mob becomes so powerful that the individuals in a mob escape their individual identity, normative regulations and restraints³⁸. So, is the version of rightness or justness during the crime of Lynching may not exactly same but converge at similar points to lead to a common consequence. Even now, one question still remains and i.e. what motivated them to be a part of that group? What is that charged emotion that made this mob? Answers to these questions

³⁴ DONELSON R. FORSYTH, GROUP DYNAMICS, 507

³⁵ *Ibid.*

³⁶ GUSTAVE LE BON, THE CROWD, 27 (1895)

³⁷ DONELSON R. FORSYTH, GROUP DYNAMICS, 509

³⁸ *Ibid.*



are dependent and vary according to the society and the social movements taking place in that society at that particular time – this brings us closer to the proposed reasons as discussed above.

The explanation to these inherent questions in this segment come with such an understanding of Lynching that clarifies the root of its ingredients, and also these issues form a close nexus with each other on microscopic level. The purpose of taking this question for analysis was to highlight some key aspects of the most important ingredient of Lynching i.e. a mob. Since, without studying both the lynched and the lyncher, the mob and the trauma, understanding of Lynching would be incomplete. Crimes cannot be taken as a series of standard ingredients put together to make up punishable offences. Perpetrators of this crime cannot be made to fit in the already established standards of other crimes because of the uniqueness it carries, separating it and making it a rather an aggravated crime than other crimes like murder, assault, rape etc. This kind of discourse would deepen the understanding of Lynching and would enable to conclude probable solutions against this crime, not just imparting hollow punishments, but devising ways and remedies which would adequately address Lynching and rehabilitate the lynched victims.

1.4 WHY THE ELEMENT OF 'PUNISHMENT' IN LYNCHING?

The question that should be asked rather than just assumed as a part of Lynching is – Why Punishment? Why is there need for giving punishment to people either because of othering or asserting power or any other?

Why people have this notion of wanting more severe outcome to teach a so-called lesson? According to Nietzsche, *punishment is not first of all a juridical apparatus; it is a movement of life, a writing of life so as to remember, to inscribe, to imprint the past in its body*. A primitive humanity still exists in us where punishment is motivated by the way one punishes their children – which is only limited when it reaches equivalent to the injury caused for which the punishment is given³⁹. And he questions that very aspect also that does such equivalence or balance may ever exist between Crime and Punishment? How can both of these different phenomena be linked to attain a balance in the society? The genesis of which is dated back to Christ when for the payment of sins by the people to God – the son of God took the punishment of death – and that was called love. This punishment gives a voluptuous pleasure of causing the other to suffer and that is nothing more than the pleasure of seeing another suffering harm for the acts she committed – this drives the feeling of Punishment – and this is cruelty⁴⁰. People enjoy the moment where they get to exercise such kind of power while making someone suffer – while giving punishments. It is like a payment for the act a person did by way of punishment which is equivalent to the harm by such an act – like a transaction for redemption⁴¹. What is the right amount of suffering that would suffice for redemption is a matter of debate.

There is no clear answer to the phenomenon as to why lynchers consider that punishment should be given to the victim. Why to bring about right or just or correct order, punishment is seen as the first option? From the 7analizt of lynchings studied in chapter 2,

³⁹ Jacques Derrida, *The Death Penalty*, University of Chicago Press, Volume 1

⁴⁰ *Ibid.*

⁴¹ *Ibid.*



we can however come to a basic conclusion that such punishments are to deter – to instil such fear of punishment in people – that would result in the desired result. Why violence⁴² is seen as the best way for effective punishments is the question that will remain a mystery to us. But, nevertheless, it is indeed true that one sub-consciously connects an alleged wrong act with a necessary penance/punishment –which is also the general understanding of the Hindu concept of Karma. But people take a kind of responsibility upon themselves to act in retaliation according to their subjective reasoning of what is just and right during the crime of Lynching, which reflects imposing one's perspective on another.

But even if we prohibit Lynching, make it punishable, and even stop or cure this evil from our society, do we actually prohibit the desire to punish, which lead to the idea of committing the crime of Lynching in the first place? There are cases where we can see that desire to punish remain even when the people are arrested by the appropriate authorities, for instance, when a rape accused in Nagpur was dragged out of jail and lynched⁴³. This desire to punish for an act done by suspected accused can be linked to the retributive theory of punishment, where eye for an eye is

the rule of punishment⁴⁴. But, that is the tool of the state to gain monopoly over violence, along with ensuring deterrence in order to set an example⁴⁵. From these deductions we can safely derive one explanation that because of the emergence a devolutionist mindset⁴⁶ and people losing faith on the government, the people want to assert power⁴⁷ over situations by which they can take matters into their hands and command some supremacy in the society. This is when people indulge in the crime of Lynching.

1.5 IS THE STATE RESPONSIBLE FOR PROMOTING LYNCHING?

As we discussed above, people get this feeling of power when indulging in the act of giving punishment for the right or correct or just order that they want should prevail in the society. The right question is what motivates them to have this kind of notion – taking control by violence – asserting power by punishments? It does seem familiar with the attributes of how state work in a lawful society. So, can we conclude that lynchers are imitating state? This is surely an incomplete picture. State represents people of the society. It is not that before State, there wasn't a mechanism for punishing people for their crimes. The people surrendered their

⁴² David Nelken, *Critical Criminal Law, 14*, Journal of Law and Society, 1, Critical Legal Studies, 107 (1987)

⁴³ TIMES OF INDIA, *Mob drags alleged rapist out of jail in Nagaland, and thrashes him to death*, March 06, 2015, <https://timesofindia.indiatimes.com/india/Mob-drags-alleged-rapist-out-of-jail-in-Nagaland-thrashes-him-to-death/articleshow/46471326.cms> Last Visited on June 06, 2020

⁴⁴ Jacques Derrida, *The Death Penalty*, University of Chicago Press, Volume 11

⁴⁵ Salman Masood, *Pakistan top court upholds acquittal in notorious rape case*, NEW YORK TIMES, April 21, 2011, <https://www.nytimes.com/2011/04/22/world/asia/22pakistan.html?ref=collection%2Ftimestopic%2FMai>

⁴⁶ %2C%20Mukhtar&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=latest&contentPlacement=4&pgtype=collection Last Visited on June 08, 2020

⁴⁶ Rasul Khan Mahsud, *Monopoly over Violence*, August 17, 2016, <http://spearheadresearch.org/index.php/researchopinions/monopoly-over-violence> Last Visited on June 5, 2020

⁴⁷ GLOBALIZING LYNCHING HISTORY: VIGILANTISM AND EXTRA-LEGAL PUNISHMENT FROM AN INTERNATIONAL PERSPECTIVE, 18 (Manfred Berg and Simon Wendt ed. Palgrave macmillan, 2011)



power of violence and the practices of giving out punishments as a requisite for democratic governance to the state⁴⁸. That is the promise of people to the state. State is primarily structured on people's desire and opinions, for instance, it was the people as well who wanted death for the terrorist Kasab, so much so that people celebrated and welcomed the death penalty verdict given to him⁴⁹. And so, we cannot blindly say that people imitate State when it comes to Lynching. However, people are acting on behalf of state which is discussed below.

Lynchers do not have any right to act upon what they believe to be correct or just or right in the society without due regard to due process of law. Monopoly over force and violence is power of the State. This does not mean that people do not take up responsibility on behalf of the state⁵⁰ which can be seen in a number of instances – in Turkey, Lynching is considered to be legitimate force as a national reflex, in which the state can temporarily give up its monopoly over legitimate force and delegate it to the 'nation' to tackle⁵¹; in India it was reported that the BJP-led government in Haryana, provided ID cards to 'genuine' Gau Rakshaks motivating cow vigilantism⁵²; there were training camps organized by Rashtriya Swayam Sevak Sangh, which is

BJP's parent organization, for the cow-vigilantes⁵³. These are some of the ways in which we can see that people take responsibility because the state encourages them or motivates them to take action on their behalf. This can be one of the reasons why people have started to take law into their own hands when there is presence of full-functioning law machinery in our society. But all cannot be attributed on the State. State does encash from these violent uproars due to political reasons, but this is cannot drive people forcefully to behave inhumanly and act in a barbaric way. As we have seen above, state provide support but state does not compel the people to participate in these violent acts. There cannot be black-and-white answers to concretely decide what happens in that environment when people lynch, but with deliberations and studies in this article we have come closer to understanding that Lynching in India is surviving because of political support to the majority community. It is either by directly aiding lynchers in some way or omitting to act against preventing the crime or punishing the crime that is fuelling Lynching.

1.6 WHY RECOGNITION OF THE CRIME OF LYNCHING IS IMPORTANT?

⁴⁸ Nandini Sundar, *Hostages to Democracy*, VESRO BOOKS, May 30, 2018, <https://www.versobooks.com/blogs/3856-hostages-to-democracy> Last Visited on June 06, 2018

⁴⁹ R. Jgannathan, *For terrorists like Kasab is death penalty justified?* FIRSTPOST, November 23, 2012, <https://www.firstpost.com/india/in-kasab-type-terrorism-cases-death-should-be-mandatory-531493.html> Last Visited on June 06, 2020

⁵⁰ Abhimanyu Kumar, *The lynching that changed India*, FIRSTPOST, October 05, 2017, <https://www.aljazeera.com/indepth/features/2017/09/1-ynching-changed-india-170927084018325.html> Last Visited on June 06, 2020

⁵¹ Ebru Aykut, *Globalizing Lynching History: Vigilantism and Extra-legal Punishment from an International Perspective*, (ed. Manfred Berg and Simon Wendt, published by palgrave macmillan), pg. 120

⁵² Khushboo Sandhu, *Haryana To Issue I-Cards to 'Genuine' Gau*, INDIAN EXPRESS, May 12, 2017, <http://indianexpress.com/article/india/haryana-to-issue-i-cards-to-genuine-gau-rakshak-cow-vigilante-4652306/> Last Visited on May 21, 2020

⁵³ Soutik Biswas, *A Night Patrol with India's Cow Protection Vigilantes*, BBC NEWS, October 29, 2015, <http://www.bbc.com/news/world-asia-india-34634892> Last Visited on May 21, 2020



In the history of Lynching in America, one thing that remained constant was the massive journalistic involvement and extensive intellectual discourse that emerged over this issue⁵⁴. The vast literature that emerged in this time is the reason that Lynching came to be primarily associated with America. For instance, the poem – The Strange Fruit⁵⁵ – became so popular that it gathered the much-needed attention that this crime deserved at that point in time in America. This poem sung by Billie Holiday was crowned as the best song of the 20th century in Time’s Magazine’s last issue before the new millennium⁵⁶. Although, this song was highly 10enalized10 among the white Americans because a 1986 film – *Nine and a Half Weeks* – used this song in the background to portray love affair between the characters of the film. Nevertheless, this development lead Strange Fruit to catch althmore attention among the masses⁵⁷. Apart from this, people like Angelina Grimke, Ida B. Wells, Rebecca Felton, James Allen and John Littlefield took forward the discourse of Lynching. This is how masses were made aware and alert of the crime of Lynching. There was unification in the voices of America at that time because of the mobilization⁵⁸ created by the extensive literature that it changed the culture of Lynching in the long run. This is

why recognition of the crime of Lynching is important.

Similarly, when this article asserts that Lynching as a crime should be recognized, it involves a two-fold explanation: one by extensive intellectual discourse over the subject that would gather recognition and mobilization, and two by making it a crime i.e. enacting a provision in the Indian criminal laws for the offence of Lynching that will recognize Lynching as a crime.

In order to recover and cure the society from the crime of Lynching, there are two ways of doing that – first comes remembering and recognizing the crime by an intellectual discourse that would mobilize masses against it, and second comes the healing part where lynching is enacted in the Indian criminal laws in order to punish and prevent the offence of Lynching by recognizing as a crime⁵⁹.

1.7 IS THE CURRENT LEGAL SYSTEM ADEQUATE FOR CURBING LYNCHING?

Considering all the laws that are already in place, especially for the protection of minority groups, there is not much deliverance on stopping or preventing the crime or nipping the bud of these crimes once and for all. Arrests have been made in some of the cases⁶⁰ and the law machinery gives special provisions of strict punishments for

⁵⁴ EVELYN M. SIMIEN, GENDER AND LYNCHING: THE POLITICS OF MEMORY, 61 (2011)

⁵⁵ The Poem Strange Fruit <http://www.historyisaweapon.com/defcon1/fruiholdid ay.html> Last Visited on May 17, 2020

⁵⁶ EVELYN M. SIMIEN, GENDER AND LYNCHING: THE POLITICS OF MEMORY, 104 (2011)

⁵⁷ *Ibid.*

⁵⁸ For instance, the Silent Parade by the African Americans in 1917.

⁵⁹ EVELYN M. SIMIEN, GENDER AND LYNCHING: THE POLITICS OF MEMORY, 19 (2011)

⁶⁰ HUFFPOST, *Accused arrested for Delhi-Mathura Train lynching says he was drunk, was egged by friends to attack victim*, June 24, 2017, https://www.huffingtonpost.in/2017/06/24/accused-arrested-for-delhi-mathura-train-lynching-says-he-was-dr_a_22960848/ Last Visited on June 07, 2020



crimes against Schedule Caste and Schedule Tribe. However, has it really stopped or prevented crime of Lynching from happening? Even if the crime of Lynching is penalized, it entails no guarantee that people will be transformed or as soon as conviction is decided or even when an arrest has been made, the perspective of the perpetrator of the crime of Lynching will change. If reformation was attained by punishing for crimes with violence, there wouldn't have been a place for repeated offenders in the Indian Penal Code⁶¹. Why this kind of system do not result in efficient result of transformation among people – getting rid of the prejudice they carry in their mindset, is the right question to ask. It has to be noted that Lynching is not just a singular crime with only notions of justice as its ingredient, it is far more complex, including aspects of Hate Crime as well. So, it is rather difficult to cure Lynching from the Indian society with the present legal machinery. We cannot deny the fact that State machinery is punishing people for committing violence because state has that monopoly over violence i.e. to regain that power and monopoly a lesson is taught to the person indulging in the same. The motive of the law machinery seems rather far from reforming or rehabilitating people in the society⁶². With the aim devoid of reformative considerations, you cannot yield results of reformed men⁶³. Another thing is with the presence of adversarial form of legal judicial system, people are posing as adversaries to

each other. In a dispute between majority and minority community for instance, there is no reconciliation that is attempted to be made, they already were adversaries and they remain an adversary all their life. Social order, change in attitude and instillation of the feeling of sameness between people, humanity is not established. What our society needs is a social change, a mental change and transformation in the attitude towards people, which could enable people to get over this feeling of 'other' that they have against people⁶⁴. Further, as we can see from a number of instances, this 'otherness' is used in the politics of the country like a tool or ladder to step on and move forward. It is clearly not transforming or reforming people. So, we can conclude with this dilemma that there exist some reasons as discussed above which leads to doubting whether Lynching as a phenomenon can be cured from this society by the present legal system at all. The foremost reason for stopping anyone to commit violence is to instil this feeling that people are equal and that everyone deserves equal protection and position in the society. It is highly doubtful that punishment alone can change the attitude of the people towards Lynching. And, in the bargain of debating whether the punishment for a crime is adequate or not, the most important aspect – prevention is ignored. And other than that, even after years of attaining Independence, it seems we still haven't been able to break free from the shackles of torture seen as the key to

⁶¹ For instance, section 75 or section 376E of the IPC.

⁶² Rustam Singh Thakur, *An eye for an eye will turn the whole world blind*, MANUPATRA ARTICLES, <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=d4648720-96bb-4fab-8eca-32b16ce2dae1&txtsearch=Subject:%20Criminal> Last Visited on June 07, 2020

⁶³ David Nelken, *Critical Criminal Law*, 14, *Journal of Law and Society*, 1, *Critical Legal Studies* 110 (1987)

⁶⁴ Vidit, *Correctional and Rehabilitative techniques of punishment: a need for legislative reform in India*, 4, *International Journal of Law and Legal Jurisprudence Studies*, 1, 117 http://ijlljs.in/wp-content/uploads/2017/02/Correctional_and_Rehabilitative_Techniques__ARTICLE_-_Vidit.pdf Last Visited on June 06, 2020



control – be it of State or of people. Lynching is not the usual crime of simple criminal acts with simple air-tight ingredients, there is no criminal standard that is set as yet in dealing with the crime of Lynching, more than the crime, the lynchers and the lynched should be considered. The notions lynchers carry is reflective of the acts that are committed during Lynching, but with no solution in sight upto now. And most of the times, violence suffered by lynched victims because of the crime of Lynching is reflective of the age-old history of violence and oppression against them.

Although, the current legal system does not have an efficient cure for Lynching as a Phenomenon, but it can devise a method for curbing Lynching as a Crime. Lynching is something which has gripped the society so tightly in its clutches that only law enforcement mechanism can be useful in freeing the people from it. Preventive measure can be ensured only when Lynching is brought within the purview and scope of criminal laws of our country. However, it is asserted by the government that the current legal provisions that already exist are sufficient for curbing this crime and that there is no need for any further development on this issue⁶⁵.

Conclusion

In order to formulate a framework for the crime of lynching, it is important to perform an in-depth analytical study of the ingredients of lynching. Lynching ingredients involve a lynch mob composed of a group of people, perpetrating violence as a form of punishment in order to promote their version and notions of justice or right or correct order

in the society, on minority groups which are generally outnumbered in such a scenario. This article has engaged in analytical study in understanding these ingredients by psycho-analysing the lynchers and the lynched. This has led to a clearer reasoning with respect to the root cause of the crime of lynching. It has also dealt with the important aspect of recognition of crime that form one of the research questions of this study.

There has been a lot many efforts in defining lynching and all may be successful in covering its own domain of study. In the Indian context, it is very important to take into consideration the social conditions that lead to the formation of the mindset of the people of India. The factors like prejudice, caste hierarchy, patriarchy, communal mindset etc are some of the many facets of the social conditions of the Indian Subcontinent. It is very important that these factors are taken into account while dealing with a crime like lynching which is largely dependent and varies on the people that a particular society is composed of.

It was simply to start a discourse in this direction regarding the crime of lynching. It is by such intellectual exchange that awareness regarding this subject will come to surface, which has been rather less except by some news report platforms. This article has indicated that lynching should be elevated from the position of merely a practice to the position where it is punishable as a crime. It has achieved its goal in asserting with reasons that the existing legal systems and provisions are unable to tackle this crime and that there is an urgent need for steps to be taken in furtherance of legalizing lynching as a crime.

⁶⁵ TIMES OF INDIA, *Centre rules out anti-lynching law*, July 20, 2017, <https://timesofindia.indiatimes.com/india/centre->

[rules-out-anti-lynching-law/articleshow/59674673.cms](https://timesofindia.indiatimes.com/india/centre-rules-out-anti-lynching-law/articleshow/59674673.cms) Last Visited on June 06, 2020.