

# MOB LYNCHINGS IN INDIA- A STUDY OF ITS IMPACT & REGULATING LAWS

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## Abstract

*The term 'Mob Lynching' is used to depict "Extra Judicial Action" taken against various groups. This paper pursues an investigative pattern of research, as it analyzes the mob lynching's history, social media, and most importantly the need for change in the existing legislation. The purpose of this study is to shape our existing mob lynching laws, analyze incidents which took place and the effect of media influencing mob lynching. This paper also throws light on Section 153A of Indian Penal Code, 1860 and Manav Suraksha Kanon. The methodology used in this paper is a mixture of primary and secondary data. The primary data has been taken from government sources like The Indian Penal Code 1860, The Constitution of India and Draft Bills. These sources have been scrutinized to the utmost detail to throw light on Mob Lynching. The secondary data includes the reports of Tuskegee Institute, The Quint and Supreme Court cases. The main findings of this study are that enforcement and accountability of existing laws and what enforcement agencies are lacking. The solution can be that if a mob is in existence, then provisions relating to the formation of an unlawful assembly, can be invoked. Hence, by applying it, the mob can be controlled and continuous occurrence can be minimized. This study will benefit everyone, as the destruction by mobs haven't been given proper attention and it has continued to gain toehold in recent years.*

**Keywords-** Mob Lynching, Legislation, Extra- Judicial, Unlawful assembly.

## INTRODUCTION

‘Mob lynching’, a term is used to describe extrajudicial action, taken against alleged transgressors or by a group of people displaying characteristics of violence ranging from murder<sup>1</sup>, destruction of property, extremities of abuse, torture and the list goes on. While not a new phenomenon, such acts have continued to gain traction in the recent years. Although one could argue that the incidents are far and sparse, it may not share the grotesque ideals of the past- such thinking is nothing but a deeply ingrained sense of ignorance made palpable.

The vestiges of mobocracy<sup>2</sup> have historically always laid upon the hands of those, who presume they have the right to wield the arms of justice and this perverse form of thinking has gone on as a spit on the face of the law.

Now what remains to be noteworthy, is how countries across the world or to be more specific, ‘societies’ have always witnessed some form or the other of such neanderthal response targeted usually towards a member of a minority or a weaker section. Another point that must be put across is based upon the founding of its etymological links as well as the slight levels of obscurity that comes along with it.

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When we speak of lynching, one could place its genesis to the starting of the American Revolution. According to the certain articles, drawn from the phrase ‘Lynch Law’<sup>3</sup>, a term or saying for exercising punishment without following the due process laid down by law. What is interesting is how influential the west has been with its mound of sociological influence, be it good or bad and mob lynching is perhaps one of the prime examples of how needlessly copying tactics could very well lend weight to the more archaic foundations of Hobbesian philosophy; the irony here is, it would mean we would have to travel back in time and proceed to support a law-less mess of humanity.

“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.*

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<sup>1</sup> Section 300 of Indian Penal Code

<sup>2</sup> Political control by a mob

<sup>3</sup> Convicted person by a mob acting without legal process or authority.

## HISTORICAL PERSPECTIVE

On that note, it would only be expected of us to traverse down the path of history to pin-point how, why, where and what leads up to the starting of lynching. One of the aforementioned points stated that the American Revolution could provide a useful marker. Historically, it was a method moved by racial and social hatred with hints of casteism peppered throughout, that stemmed between the free blacks and the whites.

An ideal scenario that would lead to the incidents popping up would be accusations of rape, murder being committed and justified; many a time, under the veiled guise of protecting the more delicate sensibilities of women during that day and age. To be more specific, the decimation of Tulsa, Oklahoma, a neighborhood of Greenwood in 1921, after a black man was falsely charged with raping a white woman in an elevator<sup>4</sup>.

Another set of reasonings would rest upon how those of African descent were now a mess with no guidance on how to integrate into civilized society. And therefore, one had to teach them “basic manners”. This could be easily proved by the archives of the Tuskegee Institute that accounted for 4,743 lynchings that took place, out of which 3,446 (that accounts for 72.7% in total) victims were Black Americans. The cherry on the cake is that these figures do not represent all the lynchings that occurred but barely scraped the surface instead.

One of the most unsettling realities of lynching incidents that occurred was the sheer celebration that followed the gore. The general public embraced it and labelled it as a family occasion of joyous commemoration. What remains as an indisputable form of irony is how many of those in the crowd happened to be composed of women themselves, which is quite surprising given their “delicate sensibilities”.

## ROLE OF SOCIAL MEDIA

It would only be right to peg social media as two sides to the same coin. With today’s ever-growing generation of ‘woke’, for a lack of better words, individuals with a barrage of posts

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<sup>4</sup> Jamiles Lartey and Sam Morris 2020. How white Americans used lynching to terrorize and control black people <https://www.theguardian.com/us-news/2018/apr/26/lynchings-memorial-us-south-montgomery-alabama>

dedicated to undoing the Victorian standards of acceptance towards cultural appropriation, racism, white supremacy, patriarchalism, gender equality and the rest. In sharp juxtaposition to the older generations taken prey by all mediums of fake news, false propaganda, not helped by the lesser progressive standards of the particular focus groups, spread through popular social media sites.

It is quite a tricky slope to maneuver around. The former, younger ones having their own opinions about matters and thus creating their own battles to win over the internet; while the older ones, which one could critically assume to be dogmatic in nature, perhaps moved by the pre-existing notions of “silence is gold” may on their own triumph in presenting a more peaceable union to the public.

However, what most fails to address is how, regardless of age, gender, race, any post that gains enough views or clicks has in its power of the factor to influence many. Most of the cases that we mentioned earlier deals with the news that was circulating around, with more often than not, the victims assumed to be criminals or the cause of the issue, or a by-product of the in-bred or unconscious bias that may have filtered through the minds of those listening, suffered.



## LYNCHING INCIDENTS IN INDIA

A prominent case to dive into, before we proceed to dissect the Indian landscape, was one of Mary Turner. Probably one of the earliest evidence of lynching, when Turner who had spoken out against the perpetrators of her husband’s murder (he was alleged to have killed his abusive plantation owner, which was followed by a week-long manhunt before being revenge was extracted in cold blood) was dragged out by a mob, ankles tied and doused with gasoline before being set on fire. However, people did not stop there. Some made the move of cutting her abdomen open causing her unborn child to fall out, who was later stomped upon and crushed. If you think the violence ended there, you are mistaken. For peace was only gained after embedding Mary’s body with a couple of hundred bullets.

Coming closer to home, according to a report by The Quint, since 2015, 94 cases of mob

lynching have been reported in India, uncontained by geographical boundaries and spurred by a distorted sense of vigilantism.

However, by considering the reasons on mob lynching, it can be into religious and communal, caste system and others. The very first case of lynching was reported in the year 2006 at Kherlanji<sup>5</sup> in Maharashtra's Bhandara District, where four people were lynched over a land dispute. A mob of at least 50 villagers, flounce into Bhotmange's house; out of four members of the family, the wife and the daughter were paraded naked in the village and sexually abused before murdering them. The very first incident on religion based was the Dadri Lynching held in the year 2015, in Bisara village, Uttar Pradesh, where Mohammed Akhlaq and his son Danish was accused of slaughtering and theft of cow calf and storing its meat for consumption when this was observed by Hindus, then Hindu mob lynched the father and the son. Another lynching incident on caste system known as Delhi Lynching held in the year 2017 in Delhi, where an auto driver stopped some college students who were intoxicated at that point of time from urinating on a public place, as it was restricted there. The intoxicated students face were distorted with rage, and hence resulted into mob and the driver died.

Three people, two monks and their driver were on the way to Surat from Mumbai to attend a funeral, not cognizant of where it ends. They were murdered by a mob in Palghar, Maharashtra. Even in a scenario of unprecedented magnitude owing to Covid-19, where authorities perpetually emphasize on social distancing, a huge mob (approximately 200 people) armed with axes, sticks and stones were still allowed to congregate. Four days prior to this incident, a lady doctor's car was pelted by stones. There were rumors regarding child lifters wandering around with an intent to kidnap children for organ harvesting. Law enforcement agencies must ensure that people don't resort to vigilantism and not just register an FIR<sup>6</sup> after such incidents. Within their jurisdiction, police must identify patterns of violence and act accordingly to it.<sup>7</sup>

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<sup>5</sup> Writ Petition No. 8702 of 2012

<sup>6</sup> Section 154[1] of the Criminal Procedure Code

<sup>7</sup> Vageshwari Deswal Mob lynching- A desecration of the 'Rule of Law

<https://timesofindia.indiatimes.com/blogs/legally-speaking/mob-lynching-a-desecration-of-the-rule-of-law/>

## LYNCHING LAWS IN INDIA

As per the legal maxim of Rule of Law, it is stated that if a person has to be punished, there must be some authority of law i.e., no punishment is to be given without the authority of law and by through the procedure established under law. As the crime of mob lynching is increasing day by day, and every now and then a new case of mob lynching comes in front of our eyes is leading to killing of innocent people. Though there are many provisions under law, which defines the strict punishments for the crimes which may fall under mob lynching, but no particular punishment is specified and it all depends upon the factual scenario of the cases.

Some of the much known crimes, which falls under mob lynching are like section 302 of the Indian Penal Code specifically defines the punishment for murder, no matter if done by a single person or mob, would be punished as per the punishment defined under Section 302; Section 304 of the Code 1 states culpable homicide not amounting to murder; section 307 defines Attempt to murder; Section 323 and 325 is the punishment for causing hurt and grievous hurt to someone voluntarily; Section 34 reads as common intention i.e. any criminal act done by several person with a common intention, each of them would be liable for the same.

The Supreme Court tackled the issue of mob lynching while imposing several preventive, remedial and punitive measures in the case of *Tehseen S. Poonawala*<sup>8</sup>, and provided the directions to states that in every district designated fast track courts have to be set up which will exclusively deal with such cases. The states were asked to submit the notices for the steps taken by them towards the implementation of these measures and to file a compliance report; to which the responses were extremely disappointing.

In any civilized society, the mightiest sovereign is law which cannot be sullied by any individual or group with an attitude of punishing the violator in a manner; they deem fit and thereby becoming law themselves<sup>9</sup>. In the legal system like India, the problem of mob violence is an obnoxious slur which leads from perverse notion of vigilantism to anarchy and for endurance of any society to be civilized, the rule of law must be upheld.

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<sup>8</sup> *Tehseen S. Poonawala v. Union of India* (WP(C) No. 754/2016)

<sup>9</sup> *Krishnamoorthy v. Sivakumar and others* (2015) 3 SCC 467

## NEED FOR NEW LEGISLATION

Apex Court believes that the Parliament needs to make laws to deal with lynching, because for smooth and systematic working there must be a law which should be followed. It is also not necessary that there should be made some particular law regarding lynching but as it is illegal, and anyone involved in this has directly committed a criminal offence and for that he/she should get punished under the criminal law. Basically, why to waste time in making new law, instead we can amend the laws which are related to this offence so that any person before committing mob lynching will think over the punishment, which deters him to commit that crime ever in future. There is a need of education so that people can understand how they should deal with problems like this without taking law into their own hand. If we want peace we have to obey and respect our laws. Whenever cases of mob lynching, hate crimes, honour killing or witch hunting are acknowledged, our requisition for special legalization to tackle them appreciates. Actually, such crimes are murders, indeed the prevailing provisions under IPC<sup>10</sup> and CrPC<sup>11</sup> can appropriately tackle them. However, enforcement and accountability of existing laws and enforcement agencies are lacking. And, if any Act didn't enact by the government there will be a huge advantages of people, who want to spread the hate, enmity etc. Most cases of Mob lynching are seen in the states like Haryana, Rajasthan, Jharakhand etc. There is no lodging of FIR<sup>12</sup>, the mob herself does justice.

## MASUKA

Thus, keeping in view to the seriousness of the circumstance, the Maanav Suraksha Kanoon (MASUKA), to address the mob lynching was enacted in New Delhi on 7<sup>th</sup> July. As we see the lynching cases have been increasing day by day; so, in a response, Tehseen Poonawalla, Shehla Rashid, Kanhaiya Kumar and Jignesh Mewani, the founder of the National Campaign against Mob Lynching came up with MASUKA.

Tehseen Poonawalla opined on this matter that- "We have proposed to make lynching a non-bailable offence and the punishment for the ones convicted under it, would be life imprisonment. It also mandates that the concerned SHO (Station House Officer) of the area would have to be suspended forthwith until a time-bound judicial probe absolves him of

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<sup>10</sup> The Indian Penal Code, 1860

<sup>11</sup> The Code Of Criminal Procedure, 1973

<sup>12</sup> Section 154[1] of the Criminal Procedure Code

charges. This provision has been laid out because if a mob of 100 people is entering an area and lynching someone, it cannot be without the consent of the concerned police officer of the area.”

Now, all off these things have created an atmosphere in this country that needs a special response because of existing laws were enough, these things wouldn't happen. We should propose a maximum fine of 5 lakh for convicts so that the convicts think twice before lynching someone. The existence section of IPC<sup>13</sup> related to the commission of murder and there is the provision on assault and so on, but we have nothing in response with this specific phenomenon of groups of people attacking innocents, Indian citizens, and other foreigners as well on our soil and expecting to get away with impunity because their identity is submerged in an enmity of a mob. So, the concept of Mob lynching includes both plural attacker which is not necessarily imagined in a normal murder provision. And, it includes the commission of a crime which may for sure should murder which include assault, various kind of viping and humiliation which we have seen in 14-15 incidents in the last couple of years. In our county, we have seen the Africans being lynched because of their colour. And, the young man in Delhi who is lynched because of telling people not to urinate on the roads and the violation of the Swachh Bharat Abhiyan. Also, it mandates that the concerned SHO (station house officer) would be suspended until a time bound judicial probe absolves him of charges<sup>14</sup>.

## CONCLUSION

The conclusion is that basically mob lynching means a group of violent peoples who lynch a person without following the due process of law. Consequently, as media plays a very important role in everyone's day to day life and humans are more and more influenced by the social media, such mediums can be and must be used for spreading the awareness regarding mob lynching and how it can be avoided so as to have peaceful life without any kind of violence involved.

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<sup>13</sup> The Indian Penal Code, 1860

<sup>14</sup> MASUKA law National Campaign against Mob Lynching Drafts bill to address rising violence, <https://www.firstpost.com/india/masuka-law-national-campaign-against-mob-lynching-drafts-bill-to-address-rising-violence-3757697.html>

As a citizen, we should not take law in our own hands just for the sake of justice without any reasonable justification. This stays against the law and if one wants justice, then the priority is to follow and respect the laws of the country.

Additionally, there is need of legal legislation but it will be more appropriate, if amendments are made in the existing laws to avoid delay and save time.

According to us, MASUKA law is a step in the right direction, making Mob Lynching a non-bailable offence and the punishment for the ones convicted under it, would be life imprisonment<sup>15</sup>. Acting as deterrent for a person/group of persons before lynching someone, it is better to strictly follow the laws which are already amended rather than making new ones. Syncing it with the increased level of education in the nation so that everyone remains knowledgeable about the laws.



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<sup>15</sup> Debayan Roy India Minority panel Chief says No need for New Anti-Lynching Law  
<https://www.news18.com/news/india/minority-panel-chief-says-no-need-for-new-anti-lynching-law-1455219.html>