

**LYNCHISTAN**

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**ABSTRACT**

“Mob lynching in India is horrendous acts of mobocracy”[ J. Deepak Mishra in a case ]. Law is enacted for the benefit of society but what happens when people take it in their hands? Mob lynching is the uprising crime in the country it is when a law-less mob attends to take justice into their hands rather than following a due legal process. It is when people in a country kills a person on whom they have suspicion of any crime, generally related to the matters concerning to the community, regardless of him being a criminal in the eye of law or not.

It is true that individual citizens cannot take the law into their hands but yet such cases are common. Mohammad Akhlaq from UP, Rupam manjhi from Bihar, Rakbar Khan from Rajasthan are among many more who are the victims of mob lynching and were all beaten to death by bamboo sticks, bricks, iron rods by villagers on some suspicion or other.

Muslims and other minorities who are considered as beef eaters are killed in mob attacks in the name of the protection of the sanctity of cow in Hindu Religion. Rumours of child lifters and other false rumours are few of the many reasons for lynching. Moreover, it has been an accepted trend for the politicians to make a political agenda out of it instead of solving the issue.

“Lynching is an affront to the rule of law and to the exalted values of the constitution and thus the state needs to make new legislation regarding the same.”[ Tehseen Spoonwalla v UOI<sup>3</sup>] Do we really need new laws? The law already has provisions for mob lynching so the new law isn't a necessity. But this doesn't mean its not good to have it. The new laws can define the roles of police, punishment for instigation as well as can fast-track the case. Putting all these under one special law could make things a lot easier.

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**INTRODUCTION**

The term Instant justice is practically synonymous with mob Justice as such deed may be directed owing to the rumours, fabricated account or solely out of ulterior motives among others. Mob lynching is popularly labelled as instant justice, by the so-called protectors of law or the vigilance man, because they believe their action to be the need of the minute and required to do the justice in order to protect the possible adjustment in the social custom. The real question is why only the powerless and feeble are lynched? It also raises the serious interrogative sentence about the fear of law in the mass.

The word 'lynch' can be traced back to the American Revolution where it was phrased as 'Lynch Law' which is meant punishment without trial. The instant justice is great social evil. Mob lynching is giving punishment to a person without any legal authority for any offence. This can be done by hanging or by beating. Mob Lynching is by a group of people of some community.

But what are the main reasons for mob lynching? It can be anything like religion or racism. In 2017 most cases of mob lynching is related to cow slaughtering. A recent report by India spend, in the first six months of 2017, 20 cow terror attack has already happened. The attack included mob lynching, attacks by people of the community, murder of the victim, harassment, assault, rape etc. In many cases, the victim was chained, beaten and stripped while in other the victim was hanged.

Lynching is not defined under the Indian Legal System and there are no punishments in regards to lynching. It is a very specific term. There are no provisions that prevent lynching in current law. Parliament believes in making new laws to instil a fear of law for would be law. Mob lynching is illegal, and people involved in them has committed a criminal offence. The reasons are irrelevant. It doesn't matter who the victim was or if the mob was right. All the politicians are involved in blame game rather than doing something to prevent it. Mob lynching cannot be allowed to become the new normal.

The enmity between Muslim and Hindus can be a reason of this mob lynching. Even in Kashmir, mob lynching is common. No one can state the reason for mob lynching, but we know that victim has committed certain crime hurting the sentiments of people. Due to which people are not satisfied with punishment granted to him by the government and make laws in their own

hands.

### **LEGAL SCENARIO**

Punishment for mob Lynching is not specific. It all depends on the facts of the case. For example, If a mob kills the victim then it will fall under 302 of the IPC. Murder in any form whether by a single person or by the mob will fall under section 302 of IPC.

Currently, cases of mob lynching and other incidents related to instant justice are tried under section 34, 120B, 147, 148, 149, 302, 307, 323, 325, and 341 of IPC.

Section 302 of Indian Penal Code<sup>4</sup>: Section 302 of IPC defines a penalty for murder. This section can be applied only if the mob kills the victim.

Section 304 of Indian Penal Code<sup>5</sup>: Section 304 of IPC defines culpable homicide not amounting to murder.this can be applied to the mob when the victim is not dead.

Section 307 of Indian Penal Code<sup>6</sup>: Section 307 of IPC covers attempt to murder.

Section 323 of Indian Penal Code<sup>7</sup>: Section 323 defines the punishment for voluntarily causing hurt which is imprisonment or fine.

Section 325 of Indian Penal Code<sup>8</sup>: This sections defines punishment for voluntarily causing

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<sup>4</sup> Punishment for murder.—Whoever commits murder shall be punished with death, or 1[imprisonment for life], and shall also be liable to fine.

<sup>5</sup> Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[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.

<sup>6</sup> Attempt to murder.—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 1[imprisonment for life]

<sup>7</sup> Punishment for voluntarily causing hurt.—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.

<sup>8</sup> Punishment for voluntarily causing grievous hurt.—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.

grievous hurt.

Section 153 of Indian Penal Code<sup>9</sup>: Section 153 covers provoking someone with intent to cause a riot.

Section 295A of Indian Penal Code<sup>10</sup>: Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, or in written form will be held under this section.

Section 120B of Indian Penal Code<sup>11</sup>: This is applicable when a group of people conspire to commit a crime.

Section 34 of Indian Penal Code<sup>12</sup>: This section defines the common intention behind the criminal act.

Section 141 of Indian Penal Code<sup>13</sup>: Section 141 covers the unlawful assembly and if the assembly causes wrong it will be covered under this section.

However, they fall short in dealing with such cases mainly because of the ever-increasing rate of such incidences in recent times. Mob Lynching is often considered to be an organized hate crime largely due to the manner involved in the execution of such heinous acts. The new laws aren't a necessity but just because it is not essential doesn't mean it would not be a good thing to have. The government has failed to acknowledge the seriousness of the matter and overlook the situation for stricter and specific legislation. Hence, civil society has come together in their demand for a law such as Manav Suraksha Kanoon also known as MaSuKa.

### **MASUKA: Manav Suraksha Kanoon:**

As the mob slaying is rising there's a concern among the society. The concern of not having a particular law against mob slaying, because of that the defendant gets away with the foremost evil crimes. However, the societies are coming back along to form a brand new law against

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<sup>9</sup> Wantonly giving provocation with intent to cause riot

<sup>10</sup> 295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

<sup>11</sup> 120B. Punishment of criminal conspiracy

<sup>12</sup> Acts done by several persons in furtherance of common intention.

<sup>13</sup> Unlawful assembly

slaying. This law is termed MUSUKA. The National Campaign Against mob slaying drafted a law named MASUKA. Prakash Ambedkar, grandchild of BR Ambedkar, and activist Tehseen Poonawalla drafted a law in association with Shehla Rashid, Shehzad Poonawalla and alternative members of National Campaign Against Mob slaying (NCAML) within the company of professional Sanjay Hegde, academician Manoj Jha at the Constitutional Club these days.

MSUKA may be a law that is expounded to mob slaying solely. It will explain the word ‘mob’ and ‘lynching’. Lynching will be made a non-bailable offence. capital punishment will also be given to convicts for mob slaying. The provisions for a duration fixed judicial enquiry that mustn't take more than six months. Also, the victims will be given compensation.[16]

MaSuKa deals with varied aspects of abovementioned offences as follows –

- 1) Inadequate hate crime laws
- 2) penalty for instigation
- 3) Deals with police inaction and guilt.
- 4) Special courts for fast justice.
- 5) Rehabilitation and compensation for victims’ families

Putting all this in one place beneath the special law would create the work easier for everybody and make sure that justice is truly achieved

### **PREVENTIVE, PUNITIVE & REMEDIAL MEASURES**

[ Tehseen Poonawalla vs Union of India]

- Preventive Measures

1. The state government shall assign a superior policeman as the, not below the rank of superintendent of police as the person who has the authority of several things in each area. This person having all authority shall be assigned by one of the DSP rank officers in the areas for taking various measures to prevent mob lynching.

2. The secretary, home department dealt with state shall issue advisories of the Nodal officer of

the state in concern to ensure that the officer in charge of the police station of the identified district are attentive if any instance of mob lynching within their jurisdiction comes to their notice.

3. It shall be the legal obligation of every police officer to make a mob disperse by making use of his power under section 129 of CrPC, which in his opinion has a tendency to cause damage, hurt or kill someone or wreak the havoc of lynching in the disguise of vigilantism.

4. The central and the state government should transmit on radio and television and other media platforms including the official websites of the home department and police of the states that lynching shall induce major outcome under the law

5. The Central Government shall also issue appropriate advisories to the State Government which would reflect the gravity and seriousness of the situation and the steps to be gain in possession.

- Remedial Measures

1. Despite the obstructive steps taken by the State Police, if it comes to notice of the local police that an event of lynching has taken place, the jurisdictional police station shall promptly lodge an FIR without any delay under the admissible provisions of IPC and other provisions of law.

2. The State Government shall arrange a lynching victim reimbursement scheme in the light of the provisions of Section 357A of CrPC within one month from the date of judgement. In the said strategy for computation of compensation, the State Government shall give due regard to the nature of a bodily injury, loss of earnings including loss of employment opportunities and education. The said reimbursement scheme must also have a provision for interim relief to be paid to the victims of lynching.

3. To set a serious example in cases of mob lynching upon declaration of the accused person, the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC.

- Punitive Measures

1. Whenever it is found that an officer of the local management has been unsuccessful to comply

with the aforesaid directions in order to intercept or scrutinize or facilitate the expeditious trial of any crime of mob lynching, the same shall be contemplated as an act of deliberate carelessness for which appropriate action must be taken against him or her. The department action shall be taken to its logical conclusion preferably within six months by the authority of the first instance.

The measures with immediate effect are taken in four weeks by both centre and state government and the report must be filed within the given time period.

The people should be reminded that the nation is secular and no one should be discriminated of his background. We should remember that India does not belong to Hindus or Muslims alone.

### **LEGAL DILEMMA**

#### Why a New Law Isn't Necessary

Even as things stand, anyone involved in lynchings has committed a criminal offence. The “reasons” behind the killings – child-lifting rumours, cattle-smuggling – that’s all irrelevant. It doesn't matter whether or not the mob is right and who were the victims' nobody can take the law into their hands. Our law already has provisions to deal with cases related to lynching. Adding a new offence mob lynching to the Indian Penal Code, as the government is reportedly planning, doesn't, therefore, change very much.

Lynching doesn't exactly focus on the fact that why these killings take place or how they can be stopped. There is more to this culture of lynching that afflicts India than just garden-variety murderousness.

Coming up with a law could also very easily just become a quick-fix solution which makes a diversion for everyone from the root causes behind the killings, and why the killers are able to act with impunity. One also has to be careful with the drafting, to avoid any ambiguities or vagueness.

Now, one might say that it is precisely because there is something more to these lynchings, that a new law is necessary. One of the most terrifying aspects of the lynchings in India has been the way in which the mob is glad about recording the lynching, shares them online, and boasts of its

achievements.

### Can a Special Law on Lynching Could be a Good Thing

#### Reason 1: Inadequate Hate Crime Laws

Inadequate hate crime laws are something we should be considering carefully in India, where our laws are very inadequate when it comes to hate crimes. Apart from the SC/ST Atrocities Act, we don't have any significant laws which deal with harm and violence caused to the victim based on which community they're from. This is important when religion or outsider status is often at the heart of modern lynchings.

#### Reason 2: Addressing the Role of Police

Another important aspect of lynchings in India is the role of the police.

Take the death of Akbar Khan in Alwar, for example. The police didn't take him to a hospital for three hours, despite knowing what had happened to him. At other times, the police just stand by and let things happen, like in the Hapur lynching.

It wouldn't even require a tremendous amount of thought. The new guideline's of Supreme Court already include responsibilities for local police, appointment including of nodal officers, keeping track of events, & so on. The draft Manav Suraksha Kanoon drafted last year by activists and lawyers (including Tehseen Poonawalla and Sanjay Hegde) also contains some good suggestions for making the police accountable, including specific offences for dereliction of duty.

#### Reason 3: Fast-Tracking and Monitoring

A new law could also ensure that cases on lynching are fast-tracked and monitored by High Courts or the Supreme Court. This would mean they don't just get lost in trial court limbo like the Mohammad Akhlaq case, or see the convicts released on bail to be garlanded by politicians like Jayant Sinha.

#### Reason 4: Punishment of Instigators

It could also ensure that there are suitable punishments for sharing material which instigates mob

violence. This is important in a time when lynchings are provoked by fake news and messages on Social Media.

### **CASE LAWS & STUDIES**

➤ Arumugam Servai v. State of Tamil Nadu<sup>14</sup>

In this case, the State government directed to immediately suspend the district magistrates and collectors and superintendent of police or other concerned officials if they fail to apprehend those responsible for honour killing or prevent such incidents despite having advance knowledge and also to charge-sheet them and proceed against them departmentally. This case tells the shocking state of concern. There was no contravention that the petitioner was major and was at all times a major. She has a right to marry anyone whom she wants to. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law.

➤ Dadri Lynching Case 2015

On 28th September 2015, a conflict at Bisara village Uttar Pradesh took place. A union of Hindu mob lynched Mohammad Akhlaq and his son Danish. They were held responsible for slaughtering a cow-calf and preserving the meat to gobble up. This case of mob lynching was the first case of Hindu Mob Lynching a Muslim in the name of cow or beef.

➤ Kherlanji Massacre 2006

On 29th September 2006, the first case reported in India relating to lynching. This incident took place in Bhandara district in the state of Maharashtra. The lynching took place due to land problem where a union of at least 50 villagers shove into the house of the victim assaulting four members of the family and parading naked the wife and their daughter before they murdered them.

➤ Jalwe Jharkhand Lynching 2017

On 29th June 2017, Mithun Hansda who was an accused of rape and murder of an eight-year-old

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<sup>14</sup> (2011) 6 SCC 405

girl was allegedly thrashed to death by an angry mob of villagers.

➤ Srinagar, Jammu and Kashmir Lynching 2017

On 22nd June 2017, a batch of angry mob outside Nowhatta's Jamai Masjid had lynched a DSP Mohammad Ayub Pandith. Some reporters say that he had opened fire on few people who caught him taking pictures of the masjid while other reports say he was on his duty while he got attacked by a mob which he used his pistol as self-defence.

**Conclusion:**

Mob Lynching should be stopped as it promotes war, hatred, violence etc. It is not at all healthy for a country and its society. People should understand that every life is important. Killing someone on just a cautious distrust of someone is not justified. Also, law shouldn't be taken in the hands itself. Courts and police are there to give punishment. Using violence is not the option left. People can change the society even by speaking. "Don't Raise Your Hands Raise Your Voice " if you want to change something in the society. More than that there should be a law passed by the government, MASUKA which will bring political and legal minds together to try and find the ways to stop lynching. And by doing this could save many lives in the coming years.