

THE MENACING GROWTH OF MOB LYNCHING: A STUDY IN INDIAN LEGAL PERSPECTIVE

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INTRODUCTION

During the past few years, India is facing an unprecedented crisis of mob lynching which has aptly been described by the Hon'ble Supreme Court Judges in a recent case¹ as "horrendous acts of mobocracy". Lynching phenomenon is not new in Indian context but recent spurt in the lynching incidents is not only surprising but utterly shocking indeed for any person who believes in democratic principles". Lynching is a social act," says Prof. Bhaskar Chakravorty, Dean of Global Business at the Fletcher School of Tufts University. He further elaborates that "It is not new, but it happens more readily when more people believe in some common cause and fewer people have the counter-facts to pose an objection. The fervour of the lynch mobs was largely facilitated by social media, which efficiently delivered rumours to solidify a "common cause."² So, the big difference between the lynching phenomenon of the past and the present acts is the role of social media of which WhatsApp is most notable.

Our country is witnessing mainly two forms of mob lynching. First, in the name of cow protection vigilantism in which "strident gau raksha sloganeering has contributed to the environment where people believe they can get away with violence in the name of the cow, so have the stiff cow slaughter prohibitions framed by different state governments - which seem to equate the taking of animal and human lives"³. The other type, which is prevalent during the past few months, is associated with rumours of kidnapping of children to harvest their organs. In both types of lynching acts, dozens of people have lost their lives who were innocent and poor. As mentioned earlier, in the latter case rumour mongering was done largely through the use of social media platforms like WhatsApp and Twitter.

¹ Tehseen S. Poonawalla Vs. Union of India, 2018 SCC online SC 696, Order dated 17.07.2018.

² Bhaskar Chakravorty, A Lynching in Digital South, The Indian Express, dt. 17.7.2018.

³ Editorial, Times of India, dt. 15.6.2018.

The Supreme Court of India in Tehseen S. Punawalla's⁴ petition has observed that mob violence is a crime whatever the motive. Saying it would "not confine these incidents to any particular motive," the Court said "this is mob violence, which is a crime." The Court further observed that "We do not want lynching. We do not want mob violence. We want to protect victims." The Court said that "it was the obligation of the states to ensure that such incidents do not occur." The Apex Court also urged the Central Government to frame Anti-lynching laws as there are none at present to deal with this menace.

In the light of directions given by the Apex Court, the Central Government has formed a Group of Ministers (GOM) to deliberate upon the matter and give suggestions regarding formulation of new law for curbing the menace of lynching. Further, the Ministry of Home Affairs and the Law Ministry at the Centre are on the job to put up a draft law. It is hoped that the new law will soon come up as Supreme Court is monitoring the issue.

The spate of lynchings during the past few years is unexpectedly becoming a new normal and is posing a big challenge for democratic norms. It is also underplaying the role of civil society and the process of dialogue which is at the root of any democratic society. So, the big question is how to stop the rot? Whether a new and robust law in this regard will suffice or a lot more needs to be done through the combined efforts of civil society and the government. Also, the role of social media has to be redefined in this context. The present study focuses on such issues and tries to find working solutions also.

PRESENT SCENARIO: MOB AND VIGILANTE ATTACKS

(A) *Cow protection/ Cow terrorism:*

"A review of media reports shows 32 cases of attacks by mobs or vigilante groups on Muslims since May 2014. In these attacks, 23 people were killed, including women and children. This is a conservative estimate because many attacks may not have been covered in national media."⁵ The latest case is of Alwar district in Rajasthan where one Rakbar Khan lost his life.

⁴ 2018 SCC Online SC 696.

⁵ Subodh Varma, Cow terrorism killed 23 since 2014, The Times of India, dt. 30.06.2017.

The spread of cow terrorism cases spans 12 states of India. "Between June 2014 and December 2015, 11 such attacks took place, but after that, the pace has increased with 2016 recording 12 cases and 2017, 9 cases in six months. Most such attacks have occurred in North India."⁶

In some cases, the mob frenzy was turned into barbaric acts also. The lynching of Mohd. Akhlaq in Dadri in 2015 is a notable example." In March 2016, a 12 year old boy Inayatullah Khan was hanged along with Mohd. Majloom by a mob of villagers on the mere suspicion of cattle trading. In the Mewat rape case, a 14-year old girl was raped along with her 20 year old cousin by four antisocial elements who barged into their house at night. She told the media later that the rapists told her that they were going to punish her for eating beef."⁷ In 2016, some dalit youths in Una, Gujarat were stripped and beaten in the name of cow vigilantism.

B. *Child-lifting rumours:*

In the last one year, 27 people were killed in 15 cases of lynchings by frenzied mobs provoked by the wild rumours of child-kidnapping across nine states- from Assam to Tamil Nadu.⁸ According to an investigation carried out by the Indian Express team, there were 9 people in Maharashtra, 1 people each in Karnataka, Tamil Nadu, Telangana and Chhattisgarh, 2 people in West Bengal, 2 people in Assam, 3 People in Tripura and 7 People in Jharkhand who become the victim of mob lynching.⁹ Incidentally, the process has not stopped fully. Stray incidents are occurring here and there. In these incidents, the spread of fake news of child kidnapers on WhatsApp played a major role.

MOB LYNCHING AND THE LAW

Under our legal regime, there is no specific provision for mob lynching. Even the word 'Lynching' is nowhere defined. "The common definition of lynching by the NAACP (National Association for the Advancement of Colored People) in the U.S. is that:

- (i) there must be evidence that a person was killed;
- (ii) the person must have met death illegally;

⁶ *Ibid.*

⁷ *Ibid.*

⁸ The Indian Express, dt. 6.7.2018.

⁹ *Ibid.*

- (iii) a group of three or more persons must have participated in the killings; and
- (iv) The killing is carried out in public."¹⁰

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.¹¹ Presently, due to sudden upsurge of lynching case, the demand has arisen for a new law to curb lynching. The definition and other contours of lynching will be taken care of in the new Law. However, Indian Penal Code contains enough provisions - Section 302 (murder), Section 304 (culpable homicide not amounting to murder) and section 307 (attempt to murder). Section 34 (Acts done by several persons in furtherance of common intention)- to take such incidents. Here it is worth mentioning that in the case of the U.S., it took almost a hundred years between the Civil War (1861-1865) and the Civil Rights Movements (1954-1968) for the abominable practice of mob violence to be wiped out. In between 1882 and 1968, nearly 200 anti-lynching bills were moved in the U.S. Congress, and seven Presidents, between 1890 and 1952, petitioned Congress to pass a federal law. However, no bill was approved by the Senate, due to the opposition by the conservative South. Even truly, in 2005, the U.S. Senate formally apologised for not passing an anti-lynching law when it was most needed.¹² The Apex Court, in *Tehseen S. Poonawalla Vs. Union of India & others*.¹³ has passed the following guidelines for the Central and State Governments to follow. These are as under:

“40 A. Preventive Measures

- (i) The State Governments shall designate, a senior police officer, not below the rank of Superintendent of Police, as Nodal Officer in each district. Such Nodal Officer shall be assisted by one of the DSP rank officers in the district for taking measures to prevent incidents of mob violence and lynching. They shall constitute a special task force so as to procure intelligence reports about the people who are likely to commit such crimes or who are involved in spreading hate speeches, provocative statements and fake news.

¹⁰ Indira JaiSing, Passing the Buck On Lynching Must End, Economic Times, July 22-28, 2018.

¹¹ *Ibid.*

¹² Satvik Varma, Checking the new abnormal, The Hindu, dt. 4.8.2018.

¹³ 2018 S.C.C. Online SC 696

- (ii) The State Governments shall forthwith identify Districts, Sub-Divisions and/or Villages where instances of lynching and mob violence have been reported in the recent past, say, in the last five years. The process of identification should be done within a period of three weeks from the date of this judgment, as such time period is sufficient to get the task done in today's fast world of data collection.
- (iii) The Secretary, Home Department of the concerned States shall issue directives/ advisories to the Nodal Officers of the concerned districts for ensuring that the officer In-charge of the Police Stations of the identified areas are extra cautious if any instance of mob violence within their jurisdiction comes to their notice.
- (iv) The Nodal Officer, so designated, shall hold regular meetings (at least once a month) with the local intelligence units in the district along with all Station House Officers of the district so as to identify the existence of the tendencies of vigilantism, mob violence or lynching in the district and take steps to prohibit instances of dissemination of offensive material through different social media platforms or any other means for inciting such tendencies. The Nodal Officer shall also make efforts to eradicate hostile environment against any community or caste which is targeted in such incidents.
- (v) The Director General of Police/ the Secretary, Home Department of the concerned States shall take regular review meetings (at least once a quarter) with all the Nodal Officers and State Police Intelligence heads. The Nodal Officers shall bring to the notice of the DGP any inter-district co-ordination issues for devising a strategy to tackle lynching and mob violence related issues at the State level.
- (vi) It shall be the duty of every police officer to cause a mob to disperse, by exercising his power under Section 129 of CrPC, which, in his opinion, has a tendency to cause violence or wreak the havoc of lynching in the disguise of vigilantism or otherwise.
- (vii) The Home Department of the Government of India must take initiative and work in co-ordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of mob violence and lynching against any caste or community and to implement the constitutional goal of social justice and the Rule of Law.

- (viii) The Director General of Police shall issue a circular to the Superintendents of Police with regard to police patrolling in the sensitive areas keeping in view the incidents of the past and the intelligence obtained by the office of the Director General. It singularly means that there should be seriousness in patrolling so that the anti-social elements involved in such crimes are discouraged and remain within the boundaries of law thus fearing to even think of taking the law into their own hands.
- (ix) The Central and the State Governments should broadcast on radio and television and other media platforms including the official websites of the Home Department and Police of the States that lynching and mob violence of any kind shall invite serious consequence under the law.
- (x) It shall be the duty of the Central Government as well as the 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.
- (xi) The police shall cause to register FIR under Section 153A of IPC and/ or other relevant provisions of law against persons who disseminate irresponsible and explosive messages and videos having content which is likely to incite mob violence and lynching of any kind.
- (xii) The Central Government shall also issue appropriate directions/ advisories to the State Governments which would reflect the gravity and seriousness of the situation and the measures to be taken.

B. Remedial Measures

- (i) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that an incident of lynching or mob violence has taken place, the jurisdictional police station shall immediately cause to lodge an FIR, without any undue delay, under the relevant provisions of IPC and/ or other provisions of law.
- (ii) It shall be the duty of the Station House Officer, in whose police station such FIR is registered, to forthwith intimate the Nodal Officer in the district who

shall, in turn, ensure that there is not further harassment of the family members of the victim (s).

- (iii) Investigation in such offences shall be personally monitored by the Nodal Officer who shall be duty bound to ensure that the investigation is carried out effectively and the charge-sheet in such cases is filed within the statutory period from the date of registration of the FIR or arrest of the accused, as the case may be.
- (iv) The State Governments shall prepare a lynching/ mob violence victim compensation scheme in the light of the provisions of Section 357A of CrPC within one month from the date of this judgment. In the said scheme for computation of compensation, the State Governments shall give due regard to the nature of bodily injury, psychological injury and loss of earnings including loss of opportunities of employment and education and expenses incurred on account of legal and medical expenses. The said compensation scheme must also have a provision for interim relief to be paid to the victim (s) or to the next of kin of the deceased within a period of thirty days of the incident of mob violence/ lynching.
- (v) The cases of lynching and mob violence shall be specifically tried by designated court/ Fast Track Courts earmarked for that purpose in each district. Such courts shall hold trial of the case on a day to day basis. The trial shall preferably be concluded within six months from the date of taking cognizance. We may hasten to add that this direction shall apply to even pending cases. The District Judge shall assign those cases as far as possible to one jurisdictional court so as to ensure expeditious disposal thereof. It shall be the duty of the State Governments and the Nodal Officers in particular to see that the prosecuting agency strictly carries out its role in appropriate furtherance of the trial.
- (vi) To set a stern example in cases of mob violence and lynching, upon conviction of the accused person (s), the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC.
- (vii) The courts trying the cases of mob violence and lynching may, on application by a witness or by the public prosecutor in relation to such witness or on its

own motion, take such measures, as it deems fit, for protection and for concealing the identity and address of the witness.

- (viii) The victim (s) or the next of kin of the deceased in cases of mob violence and lynching shall be given timely notice of any court proceedings and he/she shall be entitled to be heard at the trial in respect of applications such as bail, discharge, release and parole filed by the accused persons. They shall also have the right to file written submissions on conviction, acquittal or sentencing.
- (ix) The victim (s) or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987.

C. Punitive Measures

- (i) Wherever it is found that a police officer or an officer of the district administration has failed to comply with the aforesaid directions in order to prevent and/or investigate and / or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence and/ or misconduct for which appropriate action must be taken against him/ her and not limited to departmental action under the service rules. The departmental action shall be taken to its logical conclusion preferably within six months by the authority of the first instance.
- (ii) In terms of the ruling of this Court in **Arumugam Servai V. State of Tamil Nadu**¹⁴, the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official (s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident has already occurred, such official (s) did not promptly apprehend and institute criminal proceedings against the culprits.”

Undoubtedly, the abovementioned guidelines are more than sufficient to put a check on lynching practices anywhere in India. What is needed is honest and sincere implementation on the part of concerned authorities.

¹⁴ (2011) 6 SCC 405

ROLE OF SOCIAL MEDIA

As discussed earlier, rumours act as a catalyst for the people who indulge in lynching activities. This rumour is spread by words of mouth and also by using social media platform like WhatsApp, Facebook or Twitter. In this regard, the central government has told WhatsApp to use technology to curb such rumours. It cannot 'evade accountability and responsibility' over its platform being used to spread rumours that have resulted in the death of innocent people in India. In response, WhatsApp has published advertisements in various newspapers giving out 'easy tips' that can help users to decide if "something sent to you on WhatsApp is true". WhatsApp has also launched new feature to label forwarded messages and not created by the sender. Now, a huge responsibility rests on the shoulders of the WhatsApp messaging site to go for technological innovations to kill the fake news which gradually take the shape of rumours.

CONCLUSION

Mob lynching is fast gaining ground which is quite dangerous for a burgeoning democracy like India. There may be different variants of mob lynching ranging from cow vigilantism to child kidnapping or others, the end result may sound a death-knell for the rule of law in any democratic country. Primarily it shows that people are losing faith in institutions like police, judiciary and the legislature. Otherwise, the most desired outcome of such happening should be to handover the so-called culprits to the police authorities instead of taking law into their own hands. While the need for a specific and robust lynching law may be the need of the hour, yet this is not an end in itself. To begin with, the loopholes in the law and order machinery must be filled up urgently. Right from lodging of FIR to investigation of the crime without undue delay will certainly help in providing speedy justice to the complainants. This will reemphasize the faith in the existing law and order machinery and the judicial system. Secondly, placing the onus on social media sites like WhatsApp for spread of rumours is not going to help. We will have to concentrate on better digital literacy of the citizens who are using these platforms. They are to be made aware about the difference between truth and fake news. Government can make use Radio and Television for this purpose. In doing this the help of N.G.Os and civil society can be taken. Thirdly in order to reach the masses in the rural area

the help of local panchayats and village level functionaries can be easily procured by the district administration. Last but not the least, enough political will be needed to tackle this problem by political bosses which is assuming menacing trends. Time has come to act decisively otherwise it will be too late.

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