

Mob Lynching: Tailoring Legislative Enactments or Fall Back on Existing Criminal Legislations?

Rajendra Sakarwar
West Bengal National University of Juridical Sciences
Kolkata, West Bengal, India

ABSTRACT:

This paper attempts to unravel the practicality of a scenario where the offences of Mob lynching will be governed by a special anti-lynching law. In the contemporary times, there have been a lot of incidents where the basic principles of law have been violated as a particular sect of society took law in their own hand to punish what according to them is wrong. This is an alarming situation. The increasing number of mob lynching offences is directly a threat to the peace and communal harmony of the nation. This paper deals with the enactment of a law by the parliament which will be in lines with the Supreme Court ('the SC') guidelines on mob lynching. The court wants to imbibe fear in the mind of would be lynchers and this essay explains how a special law will be very effective in such a scenario. This essay proves, though IPC covers all the theoretical aspects of mob lynching, still why we need a special law. This essay also deals with the incompetency of the administration and the police in dealing with such offences and explains how a new law might be a good start to end this horrendous culture plaguing the country.

I. INTRODUCTION

“Lynching is an act of unspeakable horror. There is an absolute asymmetry of power. It is a mob versus an individual, who is often defenseless and begging for life.”¹ Data from the ‘Observer research foundation’ suggests that “mob lynching was trending downwards during the latter days of the UPA government [...] the data also suggests that mob violence is trending upwards since the BJP government came in power.”² Religious minorities, particularly Muslims, are routinely targeted.³ As per the Constitutional scheme, “State Governments are empowered to enact and enforce laws to curb crime in their jurisdiction.”⁴ The underlying question here is does such data really makes an “anti-mob lynching law” need of the hour. This essay deals with this question by analyzing the current situation. Also, keeping in mind, what can be achieved by enactment of such a law?

II. PROBLEM: INCOMPETENT LAW OR FAILED ENFORCEMENT?

It has been stated in *Krishnamoorthy v. Sivakumar*⁵ and others, “the law, the mightiest sovereign in a civilized society”. “The majesty of law cannot be sullied because an individual or a group generate the attitude that they have been empowered by the law to take its enforcement into their own hands and gradually become law unto

¹TRT WORLD, *Making Sense of Lynchings in India*, July 27, 2018 <https://www.trtworld.com/opinion/essay-making-sense-of-the-lynchings-in-india-10261>

²Observer Research Foundation, *Has India become Lynchistan?* <https://www.orfonline.org/expert-speak/has-india-become-lynchistan/>

³Meenakshi Ganguly, *Engaging in Whataboutery instead of Protecting Rights*, 24 Brown J. World Aff. 39, 52 (2017)

⁴Manupatra, Government set up high level committee chaired by Union Home Secretary to check mob lynching, GoM headed by Union Home Minister to consider its recommendations : MANU/PIBU/1100/2018

⁵(2015) 3 SCC 467

themselves and punish the violator.”⁶ The SC in the case of *Tehseen S. Poonawalla v. UOI* passed an order to curb such incidents of mob violence. The SC said that the parliament should work on the enactment of a new law which will only cater the offences of mob violence in the country.⁷ There is no settled reason for such instances of mob violence, be it the child lifting incident in MP, the Alwar incident where the mob killed a man on suspicion of cow smuggling or “the spurt in the incidents of cow vigilantism in particular the mob lynching of Mohd. Akhlaq [...] for allegedly consuming beef.”⁸ Even after there being laws against mob lynching there is no stopping to these offences. So is the enactment of the law a problem? In the Akhlaq case the police sent the meat for forensic testing, although possession of beef is not an offense in Dadri.⁹ This shows the way such incidents are treated in the country and it’s an alarming situation. “Politics, poor governance, inability to meet rising expectations and absence of standard conflict resolution mechanism explains much of these instances of group violence. The role of police and its leadership in handling and diffusing violent situations remains largely unexamined and there are no major consequences for non-performance on part of the police.”¹⁰

III. WHAT ARE THE CURRENT LAWS REGARDING MOB LYNCHING? IS A SPECIAL LAW REALLY A NECESSITY?

In the Indian Penal Code (‘the IPC) there are various laws which cover different aspects of the offence of mob lynching. §300 of the IPC states that whoever causes death by doing an act with the intention of causing death or with the intention to cause such bodily injury which results in death commits murder.¹¹ Similarly other offences like §304 Culpable Homicide, §307 Attempted Murder, §323 or §325 Hurt or grievous hurt, §141,149 Unlawful Assembly, §147,148 Rioting and §120B Criminal Conspiracy. These laws can be used to enforce liability on the entire mob when read with §34 of the IPC, which states that “where two or more persons, with a common intention to commit a criminal act, do any acts in furtherance of such common intention, each of them is liable for the criminal act done as if it were done by him alone.”¹²

It’s not tough to ascertain that there is no scarcity of laws to cover mob lynching, so adding a new law to the IPC which will only cover mob lynching won’t change much. Though, theoretically there won’t be any change

⁶Tehseen S. Poonawalla v. Union of India, WRIT PETITION (CIVIL) NO. 754 OF 2016.

⁷THE TIMES OF INDIA, *Mob lynching , vigilantism are crimes no matter what the motive: Supreme Court*, July 27, 2018 <https://timesofindia.indiatimes.com/india/mob-lynching-vigilantism-are-crimes-no-matter-what-the-motive-supreme-court/articleshow/64840635.cms>

⁸G. S. Bajpai; Ankit Kaushik, *Thwarting Radicalisation in India: Lacunae in Policy Initiatives*, 4 J. Nat’l L. U. Delhi 1, 34 (2017)

⁹Faizan Mustafa; Jagteshwar Singh Sohi, *Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy*, 2017 BYU L. Rev. 915, 956 (2017)

¹⁰Arvind Verma, *Economic and Political Weekly, Role of police in containing mob violence*, no. 36 (2012): 65-73. <http://www.jstor.org/stable/41720113>. (Last Visited – July 28, 2018)

¹¹Law Commission of India, *Indian Penal Code*, Report No. 42, (June, 1971), <http://lawcommissionofindia.nic.in/1-50/report42.pdf> (Last Visited - July 28, 2018)

¹²Id.

but in the contemporary scenario there will be a major practical change by the enactment of a special anti-lynching law. A new special law will be in accordance with the SC guidelines. Also, as there is discontent in certain sect of the society. “According to Apporv Anand a Human right activist, the harsh truth is that India’s legislators and parliamentarians have deserted the country’s Muslim.”¹³ Hence, to maintain peace it might be a good thing to have a special law. Also, the SC condemned the act and said that “these offences need to be curbed with an iron hand [...] no citizen can take law into their hands or become a law unto themselves”¹⁴

One thing that can be easily deciphered from the guidelines laid down by the SC is that the main idea behind a special law is to instill a feeling of fear in the minds of would be lynchers. A new special law will certainly help the country deal with these inhumane acts in a better manner, so a new law won’t bring a theoretical change but in practicality it will be a good thing to do. Does that mean a new law is the solution to this trending culture of mob lynching in our country?

IV. IS A SPECIAL LAW ONLY A QUICK FIX OR IS THERE MORE TO THE DEVELOPING CULTURE OF MOB LYNCHING IN INDIA.

Even if we consider that a new anti-mob lynching law is enacted and for some time there is a fear of such law in the mind of would be lynchers. This does tackle the whole trending culture of mob lynching in India. As mob lynching is certainly not limited to one specific country, we should see how the other nations have tackled this issue. America has been tackling this issue from a very long time and they have managed to curb this issue by analyzing the root cause of it. Dora Apel in her book wrote “Lynching was certainly not the affair of the victims alone – It was a struggle with the concept of racial and national identity that affected everyone in the country.”¹⁵ This shows what really the root cause of lynching in America was and it also helps people understand this complex issue.

Having a new law is certainly a way forward but it should be kept in mind that because of this we shouldn’t be distracted from the root cause of this culture which is plaguing the country. It is certainly not a law which stopped this culture of lynching in America, the credit goes to the civil rights movement which helped America tackle this issue. “The civil rights movement was a force capable of transforming race relations in America. Also, it was a groundbreaking movement that took root and became a major force in American society.”¹⁶ It’s

¹³Flavia Agnes, *Triple Talaq - Gender Concerns and Minority Safeguards within a Communalised Polity: Can Conditional Nikahnama Offer a Solution*, 10 NUJS Law. Rev. 427, 450 (2017)

¹⁴THE TIMES OF INDIA, *Mob lynching: 'Draft new legislation to stop people taking law into own hand' says SC to parliament*, <https://timesofindia.indiatimes.com/india/mob-lynching-draft-new-legislation-to-stop-people-taking-law-into-own-hands-says-sc-to-parliament/articleshow/65019261.cms>

¹⁵DORA APEL, *IMAGERY OF LYNCHING: BLACK MEN, WHITE WOMEN, AND THE MOB* (2004)

¹⁶Aldon D. Morris, *The Origins of the Civil Rights Movement*, (1984)

crystal clear that this culture won't end by the enactment of a new law and taking the precedent of American civil rights movement it's easy to say that a new law didn't bring end to lynching in America.

Hence, to stop this inhumane culture we need to analyse its root cause. Even though having a new anti-lynching law is not a necessity but it will surely help the country to deal with this issue in a better manner.

V. WHAT TO EXPECT FROM A SPECIAL LAW?

The SC in their guidelines mentioned that “the police in such cases should register FIR under §153A of IPC, the state governments shall prepare a compensation scheme in light of §357 of CrPC, a provision of special fast track court, courts should give maximum punishment in such cases and the state is advised to take disciplinary action against officials in case of non- performance.”¹⁷ It's assured that these guidelines will be taken into consideration while making a special law. Also, mob violence against tribal communities should be taken into consideration as “mob-lynching, arson and police atrocities against tribal people occurred in many states causing an alarming situation.”¹⁸ Also, the role of police is crucial in such cases and it needs to be scrutinized. “In the Alwar case reports claimed that there was a three-and-a-half-hour delay on the part of the police in taking the victim, Rakbar Khan, to the hospital.”¹⁹ Hence, this law can prove to be of immense help as it ensures a check on police in cases of mob-lynching. Also, there is a need to consider mob lynching as a hate crime to ensure strict punishments as often religion and community of the victim is the motivation for the mob.

VI. CONCLUSION

Through the course of this article we have analyzed the possibilities and the need of having an anti-lynching law. It can be ascertained that there is no specific downside of having an anti-lynching law if it's not taken as a quick fix solution for the contemporary scenario. If the guidelines of the SC are enacted in the prospected law then it can prove to be very effective considering the previous instances of mob lynching. Hence, such a law can be a great start to end this culture which is plaguing the country.

¹⁷ FIRSTPOST, *SC tells Parliament to draft new law on mob lynching, condemns 'mobocracy': Highlights from judgment*, <https://www.firstpost.com/india/supreme-court-tells-parliament-to-draft-new-law-on-mob-lynching-condemns-mobocracy-highlights-from-judgment-4758471.html>

¹⁸ US Department of State, *Annual Human Rights Report*, 2165, https://heinonline.org/HOL/Page?men_tab=srchresults&handle=hein.intyb/huhelsnk2802&id=421&size=2&collection=cow&terms=Mob%20lynching&termtype=phrase&set_as_cursor=0

¹⁹ *Alwar lynching case: Police took cows to shelter, stopped for tea before taking victim to hospital, say reports.*, FIRSTPOST, <https://www.firstpost.com/india/alwar-lynching-case-police-took-cows-to-shelter-stopped-for-tea-before-taking-victim-to-hospital-say-reports-4795231.html>