

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 3

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Combating Mob Lynching: Need of the Hour

SANKET SOLANKI¹ AND BHAVYA GUPTA²

ABSTRACT

Mob lynching is such a horrible act that cannot be justified by either means. A country which has an efficient and effective legal system, why people take law and order in their hand is a question which needs to be answered. Recent times in India, there have been incidents of mob lynching. And it has been seen that in the cases of Mob lynching, people consider themselves Judges, Jury and executive, and punish accused on the basis of suspicion. Authors start this paper by defining Mob lynching And by what existing laws in India, accused of Mob Lynching is punished. Later in the paper, the authors present what the Supreme Court has said about offence of mob lynching and guidelines given by it. And how other counties have special legislation for preventing and combating mob lynching. And later, authors try to answer why India need special Legislation to prevent and combating mob lynching.

Keywords: Mob Lynching, rule of law, Supreme Court's guidelines.

I. INTRODUCTION

Abraham Lincoln said 'Democracy is of the people, by the people and for the people.' Preamble to Indian Constitution reflects the idea of Lincoln. Since last decades, it has been seen that people take law and order in their hand, on the basis of suspicion, punish accused and justify by calling it justice. This action is called Mob lynching. Lynching is a predetermined and deliberate killing by a group. It can be explained as extrajudicial killing or public execution by a mob in order to fulfill their illegal motive. It is often considered as act of terrorism and it is a violence in which a mob without trial punishes a person. Mob is an English term which denotes uncontrolled gathering of crowd and the term lynch is a latin word denoting killing without proper adjudication. So mob lynching is killing without trial by uncontrolled public gathering. This is against to the established legal principles and norms. It can also be considered as barbaric violence arising due to some form of abatement, instigation or intentional aids. Mob lynching is a form of hate crime which results into terror as it is a product of barbaric ideology, various intolerances and differences. This is against

¹Author is a student at Dharmashastra National Law University, Jabalpur, India.

² Author is a student at Dharmashastra National Law University, Jabalpur, India.

the very basic idea of natural law, democratic principles and accommodating principles of pluralism.

II. EXISTING LAWS IN INDIA

Article 21 of the Indian Constitution states that every person shall have right to life and personal liberty and it cannot be taken away by state or anyone except as per the procedure established by law.³ Our country is governed by rule of law. No one is above the law. And no person can be punished except authority by law. And if a person takes law and order in his hands, he is punished by legal authorities. It is true that Indian Penal Code and any other legislation do not have explicitly any provision for offence of Mob lynching. However, for inflicting punishment upon the accused, Indian Penal Code 1860, and Code of Criminal Procedure 1973 provide various provision and some of them which deal with mob lynching are as follows

Section 141 of IPC which defines the unlawful assembly, section 147 of IPC punishment for Rioting, Section 148 Rioting with arms of deadly weapon, Section 149 every member of unlawful assembly is guilty of offence committed in prosecution of common object, Section 302 Punishment for murder, Section 307 Attempt to murder, Section 323 Punishment for voluntary causing hurt, Section 325 Punishment for voluntary grievous hurt, Section 326 voluntary causing grievous hurt by dangerous weapons. And section 223 of Code of criminal Procedure states about for what offence persons may be charged and tried together.

III. JUDICIAL INSIGHT ON MOB LYNCHING

The cases of mob lynching in India are increasing. And this issue is also addressed to the Supreme Court of India in various cases. The Hon'ble Supreme Court of India has given stringent remedial, preventive and punitive guidelines to combat the mob lynching in the significant decision of *Tahseen S. Poonawala v. Union of India*⁴ and described lynching as "horrendous act of mobocracy". There should be nodal officers and special task force dealing with this issue in every district. And nodal officer shall constitute a task force in every district to prevent such incidents. This team of Nodal officer, Task force and local nits will meet regularly (atleast once in a month). And it shall be duty of State government to identify such district where mob lynching frequently happened. Police can exercise their power under section 129 CrPC to disperse the mob which has a tendency to cause or initiate violence. If there is any incident of mob lynching FIR should be registered immediately without any

³Article 21, Constitution of India 1950.

⁴*Tahseen S. Poonawala v. Union of India* (2018) 9 SCC 501.

delay and investigation should be specially done by nodal officer. Supreme Court has also urged the States to carry out these guidelines so as to preserve the pluralistic social fabric efficiently and effectively. State government were also directed to enact a lynching compensation scheme under which the net kin of the deceased will be given interim relief.

In *Kodungallur Film Society and another vs. Union of India and others*⁵ the Hon'ble Supreme court dealt mob lynching along with damaged cost to property by mob violence. In this case Supreme court reiterated the guidelines given by three judges bench in *Tahseen S. Poonawala case* (supra). Court has also directed the Parliament to enact a special legislation with adequate punishment for offence of Mob Lynching.

IV. LAW IN OTHER STATES IN INDIA

Entry 1 of list III that is concurent list contains crinal law including Indian penal code.... It means that Centre as well as state legislature can make laws regarding criminal laws amd criminal law procedure. But before Supreme Court's guidelines there were no states which had laws for Mob lynching. After *Tahseen Poonawala case* for preventing and combating mob lynching, Manipur was the first state to bring an ordinance. This ordinance defines mob lynching as an act or series of acts of violence or aiding, abetting, spontaneously or planned by mob on the ground of religion, place, birth, culture, etc.⁶ This ordinance was based in the guidelines given by Supreme Court in the case of *Tahseen S. Poonawala v. Union of India*.⁷ Rajasthan, and West Bengal also passed bill by respective legislatures but Governor reserved bills for President Consideration.

V. ANTI-MOB LYNCHING LAWS IN SOUTH AFRICA AND NIGERIA

South Africa is notorious country for racial violence. In 2018, Republic of South Africa passed Preventing and Combating Hate Crimes and Hate Speech bill. This legislation defines hate crime as *A hate crime is an offence recognized under any law, the commission of which by a person is motivated by that person's prejudice or intolerance towards the victim of the crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member or the victim's association with, or support for, a group of persons who share the said characteristics: such as age, race, colors, birth, culture, HIV status, ethnic or social origin.*⁸ The said act also impose duty upon South Africa Human Right Commission and commission for Gender Equality for creating

⁵ *Kodungallur Film Society and another vs. Union of India and others* (2018) 10 SCC 713.

⁶Section 2(d), Manipur Protection from Mob Violence Ordinance 2018.

⁷*Tahseen S. Poonawala v. Union of India* (2018) 9 SCC 501.

⁸Section 3 (1), Preventing and Combating of Hate Crime and Hate speech Bill 2018.

awareness for prohibition of hate crimes.⁹ Section 9(2) further casts' duty on the cabinet member to develop a programme, campaign for education people against the crime of hate crimes.

Republic of Nigeria, for curbing mob lynching, has passed Anti Jungle Justice Bill 2015. This bill defines lynching as assemblage of three or more person to deprive a person from his life without any lawful authority as sign of punishment.¹⁰ It declares lynching as criminal offence and provides punishment of imprisonment of twenty five years or more. A public officer who fails to prevent and combat mob lynching then he will be liable for offence of felony.

VI. NEED FOR SPECIFIC LEGISLATION

One of the objectives of Criminal law is to satisfy the ego of victims as well as society. Because offence not only affects the individual but also to the society. But it does not mean that society can punish accused with its own accord. Indian Penal Code, 1860 does not have explicit provisions relating to offence of mob lynching. However, it has certain provision which can cover the offence of mob punching. But the substantive and procedural law of criminal law do not provide any preventive measures for Mobocracy. The guidelines given by the Supreme Court explicitly mention that State agencies must appoint nodal officers and they will constitute a special task force to retrieve intelligence report so that they may prevent to such type of incidents.

There is a need to protect the family of victims from such incidents. Therefore there is need of functional machinery which will look upon such happenings and provide preventive measures. Victims of mob lynching suffer various injuries like physical, mental, monetary and others as well. Compensation for injuries should be provided to victims and they should send to such relief camps which provide them better environment.¹¹ These schemes are not covered in existing Indian legal system. Therefore addressing these concern, there is need of new legislation.

There should also be active responsiveness on the part of local administration as this is a very serious offence which create imbalance in the society. Civil societies and media houses should come forward to spread awareness regarding this subject matter. The approach should be very liberal and not target specific to make transformational changes in the behaviour of society. Each and every individual should be faithful to their moral and constitutional obligation so as to preserve the diverse social fabric.

⁹Section 9 (1), Preventing and Combating of Hate crime and Hate Speech Bill 2108.

¹⁰Section 1, Ante Jungle Justice Bill 2015.

¹¹ 7th Report of VII State Law Commission (Uttar Pradesh).

The biggest loophole in the system is that the Parliament is not implementing the guidelines well. The parliament has found no moral obligation to execute the guidelines. The parliament has only constituted a group of Minister who will look upon the purpose of enacting a specific legislation. We can also see the non-compliance of the guidelines through the recent incident happened in Palghar district, Maharashtra. Three person were killed by mob considering them to be kidnappers and organ harvesters. The mob has taken law in their own hand and became the guardian of law and rest is the result. A special law dealing with this subject matter will create a sense of fear and will alarm all person who indulge in such type of activity.

VII. CONCLUSION

There is no place of mobocracy in democracy. But recent incident in Palghar where a saint was lynched by mob in presence of Cops again realizes us that India needs legislation to prevent incidents where people take law and order in their hands and punish accused on basis of suspicion. In this regard a private member presented bill in Rajya Sabha but it was not passed. And Manipur brought ordinance for mob actions. And state law commission of Uttar Pradesh suo motto prepared report and drafted a bill and submitted to Chief Minister of State. In spite of several efforts, India does not have any legislation which promises protection from illegal acts of the mob. India needs a law which safeguards the rights of victims. Law should deal with three instances, before mob lynching there should be a Peace Officer who will maintain harmony among people, second during mob lynching there should be an immediate responding team or force which will stop the unauthorized act of mob. And third instances after mob lynching, victims must get justice as soon as possible. Mob lynching is crime against the whole society and there is triangulation of interest of victim, accused and society through State authority which is involved. The laws which are there are not enough to combat and prevent this misfortune. Rather more specific law to the subject matter is required.
