Need for Law on Mob Lynching

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Introduction

“all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”
– united nations charter, 1945

The rule of law is the pillar of Indian democracy as the rule of law governs our country. Every person, as well as the government, is obliged to follow the rule of law. If punishment or penalty for a crime is not permitted under the law, it cannot be executed even by the government, regardless of how significant and atrocious crime it may be. Any individual who commits a crime can be punished only through the procedure laid down by law. Although numerous safeguards and rights are available to the citizens, a constant increase in the incidents of mob lynching has been witnessed. Solely, based on suspicion, the mob takes the law into their hands and imparts ‘justice’ by lynching him.

Now the question arises ‘what is mob lynching’?

The Oxford English Dictionary refers to lynching as “the act of killing done by a mob without any legal authority or process involved.”

The term ‘mob lynching’ is used to describe the acts of targeted violence by a massive group of people. The violence is tantamount to the offences against the human body or property (both public as well as private). The crime is committed by the mob believing that they are punishing the victim for doing something wrong; hence they take the law in their own hands to punish the purported accused without acting in accordance with the rules of law. As aptly referred to by the hon’ble supreme court as a ‘horrendous act of mobocracy’ mob lynchings have a pattern as well as a motive. More often than not, innocent people are targeted based on some rumour, misinformation or suspicion.\textsuperscript{343}

Mob lynching has always been a vitriolic practice in society. Few paramount questions arise, whenever a piece of news about mob lynching unveils. The questions such as – what are the reasons which impel an individual to commit such an act? Don’t our country have laws to suppress such acts? Are the laws not adequate to curb such violence? The raising stories of gruesome lynching have highlighted the issue of mob lynching, but there are many innocent who have fallen

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prey to mob lynching. Many a time, murder is hidden behind the wall of lynching in order to escape the criminal liability.

The constant increase in the instances of mob lynching seems to weaken the pillars of Indian constitution. The expression ‘we the people’ enshrined in the preamble of Indian constitution is questioned as lynching by the mob connotes the absence of we feeling among the people. Similarly, the expression of ‘sovereignty’ and ‘secularism’ attracts the highest level of criticism. The expression ‘fraternity’ is attacked whenever the issue of mob lynching comes into light. Fraternity refers to brotherhood, and it cannot stand still when mob lynching takes place. Thus, news pertinent to this infamous issue has become too ordinary to get confound.

In Cardamom Marketing Corporation and Ors. Vs State of Kerala and Ors. 344 (01.09.2016 - sc), Justice Dr A.K. Sikri, observed that:

“When we talk of sound and stable system of administration of justice, all the stakeholders in the said legal system need to be taken care of........it is wisely said that for any society governed by rule of law, an effective judicial system is a necessary concomitant. The rule of law reflects a man’s sense of order and justice. There can be no government without order; there can be no order without law....”345

The government has the constitutional to maintain law and order among the citizens. The state also holds the responsibility to protect the life and property of the citizens.

The criminal justice administration is the backbone of a tranquil society. If the society is made free from crimes only then every citizen of a country can lead a peaceful life and enjoy their guaranteed rights. It is only possible through efficient criminal justice administration, which is one of the essentials of good governance. The criminal justice administration must perform its duty by punishing perpetrators of lynchers without any delay to build confidence and attitude of respect towards the rule of law.

However, in India, because of the lack of laws, criminals have realised that the possibility of begging punished is too remote, and hence they are defying laws and orders.

If the government wants to uphold the rule of law in the country, it should prosecute and punish the criminals, or else it would be difficult to get any reasonable rule of law in the country.

Indeed, there is a need to pass a law prohibiting the mob lynching because the current law contained in the Indian Penal Code in Section 302 (Murder), 307 (Attempt to Murder), 323 (Causing voluntary hurt), 147 (Rioting), 148 (Rioting, armed with a deadly weapon) and 149 (Unlawful Assembly) is not sufficient to curb the problems of mob lynching arising around the country.

**Historical background**

The word lynching was derived in the United States in the mid-18th century during the American revolution. It was phrased as “lynch law” means punishment without trial. As per historians, the

344 MANU/SC/1268/2016

word was first used by planter charles lynch and william lynch to narrate extra-judicial authority used by private individuals like him. Over time it came to be applied to extra-judicial killings by crowds, it was most common in african-americans in the late 19th century. During that time, lynching was preferably used against black people, and several cases were even reported in the US before the american civil war. In some instances, whites were also lynched for taking a stand for slavery against black people. Vigilante justice was practiced in many countries under conditions where informally organised groups tried to supplement legal justice. For instance, the fehmic courts of germany had punishments which involved lynching.

There were two significant plots of lynching that existed in the community and the past.

1. The classic lynching: the member of an established society punishes a newcomer or an outsider. It can be related to one act of wrongdoing.

2. The communal lynching: members of society punish the insider. It occurs after a few offences committed by the same individual over a period of time.

The first case of lynching was witnessed in St. Louis in 1835, McIntosh black man killed a sheriff while he was taken to jail. He was chained to a tree and pushed to death in front of 1000 people. Lynching, which was first started in America became a focal point of many other countries as well. Many countries the cases of lynching generally occurred due to racism. Mob lynching is not new in India although the word is of foreign origin. For the first time Indian legal history in the national campaign against mob lynching (ncaml’s) draft for “protection from lynching act, 2017 defined term “lynching”, “mob”, and “victims of mob lynching”. It still exists in India due to set up of its historical background and reasons why it grew are as follow:

1. Structure of society which is still recognised in our society on the basis of religions and castes. Community identity is one of the drivers that leads to violence of lynching.

2. The weakness of the government and judicial system to challenge the mob.

India is observing a high rise in cases of mob lynching as well. Taking the law into hands could be dangerous. There is no particular reason for the existence of mob lynching. However, event leads to heinous crime when a victim has committed a particular crime that has hurt the moral sentiments. Mostly in India, victims of lynching are minorities dalits or muslims, lynching against cow smuggling allegations, and lynching related to child-lynching suspicion. This offence is a threat to our nation and modern society because the mob takes into hand the role of the state. If it

348 Roberta Senechal de la Roche, why is Collective Violence Collective, 19 SOCIOLOGICAL THEORY 126, 130 (2001).
351 Arnold HT Sangma, Mob lynching: An uprising offence needed to be strenuous under the Indian legal system, 2 INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH AND DEVELOPMENT 30, 30 (2017).
is allowed, it will lead to hobbes' state of nature which claims man to be nasty and society remains in a state of non-peace.\textsuperscript{352} few incidents that happened in the history of india portrayed the same.\textsuperscript{353}

For instance

Legacy of partition: the year of partition 1947 witnessed lynching and collective violence of which women and victims became the worst victims. Nisidhajari in “midnight furies” (houghton mifflin harcourt) his fast-paced new narrative of partition and its aftermath, writes, “gangs of killers set whole villages aflame, hacking to death men and children and the aged while carrying off young women to be raped. Some british soldiers and journalists who had witnessed the nazi death camps claimed partition’s brutalities were worse, pregnant women had their breasts cut off and babies hacked out of their bellies, infants were found roasted on spits.”

From the above discussion, it has been realised that mob lynching is a part of history not in india, but the presence of its root is felt all over the world. The problem is not limited to any particular nation various reports of the united nations have proved lynching cases from sudan, nigeria, haiti, and other countries. When the problem is increasing and is not under control, the role played by law has to be analysed. This report further discusses the legal history of subject mob lynching.

India does not explicitly have laws dealing with mob lynching. The indian penal code does not explicitly mention the word “lynching”. However, the code of criminal procedure, 1973 talks about persons or a mob involved in the same offence in the same activities that can be tried together. Nevertheless, the law fails to grant justice to the victims. We can see that reports of lynching are increasing in the past few years, but we do not have any separate data for the cases. In 2018 national crime record bureau (ncrb) released the report “crime in india” but it also failed to include new categories like mob lynching.\textsuperscript{354}

In 2018 supreme court described lynching as a “horrendous act of mobocracy”. In case “tahseen s. Poonawalla v. Union of india and others” issued guidelines for the police administration of the entire country as an interim order. Further supreme court issued guidelines out of which main steps are as follow:\textsuperscript{355}

\begin{enumerate}
\item It was ordered to designate an officer of sp rank as nodal officer to prevent mob violence;
\item Broadcasting of messages that involvement into lynching shall invite severe consequences by the centre, state and local authorities;
\item Spreading of fake news and messages shall lead to the filing of fir against culprit;
\item Failure on the part of police and district administration on complying with sc’s guidelines will amount to negligence;
\item States to make compensation schemes for victims;
\item Lynching cases should be tried out by fast track courts in each district and to be concluded in 6 months.
\end{enumerate}


\textsuperscript{355}https://www.delhipolice.nic.in/SUPREME%20COURT%20GUIDELINES.pdf.
Lynching has become a social issue now, which is spreading and getting attention now because cases have increased recently, and the supreme court has issued guidelines to control it. The current status of lynching is vulnerable due to the absence of laws to criminalise it and neither it is defined in ipc, crpc, or constitution.

Lynching incidents which shook the nation

1. Khairlanji lynching:
Khairlanjimassare (or kherlanji massacre) is one of the first cases of lynching which held in september 2006 when four individuals were lynched over a land dispute. A village named kherlanji in bhandara district of maharashtra where a mob of minimum fifty villagers of politically dominant kunbi caste stormed into the bhotmange’s house and lynched four members of the same family. Bhotmange’s wife and daughter were paraded naked in the whole village, and the ladies were sexually assaulted before slaughtering them.356

2. 2009 mangalore pub attack:
Sri ram sena, a radical group, consisting of forty activists attacked young men and women in a pub named, “amnesia-the lounge” in mangalore, karnataka on 24th january 2009 stating that these young women are violating the traditional Indian values. The founder of this group, when interviewed by one of the esteemed newspapers, was unapologetic on this incident and answered that why should girls go to pubs, drink alcohol and wear westernised clothes. Later, a few years back in 2018, the activists were acquitted due to lack of evidence.357

3. Dadri Mob Lynching:
This incident happened in a village, Bisara near Dadri in Uttar Pradesh on 28th september 2015. A mob of villagers attacked the house of 52-year-old Mohammed Akhlaq after one of his neighbours accused him of stealing and slaughtering his missing calf. The local villagers carrying sticks, bricks and knives attacked Akhlaq’s house at night and accused his family of consuming beef and storing the cow meat in the refrigerator. The mob dragged and attacked Akhlaq’s and his son even after repeated denial of the fact by the family. It was considered as one of the first mob lynching incidents in the name of cow and beef.358

4. Dimapur Lynching:
The Lynching which horrified the nation was the Dimapur Lynching in Nagaland when a mob of about 7000-8000 broke into the Dimapur Central Jail and dragged Farid Khan who was a suspect in a rape case. He was paraded naked, stoned and thrashed and beat him to death in the name of vigilante justice and was seen by many as the stellar example of serving justice. It was also reported in the incident that the accused was an illegal immigrant from Bangladesh. This

Lynching also ascribed the faulty justice system of the state in which it had obtained very few convictions in the rape cases.

5. Jharkhand Lynching, 2016:
In Chatra district of Jharkhand, a mob named, ‘gaurakshak’ brutally thrashed and lynched two people belonging to a Muslim community and were hung from a tree in a forest near Jhabar village. The two individuals, Mazloom Ansari and Imtiaz Khan were on the way to sell a batch of oxen and cows at a cattle fair in Chatra District.

6. Alwar Lynching:
Pehlu Khan, a 55-year-old who was a dairy farmer from Nuh district in Haryana. On 1st April when he was transporting cows for his dairy farm and was beaten up mercilessly by a group of 200 cow vigilantes. He was accused of smuggling cattle, but instead, he bought a cow for milking with a receipt. Police could not arrest the ones that were named in the dying declaration of Khan, but the Police managed to arrest the vigilantes after a video of the incident went viral.  

7. Delhi Lynching:
A rickshaw driver stopped some college students who were urinating on a public wall when it was restricted to do so. The college students who were intoxicated at that time got furious and lynched the rickshaw driver in a burst of anger. The rickshaw driver was killed in the Lynching.

8. The Jharkhand Lynching, 2019:
This incident was brought under light after a video of the incident went viral and resulted in public anger. A mob attacked a 24-year-old Tabrez Ansari in Jharkhand on 17th June 2019. He was brutally thrashed and beaten on suspicion of bike theft. He was tied to the tree and Ansari; a Muslim was forced to chant Hindu sayings. Ansari was arrested and was kept in prison and when one of the relatives went to see him only to find him severely injured. The relative’s request to the medical officer of the prison was also denied, and later, he was taken to the hospital when his condition became severe. He died several days later.

9. Palghar Mob Lynching:
The recent case of mob lynching where a vigilante group on 16th April 2020 lynched two Hindu Sadhus and their driver. The incident of Gadchinchale Village in the Palghar district of Maharashtra was fuelled by rumours which were circulated on Whatsapp regarding thieves operating in the area during coronavirus lockdown. The vigilante group had mistaken the two

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sadhus and the driver as thieves and killed them. They even injured the policemen who intervened their action.\textsuperscript{361}

Reasons for mob lynching

1. Cow vigilante religious vendetta

The sale of cow meat has always been a point of conflict in society. It has mostly resulted in a mob attack.

After prohibiting of sale of cow meat under the prevention of cruelty to animals act in 2017, there has been a rise in cow vigilante. In the first six months of 2017, 20 cow-terror attacks were reported–more than 75\% of the 2016 figure, which was the worst year for such violence since 2010.\textsuperscript{362}

These attacks–sometimes collectively referred to as gautankwad, a portmanteau of the hindi words for cow and terrorism, on social media–were reported from 19 of 29 indian states, with uttar pradesh (9), haryana (8), karnataka (6), gujarat (5), delhi (5), rajasthan (5) and madhya pradesh (4) reporting the highest number of cases, according to the report of india spend.

Muslims were the target of 51\% of violence centred on bovine issues over nearly eight years (2010 to 2017) and comprised 86\% of 28 indians killed in 63 incidents, according to an indiaspend content analysis of the english media.

As many of 97\% of these attacks were reported after prime minister narendra modi’s government came to power in may 2014, and about half the cow-related violence – 32 of 63 cases – were from states governed by the bharatiya janata party (bjp) when the attacks were reported, revealed by the report of the hindustan times\textsuperscript{363} analysis of violence recorded until 25th June 2017.

A muslim man in jharkhand was accused of stealing a bike from the hospital and was thrashed by a mob. He was forced to chant ‘jai sri ram’ and ‘jai hanuman’ while being tied on a pole by a group of angry mobs\textsuperscript{364}.

Some of the cases are:

- \textit{Dadri lynching:} it occurred in the year 2015 in bisara village, uttar pradesh. Mohammed akhlaq and his son danish was accused of slaughtering and theft of cow-calf and storing its meat for consumption. When knowledge of this fact came into the observance of hindus,
then a hindu mob lynched the father and the son for this fact. Fact- it is considered one of the first mob lynching cases, which was religious based in the name of cow and beef.

- **Chatra district lynching:** In Chatra district, Jharkhand, a mob named as ‘gaurakshak’ brutally lynched 2 people belonging to muslim community named Ansari and Imteyaz Khan who was accused of smuggling as well as selling cows and oxen in the market.

- **Alwar lynching in 2017, April:** In the area of Alwar, Rajasthan, some people of the Muslim community were accused of cattle smuggling and slaughter. They were lynched by a Hindu mob. It was later found that the cows he had were for the purpose of dairy farming, and not for the smuggling of cow meat.

- **Haryana lynching in 2017, June:** In Tughlagabagh, Haryana, 3 Muslim brothers were travelling on the train from Tughlagabagh to Ballabgarh. The brothers were mob lynched by the members in the train because of suspicion of carrying beef along with them. Fact- one of the brothers died named Junaid, and the other brothers survived multiple stabs.

2. **Suspicion of child lifters and social media rumours**

The rumour or fear of child kidnappers has been a reason for mob attack. Thiruvannamalai in Tamil Nadu, Karbianglong in Assam, and Chittoor in Andhra Pradesh are heavily linked in more ways than one. These three districts witnessed murders by the mobs. The perpetrators were residents, and the trigger was a piece of information circulated in social media platforms.

According to an India Spend report, between 1st January 2017, and 5th July 2018, 33 persons have been killed and at least 99 injured in 69 reported cases. In the first six days of July alone, there have been nine cases of mob violence over child lifting rumours, and five deaths, which amounts to more than one attack recorded every day.

Of the 69 mob violence cases related to rumours of child lifting that have been reported, 77% were eventually attributed to fake news spread through social media. Mobile messenger application WhatsApp, in particular, featured as the rumour source in 28% or 19 of the cases.

Social media plays a massive role in spreading of rumours like children being kidnapped from neighbouring villages for the purpose of illegal sale of organs.

- In Vellore, Thiruvannamalai and Tiruvallur districts of northern Tamil Nadu, WhatsApp posts were circulated about 200 criminals from “North India” entering the state to lure children away. This claimed three lives and incited numerous mob attacks. The first victim was a mentally deranged man in his thirties who was found roaming in Parasuramanpatti village in Gudiyatham in Vellore district. The “Hindi speaking” man was hacked to death on 28th April.

- Sixty-five-year-old Rukmani, who was in Athimoor village in Tiruvannamalai district, was killed on the suspicion that she was a kidnapper.

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• In a more chilling incident, a 45-year-old homeless beggar was beaten to death and hung from a bridge in Pulicat. All three incidents happened within a span of two weeks\textsuperscript{366}.

• A 40-year-old woman was beaten to death by a mob of around 30 people in Ahmedabad on suspicion of being a child-lifter. In another incident, a 45-year-old woman was assaulted in Surat or the same reason. The woman was attending a family function. She had stepped out to buy balloons for her three-year-old daughter when she was assaulted by a mob which pulled her child away from her. Following the Ahmedabad lynching, Gujarat Police issued an advisory warning people against taking law in their hands and asking them not to believe social media rumours about child-lifting gangs\textsuperscript{367}.

2.1 role of social media

It is a known fact that internet usage in India is increasing day by day. Social media engagement is very high. If we consider the current situation, social media has been a saviour in the time of this pandemic in terms of entertainment. In traditional times, the only way of disseminating information was word of mouth, which of course has a very less reach. However, at present times, social media has taken over, and information spreads like a wildfire. ‘whatsapp’ is one of the social media players, helps in connecting people all around the globe. With more than 200 million users, India is whatsapp biggest market. It also has an ‘end to end encryption’ which gives users their privacy and their messages does not get shared to anyone else other than the parties involved in the conversation, so to track the origin of the fake rumour is next to impossible.

Following the death of 22 people due to spreading of fake news, ministry of electronics and it (meity) had asked the officials of whatsapp to curb the spread of fake news on its platform. Whatsapp retained its policy of end to end encryption but had limited the scope of forwarding messages. Earlier the message could have been forwarded to 256 people. Now message can only be forwarded to five people, and the message is marked as ‘forwarded’. Whatsapp has also introduced the feature where only admins can send message to a group, and participants are restricted to send messages in the group. Whatsapp has been involved in spreading digital literacy and means to avoid fake rumours. Moreover, a message which is labelled as ‘highly forwarded’ can only be forwarded to one person as opposed to five\textsuperscript{368}. However, is it really effective? Even though the limitation has been set on forwarding a message, but the origin of the message is still not traceable. The sad truth is that people rely on the information shared on whatsapp rather than relying on news channels. If this trend is followed, the fate of people will depend on the forwards, and the idea of ‘instant justice’ to the perpetrator will demolish the legal system of our country and democracy.

3. Lynching of person belonging to a minority group

In 2016-17, there were a total of 117 cases registered against discrimination against and victimisation of minorities and 505 cases on the victimisation of people belonging to the


\textsuperscript{368} https://www.medianama.com/2018/07/223-whatsapp-responds-to-meity-full-text/
scheduled castes throughout the country. Of the 117 cases regarding minorities, 42 were from uttar pradesh. As many as 221 of the cases dealing with injustice against scheduled castes were also from uttar pradesh

Minister of state for home g kishan reddy, replying to a query from lok sabha mp k navaskani seeking details of complaints received by nhrc regarding harassment of minorities and dalits, said the number of complaints in respect of minorities had fallen from 117 in 2016-17 to 67 in 2017-18, before rising again to 79 in 2018-19. Similarly, the number of Dalits alleging victimisation before NHRC fell from 505 in 2016-17 to 464 in 2017-18 before rising to 672 in 2018-19.

State-wise, the highest cases of alleged harassment of minorities as well as Dalits were registered by NHRC (National Human Rights Commission) in UP, which also happens to be the most populous state in the country. UP reported 19 cases of minority harassment and 311 of SC victimisation in 2018-19, up from eight and 215 respectively recorded in 2017-18. Other states from where NHRC got complaints of minorities’ discrimination in 2018-19 were Gujarat (8), Tamil Nadu (7), Maharashtra and Haryana (5 each).

The main explanation given by the offenders is that it is a way of providing instant justice to the person allegedly going against society. It is an argument because of the failure of the judiciary to wrap up cases on time and provide justice to the affected people of society. This is not justified because no one can take the law in their own hands and decide the punishment of an offender. Most of the cases stated above are based on the rumours spread on social media platforms. It is disastrous how a forwarded message n Whatsapp can cost the life of an individual. Even if the attack does not kill them, society perceives them as an offender for the rest of their lives. This menace has to be tackled because it does not only affect the life of the victim, but also the whole family.

Laws applicable

As we know that there is no codified law against the act of mob lynching and hence, the person is tried under the sections of ipc, crpc and evidence act. Why indian laws failed in the implementation in case of mob lynching is quite evident to the fact that a group of people collectively coming together to kill a person are tried under the provisions mentioned in the ipc such as murder, culpable homicide, unlawful assembly, criminal conspiracy and rioting.

It creates void in the criminal jurisprudence as no law criminalises mob lynching. It is also possible under section 223 (a) of the criminal procedure code (crpc) to prosecute people who are two or more in number for the same offence under ‘the same transaction.’

369 https://thewire.in/rights/uttar-pradesh-cases-harassment-violence-minorities-dalits-nhrc
371 Ibid.
Constitution of India

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Article 14</td>
<td>It guarantees the right to non-discrimination and the right to equality to each person in the territory of India.</td>
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<tr>
<td>Article 15</td>
<td>This article prevents discrimination based on religion, race, caste, sex or place of birth.</td>
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<tr>
<td>Article 21</td>
<td>“no person shall be deprived of his life or personal liberty except under procedure established by law.” It protects the personal liberty of the citizens and prevents the state from depriving the right of liberty of citizens.</td>
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Indian Penal Code (IPC)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 120 a.</td>
<td>Criminal conspiracy</td>
</tr>
<tr>
<td>Section 141</td>
<td>Unlawful assembly</td>
</tr>
<tr>
<td>Section 147</td>
<td>Rioting</td>
</tr>
<tr>
<td>Section 148</td>
<td>Rioting armed with deadly weapons</td>
</tr>
<tr>
<td>Section 149</td>
<td>Every member of unlawful assembly guilty of offence committed in the prosecution of common object</td>
</tr>
<tr>
<td>Section 300</td>
<td>Murder.</td>
</tr>
<tr>
<td>Section 302</td>
<td>Punishment for murder.</td>
</tr>
<tr>
<td>Section 304a</td>
<td>Causing death by negligence.</td>
</tr>
<tr>
<td>Section 323</td>
<td>Punishment for voluntarily causing hurt.</td>
</tr>
<tr>
<td>Section 335</td>
<td>Voluntarily causes grievous hurt</td>
</tr>
<tr>
<td>Section 339</td>
<td>Wrongful restraint.</td>
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Criminal procedure code (crpc)
Section 223a
To prosecute people who are two or more in number for the same offence under ‘the same transaction.’

Section 357a
The victims of such violence or their family members would be compensated

**Need for Law on Lynching**

Justice appears to be roughly synonymous with morality. In the narrow sense, just laws refer to but one area of morality. Just laws protect the interests of each individual along with the interests of mankind at large. Just laws seek to do good, justice and benevolence. It provides an opportunity for peaceful change in society with the acceptance of the majority of people.

Law is an instrument of society; justice is the goal of society. As the law is intended to protect justice, the subjects of state are bound by law whether they like it or not and cannot opt-out of their legal obligation. We believe that citizens commit a crime against the state as the state is the protector of rights and not in the individual whom damage has been caused, so it is in the fitness of things that it is proper for the state to make arrangements for the punishment. We are of the opinion that punishment is a negative gift to the criminal. If proper legislation is not established by the state, it may result in disturb the peace of society in the following ways:

Firstly, people will be tortured by injustice, which naturally will infuse the feeling of anger in themselves and their near and dear ones and it poses the fear of disturbing the peace of society and poisoning and polluting the environment.

Secondly, the reverence and respect for state disappear from the minds of those who have suffered from injustice.

The state should determine penalty through legislation in order to prevent and reduce crimes. If the perpetrator is punished, the ego of the victim as well as the society may be said to have been satisfied. However, in the matters of mob lynching, extraordinary steps are required, that is to say, constant surveillance by the agencies accountable for maintaining law and order, the responsibility to put a stop to the repetition of such incidents, measures to be adopted by the law enforcement agencies against culprits of such offences, rehabilitation of the victim as well as their family, guard the witnesses of such incidents and many more other things. Although, India Constitution provides the fundamental right of life and liberty, it has to be safeguarded at all costs by the Law.
Suppose we look into the existing provisions of the law in India. Indian penal code has provisions such as unlawful assembly, common intention, rioting, hurt, grievous hurt, culpable homicide and murder, which is often argued to be sufficient enough to control the offences of mob lynching. These provisions seem to be sufficient only on the paper, but the practical result is not the same. The Victorian penal statute of India does not explicitly address the offence of mob lynching and treats it similar to other group crimes. There is no specific section in IPC which per se deals with the group of people coming together to kill people. Although they can be charged under Section 34-common intention, along with murder but the conviction rate is seen shallow in such cases. Under the Section 223(a) of Code of Criminal Procedure two or more persons can be charged for the same offence forming part of the “same transaction” but these provisions do not seem to be sufficient to put a stop on these crimes. To put exclusive control over the crime of mob lynching, the need of the hour is to have a separate category of an offence under a special law.

The Code of Criminal Procedure gives the executive magistrate the power to control any unlawful assembly, in order to avoid any unfortunate happening, which may pollute the public order and tranquillity. The provision is a directory in nature, and therefore no specific punishment has been given under the provision if the executive magistrate fails to act accordingly. The Code does not bound the executive magistrate by a mandatory and specific duty to control the unfortunate happenings which are prudent enough to lead towards mob lynching. Also, the Code does not put any clear obligation over the Police to become extra vigilant in order to control the atrocious crimes of this nature. In the recent past, the action of police and local administration to control the heinous crime of mob lynching has always been in question. It is often alleged that the Police hesitates to take action against the person involved in mob lynching, it is also alleged that the Police reaches to the spot late and that the intelligence of Police entirely fails to pass report before the incident. The investigation carried out by the Police is often under political pressure. The crime of mob lynching is grave, and if it is not controlled, it can lead towards civil war in India. So, we need to fix the mandatory and specific duty over the Police and local administration under a particular law. The specific provision under a special law for punishment should also be there against the Police and local administration if they fail to comply with their specific duty. The major problem is that culprits of such offences are rarely identified and furthermore, due to massive pendency in the courts, the trial of such persons consumes considerable time.

As mentioned above, mere punishment to the wrongdoer is not sufficient in the matters of mob lynching because people are severely injured by the mob and often die due to such injury caused. The mob also prosecutes the victim without giving an opportunity of being heard. Such a person is presumed to be guilty of the suspicious offence and sentence is granted by the mob, which is not

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372 S. 141, the Indian Penal Code, 1860.
373 S. 34, the Indian Penal Code, 1860.
374 S. 146, the Indian Penal Code, 1860.
375 S. 319, the Indian Penal Code, 1860.
376 S. 320, the Indian Penal Code, 1860.
377 S. 299, the Indian Penal Code, 1860.
378 S. 300, the Indian Penal Code, 1860.
379 The Indian Penal Code, 1860.
permitted under any law of the country. It has been noticed in various cases that the District Administration as well as the Police Administration lack in taking sufficient steps to prevent such incidents.

Bringing specific and special law laws to control the special kind of offences is not a new concept. The Protection of Children from Sexual Offences Act (POCSO Act) 2012, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 etc. Is a perfect example of a special Act dealing with a special category of crimes. Similarly, witnessing the rate with which the heinous crime of mob lynching is increasing, it is prudent enough to suggest that we should have a special law to deal with the offence of mob lynching. In our view, mob lynching if not controlled, will lead towards civil wars.

Hon’ble Supreme Court in the matter of Tehseen S. Poonawalla vs. Union of India and Others, (2018) 9 SCC 501, while explicitly dealing with the issue of mob lynching has directed the Central as well as State Governments to adopt preventive, remedial as well as punitive measures to curb mob lynching and provided a set of guidelines.

In the preventive guidelines, it is required that Nodal Officer is appointed not below the rank of superintendent of Police in each district and he should constitute a Special Task Force to procure Intelligence Report so that proper preventive measures may be taken. It shall also be the prime duty of the Nodal Officer to take steps in order to protect the hostile environment against any individual of any community or caste, which is likely to be targeted in such incident. It will also not be wrong to mention that whenever any such incident takes place, some anti-social elements also join their hands to facilitate such Lynching. Therefore, there is a need to provide Special Machinery for combating such Lynching by way of preventive measures.

As far as the remedial measures are concerned, it usually is the complaint of the victim, i.e. First Information Report (FIR) which is not lodged unless he has some resourceful person. Therefore, the Nodal Officer should be made duty-bound to ensure that FIR is registered forthwith, and the investigation is carried out impartially and effectively.

Although there are provisions under Section 357A Cr.P.C. to grant compensation to the victim, in the matters of mob lynching, one should not depend upon the event of realisation of fine awarded by the trial court and a special provision, i.e. Victim compensation scheme should be made for grant of compensation like rape cases in the matters of Scheduled Castes and Scheduled Tribes.

There is also a need to accelerate the trial of such cases. Therefore, the cases of mob lynching should be tried by the designated Judge on a priority basis, so that the society realises that the trial of mob lynching is not delayed. As a standard practice, there is no provision for allowing being heard to the victim or the family of the victim while awarding the sentence. In such matters, arguments of the public prosecutor are heard, and after the statements of the accused are taken into consideration, the punishment is awarded. In the matters of mob lynching, the right of hearing on the quantum of the sentence should be provided to the victim or victims’ family. One more aspect also requires consideration of the Courts, i.e. The damages caused to the property. In India, the Law of Tort is not applicable unless there is some specific provision. Therefore, this aspect should also be considered while making new legislation.
As far as punitive measures are concerned, the court said that if the police officer or an officer of the district administration fails to adhere to the above guidelines, it would be considered as an act of deliberate negligence/misconduct. If it is found that such official did not prevent the incident even after having prior knowledge of such happening or where the incident has already occurred, and such official did not promptly detain and initiate criminal proceedings against the culprits, then it will result into strict action against such official. Strict punishment must be awarded to the culprits and for this, a separate offence called “Mob Lynching” should be made so that there is fear in the mind of wrongdoers that if they are held responsible, they shall be subjected to such harsh punishment.

International overview

United nations human rights commission (unhrc) on mob lynching against muslims and dalit in india:

The united nations human rights council addressed the cases of mob lynching in india against muslims and dalits. During the 41st session in geneva acknowledged that there were cases of lynching against muslims and dalits by hindus, in the name of protection of holy cow. The paul newman kumar stanisclavas of the centre for africa development and progress notified in the session that it had been reported about the cases in the session to remind indian government that india being a signatory of international covenant on civil and political rights (iccpr), and international covenant on economic, social, and cultural rights (icescr).

He said at least 10 muslim men had been lynched in public in suspected hate crime in the recent past. “the attacks have contributed to a growing sense of insecurity among muslims and intensify religious tensions. The recent trend is to make muslims chant ‘jai shri ram.’ about two weeks ago a 24-year-old, tabrez ansari, was beaten for hours until he died at the hands of hindu mob in the eastern state of jharkhand for not chanting “jai shri ram.’

he added, “recently a teacher was attacked in a train for being a muslim. He was heckled to say ‘jai shri ram.’ when he refused, he was beaten and forced to get off the train.”

He also reported that pratap sarangi of the ruling bjp in his first speech in the parliament asked, “why people, who refuse to chant hindu slogans should be allowed to live in india?”

At last, he requested the un to intervene in the matter and to respect the provisions of the constitution.

Mob lynching and convention against torture:

Till now, 119 countries are a signatory of the convention against torture. However, india is the member of the united nations and only a signatory of convention against torture, and the treaty is still not ratified. The motive behind the treaty was to “uphold the greatest values of indian civilisation and our policy to work with other members of the international community to promote and protect human rights.”

The treaty in no circumstance justifies the use of torture. The convention stresses “the need to break the silence surrounding torture, to end the impunity of those who may engage in this practice and to punish those involved failingly.” All states, including our own, have an obligation to ensure that reparation is available to victims of torture. This is fundamental to their proper rehabilitation, and it must include restitution, compensation, and the guarantee of non-repetition.

European commission-funded report, “campaign against torture in india: prevention, and rehabilitation”, acknowledged that the cases of inhumane and torture are increasing in india. Failure to legislate laws against torture covers the purview of lynching. Criminalising torture holds a path to reduce crimes like mob lynching. Before ratifying the treaty, it is necessary to take into account the bill drafted by the law commission of india against torture on 27th november 2017. It defines torture as “the bill defines torture as an act by a public servant or by a person with the acquiescence of a public servant, causes grievous hurt or danger to life, limb or health (whether mental or physical).” The bill also proposes “punishment of minimum three years which may be extended to 10 years and fine, for torture inflicted for the purpose of extorting confession, or for punishing or on the ground of religion, race, place of birth, residence, language, caste or community or any other ground.” By adopting a holistic view, we can bring mob lynching into the perspective of torture and can secure extra-judicial killings. therefore, india needs to pass the prevention of torture bill before rectifying the united nations convention on torture.

State responsibility in international law:

International human rights law forces an obligation on states to protect individuals from infringement of human rights by states and non-state actors. Article 2 of the international covenant on civil and political rights (iccpr) imposes a duty on states to respect and make sure that all people within its jurisdiction rights adhered. The above principle has two essential components: duty to respect rights and duty to undertake remedial measures in case any violation takes place. Therefore, it’s a duty of states to protect rights guaranteed in iccpr. Article 6 states that “states parties should take measures not only to prevent and punish deprivation of life by criminal acts but also to prevent arbitrary killing by their own security forces.” The state should be responsible for following diligently international laws.

Danwood chirwa (international law expert) says “state responsibility is incurred where the state fails to exercise due diligence to ensure that private actors do not commit the violations. Due diligence requires positive steps on the part of the state to prevent the violations, control and regulate private actors, investigate and, where applicable, prosecute and punish occurrences of violations, and provide effective remedies to victims. The jurisprudence of both the iachr and the echr establishes that due diligence is essentially about the reasonableness or seriousness of the measures and steps taken by the state. Thus, the state is responsible for private actions resulting in human rights violations if it fails to take reasonable or serious measures to prevent violations or respond to them.”

Analysis of indian cases from the perspective of international laws:

Lynching in the name cow protection is a violation of human rights. The prevention of cruelty to animals (regulation of livestock markets) rules 2017, which imposed a ban on cow slaughter, only increased the actions of lynching and the state was seen to be reluctant in acknowledging the fact that such action would only increase the actions of “gau-rakshaks”. Witnessing the issue of junaid khan, a young boy assaulted on a train. The state had a duty to respect the protection of rights under iccpr and hold the culprits accountable, in which it failed. Under the indian Constitution as well state was liable to compensate victims because violation of his fundamental right took place on state premises.

The crimes of this pattern are increasing additionally, the cases are becoming repetitive. Thus, it would be suggested the state set up inquiry commissions under Inquiry Act, 1952 under section 3 in the account of public interest with restrictions which says “The appropriate Government may if it is of the opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by 2 [each House of Parliament or, as the case may be, the Legislature of the State], by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.” for the cases which involve Lynching because cases need immediate action. This can help in making culprits accountable and can prevent such incidents from occurring in the future.

Statw Law: With special mention to Rajasthan

I. THE RAJASTHAN ASSEMBLY BILL ON MOB LYNCHING-

The Rajasthan administrative passed a Bill accommodating life detention and a fine from ₹1 lakh to ₹5 lakh to those indicted in cases for mob lynching prompting casualty’s demise. Vidhan Sabha passed the ‘The Rajasthan Protection from Lynching Bill, 2019’ through a voice vote amid vociferous dissent by the Opposition BJP, which needed the Bill to have alluded to a select committee. The Bill was presented by Parliamentary Affairs Minister Shanti Dhariwal in the state get together a week ago.

Reacting to the discussion on the Bill, Mr Dhariwal on Monday told the House that the IPC and the crpc have arrangements to manage the instances of crowd lynching episodes, they are not satisfactory. Appropriately, the administration has carried the Bill to accommodate stricter discipline to control such episodes. It accommodates life detention and a fine up to ₹5 lakh to convicts in instances of horde lynching including the casualty’s demise.

Referencing the Supreme Court’s suggestion to establish a law against the occurrences of mob lynching, the announcement of articles and reasons of the Bill stated, “It is proposed to stop the evil from really developing and to forestall spreading of contempt or induction to crowd lynching by making exceptional offences against such acts.”

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387 Rajyasabha.nic.in
Chief Minister Ashok Gehlot had declared his administration’s aim to authorise the law while answering to the discussion on the State Budget on 16th July. In his answer, Mr Dhariwal told the House that the Bill was acquainted with the guarantee that the occurrences of crowd lynching are not rehashed in the State. “After 2014, 86% of instances of horde lynching revealed in the nation occurred in Rajasthan. The State is viewed as a quiet State, and such episodes have put a smear on it,” he said.

The Opposition lawmakers, on the whole, challenged the Bill saying they will not bolster it in its current structure and requested it to be sent to a select advisory group for audit. Leader of Opposition Gulab Chand Kataria said the Supreme Court had given a few rules while hearing cases identified with the crowd lynching yet the state government thought about its just a single proposal of ordering a law.

Bringing up that the IPC and crpc have abundant arrangements to manage the instances of horde lynching, Mr Kataria requested from the administration to table applicable measurements in the House on instances of crowd lynching in the state to legitimise the new law.

“The State government ought not to get such an exacting law a rush. The Bill ought to be sent to a select panel where we will sit and talk about on all issues and bolster it in all habits, yet we will not bolster the Bill in its current structure,” he said.

Meaning of Mob

The Bill characterizes the mob as a gathering of at least two people. It likewise characterises Lynching as “a demonstration or arrangement of demonstrations of savagery or those of helping, abetting or endeavoring a demonstration of brutality, regardless of whether unconstrained or preplanned, by a horde on the grounds of religion, race, rank, sex, spot of birth, language, dietary practices, sexual direction, political connection or ethnicity”.

For the offence of an attack by a crowd, prompting the casualty enduring appalling damages, the Bill accommodates prison terms as long as ten years and a fine of ₹25,000 to ₹3 lakh. In instances of the casualties enduring basic wounds, the Bill proposes detainment as long as seven years and a fine up to ₹1 lakh.

For bringing forth connivance of Lynching or helping, abetting or endeavouring such an offence, the Bill looks to rebuff the guilty parties in a similar way as though he dedicated the offence of Lynching.

The Bill additionally enables the State police boss to name a state organiser of the position of Inspector General of Police to forestall the episodes of Lynching in the State with the locale Superintendents of Police going about as the region’s facilitator, to be helped by a Deputy Superintendents of Police, for taking measures to forestall occurrences of horde viciousness and Lynching. The Bill additionally enrols different offences identified with the Lynching, for

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389 Loksabha.nic.in
example, the spread of hostile materials, engendering of the threatening condition and hindering legal procedures, which would be culpable with prison terms changing from three to five years.

The Bill additionally specifies the arrangement of pay to casualties by the State government according to the Rajasthan Victim Compensation Scheme. It likewise ties the State government to take essential measures to restore the casualties of mob lynching, experiencing removals their local spots. The discipline in situations where the casualty is harmed will differ - as long as ten years in jail and a fine between Rs 25,000 to Rs 3 lakh in instances of heinous injury.

The exceptional law will be notwithstanding the arrangements of the Indian reformatory Code.

“Lynching” is portrayed as a demonstration or arrangement of demonstrations of brutality, regardless of whether unconstrained or arranged, by a crowd on the grounds of religion, race, position, sex, spot of birth, language, dietary practices, sexual direction, political connection and ethnicity.

The state’s executive general of police will delegate a state organiser of the position of reviewer general to forestall instances of Lynching, the Bill said. Each region director of police will be the locale organiser who will be helped by a delegate administrator of police (DSP) for taking measures to forestall crowd viciousness and Lynching.

The Bill additionally proposes disciplines for the scattering of hateful material (one to three years in jail), making an unfriendly situation (five years) and hindering the legal procedure (as long as five years). The Bill was presented by Parliamentary Affairs serve Shanti Dhariwal. The state government will give remuneration to the casualties under the Rajasthan Victim Compensation Scheme and make strides for their recovery. If such offences lead to the removal of the people in question, alleviation camps will be set up at safe areas for them, the Bill proposes.

In the ongoing past, Rajasthan has seen at any rate two instances of Lynching, supposedly by bovine vigilantes. In April 2017, Pehlu Khan from Haryana was whipped by a crowd in Alwar locale on doubt of cow sneaking. In a comparative case, Rakbar Khan was pounded the life out of by a horde of bovine vigilantes in July a year ago in Alwar’s Ramgarh zone. The announcement of articles and reasons of the Bill specifies the Supreme Court’s suggestion to establish enactment against the crowd lynching. It said there had been numerous occurrences as of late, bringing about the loss of employment, wounds and passing. The announcement said it is proposed to stop the evil from really developing, and forestall the spread of scorn and induction to horde lynching through this law.

What is the need of a mob lynching bill in Rajasthan?

Parliamentary Affairs Minister Shanti Dhariwal told the authoritative gathering in his answer that the Bill was acquainted with a guarantee that the episodes of crowd lynching are not rehashed in the State. Among the complete number of crowd lynching cases occurred in India after 2014, 86% of instances of horde lynching revealed in the Rajasthan.

II. Manipur Protection from Mob Violence Act, 2018

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Before Rajasthan, it was Manipur which became the first state to pass the Protection from Mob Violence Act. It was considered as the remarkable law since there is no codified law for mob lynching.

Back in 2018, the Supreme Court of India described this Act of Lynching as a “Horrendous act of mobocracy” and also laid down several guidelines for the Centre and State governments to act in accordance with the guidelines. The Manipur Law is in synchronisation with the guidelines of the Supreme Court.

The main features of the Act include:

- The definition of Lynching, as mentioned in the Act, is comprehensive and covers many forms of hate crimes. It described Lynching as, “any act or series of acts of violence or aiding, abetting such act/acts thereof, whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds.”

- It excluded the solitary hate crimes and specified that mobs undertake the hate crimes.

- The law specified that in each district, there would be nodal officers to control the crimes and the people related to it.

- This law has the most substantial and worthy contribution, which makes it the first in the country to do so. It mainly lays importance and defines a new crime of dereliction of duty of public officials.\(^{392}\) It specifies that police officers failing to prevent the crime of Lynching in their territory or jurisdiction will be liable for imprisonment that may extend from a year to three years with fine up to ₹50,000.

- It also emphasised the protection of victims and witnesses of the mob against any kind of coercion, intimidation, violence, inducement or threats of violence. It highlights the duty and responsibility of the State government to make arrangements for the victims and witnesses to be safe.

- It also prescribes the duty of the state officials to obviate any hostile environment against the group, community or people who are lynched, which includes economic and social boycott.

- There is no need for prior sanction to register crimes against those public officials who fail to prevent the hate crimes amidst their obligation and duties.

- It removes the protection extended to the public officials who are charged with any offence while acting in their discharge of the duty which is equally pathbreaking in this law.

- The hate crimes will be penalised under Section 153A of the IPC, which is related to fostering enmity between people on the basis of religion, race, language and so

Nevertheless, if someone wants to register this crime, it requires prior permission of the state government. Also, many times, these state governments use this power in shielding the perpetrators who align to the ideology of the ruling establishment. Since the state government of Manipur got away with such power, this law will be more productive and non-partisan.

- However, registering this crime requires prior permission of the State government, and most governments use this power to shield perpetrators of hate crimes who are politically and ideologically aligned to the ruling establishment.\(^{394}\)
- The law also required the state to formulate a scheme for the relief camps and rehabilitation if there is a displacement of victims and death compensation.

The law excluded the provision of solitary hate crimes. Though the majority of reported cases of Lynching are attackers and onlookers, but there exist solitary hate offenders like the Bengali migrant Mohammad Afrazul in the case of Rajasthan. This law inspired the lynching laws of Rajasthan and West Bengal.

### III. West Bengal Prevention of Lynching, 2019

The third state to pass the bill on the crime of mob lynching with stringent punishment and is on lines with the Supreme Court guidelines.

- The West Bengal (Prevention of Lynching) Law, 2019 defines Lynching as “any act or series of acts of violence or aiding, abetting or attempting an act of violence, whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other ground.”\(^{395}\)

- The law specified the imprisonment of three years to life for the offenders assaulting and injuring a person. Also, fine ranging from Rs 1 lakh to Rs 5 lakh for the offence and the maximum punishment of life imprisonment.

- It also laid down the framing of the West Bengal Lynching Compensation Scheme for the victims. It also emphasised the protection of victims and witnesses of the mob and any threat, inducement, or coercion of them should be brought to the notice of the court within 24 hours.

- Also, the law prescribes the appointment of nodal officers for monitoring and coordinating the prevention of Lynching, making sure of the periodic assessment of local intelligence inputs on alarming and potential flashpoints, and also the lynching incidents should not be investigated by any officer below the rank of an inspector.

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\(^{395}\) Suhrid Chattopadhyay, Bengal Assembly passes landmark anti-lynching Bill, Frontline, The Hindu (August 31, 2019), https://frontline.thehindu.com/dispatches/article29308812.ece
What makes the law of West Bengal stringent is the zero-tolerance towards the hate crime. The law has prescribed a jail term of maximum one year and a fine up to Rs 50,000 to any person for, “publishing, communicating or disseminating offensive material by any method – physical or electronic.”

Those creating a hostile environment for a person or a group of persons will face a maximum jail term of three years and fine extending to Rs 1 lakh.

Analysis of survey conducted by the team

- The form containing questions on mob lynching was circulated among the general public, and the team managed to collect fifty responses from people belonging to different fields. 88% of the people filling the forms were students. The 6% were law professors and the remaining from diverse fields.

1. The first question focused on the concept of mob lynching. The statistics of the survey clearly shows that 92% of the people who filled the form know the concept of mob lynching. Since 90% of the survey givers live in urban areas, the survey does not entail enough knowledge of

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the people living in rural areas. The rest 6% in the first question are certain with the concept of mob lynching.

2. Half of the people in the survey that is around 50% are not aware of the measures taken by the government. It is quite evident that the government has not taken any measures. However, three states, i.e., Manipur, Rajasthan, and West Bengal, have passed their own anti-lynching state laws. One of the supreme court guidelines arising out of the Tehseen Poonawala case stated that the state governments should prepare an anti-lynching compensation scheme under the provisions of section 357a of CrPC within a month of the judgment of this case, but it went into no avail. How many states have actually followed the SC guidelines and appointed nodal officers in every district? Another guideline talked about the dissemination of information regarding the severe consequences of mob lynching and mob violence by the state and the central on radio, television and other media. However, it ended in no avail. Hence, the citizens are clueless about any such information.
The #notinmyname protest was a result of the case in 2017 which hit the headlines was the mob lynching incident in haryana where a 15-year-old junaid khan was stabbed to death in train by a mob that crushed his skull cap in ballabhgarh, haryana over an argument over train seats. He was travelling along with two of his brothers in the train when he was called a beef eater after the argument resulting in a mob crushing him. There are many other protests which did not get the importance of this one. Though things quiet down soon, and since then, incidents continued to happen irrespective of the religion.

The result of this movement on 5th June 2017 was a unified young leader from diverse backgrounds launched the national campaign against mob lynching. The draft of a proposed law known as masuka- manav suraksha kanoon came into being was a concerted effort of several lawyers, civil rights activists and politicians. The draft was made public years ago, but it is still struggling to become a law, and the worst part is that no one is talking about it today and is forgotten. Hence, the citizens are still unaware of such arrangements or movement which was accelerated years back. The case was heard concerning masuka in the landmark judgment of tehseen s. Poonawalla vs. Union of India and others that comprised of chief justice of india dipak misra, justice a.m. khanwilkar and justice d.y. chandrachud. However, the judgment asserted that it is the duty of the state to ensure efficient functioning of law and also go in accordance with the 11 supreme court guidelines, but the term masuka was missing from the judgement.

3. The next question received a mixed answer on the question concerning the reasons of mob lynching. We cannot centralise the reason of mob lynching to a single cause. Mob lynching has been taking place in places across the country over various issues.
4. The survey conducted by the team shows that there is no single person who thinks mob lynching should not be banned. However, a survey\(^{398}\) conducted by a Delhi-based NGO, Common Cause and CSDS did not answer the same. It was a quite vital clue through this survey that why people think mob lynching incidents are common, and they continue to happen despite the intervention by the supreme court. The survey reported that about 35% of the police personnel who took the survey and interviewed think that it is natural for the mob to lynch or punish the ‘culprit’ in case of cow slaughtering and natural to punish someone who is accused of rape was about 43%. There are a whole lot of crowd in India who thinks that taking law in their hand will quantify to speedy justice. The survey that was conducted by our team concerning the reasons for mob lynching has 74% of the people who agree to the cause that, “they think lynching is the only speedy quick justice to be” and also 39% people chose the other cause of mob lynching which

is, “public thinks it is there duty to punish the criminal,” which is quite right through many reports and survey conducted through ngo and other private organisations. The government is yet to announce a specific risk report or survey which details about mob lynching and related crimes committed in the country.

5. While the next question also deals with a fundamental right, which is the right to privacy and right to life and personal liberty. The next question of the survey talks whether the information of the perpetrators should be made public in order to create better awareness. Since this is a debatable sphere and will require a detail case study of pro and cons of the same. However, in our survey, around 47% of the people think that the government should make the perpetrator’s information public.

6. In the name of cow protection, there has been an increase in mob lynching in the last five years. According to a report by indiaspend, around 84% dead in cow protection violence since 2010 were muslim and also after 2014, 97% accounted for the muslim population as detailed discussed in the research report.
Another report by reuters reported the deaths and incidents since 2010 and how 2017 was the worst year in terms of cow-related violence.

Muslims were the target of 51% of violence centred on bovine issues over nearly eight years (2010 to 2017) and comprised 86% of 28 indians killed in 63 incidents, according to an indiaspend content analysis of the english media.

Note: Data as of June 25, 2017. Compiled by Indiaspend from media reportage. Incomplete information was cross-checked with local police or reporters. Click here for the list (Link updated on December 8, 2017, after data reconciliation).
Recommendations:

1. Role of social media

People depend on social media a lot these days, be it for entertainment, communication, etc. Nevertheless, as discussed above, social media has played a significant role in the dissemination of fake news or fake rumours, which triggers a community, which then takes the route of lynching. One of the social media platforms ‘whatsapp’ has regulated the amount of forwarding message. The problem is, these social media players have plenty of information about its users, and whatsapp has ended end encryption which respects the privacy of its users. Some of the measures to stop spreading fake rumours, there should be a joint action, from public and government. The issue lies in creating a balance between the user’s privacy and well-being of society. Some of the measures are:

- The news should be cross-checked with reputed news channels or on google search engine. Also, the credibility is cross-checked with evidences, and it should be checked if the messages have pieces of evidence to back their credibility.
- Try to find the purpose of the news. Is it for spreading hate, or to outrage or target a community or to hurt sentiments of the society? If yes, then the message should be avoided and reported. Also, check if a credible source backs it.
- Forward messages should be regulated by the social media platforms in a way, to make it an exception and to be able to encrypt the forwarded message and so that the source can be easily found. In short, the forwarded message should be an exception to the privacy of users for the benefit of the society as a whole.
- An online platform should be created by government which will help in checking the credibility of news and simultaneously report the same if it turns out to be a fake one.

2. Role of mass media

There are many lynching incidents which do not get enough media coverage as lynching is no longer seen as a big story and something which needs to be taken into consideration. Even under democratic setup, mob lynching incidents are only when covered when they affect the upper classes or a particular group, the media thinks it needs to be broadcasted to garner viewership. A group of people coming together to kill someone is illogical and immoral. In a diverse country like India with diverse groups containing different grievances and grudges over thousand of years by another group of people is a real danger.

Reports of Lynching have made headlines for decades where most of the cases in the last few years were causes of violent Hindu mobs who found it morally justified to kill someone by alleging them of cow killing or sellers and consumer of beef and also forcing someone to chant, “Jai Shri Ram.” However, Lynching is not limited to a particular religion or any strata of society. Even, Hindus are killed, which was evident in the Palghar incident which happened recently. Mob lynching is a crime which needs to rise above a particular pointer. There have been incidents of other kinds of hate crime which includes the infamous Mangalore Pub attack and also, in 2012 in Guwahati where a mob molested a girl in public after she had an altercation outside a pub.

Media plays a vital role in shaping someone’s perspective. People of India are more intrigued by the news on the channels. They believe what they see, hear, and the age of technology has made
the situation worse. Media houses are more corporate these days with a mindset of garnering viewership. Mass Media can be used in spreading awareness among the society at large by broadcasting news regarding fake reports and claims.

3. Need for separate law on lynching

The crime is of the public in nature makes it an impactful crime, to make society under control and welfare state it is crucial to teach the entire community by bringing separate laws under paradigm. Our communities are based on religion and caste. There is no doubt that article 14 and article 15 gets violated. The constitution needs laws to support those principles which are enriched in article 14, 15, and 21.

Once law comes into existence, lynching will be demonstrated as a constitutional crime. The centre has a responsibility to draft explicit laws on mob-lynching, and states need to adhere to it as per its situations because every region is different and has its own requirements. The laws once made should responsibly be a public message that lynching is a crime. If laws were not made, there would be a crime at both the hands.

Once when a person gets lynched and on the other hand, by those who fail to control it (state). laws can stop mob-lynching from becoming new normal. The central government should learn a lesson from growing trends before the situation gets out of hand. Before the draft, there is also a need for understanding the causes of crime. Without taken into account following it would hardly do anything on being documented. New laws can also ensure dealing with such cases on a fast-tracked basis and monitored by high courts and supreme courts.

4. Investigation and identification

As per dainik bhaskar (29th July 2018) investigations in 12 states, only two persons have been convicted in crimes relating to mob lynching.

In march 2018, the union home ministry admitted that between 2014 to 3rd march 2018, 45 persons were killed in 40 cases of mob lynching across nine states. However, the ministry clarified that its data did not have details on the motive of these incidents, whether they were due to cow vigilantism, communal or caste hatred, or rumours of child-lifting, etc. Similarly, the location of the attack, identity of the attacker, and victim, has also not been revealed by the ministry, which looks after the internal security.

The process for identifying the culprits should be improved as it is evident that the perpetrators are not identified, and they get a chance to escape their wrongdoing. Not only the identification of culprits but also the identification of the evidence on the crime spot should be made with utmost

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care and responsibility. For the identification purpose, a special team should be set up and be tasked with creating an extraordinary force which will identify people repeatedly taking part in incidents of lynching. They should immediately gather information and coordinate with the investigation department to prevent these incidents.

There is a need to form a team to investigate the case in order to know and understand the facts which would help in pursuing the case further. It also gives an opportunity to identify any political conspiracy. A special investigation team must be set up, which investigates only the cases of mob lynching and does not have the burden of any other issues. It should be ensured that these departments are free from any political pressure.

Hence, while enacting new legislation, it should be ensured that investigations are not stalled, there is no ignorance of procedures, and no one plays a complicit role in the killings and cover-up of crimes.

5. Recommendations for a separate department for mob lynching

Two high-level committees are planned by the central government to recommend ways in which and legal framework to take care of incidents of mob violence and murder effectively, the house ministry aforementioned these days.

The move came every week when the supreme court asked the central government to enact a law to take care of incidents of murder and take action on mob violence.

The government respects the recent directions of the supreme court on the difficulty of mob violence associate degree has issued an informatory to state governments urging them to require effective measures to stop incidents of mob violence and murder, and take rigorous action as per the law, a home ministry proponent aforementioned. To formulate applicable measures to deal with things, the govt. Has started a high-level committee chaired by union secretary of state for the home department gauba to deliberate upon the matter and create recommendations.the secretaries of the justice, legal affairs, legislative, and social justice and authorisation departments area unit members of the committee.

The committee can submit its recommendations to the govt, among four weeks. The government has additionally set to represent a bunch of ministers (gom) headed by home minister singh to contemplate the recommendations of the high-level committee of the secretaries, the proponent aforementioned. External affairs minister sushma swaraj, road transport minister nitin gadkari, law minister ravi shankar prasad and social justice and authorisation minister thawar chand gehlot area unit members of the gom. The gom can submit its recommendations to prime minister narendra modi.

Referring to the incidents of the mob violence and murder, the ministry proponent aforementioned the centre is bothered over incidents of violence by mobs in some elements of the country. The government has already condemned such incidents and created its stand clear in parliament that it is committed to uphold the rule of law and adopt effective measures to curb such incidents.
In March this year, the union home ministry admitted that between 2014 to March 2018, forty-five persons were killed in forty cases of mob murder across 9 states. However, the ministry processed that its knowledge did not have details on the motive of those incidents, whether or not they were because of cow law enforcement, communal or caste hate, or rumours of child-lifting, etc. Similarly, the location of the attack, identity of the assailter, and victim, has additionally not been discovered by the ministry, that takes care of the inner security.

On eighteen July 2018, union minister of state for home, hansraj ahir, told the rajya sabha, “the national crime records bureau (ncrb) does not maintain specific knowledge with relevancy murder incidents within the country.” Ahir aforementioned in response to a question whether or not the union home ministry was keeping a record of incidents of murder by mobs that area unit increasing across many elements of the country. In fact, as per the ncrb, mob murder phrase is not even lawfully outlined. Additionally missing from the narrative is any credible knowledge on the character of violence, alleged reasons, and affiliation to the organisation.

On twenty-three July 2018, the union government indicated its initial concrete instance of concern towards mob murder incidents, within the wake of the supreme court directive to curb mob murder violence. It brought a high-level committee below the union secretary of state for the home department to deliberate about the difficulty and create recommendations among four weeks.

The idea of a separate department is for a freelance inquiry to be free from any kind of political pressure and to form the investigation as clean as doable. If not, a separate department area unit is created then the cases ought to be handled by cbi or nia, and it should not lean to state police.

Supreme court guidelines for prevention of mob violence and lynching against any caste or community. (writ petition (civil) no. 754 of 2016))

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 every district. Such Nodal Officer shall be aided by one in every of the DSP rank officers within the district for taking measures to stop incidents of mob violence and murder. They shall represent a special task force thus on procure intelligence reports concerning the area unit seemingly to commit such crimes or who area unit concerned in spreading hate speeches, provocative statements and pretend news.

(ii) The government shall straight off determine Districts, Sub-Divisions and/or villages wherever instances of murder and mob violence are rumoured within the recent past, say, within the last five years. The method of identification ought to be done among an amount of 3 weeks from the date of this judgment; intrinsically fundamental quantity is sufficient to urge the task wiped out today’s quick world of knowledge assortment.

(iii) The Secretary, Home Department of the involved States shall issue directives/advisories to the Nodal Officers of the involved districts for making certain that the Officer In-charge of the Police Stations of the known area units are further cautious if any instance of mob violence among their jurisdiction involves their notice.
(iv) The Nodal Officer, thus selected, shall hold regular conferences (at least once a month) with the native intelligence units within the district at the side of all police headquarters Officers of the district thus on determine the existence of the tendencies of law enforcement, mob violence or murder within the district and take steps to ban instances of dissemination of offensive material through entirely different social media platforms or the other means that for inciting such tendencies. The Nodal Officer shall additionally create efforts to eradicate hostile setting against any community or caste that is targeted in such incidents.

B. Remedial Measures.

(i) Despite the preventive measures taken by the State Police, if it involves the notice of the native police that an occurrence of murder or mob violence has taken place, the territorial police office shall straight off cause to lodge associate degree FIR, with none undue delay, below the relevant provisions of IPC and/or alternative provisions of law.

(ii) It shall be the duty of the police headquarters Officer, in whose police office such FIR is registered, to straight off intimate the Nodal Officer within the district UN agency shall, in turn, make sure that there is no additional harassment of the members of the family of the victim(s).

(iii) Investigation in such offences shall be in person monitored by the Nodal Officer UN agency shall be duty sure to make sure that the investigation is allotted effectively.

6. On an individual level

Most of the lynching incidents because a few crowd or group thinks, it’s relevant to punish an individual or another group of people as they please. The citizens can help on an individual basis by being a little observant and attentive to the information that is disseminated on social media and other platforms. There’s an option on whatsapp for a forwarded message that is reporting the message. The same can be done on instagram and other social networking sites. The citizens shall not believe in any kind of fake news or invalidated messages or news without checking the original source which needs to be reliable.

Conclusion

“the law, the mightiest sovereign in a civilised society.”

Mob lynching is gaining ground in a burgeoning democracy like India, which is home to diverse culture and traditions. This primarily shows that people have lost faith over the legislature, judiciary and the administration that they are willing to take law in their hands. The law is the mightiest, and no one has the right to punish anyone irrespective of any issues. By making this hate crime communal and playing the blame game will not result in any solutions but will result in emotional pain to the victims of the mob hate. The need of the hour is bringing a robust law on mob lynching, which will curb menace from society. Also, we need to work on the loopholes present in the system, right from filing an FIR to the investigation of the crime without delay and forgery and providing speedy justice to the victims, by keeping a check on the social media platforms where certain groups spread hate and manipulate the views of people. Placing the onus on social media posts and messages which are forwarded in the messaging site will only help
unless we spread digital literacy among the citizens. To tackle fake news, the government should take the help of mass media like newspapers, radio and television. The state government should draft an anti-lynching law in accordance with the supreme court guidelines. On an individual basis, we should condemn such an act and should report any fake news that we come across by spreading awareness among our acquaintances.