



## RULE OF RABBLE: UPRISING MOBOCRACY

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### ABSTRACT

*“A society with lynch culture needs a big zoo, not for the animals definitely, but for the very people themselves.”*

-Mehmet Murat Ildan

Mobocracy is the rule or domination by the masses in order to punish an alleged suspected wrongdoer. The reports of honour killing, attacks, torture and beating by the mob are very common in India. There cannot be a right higher than the right to live with dignity as enshrined in Article 21 of the Constitution of India. What the law have provided can be taken by lawful means only. Thus, no citizen can assault the human dignity of another and take law in his own hands. Mob lynching cannot be allowed to become a new norm and the courts will never permit mobocracy to overwhelm the law of land. Through this article titled as *‘The Rule of Rabble: uprising Mobocracy’*, the authors tend to extract the fossilized and structured thought on mob violence which is casting the shadow on problems faced by the society at large. This problem cannot be solved by merely one solution, but has to be dealt by making reforms in various realms of the criminal justice administration.

**KEY WORDS:** Lynching, Vigilante, Dehumanization, Social Learning, Group Influence, Collective Identity.

## THE RULE OF RABBLE: Uprising Mobocracy

### I. INTRODUCTION

*“And then they had me, stripped me, battering my teeth*

*Into my throat till I swallowed my own blood. My voice was drowned in the roar of their voices,*

*And my black wet body slipped and rolled in their hands*

*As they bound me to the sapling.”<sup>1</sup>*

Mob lynching comprises of two words- “mob” and “lynching”. The term lynching is derived from an Arabic verb ‘linch’ which literally means to beat severely by a pliable instrument or to maltreat someone. Thus, it refers to an extra-judicial killing of a human being without following the “*procedure established by law.*” It is usually characterized by informal public executions by a group in order to punish alleged or convicted transgressors. In India, mob lynching has emerged as a collective hate crime or national crime. It targets the people of a particular identity or forms a minority community or strangers under the suspicion of committing an alleged offence. It can be an extreme instance of unruly mob having no social or moral constraints resulting in maximum intimidation. The alleged criminal is punished by an agreement of crowd especially by hanging without a genuine criminal trial by ascribing any justification.

The origin of the term lynching can be traced back during the American Revolution (1765-1783). The two Americans, *Charles Lynch* and *William Lynch* were credited for coining

<sup>1</sup> Richard Wright, ‘Between the World and Me’



the phrase; it is believed that Charles Lynch is more likely to have coined the phrase in 1782. He described his actions of violence against a suspected 'loyalist' (an American colonist who remained loyal to the British crown during American revolutionary war) emerging in 1780. These subjects were tried summarily at an informal court and sentenced with the punishment like whipping, conscription, coercive patriotism, property seizure etc.

Group violence is usually non-lethal in intention and consequences. In United States, free Blacks, Latinos in South West and runaways were the targets of racial lynching during the decades of civil war. After slavery was abolished and Right to vote was vested in US Blacks especially in South, this dramatically increased the instances of lynching in USA. During the twentieth century, when southern states adopted new constitution or set of laws which prevented Black citizens from casting the votes and established separate public facilities on the basis of race, nearly 3500 African Americans, 1300 whites were lynched in USA between 1882 and 1968.<sup>2</sup> In British Empire, lynching coincided with the period of violence which denied people participation in white dominated society on the basis of race during the 19<sup>th</sup> century.

## II. INTERNATIONAL PERSPECTIVE

### *United States*

Lynching took place in US most frequently in the late nineteenth century mostly in southern states and western frontier settlements. In St. Louis, the first lynching was recorded in 1835. The *Great Hanging at Gainesville*, Texas in 1862 was the largest in US history

<sup>2</sup> Statistics provided by Archives at Tuskegee Institute.

where 41 men were hanged who were accused of treason or insurrection. In 1871, United States enacted Civil Rights Act which punishes two or more persons who unlawfully conspires to injure, oppress, threaten or intimidate any person of any state or any territory while exercising any rights granted by the Constitution with imprisonment up to life or death penalty and/or fine. In 1981, US recorded its last lynching of Michael Donald who was found hanging from a tree by the members of Ku Klux Klan (KKK).

### *Europe*

In 1990, race riots broke out between white and black sailors after while sailors stabbed a black sailor in a pub and reciprocally revenge was taken by his friends which further resulted into an 'enraged lynch mob'. In 1944, Wolfgang Rosterg, a German prisoner of war who was known to be unsympathetic to the Nazi regime was lynched by Nazis.

### *South Africa*

The residents of Black townships formed people's courts and used the practice of whipping and necklacing offenders and political opponents. Necklacing is the practice of extra judicial summary execution by a black community to punish its members by igniting a kerosene filled rubber tire that is forced around victim's chest and arms.

### *India*

Mob lynching incidents have outreached in number because of social psyche of mob vigilantism and its acceptance by the mob. Every time such incidents occur and the lives of people are back to normal and no penal consequences are faced by the increasing rule of mobocracy. India from the last few years



has witnessed a number of cases in which mob assumed the responsibility of administering justice without undergoing trial. India has been a witness related to mob violence under the veil of secularism, vigilance against cow slaughter, kidnapping and many others.

*The 2015 Dadri Mob lynching* represents a very sad picture and psyche of the society where a 52-year-old Muslim man Mohd. Akhlaq was under the suspicion of killing a cow in Bisara village near Dadri, Uttar Pradesh. The local villagers attacked the person suspected of stealing and slaughtering the cow calf which resulted in his death. Later in the court of justice, evidence was put to decide that whether the accused was storing beef for consumption or not. The government's inquiry concluded that he was not storing for his consumption. Later the charge-sheet was filed under sections 147, 148, 149, 302, 307, 458 and 504 of Indian Penal Code. The local temple priest made an announcement that the cow head been stolen and subsequently killed by the suspect and the local villagers were asked to gather near the temple. But later the priest said that he was forced to make the announcement by some youngsters. On July 2016, the case went to the trial court that the meat found at the site was not of the cow but suggested to be mutton as per the samples sent to Mathura for conclusive test.

The assault on 24 years old Muslim man *Tabrez Ansari in Jharkhand in 2016* resulting in his death is another glaring incident of mob violence where the ultimate object of the mob was to apprehend a motor cycle thief but theft being a religion neutral offence took a communal angle forcing him to chant 'Jai Sri Ram' and 'Jai Hanuman'.

Even after complying with these communal demands, he was tied to a tree and beaten for hours before the police officials came to his rescue. The spine-chilling effect of this case was that the protector of the state (police) became the life takers of the victim. Had he been medically examined before the arrest or given the minimal rights of the accused under Criminal Procedure Code; his life could have been saved.

In 2017, *Muslim Pehlu Khan* was brutally beaten by the group of 200 so-called cow vigilantes (Gau Rakshaks) in Alwar. The mob beat Pehlu Khan and six others with rods and sticks resulting in the death of Pehlu Khan whereas others survived though they were seriously injured. Recently, the trial court at Alwar acquitted all the six accused in the case giving them the benefit of doubt. Whereas, Additional Public Prosecutor, said to the media that they will knock the doors of higher Judiciary by making an appeal against the verdict of the trial court.

Thus, there have been numerous incidents relating to mob lynching in India. These incidents reflect the internal tensions between ethnic communities or it is mainly due to cow vigilante violence, mainly involving Hindu mobs lynching Indian Muslims.

### III. LYNCHING LAWS IN INDIA

At present, there is no codified lynching law in India under which penal consequences can be meted out against the mob. The mob usually indulges in committing the offences against the alleged or suspected offenders like murder, gang-rape, grievous hurt, assault, harassment etc. The Indian Penal Code 1860 explicitly provides punishment for all the above mentioned offences and usually the cases are registered under



sections 302, 304, 307, 323, 325, 34, 120B, 143, 147 and 149.

The Hon'ble Supreme Court in the case of *Nandini Sundar & Ors v. State of Chhattisgarh*<sup>3</sup>, held that no one has the right to become the guardian of law claiming that he was to protect the law by any means. It is the duty of the state to promote fraternity among the citizens so that the dignity of every individual is protected.

Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to a procedure established by law. No one is entitled to take law into his own hands and annihilate anything that the majesty of law protects. The right of citizens is only to inform the crime to law enforcing agencies as they are no one to punish a person by giving any justification. The protectors of law that is police officers are given wide powers under Sections 149 to 152 of the Code of Criminal Procedure by virtue of which they are vested with the powers to take preventive action against the commission of cognizable offence.

The incidents of mob lynching are usually accompanied by offences like murder, gang-rape, grievous hurt, assault, harassment etc. which are cognizable offences and the preventive arrest can also be made where there is apprehension of commission of such violent acts by the mob under section 151 of Criminal Procedure Code.

The so-called claimants of law protector (mob) if have to exercise their rights to suppress certain offences or want to help the

administration of justice, the section 39 of Criminal Procedure Code provides for public to give information of certain offences to the police officer so that the criminal justice system is given a kick start. Also Section 43 of Criminal Procedure Court provides that any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence or any proclaimed offender. No law gives the authority to the public to take law in their hands and conduct investigation, trial and punish the offender on the streets. The process of adjudication must be conducted within the hallow precincts of courts of justice. The very purpose of framing law is the orderly and peaceful working of the society. No doubt can be raised regarding with whom the responsibility of the "vigilantism" lies, it is clearly the law enforcers who are under the obligation to look after all kinds of vigilantism, whether it is "cow vigilantism" or any other. No stretch of imagination or interpretation of law can justify the acts of violence committed by the mob under the garb of vigilantism.

In the case of *Tehseen S. Poonawala v. Union of India*<sup>4</sup>, the Hon'ble Supreme Court has rightly observed that the lynching is antithesis to 'Rule of law' propounded by AV Dicey which is enshrined in Article 14 of the Constitution of India. These acts of violence tend to break down the legal institution, legal order and peace of the society by extra judicial trials. In *Cardamom Marketing Corporation v State of Kerala*<sup>5</sup>, the Supreme Court stated that the 'Rule of law' reflects man's sense of order and justice. There can be no government without order; no order without law.

<sup>3</sup> Writ Petition (Civil) No. 250 of 2007.

<sup>4</sup> (2018) 6 SC 72

<sup>5</sup> Civil Appeal No. 4453 of 2008.



### **MASUKA (Manav Suraksha Kanoon)**

As there is no specific law against mob lynching, the accused generally gets away with the most heinous crimes. Therefore, the society is coming forward to make the new law. The MASUKA has been proposed by the National Campaign Against Mob Lynching (NCAML), a committee consisting of eminent individuals which drafted Protection from Mob Lynching Act, 2017. The salient features of this drafted law are as under:

- i. The objective is to protect the Constitutional rights of the person who has been attacked by the mob.
- ii. Establishing special courts for adjudging speedy and expeditious justice.
- iii. The Act provides for victim rehabilitation and compensation for their families connected with the incident thereto.
- iv. It also provides for the investigation, prosecution and trial procedure with relation to the commission of mob violence.
- v. It further provides for the heavy imposition of fines ranging from 1 lakh to 10 lakhs depending upon the gravity of offence committed.
- vi. The provisions relating to the duties of Police officers and District Magistrate to prevent any act of mob lynching are also mentioned.
- vii. The act makes abetment, conspiracy and aiding mob lynching punishable as if the actual commission of mob lynching has taken place.

### **U.P. Combatting of Mob Lynching Bill, 2019**

The Uttar Pradesh government also took an initiative to curb the offence of mob lynching in their respective State by introducing Anti Mob lynching Bill in year 2019. The Bill is drafted on the same lines and legislative

intent as that of “Protection from Mob Lynching Act, 2017”. The bill proposes to punish any legal obstruction made in the course of trial or arrest with imprisonment for a term which may extend to 5 years and with fine. It also proposes to punish abetment, conspiracy and aiding of mob lynching.

### **The Rajasthan Protection from Mob Lynching Bill, 2019**

The Rajasthan Legislative Assembly (Vidhan Sabha) passed a bill named “The Rajasthan Protection from Mob Lynching Bill” by a voice vote amid vociferous protest by the opposition BJP. The Bill provides for life imprisonment and fine up to rupees 5 lakhs to conviction in the cases of mob lynching which involves death of the victim. The offence of mob lynching is made a cognizable, non-bailable and non-compoundable under this Bill.

### **Madhya Pradesh Agricultural Cattle Preservation (Amendment) Act, 2019**

The Madhya Pradesh government amended Agricultural Cattle Preservation Act, 1959 by incorporating provisions relating to cow vigilantism which indirectly dealt in curbing the problem of mob lynching; since cow vigilantism is the major cause of mob lynching in this state. Following are the peculiar features of the Amendment Act, 2019:

- i. The act of cow vigilante is made punishable with the imprisonment up to 3 years and with fine of 25,000 to 50,000 rupees.
- ii. It provides for compulsory and special permission to be taken by the magistrate where cattle have to be transported from one place to another.

Thus, the Act provides for strict permission from the competent authority while



transporting the cows, which will ensure that it is taken for a legal purpose.

### ***The Manipur Protection from Mob Violence Act, 2018***

The objective of this legislation is to create deterrence in the minds of people who are involved in horrendous acts of mobocracy. This law was drafted after the landmark case of *Tehseen S. Poonawalia v. Union of India*<sup>6</sup>, in which the Hon'ble Supreme Court directed to make law on the increasing menace of mob lynching. The state of Manipur adhering to the Supreme Court guidelines deemed it necessary to enact such law for the protection of Constitutional rights of the individuals and to prevent the commission of mob violence.

#### **IV. GOVERNMENT'S INITIATIVES**

Apart from the initiatives taken by the various State Governments, the Central Government also made efforts to tackle and suppress the enhancing rule of mobocracy in the country. Following are the main initiatives taken by the Central government:

##### ***Creation of Nodal Officers***

The Central Government has asked the appropriate State governments to appoint a Nodal officer in each and every district to detect and prevent the incidents of mob violence. These officers as recommended by the Central Government should not be below the rank of Superintendent of Police.

The Central Government also suggested establishing a Special Task Force (STF) in every state. The Ministry said where the Police officers' derelicts from his duties or deliberately fails to prevent the crime of mob lynching, he shall be punished. Under this initiative the Police officers are given strict instructions to register a FIR against those who spreads the explosive messages which

have the tendency to incite the mob lynching of any nature.

##### ***Establishing high Level Committees***

The Central Government suggested the constitution of High-level committees dealing with the cases of mob violence and lynching. Presently, one of the two committees is headed by the Home Minister and by the Union Home Secretary. The function of these committees is to advise the State Government to take effective measures to curb the mob violence.

##### ***Creation of "Group of ministers" (GOM)***

A very innovative and peculiar initiative of joining together all the major Departments of Ministry to form the GOM who shall submit its report and recommendation to the Prime Minister relating to the data, statics, incidents etc. of mob lynching.

#### **V. CRIMINOLOGY BEHIND MOB LYNCHING**

The criminology of mob lynching presupposes it to be a typical form of the behavioural reaction driven by numerous factors. Mob is a group of two or more individual, assemble with the intention to commit any act or series of acts, either spontaneous or planed, in lieu inflict extra judicial punishment upon the alleged offenders.

The following are the six propositions to unravel the anatomy of mobocracy:

- i. ***Group Influence:*** Since mob is a group of people, "conformity to group norms" is driven by two motivations- to fit in the group and the desire of obtaining the information in the group. Every group have the 'Authoritarian Figure' which tend to control

<sup>6</sup> (2018) 6 SC 72.



and influence the behaviour of other people. This also stands true in the case of mobs, where sometime few people do not want to commit a wrongful act but, their behaviour is influenced by the authority figure which leads to the desired results of the mob. The famous *Asch Effect* explains that individual judgment is influenced by the group majority and the conformity to such majority is more likely to occur when the responses are public than private.

- ii. **Social Learning Theory:** It is not correct to say that only psychopaths indulge in the mob violence. The renowned psychologist *Albert Bandura* propounded the Social Learning Theory which states that the people learn from others through observing, imitating and modelling the behaviours of others. The violence is deep rooted in the social structure of India among the sprouting youth. These people have grown witnessing violence as easy response of a problem in most of the situations. Thus, the mobocracy is result of such faulty social learning.
- iii. **Collective Identity:** *Le Bon* states that individual identities tend to melt in a crowd which results in the formation of "collective identity". Therefore, the individual's rational consciousness, morals are controlled and influenced by the 'authority figure'. Hence, the sense of personal responsibility is reduced and sense of anonymity is increased which insists to direct the actions.
- iv. **Deindividualization:** *Leon Festinger* and *Albert Pepitone*, found that in the group of people, personal morals, individual blame and personal responsibility takes the back seat and normal prudent person is driven by the behaviours of mob.
- v. **Contagious Cohesiveness:** It is the primary feature in mob violence as stated by *Mc*

*Doughall* that greater the number of people in the group, greater will be the unity, resulting in higher level of contagion. *Sigmund Freud* stated that individual's conscious mind has three limbs: Ego (Real me), Super Ego (Moral me); and Id (Bad me). He further said that the censor within the individual i.e. Super ego. It is set aside in the crowd and primitive ego or basic id come into play.

**vi. Dehumanization:** Dehumanizing is another reason of mob being frenzy. The Theory of *Allport* states that a common stimulus (violence) prepares two individuals for the same response to be released and increases that response in other members of the group, to commit the same stimuli (violence). Hence, it is suggested that any law to be effective must take into consideration the human instincts and behaviours because mob violence is not merely an act of physical actions. But it does involve the interplay of minds and other cognitive faculties.

## VI. LEADING CASE LAWS

In the case of *Mohd. Haroon and Ors v Union of India and Another*<sup>7</sup>, it involves the case of riots and communal tension in the city of Muzaffarnagar, Uttar Pradesh, which compelled the people to vacate their homes due to the fear. The petitioners contended that the local administrator instead of enforcing the law allowed the assembly to take place and failed to monitor the crowd. It was held by Supreme Court that the victims of mob violence can't be discriminated on the basis of community or religion and must be granted the compensation. While pointing out the duties of the Police officer, the court went to ruling that in any case of irresponsibility and dereliction of duty, would attract penal consequences against such Police officer.

<sup>7</sup> 2014 (5) SCC 252.



In another case of *Archbishop Raphael Cheenath S.V.D. v State of Orissa & Another*<sup>8</sup>, a writ petition was filed highlighting the failure of the Police force to maintain law and order in Orissa during the assassination episode of Swami Laxamananda Saraswati and others by the moist. In the present case as well, the Hon'ble Court emphasised on "peace building measures" which must be undertaken by deploying the Police force.

In *Shakti Vahini v Union of India*<sup>9</sup>, the Supreme Court while dealing with another form of mobocracy "Khap Panchayats" held that these panchayats have no authority to take law into their own hands. These are not law implementing agencies. The Court also observed that where an offence under INDIAN PENAL CODE has been committed, the so called "assembly of elderly people" (Khap Panchayats) has no authority to impose and inflict punishments. They are entitled to inform the police officer and lodge FIR so that the accused is dealt with in accordance of law.

In *Tehseen S. Poonawalla v Union of India*<sup>10</sup>, the Supreme Court while dealing with the writ petition filed under Article 32 of the Constitution against the cow protection groups indulging in violence issued number of guidelines. These guidelines are as following:

**A. Preventive Measures**

- i. The State Government shall designate a senior officer, not below the rank of Superintendent of Police as Nodal Officer in every district who shall be assisted by one of the DSP rank officers. They shall constitute a Special Task Force to procure intelligence

reports about the people who are likely to commit such crime.

- ii. The State Governments shall identify Districts, Sub-Divisions and/or Villages where instances of mob lynching have been reported in the recent past.

- iii. The Secretary, Home Department of the concerned States shall issue directions to the Nodal Officers of the concerned districts to ensure that the police officers of the identified areas are extra cautious if any instance of violence comes to their notice within their jurisdiction.

- iv. The Director General of Police/the Secretary, Home Department of the concerned States shall take regular review meetings with all the Nodal Officers and State Police Intelligence heads.

- v. The police officer shall cause a mob to disperse by virtue of his power under Section 129 of Criminal Procedure Code, which, in his opinion, has a tendency to cause violence in disguise of vigilantism or otherwise.

- vi. Superintendents of police shall be issued with the circular by the Director General of Police with regard to police patrolling in the sensitive areas.

- vii. The Central and the State Governments shall broadcast on radio and television and other media that lynching and mob violence of any kind shall invite serious consequence under the law.

- viii. The police shall cause to register FIR under Section 153A of Indian Penal Code and/or other relevant provisions of law against persons who disseminate explosive messages and videos having content which is likely to incite mob violence of any kind.

**B. Remedial Measures**

- i. The jurisdictional police station shall immediately cause to lodge an FIR if it comes

<sup>8</sup> (2016) 9 SCC 682.

<sup>9</sup> WRIT PETITION (CIVIL) NO. 231 OF 2010.

<sup>10</sup> (2018) 6 SC 72.



- to the notice of the local police that an incident of lynching or mob violence has taken place.
- ii. Investigation in such offences shall be personally monitored by the Nodal Officer and the charge-sheet must be filed within the statutory period from the date of registration of the FIR or arrest of the accused, as the case may be.
  - iii. The State Governments shall prepare a lynching victim compensation scheme in the light of the provisions of Section 357A of Criminal Procedure Code within one month from the date of this judgment.
  - iv. The trial of mob lynching cases shall be conducted by designated court/Fast Track Courts in each district and the trial shall preferably be concluded within six months from the date of taking cognizance.
  - v. The trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the Indian Penal Code.
  - vi. The victim(s) or the next of kin of the deceased shall receive free legal aid and engage any advocate of his/her choice from amongst those enrolled under the Legal Services Authorities Act, 1987.
- C. Punitive Measures
- i. Wherever it is found that a police officer or any other officer has failed to comply with the aforesaid directions in order to prevent or investigate or facilitate expeditious trial of any crime of mob violence, the same shall be considered as an act of deliberate negligence and/or misconduct for which appropriate action must be taken against him/her which will not be limited to departmental action under the service rules.
  - ii. In *Arumugam Servai v State of Tamil Nadu*<sup>11</sup>, the States are directed to take disciplinary action against the concerned officials if it is

found that (i) such official did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident has already occurred, such official did not promptly apprehend and institute criminal proceedings against the accused.

## VII. CONCLUSION

Mob lynching has emerged as a distinct psyche of the mob to punish the offender through extra judicial punishments. This is a result of various factors, some of them are not having faith in the judicial system because of pending cases in the Courts, as it is truly said "Justice delayed is Justice denied". Another reason is the increasing social tensions amongst the various classes, castes, communities, religious groups and conflict in political ideologies. The major cause of frequent happening of mob violence is the poor criminal justice system which requires the strict evidences. In majority of the cases evidences are not collected due to the faulty and immature police investigation thus, consequently leading to the release of the offenders. There must be a special law dealing with the offence of mob lynching having uniform application to the entire territory of India. There must be a Special Task Force to investigate in such incidents with no bars of territorial jurisdiction. The provisions relating to grave punishments and high amount of compensation for the victim and his family must be included, to have deterrence over the minds of the people. Therefore, the need of hour is, along with the special laws to be made on the subject matter of mob lynching, our criminal justice system must render actual and speedy justice to the people. The police personnel must perform their duties and be made accountable under the ambit of the provisions contained in the

<sup>11</sup> Criminal Appeal No. 958 of 2011.



Indian Penal Code. Further, there is the need of reforms in the police functioning and they must be equipped with new technological tools and techniques to deal with the socio-legal problems. The police officials must also have frequent and effective communications with local people, where they can discuss the problems prevailing in their locality, which will help people in believing in the criminal justice system.

Thus, the problem of mob lynching cannot be solved merely by enacting new laws, but in addition to it, effective working of already enacted laws. In our opinion, it demands the combination of reforms in the arena of judicial working, political ideologies and police administration. Thus, no single solution can tackle this problem. Few structural reforms are necessary which need to be prepared with the help of local people on the lines of ground realities.

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