

“Mobocracy in Democracy”**Nitin Kumar**Chanakya National Law University,
Patna****Sneha Kumari**Chanakya National Law University,
Patna*****Chandan Kumar**IIMT & School of Law (GGSIPU)***Abstract**

This paper presents one of the most disturbing affairs of today's world i.e. Mob Lynching. Mob Lynching is not a new concept, it is in existence for centuries. Starting from America it has been increased to other countries also like South Africa, Britain etc. In these countries the reasons for such incidents is largely based on white- black and nationality. But in India, the cases of mob lynching are largely based on religious and communal issues and caste issues. The term Mob lynching means “unlawfully hanging or otherwise killing a person by mob action” One of the major causes of mob lynching is hate speech. The increasing number of smart phones and internet access has increased and has strengthened the effect of online hate speech. This further gives rise to rumours where people are instigated and becomes part of mob lynching. Justice is the backbone of any peaceful society. The concerned authority must ensure peaceful life to its citizens. But the administration is lacking far behind in its approach. Even though the laws have been made but they are not properly implemented. Under Indian Penal provisions, lynching is neither defined nor considered as a crime. Hence, without proper implementation of law the idea of peaceful society cannot be achieved. There is a serious need of taking action to uproot this issue from its root. A careful evaluation of mob lynching is needed to be tackle by the government to provide a stronger legislation. Also, there is a need of understanding mob lynching from perspectives other than communal or caste issues.

INTRODUCTION

One has rightly said, “An angry mob has no brain.” India is witnessing this trend in its worst forms. When communal threats arose, people have time and again taken law in their own hands to deal with any accused by resorting to inhuman acts without being rational and ethical. The outbreak of lynching incidents in India has taken its peak in the last 5-6 years. In maximum cases, the victims of mob violence have been the minority groups of Muslims, Dalits and few racially tortured African tourists. They are generally chained, stripped, beaten, harassed or hanged by the mobs. The lynching has been carried out in cases of witch-hunting, caste based atrocities and most commonly bovine slaughter especially cows.¹

¹ Nitya Nand Pandey, Mob Lynching: A New Crime Emerging in Indian Society, 5 IJRAR (2018), <www.ijrar.org> accessed on 08 September 2019

The term Mob lynching means “*unlawfully hanging or otherwise killing a person by mob action*” Lynching involves injury or murder of a person who is criminal or accused of a crime against the community or a society.² The concept of taking law into one’s hand to punish a criminal has a history and said to have originated during the American Revolution phrased as ‘Lynch Law’ which is a punishment without trial.³ During 1800’s in America, lynching used to be a form of punishment for presumed criminal offences by self-appointed ‘mobs of justice’. It is disturbing to note that mob lynching in India is moving towards becoming the new “normal.” It has failed to invoke unconditional condemnation from a large section of society.

One of the major causes of mob lynching is **hate speech**. The **Law Commission of India defines hate speech** as an “*incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like*”.⁴ Nowadays, the tumbling cost of Smartphone together with cheap data plans has increased the number of internet users in India. The high internet connectivity has also strengthened the impact of online hate speech.

The increasing number of smart phones and internet access has increased and has strengthened the effect of online hate speech. More than half a billion people are using internet in India.⁵ Online hate speech is mainly transmitted through social media like Facebook, Twitter and What’s App. On Facebook we can see a number of fake pages spreading fake propagandas and exciting masses for communal violence. Twitter is being used as a platform for trolling people. This threat from Social media started when a young IT professional was murdered by a mob for derogatory posts on Facebook in 2014.⁶ A new way in which mobs are misguided and carrying out horrific violence is through random What’s App threat messages. Using social media for creating fake and disturbing news has become rampant in the last few years. Many people have been lynched by such rumours spread on social media. From Karnataka to Assam, every other person is becoming victim of mob lynching. The above statement is backed up by an incident which took place on 15th July, 2018 in Karnataka where a software engineer was beaten to death on suspicion of being a kidnapper. This is one incident but there are many more incidents where rumours have played an important role in instigation people which ultimately lead to mob lynching as it is well said that “rumours are carried by haters, spread by fools and accepted by idiots.”

² Seema Uikey & Nidhi Dubey, Mob Lynching in India: What’s app as Social Media to Anti- Social Media [2018] 40

³ Michael Quinion, Lynch, World Wide Words < <http://www.worldwidewords.org/qa/qa-lyn1.htm>> accessed 08 September 2019.

⁴ KrishnadasRajagopal, Redefining hate speech, *The Hindu* (15/12/2017) <<https://www.thehindu.com/todays-paper/tp-opinion/redefining-hate-speech/article21667235.ece>> accessed on 08 September 2019.

⁵ Subhangi Agarwal, *Internet Users in India expected to reach 500 million*, Economics Times (20/02/2018) <<https://economictimes.indiatimes.com/tech/internet/internet-users-in-india-expected-to-reach-500-million-by-june-iamai/articleshow/63000198.cms?src=ilaw>> accessed 09 September 2019.

⁶ *Muslim techie killed by right wing mob over morphed fb post*, Firstpost (4/06/2018) <<https://www.firstpost.com/india/pune-muslim-techie-killed-by-rightwing-mob-over-morphed-fb-posts-1555709.html>> accessed 09 September 2019.

ANALYSING INDIAN LEGISLATIONS

A country plagued with mobs taking the law into their own hands does not have a law against the crime in India is an irony. Although the Indian Penal Code (IPC) has no mention of the word lynching, however it punishes all the criminalities perpetrated by lynch mobs. Such cases are covered under **Section 302 (murder), 307 (attempt to murder), 323 (causing voluntary hurt) 147 (rioting), 148 (rioting armed with deadly weapons) and 149 (unlawful assembly)**. Also, **Section 223(a) of Code of Criminal Procedure, 1973** contains the provision for persons being charged jointly for the same offence committed in the course of the same transaction. Furthermore, **Section 144** of the code⁷ empowers the Executive Magistrate to prohibit an assembly of more than four persons in an area. Nevertheless, the Indian Legal System neither defines lynching nor provides punishment for it. Hence, there is a need for making new laws based on lynching.

When we talk about Indian Constitution, the **Rule of Law** in the cornerstone of Indian Democracy and every person is bound to follow it.⁸ According to this Rule of Law, a person shall not be punished without the authority of law. In addition to it, **Article 21** provides for right to life and personal liberty which shall not be infringed. But here the question put forth is despite all the safeguards available why the incidents of mob lynching are increasing day by day? Why there is no proper laws made against mob lynching?

There have been various incidents of mob lynching which proves that not only Central Government but State Government is also lacking far behind in not only making new laws against mob lynching but also implementing existing laws. One of the famous cases was Dadri Mob Lynching (2015) where a Muslim male was beaten to death as he consumed cow and under Hinduism cows are considered to be sacred. This clearly points out that even though the responsibility is given to the concerned State authority they lacked in their approach. It is their prime obligation to maintain law and order in a State so that any vigilantism does not take place.⁹ The present laws are inadequate and inefficient in providing legal framework for prosecution or perpetrators. However, several lawyers, civil activists etc united and demanded for separate law which could deal with the instances and mob lynching and provide justice to the victims'. A draft of a proposed law, **Manav Suraksha Kanoon (MASUKA)**¹⁰ by **National Campaign Against Mob Lynching** has been made with an aim of combating such issues by protecting the constitutional rights of individuals and to punish the perpetrators, but it is still struggling to be implemented as a law.¹¹ There is a failure on the part of Government in maintaining law and order and protecting the rights of its citizens. There is a need of effective criminal justice administration for good governance of society.

⁷ Code of Criminal Procedure, 1973

⁸ *National Human Rights Commission V. State of Gujarat & Ors* [2009] 6 SCC 342

⁹ *Mohd. Haroon & Ors V. Union of India & Anrs* [2014] 5 SCC 252

¹⁰ Also called The Protection from Lynching Act, 2017

¹¹ iPleaders, MASUKA – A draft bill by the collective National Campaign Against Mob Lynching to curb the menace of mob-lynching, (August 3, 2017) <<https://blog.ipleaders.in/masuka-draft-bill/>> accessed 15 September 2019

Taking into consideration the other countries, USA witnessed lynching in both pre and post American civil war. The lynching carried out against 41 people in Great Hanging at Gainesville has been one of the largest lynching does so far.¹² History shows that lynching was often used as a tool by white people to maintain their social dominance over black. Anti-lynching law like Dyer bill was introduced in the United States Congress by C. Dyer in the year 1918. The bill was favourably conceded by both the US House of Representatives and US Senate Committee. It states assurance to every individual for equal protection of the laws and to punish the crime of lynching.¹³

CONCLUSION

Right to life is a fundamental right guaranteed to every citizen. The act of taking life through the vehicle of mobocracy is murder of democracy. It is to be noted that the top priority of a democratic government should be the safety and security of its citizen. However, the present state machinery has totally failed to do so. It can be deciphered that from last few years, mobocracy is on its peak. There is an urgent need of provisions which exclusively deals with mob lynching however the issue has not been taken seriously. But after receiving a batch of petitions and looking at the situation of the country, the Apex Court in 2018 had issued several guidelines to tackle mobocracy. However, those guidelines have not been implemented properly in spite of court's notice in the PIL to implement the earlier order. A proposed law like MASUKA need to be implemented for promoting social inclusiveness. Also, social and administrative reform is necessary to combat such menace in future.

Lynching is not just mobocracy. It is collective hate crime and hate crime flourish due to hate speech and violence. Nowadays, the increase in number of Smart phones with internet access leads to online hate speech through social media platforms. These social networking sites under the guise of wrong information and mere suspicion lead to lynching. However, some of these sites have come out with an awareness campaign against fake news through newspaper advertisements.

India is not the only country which is experiencing this brutal crime. Developed countries like America and Britain have already faced it and have successfully contained the menace. Now, it's time for India to get rid of this democratic slump. It can be done through introducing strict laws. But lynching cannot be eliminated without eliminating hate speech and violence. However, there already exists laws to prevent hate speech and violence but the implementation is necessary in that context. The most perfect way to reduce hatred is through awareness and education. So in order to deal with hate crime like lynching in future, education and debate should be encouraged. Also awareness campaigns like "not in my name" should come into light by citizens.

¹²McCaslin, *Richard B. Tainted Breeze: The Great Hanging at Gainesville Texas* 1862 81 (1994)

¹³*Excerpt from Dyer Bill as it appeared in 1922,*
<www.amistadresource.org/documents/document_07_06_040_dyer.pdf> accessed 12 September 2019.