

**MOB LYNCHING AND ISSUE OF HUMAN RIGHTS**

*Author: Shubham Bajaj, V year of B.COM.,LL.B.(Hons.) from UILS, Panjab University*

**ABSTRACT**

This article attempts to cover the reason behind the ever-rising instances of mob lynching in India and contemplate upon repeated attempts of the xenophobic and masculine mob to destroy the social fabric of this country. The growing trend of mob incited violence in India since the oncoming of the BJP reign in 2014 poses a grim picture for the future as there is an imminent threat of a social imbalance hovering above our nation. Liberty, equality and fraternity form the trinity upon which social democracy is based. Neither of the three can be divorced from each other. As Dr. B.R. Ambedkar in his constituent assembly speech also observed, "Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty would produce the supremacy of the few over the many. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them."

The interpretation of the data presented through this article, it appears that the principles of The Trinity is under serious apprehension of a well designed and structured attack at the grass root levels and it would require the conjoined consciousness of morally awakened people to inhibit this attack and rescue our country from the chains of mobocracy, hyper-masculine nationalism, and religiocentrism.

## **INTRODUCTION**

Lynching, a form of violence in which a mob, under the pretext of administering justice without trial, executes a presumed offender, often after inflicting torture and corporal mutilation. The term *lynch law* refers to a self-constituted court that imposes a sentence on a person without due process of law<sup>1</sup>. The term “lynching” does not have a literal meaning. There was an American Revolutionary in the 18th Century who headed an informal court in Virginia by the name of “Charles Lynch” who established a law that provided for punishment without trial, which came to be known as “lynch law”. But it remains uncertain whether any person was executed under the said law, it was only meant to intimidate the British loyalists who, at that time, were against the American fight for Independence. It is an appalling mystery how a course of action designed to fight the corrupt establishment in a country could later transform into a menace gripping a country that is 13000 km away from its origin. Lynching is mostly done by the Majority or a predominant group to crush the voices of dissent to consolidate their position, as has happened over the period, right from the epoch of the great Roman Empire where mass executions used to happen if anybody raised their voice against the divine power of kings, to the most recent case of two Saints being killed in the State of Maharashtra by stones and sticks. It is predominantly done with public spectacle to intimidate a larger number of people and instil fear among them. There is a pattern that is almost similar in every case of lynching, i.e, the presumption of guilt of the accused, irrational anger and outrage of the mob, audacity to take the law into their hands, and consequently the confidence that they will get away with everything. The mob, under the pretext of being a vigilante, adopts the role of a judge, a jury and the executioner, making an absolute mockery of the rule of law. Most of us associate the word ‘mob lynching’ to Hindutva Hardliners whose rage is at their highest in the Hindu Belt of India but the roots of lynching are spread deeper in the history of time.

## **HISTORICAL BACKGROUND**

As discussed above, many years before the coining of the term ‘lynch’, people and even kings were also killed by a fierce group out in the open to express their immense displeasure with the

---

<sup>1</sup> Geoffery Abbott, Lynching, Encyclopedia Britannica, (August 13, 2019), <https://www.britannica.com/topic/lynching>.

current establishment (like it happened with King Charles of England in 1649). It is only after the American Revolution of the 18th Century that such an act done by the public came to be addressed as lynching. The first such recorded lynching in which the person was executed by the mob took place at St. Louis in 1835, in which a black man who was accused of killing a sheriff was captured by a mob while he was being taken into custody. He was chained to a tree at a corner lot and was burnt alive in front of 1000 people, who were cheering and shrieking at the pitiful immolation of the person<sup>2</sup>. One could only imagine the sight of a person being burnt alive in the open and the moral corruption of the public enjoying the spectacle at that time. Europe is also guilty when it comes to lynching. The Vehmic Courts of Germany, the infamous Halifax Gibbet Law, which provided for the beheading of a thief in the middle of a street by a Guillotine machine, the Cowper Justice in England, and also the well thought out Pogroms in Russia and Poland directed against the Jews. From 1882-1968, 4,743 lynchings occurred in the United States. Of these people that were lynched 3,446 were black.

The blacks lynched accounted for 72.7% of the people lynched. These numbers seem large, but it is known that not all of the lynchings were ever recorded. Out of the 4,743 people lynched only 1,297 white people were lynched. That is only 27.3%. Many of the whites lynched were lynched for helping the black or being anti lynching and even for domestic crimes<sup>3</sup>. Mob attacks and Vigilante Justice is not new to this world, they have been menacing society since the beginning of civilization, rotting the ethos of the world we live in. The massacre of minority community continued in the United States even after independence by white supremacists and vigilante groups like the Klu Klux Klan who are accused to have killed as many as 400 people from 1868 to 1871<sup>4</sup>, ranging from African-Americans, Communists, Homosexuals, Social and Political Activists. This was the reason why many African-Americans fled their hometown to settle in the more culturally diverse places like New York and California. Such was the intolerance against the Africans in the 1900s that the State Senator Benjamin Tillman, who was a former Governor of South Carolina, went on to say that: “We of the South have never recognized the right of the

---

<sup>2</sup> William Hyde and Howard L. Conrad (eds.), *Encyclopedia of the History of St. Louis: A Compendium of History and Biography for Ready Reference: Volume 4*. New York: Southern History Company, 1899; pg. 1913.

<sup>3</sup> Dahleen Glanton, *South Revisits Ghastly Part of Past*, CHICAGO TRIBUNE, (May 05, 2002), <https://www.chicagotribune.com/news/ct-xpm-2002-05-05-0205050349-story.html>.

<sup>4</sup> History.com editors, *Klu Klux Klan*, A & E Television Networks, (Oct. 29, 2009), <https://www.history.com/topics/reconstruction/ku-klux-klan>.

negro to govern white men, and we never will. We have never believed him to be the equal of the white man, and we will not submit to his gratifying his lust on our wives and daughters without lynching him.<sup>5</sup>”

Mobs were attacking, massacring, destroying the lives of Blacks at every instance, their men were killed, ladies were raped, children were tortured, and their houses were burnt. They could not even turn to the legislature to lend them a hand, for the legislature did not even sympathize with them, let alone helping them. A new law was ratified in the legislature to disenfranchise Black voters so they could not vote so that they were left with negligible political representation. A few politicians tried to raise their voice but they met with the same fate as their black counterparts. It is equally important to note that the lynching was not only limited to executing Africans. Anti-Jew, Anti-Catholic, Anti-Immigration stance was also gaining support. In the first decade of the 20th Century, the lynching culture became so popular that the outlaws even took photographs of their victims and what they have done to them and went to the lengths of publishing them to intimidate the people. Some of the souvenirs are still occupying a space in the closets of their sympathizers.

The U.S. was subjected to severe criticism from across the world. They were accused of being the flag bearer of racism and a country of kangaroo courts, and they were partially guilty of it. The Soviet Union came down hard upon them and they were being ridiculed in the media for it<sup>6</sup>. This sad state of affairs forced them to bring about a societal change and even the hardliner white supremacist gradually started turning soft. But not before the epidemic of lynching sneaked out of their country to make its way to other nations of the world, castigating the very core of human values, vilifying the social structure of the country, censoring the principles of harmony and togetherness. And as India willfully adopts every western concept, she adopted the idea of lynching too, with open hands.

---

<sup>5</sup> Bob Hebert, The Blight That Is Still With Us, THE NEW YORK TIMES, (Jan 22, 2008), <https://www.nytimes.com/2008/01/22/opinion/22herbert.html?hp>.

<sup>6</sup> Allison Quinn, Soviet Propaganda Back in Play with Ferguson Coverage, THE MOSCOW TIMES, (Dec 27, 2014), <http://old.themoscowtimes.com/news/article/soviet-propaganda-back-in-play-with-ferguson-coverage/511975.html>.

**MOB LYNCHING WITHIN THE PURVIEW OF HUMAN RIGHTS**

“When the fundamental principles of human rights are not protected, the centre of our institution no longer holds. It is they that promote development that is sustainable; secure peace; and lives of dignity.”

–Zeid Ra’ad Al Hussein (Former UN High Commissioner for Human Rights)

The Right to Life is the most fundamental and mother of all rights from which every right is born. It is the root of all rights out of which every right stems from. The right to life is the genesis and all other rights are mere byproducts of it. Article 3 of the Universal Declaration of Human Rights guarantees the Right to life as it states that “Everyone has the right to life, liberty and security of a person.”<sup>7</sup> Article 6(1) of the International Covenant on Civil and Political Rights also provides for the Right to life and also entrusts the responsibility to safeguard the right on the State as it provides that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>8</sup> These provisions guarantee every individual, irrespective of his colour, religion, ethnicity, creed the right to live and it “shall” be the duty of the state to protect the most fundamental of all rights of its citizens.

The United Nations was also forced to intervene to keep a check upon the increasing hate crimes in India taking cognizance of the issue. The cries which followed the Tabrez Lynching echoed even in the arcades of the United Nations Human Rights Council on July 1, 2019. Center of Africa Development and Progress (NGO) raised the issue of the ever-increasing number of mob lynching all over the country, with emphasis on the Tabrez Lynching case and another case in which a Madarsa teacher was publically heckled for not chanting ‘Jai Shri Ram.’ The issue was raised during the 17th meeting of the 41st Regular Session before the United Nations Human Rights Council. The NGO established that as India is a signatory to the ICCPR (International Covenant on Civil and Political Rights) and ICESCR (International Covenant on Economic, Social and Cultural Rights), which attempts to safeguard the civil and political rights of the citizens, there arises an obligation for the Indian Government to restrict the cases of mob

---

<sup>7</sup> Universal Declaration of Human Rights, 1948, Article 3.

<sup>8</sup> International Covenant on Civil and Political Rights, 1976, Article 6(1)

lynching all over the country as it goes against the basic tenets of the United Nations<sup>9</sup>. It was further established that there was an atmosphere of fear amongst the Dalits and the Muslims as they were the ones most affected by the fanaticism of the Hindutva Mobs. The rising culture of impunity was also highlighted. Paul Newman Kumar, who was representing the NGO, pointed out that the Indian State has degraded the values of its constitution by the apparent impunity allowed to the Hindutva mobs to roam freely and raise havoc in the country. He suggested in his speech that the state of India must follow the values enshrined in its constitution.

The United States Commission on International Religious Freedom (USCIRF) also condemned the lynching of Tabrez Ansari and pronounced the mob lynching culture as systematic and egregious. It also placed India in its tier-2 for engaging in or tolerating religious freedom violations that meet at least one of the elements of the “systematic, ongoing, egregious” standard used to designate “countries of particular concern,” or CPCs, under the International Religious Freedom Act (IRFA).

Tony Perkins, chairman of the USCIRF, has issued the following statement regarding the Tabrez Ansari case in which he has also called upon the Modi govt to take suitable actions to curb this sort of violence: “We condemn in the strongest terms this brutal murder, in which the perpetrators reportedly forced Ansari to say Hindu chants as they beat him for hours. Ansari later died from the injuries he suffered due to this horrific attack. We call on the Indian government to take concrete actions that will prevent this kind of violence and intimidation by a thorough investigation of Ansari’s murder as well as the local police’s handling of the case. Lack of accountability will only encourage those who believe they can target religious minorities with impunity<sup>10</sup>.”

The mushrooming cases of mob lynching and fanaticism have only tarnished the image of our country globally and have also blemished the tag of “The Strongest PM India has ever had” which was accorded to Mr. Narendra Modi as he appears to be ill-equipped to drag our country out of this epidemic that has inhibited the cultural growth of our society.

---

<sup>9</sup> Shabina Akhtar, UN Human Rights Council Listens to Increasing Mob Lynching and Hate Crimes against Muslims and Dalits in India, NEWS CLICK, (Jul 05, 2019), <https://www.newsclick.in/UN-human-right-mob-lynching-hate-crimes-muslims-dalits-india>

<sup>10</sup> USCIRF, USCIRF Press Statement on Mob Lynching of Muslim Man in India, USCIRF, (Jun 26, 2019), [www.uscirtf.gov/news-room/releases-statements/uscirtf-statement-mob-lynching-muslim-man-india](http://www.uscirtf.gov/news-room/releases-statements/uscirtf-statement-mob-lynching-muslim-man-india)

**INDIA AND LYNCHING**

It is difficult to associate India with Lynching. As for how two words, which signify contradictory meanings, words that lie at the opposite ends of the spectrum can be present in one frame. One may wonder that how a country like India, which stands for inclusiveness and consortium, peace and solidarity associate itself with Lynching, which at its very core, symbolize violence, bigotry and dogmatism. Even the RSS Chief Mohan Bhagwat agreed, as at his annual Dushehra Speech on 8th October 2019 he said that the word Lynching itself is foreign to India, that India is inherently a peaceful country, and that attempts are made to desecrate Indian social structure based on “some” incidents which were spontaneous<sup>11</sup>. What Mr. Bhagwat meant was that there was no crack in the social fabric of the nation and that all the 900 lynchings that have taken place in India after the BJP Government came in power, were mere coincidences and nothing else. As I have mentioned earlier, I am in full consonance with Mr. Bhagwat that lynching is foreign to India, but his speech is subject to correction as although the concept itself was foreign to India but the Hindi Heartland has pounced upon it and made it their own. India has witnessed lynchings even before 2014 but they were more related to women labelled as a witch, or a person accused of being a thief, a child lifter, or in some underdeveloped areas where the Dalits were entered in the territories of the upper class. In some areas even when a groom went through an upper-class society, the whole congregation was beaten to death. But these incidents were reported thoroughly and the practice of impunity was not evident. The perpetrators were not protected by the authorities, they were not garlanded at public functions and not invited to the oath-taking ceremonies of ministers.

In India, when the first of many mob lynchings took place of Mohammad Akhlaq on the rumour that he and his family are savouring cow meat at their residence, a hyper-masculine mob assuming themselves to be the saviour of their religion, entered their household and dragged Mohammad and his son Danish outside and started beating them with sticks and bricks. Some of them went inside and collected some meat that appeared to be cow meat. The police officials, as is the case, arrived an hour later but it was too late for Mohammad as he succumbed to his

---

<sup>11</sup> FP Staff, 'Lynching is the foreign concept used to defame India': Mohan Bhagwat, FIRSTPOST, (Oct 08, 2019, 12:59:35 IST), <https://www.firstpost.com/india/lynching-is-foreign-concept-used-to-defame-india-in-dussehra-speech-mohan-bhagwat-says-violence-not-rss-sanskar->

injuries. Danish, his son, was grievously injured in the attack. Later, in the court, it was discovered that the meat was indeed mutton and someone had mischievously spread a rumour at a local temple that Mohammad Akhlaq had stolen a calf from his neighbour and has eaten it on Eid-ul-Adha. Even after all this, his family wasn't left alone to grieve in peace as they were being continuously targeted by the neighbourhood for killing their sacred animal. What followed was that the family was forced to leave their ancestral home and reside in an Air Force Society where their son was getting treated for his brain injuries<sup>12</sup>.

The lynching of Mohammad Akhlaq, which came to be known as Dadri Mob Lynching, at that time appeared as an exception to the otherwise peaceful and diverse country like ours but sadly, what was an exception turned into a norm and lynching turned into a social hazard which jeopardizes the very pillar at which our country stands: Brotherhood and Harmony.

### **MOB LYNCHING IN INDIA- A STATISTICAL ANALYSIS**

As discussed earlier, lynchings did happen in India but the culture of impunity was not prevalent as it is today and mostly it was not religiously motivated. There is no official data about lynching or mob violence as the National Crime Records Bureau (NCRB), which is a branch of the Ministry of Home Affairs and has been accorded with the responsibility of maintaining a secure database about the crimes taking place in the country, does not recognize it as a separate offence. It comes under the ambit of either 'promoting enmity between two groups based on religion' or records them as communal incidents. This practice was also started in 2014. The MHA also records communal incidents and publishes the records annually, which differs from the records published by the NCRB<sup>13</sup>. So the government statistics regarding mob lynching are not abundant and all that there is simply not reliable. The NCRB has not even published this data after 2015 and MHA has last published its report on communal incidents in 2017. "Factly", a fact-checking website filed an RTI in the MHA seeking information regarding the discrepancies in the report disseminated by NCRB and MHA and discovered that there was gross under-reporting of

---

<sup>12</sup> Poonam Aggarwal, The Dadri Truth: A Personal Grudge Twisted into Communal Killing, BLOOMBERG QUINT, (Sep, 28, 2019, 11:11 AM IST), <https://www.thequint.com/news/india/was-the-dadri-lynching-really-a-murder-based-on-a-personal-grudge>

<sup>13</sup> Rakesh Dubbudu, Home Ministry Still Clueless About Discrepancy Related to Communal Incidents, FACTLY MEDIA & RESEARCH, (Nov, 26, 2016), <https://factly.in/communal-incidents-ncrb-contradicts-home-ministry-yet/>

communal incidents by the NCRB. As per NCRB, 789 cases of communal riots took place in the year 2015 and 1174 people bore the brunt of the same, whereas according to the MHA in the same year, 751 incidents of communal riots took place and 2361 persons were either killed or injured in the violence. In the data published by the NCRB, Haryana tops the list with 201 instances of communal riots and in the report of the MHA, UP is at the top with 155 cases of communal riots. The MHA was clueless in the explanation and had no plausible justification regarding the discrepancies in the official figure<sup>14</sup>. Consequentially for research purposes, I had to turn to information collected by independent websites and media organizations. Research carried on by Observer Research Foundation has been published on their website **orfonline.org** covering the incidents of mob violence from 2011-2017<sup>15</sup>.

The Author, Rupa Subramanya has done extensive research in following the incidents of mob violence and public disorder and has also tracked the rising graph of cow-related violence. In the report, it has been stated that from 2011-2014, the graph went down after actually going up as regards the mob violence and subsequently shot upwards in 2015 after the new regime came into power and dipped later in 2017. It is difficult by this finding to draw out a conclusion that the current establishment is solely responsible for the heinous crimes that have been taking place. But another striking study was done by the author and it was found out that instances of cow-related violence were gradually rising after the BJP came into power in 2014. Cow related violence was steady at 5% before 2014 which boomed at 20% by the end of 2017. These figures are startling to believe and might even incline one to hold the BJP responsible for this. But again, no conclusion can be drawn solely based on this report as the statistics used for the study were from the local newspapers and media houses and not from the NCRB or MHA as they do not record crimes under a separate category of mob lynching or cow-related violence. Also, the NCRB follows Principal Crime Theory, so if more than one crime has taken place, the NCRB records the most heinous of them all because sometimes multiple cases may be filed for a single incident. For eg.- If a mob has beaten a man and he succumbs to his injuries then the crime

---

<sup>14</sup> Rakesh Dubbudu, Home Ministry Still Clueless About Discrepancy Related to Communal Incidents, FACTLY MEDIA & RESEARCH, (Nov, 26, 2016), <https://factly.in/communal-incidents-ncrb-contradicts-home-ministry-yet/>

<sup>15</sup> Rupa Subramanya, Has India Become Lynchistan?, OBSERVER RESEARCH FOUNDATION, (Jul, 07, 2017), <https://www.orfonline.org/expert-speak/has-india-become-lynchistan/>

would be reported as that of a murder, not mob lynching. This may sometimes mislead us and present an obscure image of the ground reality.

### **SOCIAL MEDIA AND MOB LYNCHING**

In the era of social media where news spreads like a wildfire, it becomes the duty of citizens to act responsibly and not just act on unverified and unscrupulous news. Most of the lynchings have happened because fabricated rumours were spread through social media accusing one to be a child lifter, thief, beef eater among other things. The lynching of Mohammad Akhlaq which took place in Dadri, U.P. was the first among many killed by a self-proclaimed group of cow vigilantes. It was one of the first cases in which the person was killed because it was alleged that he has consumed cow meat. Cattle traders become easy targets of these self-proclaimed cow protectors and they have had to do away with their life on mere suspicion of killing a cow. If the man belongs to the Muslim community, it becomes easier for them to brand them as a beef eater due to the popular belief that Muslims often savour beef. And as 'consensus gentium' goes, throughout human history it has turned out to be false. The theory of consensus Gentium states that if many people believe it, it must be true. This principle is inherently flawed in determining the veracity of a fact; a belief is not true because it is believed by several people, it should be believed because it is true. More simply, believing something does not make it true. As per the report of India spend in June 2017<sup>16</sup>, which has covered the mob lynchings in India, has published in its report that 84% of all cow-related violence was targeted against Muslims. 25 people have lost their lives since 2010 due to the menace out of which 21 people died after the Narendra Modi led government came into power and as many as 139 got injured. A research carried out by the same organization further established that 52% of these attacks were based on baseless rumours spread on social media groups, and as many as 97% of attacks were against Muslims. A rumour was circulated on Whatsapp concerning the deadly terror attack which took place on 14 February 2019, leaving our 44 Jawans dead and almost 70 soldiers injured. A rumour was spread that the attack that happened was all because of Kashmiri people and perception was built in the mainstream media that Kashmiris were celebrating the martyrdom of Indian Soldiers.

---

<sup>16</sup> Delna Abraham, & Ojaswi Rao, GLOVAL INVESTIGATIVE JOURNALISM NETWORK, (Jun, 28, 2017), <https://archive.indiaspend.com/cover-story/86-dead-in-cow-related-violence-since-2010-are-muslim-97-attacks-after-2014-2014>

The rumour-mongering groups took this upon themselves to circulate this and cause mass hysteria although the claim had no basis whatsoever. As a result, various instances of a mob led by right-wing Hindu groups started marching towards Kashmiri societies, demanding their social boycott. There were reports of Kashmiri people getting kicked out of colleges, they were fired from their respective jobs, they were thrown out of their rented homes, and had to face the uncomfortable sternness of a regular man if they introduced themselves as a Kashmiri. Kashmiri students were forced to flee from their household amidst the atmosphere of fear that engulfed the hearts of Kashmiris after the unfortunate Pulwama attack<sup>17</sup>. According to data journalists at IndiaSpend, since 2017, a staggering 30 people have lost their life due to rumours spread on WhatsApp. This is just one example out of uncountable instances where a baseless rumour was spread on mere hearsay which went on to impact the lives of many.

There have been innumerable instances where the perpetrators record their barbarism and post it on social media glorifying their atrocities. This is an ongoing trend in which a vigilante group, takes hold of a Muslim man and force him to chant “Jai Shree Ram” lest he would be butchered by the mob, and post a video of the same on their respective Whatsapp groups which further disseminate the video saluting the vigour shown by their “brother.” This is a way in which the religious fanatics stamp their authority over the minority and dictate to them that if they want to live in the country they must bow to their gods or else they shall be killed. This has become a war cry for the hardcore extremists and has preceded numerous lynchings, the most recent case being the lynching of Aftab Alam in Badarpur, Noida. In this case, the victim was on the call with his son who was hearing that some people were threatening his father and asking him to say “Jai Shri Ram”. On suspecting foul play, he started recording the call. After a while, there was pin-drop silence and he went to the police station in Mayur Vihar, Phase 1. The Sub-Inspector present tracked the device and later found out that his father had died and tied to his car. The son, Sabir, continuously insisted the police recognize him as a hate crime as he had heard the perpetrators asking his father to chant Jai Shri Ram and he even had the incident on record, but

---

<sup>17</sup> Nazir Masoodi, Attacks on Kashmiris Have Undone Years of Hardwork, NDTV Convergence LTD., (Feb, 22, 2019, 6:10 PM IST), <https://www.ndtv.com/blog/attacks-on-kashmiris-after-pulwama-have-undone-years-of-hardwork-1997806>

they refused to entertain him and registered a case of Murder and Robbery<sup>18</sup>. Unfortunately, this is not the first case where this has happened and if we do not progress as a society, this certainly will not be the last.

An important fact that must be noted here is that mob lynching is not only based on religion but on also on age-old prejudices which have been gripping Indian societies for a long. For example that a poor woman who is wearing shabby clothes is more likely to be a child lifter, that an old baba who is carrying his 'jhola' roaming in streets must be a tantric of some kind, or a person suffering from a mental disorder is believed to be possessed by a ghost. Many cases have come out of semi-rural and rural areas where persons matching the above description have been mercilessly killed by a mob. As per the database of Indiaspend, 70 mob attacks took place based on rumours of child lifting from 2010-2018 and the daunting fact is that there was only one such reported case before 2014. 61 cases of mob attacks due to child lifting happened alone within the first 7 months of 2018. The report points out that from 1 January 2017 to July 5, 2018, 33 persons have been killed and 99 have been injured out of 69 reported cases. This signifies an emergence of a dangerous trend taking charge of a diverse society like ours.

### **JUDICIAL PRONOUNCEMENTS**

The judiciary has also played a major role in trying to protect the rights of its citizens. The Hon'ble Supreme Court and the High Courts of India in the plethora of judgements have described mob lynching as totally unacceptable and unbearable and have also called upon the government to ensure a proper mechanism to prevent the roots of mob violence to flourish. But, despite the continuous efforts of the apex court to ensure the safety of people, the current scenario surrounding mob lynching does not present a bright picture. The Hon'ble Court in Archbishop Raphael Cheenath v. State of Orissa<sup>19</sup>, which was one of the most diabolic act of communal violence in modern India, criticized the police investigation which could not secure a conviction for even 50% of the accused arrested for the violence. The apex court in the said case observed that the State Government shall do well to enquire into and find the causes for such

---

<sup>18</sup> Ismat ara, 'Say Jai Shri Ram', Killers of Muslim Man in NCR said, Police Deny Murder was a Hate Crime, THE WIRE, (Sep, 07, 2020), <https://thewire.in/communalism/jai-shri-ram-muslim-driver-lynched-death-uttar-pradesh>

<sup>19</sup> 2016 9 SCC 682

communal unrest and strengthen the fabric of the society. It further stated that strengthening of police infrastructure in the district would undoubtedly help in curbing any recurrence of such communal violence. The riots were led by Hindutva groups against the Christians and the tribals in the ghettos of Orissa and as many as 500 churches are reported to be demolished by the mob. The Hon'ble court also referred to the observation made in Ahmedabad St. Xavier's College Society v. State of Gujarat<sup>20</sup>: "The minorities are as many children of the soil as the majority and the approach has been to ensure that nothing should be done, as might deprive the minorities of a sense of belonging, of a feeling of security, of consciousness of equality and the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution. It can, indeed, be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression."

To curb the incidents of cow vigilantism and mob violence, the 3 judge bench of the Supreme Court in Tehseen Poonawalla v. Union of India<sup>21</sup>, passed a string of preventive, punitive and remedial measures to counter this menace. The apex court has objected sternly to the growing numbers of mob lynching. It has observed that: "There cannot be an investigation, trial and punishment of any nature on the streets. The process of adjudication takes place within the hallowed precincts of the courts of justice and not on the streets. No one has the right to become the guardian of law claiming that he has to protect the law by any means."

The author of the judgement, Justice Dipak Misra (C.J.), has not mince his words while lambasting the system of ochlocracy existent in the roots of society. The Hon'ble Chief Justice describes vigilantism of any kind as an antithesis to the hallow Constitution of India. This was a landmark judgement and was surmised as a watershed for changing the whole narrative of states towards the horrendous acts of mob lynching but in reality, as it goes, nothing much of substance has changed since the passing of this judgement. The judgement was also met with some harsh criticisms with some critics terming it as superficial and out of touch with reality<sup>22</sup>. The

---

<sup>20</sup> 1974 1 SCC 717

<sup>21</sup> 2018 6 SCC 72

<sup>22</sup> Priyadarshi Mukhopadhyay, The Epidemic of Mob Lynching in India: Analysing Tehseen S. Poonawalla v. Union of India, THE CRIMINAL BLOG NLUJ, (Feb, 11, 2020),

judgement in one of its guidelines provided for a quarterly meeting between the high officials of a state to critique upon the prevailing condition of vigilantism and increase the patrolling in sensitive areas but no meeting of such sort has been reported until now. Even if a meeting had taken place, it could only solidify the failure of law enforcement as the episodes of mob violence have shown no sign of stopping. The guidelines have also directed the state governments to enact a separate law on lynching and record it as a separate crime altogether but barring Rajasthan, Manipur and West Bengal, no other states have adhered to the guidelines of the Hon'ble court<sup>23</sup>.

### **CONCLUSION**

“When a mob lynches a person for the food that she or he eats, it is the Constitution which is lynched. When we deny human beings the power of love for reasons of religion or caste, it is the Constitution made to weep.”

-Hon'ble Mr. Justice D.Y. Chandrachud<sup>24</sup>

In conclusion, I would like to reiterate what Hon'ble Mr. Justice Dipak Misra penned down in his Tehseen Poonawalla Judgement<sup>25</sup> that “Crime knows no religion and neither the perpetrator nor the victim can be viewed through the lens of race, caste, class or religion. The State has a positive obligation to protect the fundamental rights and freedoms of all individuals irrespective of race, caste, class or religion. The State has the primary responsibility to foster a secular, pluralistic and multi- culturalistic social order to allow free play of ideas and beliefs and co-existence of mutually contradictory perspectives. Stifling free voices can never bode well for a true democracy. It is essential to build societies which embrace diversity in all spheres and rebuild the trust of the citizenry in the State machinery.” The intent of the judiciary is very much clear from the pronouncements but it seems like the state machinery is bereft of the will to do something in this regard. Mobocracy induced by intolerant youth being further misguided by a circulated rumour can trigger a collapse and a great country like ours can swirl into anarchy.

---

<https://criminallawstudiesnluj.wordpress.com/2020/02/11/the-epidemic-of-mob-lynching-in-india-analysing-tehseen-s-poonawalla-v-union-of-india/>

<sup>23</sup> Gayatri Korgaonkar, Three State Anti-Lynching Bills gather dust on President Kovind's table, SABRANG, (Nov, 05, 2019), <https://www.sabrangindia.in/article/three-state-anti-lynching-bills-gather-dust-president-kovinds-table>

<sup>24</sup> CJP Team, Justice Chandrachud on Why The Constitution Matters, CITIZENS FOR JUSTICE AND PEACE, (Feb, 13, 2019), <https://cjp.org.in/justice-chandrachud-on-why-the-constitution-matters/>

<sup>25</sup> 2018 6 SCC 72

Unfortunately, the present picture poses a grim view of the future, the government does not seem to be too keen to address the issue, the masse seems to be oblivious of this grave threat altogether, minorities are vociferously opposed in the streets, dissenters are put behind bars and the fourth pillar of our country, the media, have certainly lost its spine to stand up to the government. Concluding, I would like to quote Prof. Avijit Pathak for his insight on the social system. He opines that we as a society are decaying from inside and further states, “Indifference to human tragedy and political violence is the worst enemy of human civilization. Our crude ‘pragmatism’ has deprived us of even thinking of what the likes of Tagore and Gandhi used to strive for— education as the activation of the moral self, religiosity as love and compassion, and politics as anasakti yoga. Instead, our education will transform us into mere ‘employees’ or selfish careerists with all regressive ideas; we will continue to remain preoccupied with our survival strategies, and the politics of Hindu versus Muslim binary will excite us.”<sup>26</sup>



BRILLOPEDIA

---

<sup>26</sup> Avijit Pathak, Tales of Decadence, THE TRIBUNE TRUST, (Oct, 06, 2020, 06:33 AM IST), <https://www.tribuneindia.com/news/comment/tales-of-decadence-151539#top>