

Lynching: Taking the Law in Hands is Now to be Handled by Law

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ABSTRACT:

“It may be true that the law cannot make a man love me, but it can stop him from lynching me, and I think that's pretty important.”

— Martin Luther King Jr.

The Supreme Court's recent guidance to the Parliament to draft a new law to punish offenders participating in lynching created a huge pandemonium in the Country. Many political groups showed resentment against this long-desired judgment. Various debates were reported to have occurred in the Rajya Sabha on the question, whether there is even a need to enact a separate law against lynching or are the existing laws enough to deal with the crime. But before beginning a Pandora of discussions on it, it is important to first analyse the concept of lynching, its evolution and the reasons for its “supposed sanction” both in the earlier and the current times. This article mainly discusses the recent judgment of the Supreme Court of India (*Tehseen S. Poonawala vs. Union of India*) directing the Parliament to draft a new law to stop lynching. The paper begins by analysing the concept and tracing the origin of lynching. The paper further examines the statistical data of the past mob killings in India and concludes by analysing the above-mentioned Judgement of the Supreme Court regarding lynching.

Lynching is the practice whereby a mob—usually several dozen or several hundred persons—takes the law into its own hands in order to injure and kill a person accused of some wrongdoing. The alleged offense can range from a serious crime like theft or murder to a mere violation of local customs and sensibilities.¹ People in defiance of the violation of their sentiments serves the role of a prosecutor, judge, or an executioner in a way of taking the law in hands thereby making the guilt and the innocence of the victim secondary.

Lynch law originated during the American Revolution with Col. Charles Lynch and his Virginia associates, who responded to unsettled times by making their own rules for confronting Tories and criminal elements.² The concept of lynching is not new. It can be traced back to the practice of slavery in which African descents were treated as property of their master. During slavery there were numerous public punishments of slaves, none of which were preceded by trials or any other semblance of civil or judicial processes. Justice depended solely upon the slaveholder. These African descents had no dignity and were brutally treated. They were lynched to death both by their master and the people who derived their authority from the master. Executions, whippings, brandings, and other forms of severe punishment, including sometimes

¹Eric Foner and John A. Garraty, *The Reader's Companion to American History*. Ed. Copyright © 1991 by Houghton Mifflin Co.

²Robert L. Zangrando, *About Lynching Gwendolyn Bennett's Life and Career*, UNIVERSITY OF ILLINOIS, http://www.english.illinois.edu/maps/poets/g_l/lynching/lynching.htm.

the public separation of families, were meted out by authority or at the command of the master or his representative.³ Lynching was something worse than the murders committed against the slaves.

After the long continuation of the authoritative rule of the slave master, the position of the master was replaced by the white community, where a vaguer standard of justice prevailed. Hence lynching derived its authority from the sanctions of violence made by the particular white community where the participants could legitimately exercise violence while committing the ritual murder. Lynching rose after the Civil War and there was no significant decrease even in the earlier twentieth century. In the last sixteen years of the nineteenth century there had been more than 2,500 lynchings, the great majority of which were of Negroes. In the very first year of the new century more than 100 Negroes were lynched, and before the outbreak of World War I the number for the century had soared to more than 1,100.⁴ However, a fall in the number of lynchings were observed during the First World War, where President Wilson even issued a statement against lynching and mob violence. But this halt lasted only for a few years. The issue of increased lynching inspired many Representatives of the House to draft the anti-lynching bill.

The Dyer Anti-Lynching Bill was first introduced in 1918 by Representative Leonidas C. Dyer, a Republican from St. Louis, Missouri, in the United States House of Representatives.⁵ With the high rate of lynching in the South and the failure of local and state authorities to prosecute them, Dyer took the step to curb this typhoon like monster. The bill classified lynching as a federal felony, which would have allowed the United States to prosecute cases.⁶ The bill aimed to prosecute the people participating in mob killing or lynching by charging them with a 5-year term prison or a fine of 5000 USD. Also, the victim's heirs could recover up to \$10,000 from the county where the crime occurred. The bill was passed by the House but was opposed by Democratic senators from southern states and failed to pass the Senate. In 2005, the Senate passed a rare resolution apologising for the repeated failure to approve anti-lynching legislation.⁷ Two more laws, **the anti-lynching law of 1928 in Virginia and the Nigerians anti-lynching Bill, 2009 were subsequently passed to curb the instances of lynching and mob killing.**

In India, lynching has a dark background. Mob killings were highly prevalent in the pre-independence era where Indians were usually the victims and continued even after the independence. More than 630 people between 1982 and 1984 alone - were murdered by mobs during the three-decade-long Communist rule in West Bengal.⁸ However, India has seen a flood of lynching incidents from 2010 to 2018. 2017 was the

³ John F. Callahan, *The Oxford Companion to African American Literature*, OXFORD UNIVERSITY PRESS

⁴ John Hope Franklin, *From Slavery to Freedom: A History of Negro Americans*, 1967.

⁵ Journal of the House of Representatives of the United States, Volume 65, Issue 2. Washington DC: Government Printing Office. 1918. p. 297.

⁶ Victor W. Rotnem, *The Federal Civil Right "Not to Be Lynched"*, 28 Wash. U. L. Q. 057 (1943).

⁷ Black US senators introduce anti-lynching bill, BBC NEWS (2018), <https://www.bbc.com/news/world-us-canada-44668459>.

⁸ Soutik Biswas, *Is India descending into mob rule*, BBC NEWS (2017), <https://www.bbc.com/news/world-asia-india-40402021> (Jul 25, 2018).

worst year for such lynching since 2010. In the first six months of 2017, 18 such cases were reported which was almost 75% of the 2016 figure. The attacks include mob lynching, attacks by vigilantes, murder and attempt to murder, harassment, assault and gang-rape. In two attacks, the victims/survivors were chained, stripped and beaten, while in two others, the victims were hanged. 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, Haryana, Karnataka, Gujarat, Delhi, Rajasthan and Madhya Pradesh reporting the highest number of cases.⁹

It has been eloquently pointed out that this recent spate of mob lynching indicates state indifference and a majoritarian denial of reality, that it is the deliberate persecution of minorities based on hate, an anti-Muslim feeling buoyed by the current *Rashtriya Swayamsevak Sangh-Bharatiya Janata Party* dispensation, and that a lynching is a majority’s way of telling a minority population that the law cannot protect it. This rings out loud in the aftermath of legislations passed on cattle trade and the now infamous rise of cow vigilantism in India.¹⁰

However, it’s not apt to say that only Muslims end up being the victims of lynching. There are many instances in which Dalits are often beaten to death by mobs. Thus, the scope of lynching does not remain confined only till Cow Vigilantism or Muslim homicides, there are three other prominent issues which merit an independent investigation and are not reported much or given due consideration as the incident count pertaining to them is too large. These include, witch hunting, the long running caste atrocities and violence against Dalits and the mob killings done during communal riots.

However, even the rising number of lynching incidents in the country couldn’t encourage the Parliament to enact new laws against lynching. It is a fact of remorse that India lacks any law in particular which prohibits or punishes lynching per say. It is often argued and pointed out that the cases of lynching can be dealt with the already existing provisions of the Indian Penal Code, for example **Section 302-** Punishment for Murder¹¹, **Section 304-** Punishment for Culpable Homicide not amounting to murder¹², **Section 307-**

⁹Delna Abraham & Ojaswi Rao, 84% Dead in Cow-Related Violence Since 2010 Are Muslim; 97% Attacks After 2014 IndiaSpend-Journalism India |Data Journalism India|Investigative Journalism-IndiaSpend (2017), <http://www.indiaspend.com/cover-story/86-dead-in-cow-related-violence-since-2010-are-muslim-97-attacks-after-2014-2014>.

¹⁰ NewsLaundry, SABKI DHULAI NEWSLAUNDRY, <https://www.newsLaundry.com/2017/07/04/mob-lynchings-in-india-a-look-at-data-and-the-story-behind-the-numbers>.

¹¹ **Section 302, Indian Penal Code, 1860-** Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

¹² **Section 304, Indian Penal Code, 1860-** Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Punishment for Attempt to Murder¹³, **Section 323-** Punishment for Voluntary causing hurt¹⁴ and **Section 325-** Punishment for voluntary causing grievous hurt.¹⁵ The issue which comes forward despite these provisions is that they only punish the offenders involved in the homicide or violence, only if they by any chance get caught and charged by the law enforcement authorities. Since, lynching is usually done by a mob in rage, the authorities fail to prosecute them despite the existence of **Section 34-** Acts done by several persons in furtherance of common intention¹⁶, **Section 141-** Unlawful Assembly¹⁷ and **Section 149-** Offence committed in prosecution of common object¹⁸. Hence people assume a supposed sanction and a backing from the Government to indulge in the acts of lynching. There is no such law which legally prohibits the specific act of lynching in the first place. Hence these laws are not sufficient in themselves to bring mob killings to an end and a separate law to prohibit it is the need of the hour.

Nearly a year ago, the draft of a proposed law MASUKA-Manav Suraksha Kanon-came into light when several lawyers, civil rights activists, and politicians came together to demand a unified and a separate law which could bring justice to the lynching victims and also could help in preventing such crimes in future. But even after a year since MASUKA came into existence, the draft is still struggling through its way to becoming a law, and worse, no one is now talking or campaigning about it anymore¹⁹. However, worried with the passing of the MASUKA into oblivion, the same party campaigning for MASUKA filed a writ petition in the Supreme Court which was heard and decided by the bench comprising of Chief Justice Dipak Misra, Justice A.M Khanwilkar and Justice D.Y. Chandrachud.

The landmark judgment of the Supreme Court in *Tehseen S. Poonawala vs. Union of India* is a big attempt towards the reformation and protection of human rights. The Court condemned the mob lynching incidents across the country and said that the onus lies on both the Centre and the State Governments to check these incidents and take preventive, punitive and remedial measures against lynching.

¹³**Section 307, Indian Penal Code, 1860-** Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

¹⁴**Section 323, Indian Penal Code, 1860-** Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both

¹⁵**Section 325, Indian Penal Code, 1860-**Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹⁶**Section 34, Indian Penal Code, 1860-**When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

¹⁷**Section 141, Indian Penal Code, 1860-** Defines unlawful assembly.

¹⁸**Section 149, Indian Penal Code, 1860-** If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

¹⁹ Siddhant Mohan, *How MASUKA, a draft law against lynching, went from being popular to being forgotten*, TWOCIRCLES.NET, <http://twocircles.net/2018jul17/424502.html>.

The bench after pronouncing this judgment did justice to the plethora of petitions already filed against this horrendous act. The court held that, *“When any core group with some kind of idea takes the law into its own hands, it ushers in anarchy, chaos, disorder and, eventually, there is an emergence of a violent society.”*

Directing the Centre and states to take strict measures to stop lynching incidents, it said, *“Crime knows no religion and neither the perpetrator nor the victim can be viewed through the lens of race, caste, class or religion.”* The Court further added that, *“State has the primary responsibility to foster a secular, pluralistic and multi-cultural social order so as to allow free play of ideas and beliefs and co-existence of mutually contradictory perspectives. Hate crimes must be nipped in the bud, before they result in a reign of terror.”*²⁰

The Court while protecting the rights of the citizens held that, *“the rights of the citizens cannot be destroyed in an unlawful manner. As the investigating agency has to show fidelity to the statutory safeguards, similarly, every citizen is required to express loyalty to law and the legal procedure.”* No one, and we repeat no one, is entitled to take the law into his own hands and annihilate anything that the majesty of law protects. When the vigilantes involve themselves in lynching or any kind of brutality, they, in fact, put the requisite accountability of a citizen to law on the ventilator.²¹

Condemning the acts of vigilantes of taking the law in hands, the Court further held that, *“Such core groups cannot be allowed to act as they please. They cannot be permitted to indulge in freezing the peace of life on the basis of their contrived notions. They are no one to punish a person by ascribing any justification. The stand and stance put forth in the interlocutory applications filed by the impleaded parties intend to convey certain contraventions of the provisions of statutory law, but the prescription of punishment does not empower any one to authorize himself to behave as the protector of law and impose punishment as per his choice and fancy. That is the role and duty of the law enforcing agencies known to law. No one else can be permitted to expropriate that role. It has to be clearly understood that self-styled vigilantes have no role in that sphere. Their only right is to inform the crime, if any, to the law enforcing agency.”*²²

The Court also upheld the powers of the law enforcement agencies and added that, *“It is the duty of the law enforcement agencies and the prosecutors to bring the accused persons before the law adjudicating authorities who, with their innate training and sense of justice, peruse the materials brought on record, follow the provisions of law and pass the judgment.”*²³

By ruling out the acts of mobocracy, the Court gave utmost power to the majesty of law and said that what law provides cannot be taken by anything except the fundamental concept of law. The court thus defined the goal which law seeks to achieve in a democratic society by saying that it is the duty of the lawmakers to

²⁰ Tehseen S. Poonawala vs. Union of India, W.P. (C) No. 754/2016, para 23

²¹ Tehseen S. Poonawala vs. Union of India, W.P. (C) No. 754/2016, para 34

²² Tehseen S. Poonawala vs. Union of India, W.P. (C) No. 754/2016, para 34

²³ Tehseen S. Poonawala vs. Union of India, W.P. (C) No. 754/2016, para 34

prevent the crimes and make the people aware of the same. No one is entitled to shake the foundation of law and if anyone tries to transgress the authority of law jostle in the streets that eventually leads to an atmosphere which witness bloodshed and tears. The Court finally concluded by indicating the need for implementation of law at every stage and directed Centre and the State for the prescription of necessary guidelines which include not only the preventive measures but remedial and punitive measures as well.

It is expected that this judgement of the Apex Court directing the Parliament to enact laws prohibiting lynching will bring give a sense of security and equality to the minorities who are always prone to become the victims of mob killings. The Parliament should consider the urgency of this law and take no time to enact a law which can contribute a lot towards saving the dying humanity.



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