

MOB LYNCHING, THE CONUNDRUM OF INSTANT JUSTICE

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“... All night a bright and solitary star...

Hung pitifully o'er the swinging char.

Day dawned, and soon the mixed crowds came to view

The ghastly body swaying in the sun:

The women thronged to look, but never a one

Showed sorrow in her eyes of steely blue;

And little lads, lynchers that were to be,

Danced round the dreadful thing in fiendish glee.”

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

In no civilized society, the lynching of a person by mob can be justified on any grounds whatsoever. The law and order situation is said to be at stake when incidences of lynching start taking place in a society. The delineation of Mob lynching primarily mulls over an act of violence committed by a mob who presumes their actions to be called for, so as to maintain the social thread intact and preserve the social norms. Furthermore, Lynching is a form of instant justice being administered against a presumed offender without any trial or procedure established by law. Additionally, the term 'lynching' and the pseudo 'lynch law' are coined after a Virginia planter and *justice of peace* during American Revolution, Charles Lynch (1736–96).¹ Therefore, such acts of violence have no authority of law and are innate illegal and inhumane. It includes acts ranging from mob lynching; attacks by vigilantes, murder, rape, harassment, assault, theft, etc. all have the earmarks of the instant justice by them as they find no faith in the procedure established by law.² Withal, Vigilantism is characteristically associated with the mob crime as such acts are not only notoriously ruthless but also vacuous of any remorse or repent. Similar tendency makes vigilantism the order of the day which is no less than a story of sheer horror.

¹ *Lynching mob violence*, <https://www.britannica.com/topic/lynching>

² <https://www.newslaundry.com/2017/07/04/mob-lynchings-in-india-a-look-at-data-and-the-story-behind-the-numbers>

REASONS FOR THE INSTANT JUSTICE

The term Instant Justice is practically synonymous with Mob Justice as such acts may be directed owing to the rumours, fabricated stories or solely out of ulterior motives among others. The Aforesaid situation is in a grave stage in African nations like Ghana which might result in the law and order situation has been totally overtaken by such *on-spot justice*.³ Although, there are two-fold reasons which result in a situation of *instant justice*; firstly there is an evident lack of faith and conviction in the existing legal system so as to be non-competent in producing satisfactory results according to the societal norms. Secondly, there is a sense of confidence in the minds of people carrying out such vigilante punishment to remain unscathed from the reach of the law.⁴ Mob lynching is popularly labelled as instant justice, by the so-called *protectors of law or the vigilantes*, because they believe their actions to be the need of the hour and required to do the justice in order to safeguard the possible alterations in the social norms and traditions.

With the striking similarity in reasoning, such acts are no more confined to illiterates, uninformed people who might be doing it for certain benefits and gains but many cognizably indulge in such activities to accomplish their intentions and opinionated justice. To substantiate the matter, recently a senior Jammu-Kashmir police officer was lynched to death by the mob just outside the Jamia masjid in Srinagar which was devoid of any possible reason or rumour.⁵ The contention that only the powerless and feeble are lynched is exceedingly challenged by this incident and it also raises the serious questions about the fear of law in the minds of the masses. Hence, putting in a nutshell, the real or the core reasons behind the occurrence of such incidents is although not difficult but rather perplexing. Additionally, the people involved in these horrific acts commit them as a result of either one or all the reasons clubbed together. On the other side, one reason which appears to be the most concrete is oblivious to the legal framework and stern sense of confidence in such acts or activities.

LEGAL ASPECT

The legal position and jurisprudence related to mob violence in relation to lynching, etc. is crystal clear. The apex court has very rightly differentiated between the issues of public order, law and order and security of the state. In the landmark case of *Ram Manohar Lohiya*⁶ and then reiterated in the recent case of *Shreya Singhal*, that a similar action may be a bone of contention in both public order and law and order situation when it reflects certain colours of disturbance to society as a whole and may strain public peace and its

³ *Instant Justice Is A Great Social Evil*, <https://www.newsghana.com.gh/instant-justice-is-a-great-social-evil/>

⁴ <https://law.stackexchange.com/questions/21275/why-are-lynching-and-mob-justice-so-popular-in-india>

⁵ <http://www.hindustantimes.com/india-news/j-k-mob-stones-man-to-death-after-he-opens-fire-outside-mosque-in-nowhatta/story-zFlisCu2SnqGMSqt4ktWwO.html>

⁶ *Dr. Ram Manohar Lohia vs State Of Bihar & Ors.* 1966 AIR 740, 1966 SCR (1) 709.

tranquillity contrary to only a breach of a law which results in the infringement of law and order situation.⁷ The is impetus to bring the above discussion in notice because the cases involving mob lynching are mostly seen from the communal lens and as a target to a certain minority, castes, tribes, etc. as a result of which it may become an issue of public order and is in direct conflict to tenants of law. As of now, there are no specific provisions in any law that deals with the cases of mob lynching specifically and provide an impeccable piece of well-drafted legislation. Moreover, the terms like mob, lynching, mob-lynching, instant justice, spot actions, etc. are not clearly defined leading to the situation of ambiguity and errors in interpretation of the problem in hand. Currently, cases of mob lynching and other incidents related to instant justice are tried under section 34, 120B, 147, 148, 149, 302, 307, 323, 325, and 341 of IPC⁸. However, they fall short in dealing with such cases mainly because of ever-increasing rate of such incidences in recent times. Mob Lynching is often considered to be an organized hate crime largely due to the manner involved in execution of such heinous acts and the liableness to danger. It is often alleged that many right-wing political organisations and their leaders aid such vigilantes in committing the crimes. The monetary benefits coupled with power and future prospects as an exhibit by these outfits might be one of the probable reasons behind these offenders luring into such activities without giving even a second thought. Undoubtedly, the political outfits and organisations behind aforesaid acts of violence harness the results of such crimes by moulding them into a political and social propaganda to brainwash one particular community against another and subsequently capitalizing the gains out of it in a manner of their choice namely, elections.⁹

MaSuKa

On the point of existing laws and legal framework are not sufficient, there is a dire need for a specific, dedicated law dealing with the nitty-gritty of Mob lynching. The government of the day has failed to acknowledge the seriousness of the matter and overlook the demand for stricter and specific legislation.¹⁰ Hence, civil society has come together in their demand for a law such as *Manav Suraksha Kanoon*¹¹ (MaSuKa) which deals with various aspects of abovementioned offences as follows –

- Deals with police inaction and complicity.
- Special courts for speedy justice.
- Rehabilitation and compensation for victims' families.

⁷ *Shreya Singhal vs Union of India* AIR 2015 SC 1523.

⁸ Indian Penal Code, 1860.

⁹ *What is behind India's epidemic of 'mob lynching'?* Apporvananda
<http://www.aljazeera.com/indepth/opinion/2017/07/india-epidemic-mob-lynching-170706113733914.html>

¹⁰ <http://caravandaily.com/portal/home-minister-at-loss-to-explain-govt-steps-taken-against-mob-lynching/>

¹¹ <https://www.thequint.com/news/india/is-masuka-the-answer-to-mob-lynching>.

- Protection of witnesses.

It is impetus to note that the existing law may be used for trying the accused under mob lynching but it will not provide the whole sought-after mechanism to deal with such cases contrary to what a special law will do. Moreover, acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and the Protection of Women from Domestic Violence Act 2005 were passed and enacted by the legislature even though there were provisions present in the existing law to deal with such offences. It is done so as to provide a stricter deterrence and smooth mechanism in a legal framework with respect to offences in question. Conjointly, all big-small political parties and groups condemn the cases of mob lynching in one sparkling tone but fail pathetically in transforming such words into a reality so as to be of some practicality against such gory crimes in society. The deafening silence of the legislature and the government on the topic of a specific legislation dealing with the problem or even an explanation behind their idleness in this regard is disturbing and acts as a poisoning bush in the great, grand forest of democracy. The law makers are considering the matter as any other matter of law and order problem which they envisage to get rid of by the existing laws and civil forces with the passage of time. To the contrary, they turned blind eye to see the communal tension and people belonging to minorities being targeted every now then. It will be sheer foolishness if such victims are considered as a mere coincidentally belonging to one particular community and been attacked because of few particular reasons. Therefore, one is not to be blamed if he is suspicious of political parties' active role and hidden agendas behind the whole issue in hand, as such passivity in the matter of this grave nature do not reflect anything else but a conformity and welfare, to say the least. Another problematic parameter in this regard is non-availability of official data as the cases of mob lynching is also counted under the same head of murder under section 302, Indian Penal Code and there is no specific category of mob lynching per se.¹² The records of The National Crime Records Bureau are silent in this regard whereas the media houses reports show different numbers which creates an unnecessary confusion and delays the effective regulations on such cases.

IMPLICATIONS OF SPECIAL LAW

There are always two sides of the same coin; Similarly, special legislation also has prospective cons such as –

- Improper definition of lynching.
- The Scope of misuse.
- Procedural lacunas.
- Timeline too short.

¹² *To prevent exaggeration of mob lynching statistics, time NCRB creates a record*
<https://www.oneindia.com/india/to-prevent-exaggeration-of-mob-lynching-statistics-time-ncrb-creates-a-record-2482016.html>

Regardless of what the cons might appear to be but such legislation in bare minimum will at least surface the causes and even be fruitful in containing such incidences in future. Lastly, the menace of mob lynching is no new; it has been the cause of utmost tension and one of the prime reasons for civil violence in many nations. United States of America, has witnessed noxious period of mob lynching prior and post American civil war, from 1882-1968, in total 4,743 people were lynched out of which 72.7% were blacks.¹³ Out of many possible reasons, homicide, hatred and baseless victimisation appear to be the major ones. To overcome such cases, civil rights law was put in effect in addition to many state laws largely aimed at securing and protecting ones civil rights against any possible injury, oppression, threat, intimidation, etc. all across the country.¹⁴

CONCLUSION

There is no denial of the fact that the cases of mob lynching under the labelled term of instant justice are on an expeditious rise since 2015.¹⁵ Power to deliver justice in no manner can be granted to the mob, the display of strength and use of violence is against the very pillars of democracy. There is a compelling need for atleast certain specific provisions if no legislation for the crimes related to mob lynching. The specific provisions will ensure the speedy trials together with the rehabilitation of victims' families and security of witnesses which is missing under the current law. It is the right time to understand the gravity of the situation and start a constructive discussion over the mob violence and the law needed. The indispensable need of critical look up into the issue and do the needful cannot be pressed any more. Nations like US, Mexico, Guatemala, Dominican Republic, Haiti, South Africa, Nigeria, Palestine, Afghanistan and whole of Europe have faced the grisly mob lynching at some point of time in history but the careful follow up into the crimes have minified the incidents.¹⁶ Now, it is the turn of the world's largest democracy to tackle the issue with the paramount solemnity and bolster the peaceful, secular-social thread that makes India great. Any sort of positive interactive dialogue amongst the different political parties, civil forces, legal institutions, law experts and society as a whole can handily decipher the perils of mob lynching. Otherwise, the democracy may transform into a mobocracy.

It is not the creature of an hour, the sudden outburst of uncontrolled fury, or the unspeakable brutality of an insane mob”

– Ida B. Wells¹⁷

¹³ *History of lynchings*, <http://www.naacp.org/history-of-lynchings/>

¹⁴ *Lynching*, <https://en.wikipedia.org/wiki/Lynching>

¹⁵ <http://www.indiaspend.com/cover-story/86-dead-in-cow-related-violence-since-2010-are-muslim-97-attacks-after-2014-2014>

¹⁶ Supra 14.

¹⁷ *So Just, "Speeches on Social Justice,"* http://www.sojust.net/speeches/ida_wells_lynch_law.html