
THE CRIME OF MOB LYNCHING: MISDIAGNOSIS OF A CRIME AND SYSTEMATIC FAILURE OF ITS REDRESSAL

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The first issue from the above discussion clearly is with adopting a standard definition of “mob violence” or “mob lynching” - as there is no precise definition of either of these phrases. These terms do not have a presence under any of the Indian laws especially the penal law; nor is there any transnational legal policy practice that lends any definitional clarity to them.¹

In **Tehseen Poonawala v. Union of India**², the Supreme Court defined lynching in broad terms, as “targeted violence and commission of offences affecting the human body and against private and public property by mobs under the garb of self-assumed and self-appointed protectors of law.”³ Interestingly, this definition reflects a strong 'rule of law' strain in the judgment, where the Court came down heavily on mobs that “took law into their own hands.” This definition of lynching speaks to a certain motivation on part of the alleged perpetrators, which is often found in the American legal and legislative history of laws against lynching⁴. For example, in the famous Dyer anti-lynching bill, the failed legislation that aimed to make lynching a federal offence in 1922, the prohibited “mob or riotous assemblage” was defined as “an assemblage composed of three or more persons acting in concert for the purpose of depriving any person of his life without authority of law as a punishment for or to prevent the commission of some actual or supposed public offense.” Emphatically, NCRB has not adopted this definition for data collection. The potential ‘definition’ of “mob violence” is equally if not more vague. It is not clear how mob violence is actually

¹Republic World, "West Bengal Passes Prevention of Lynching Bill 2019 in Assembly," <https://www.republicworld.com/india-news/general-news/west-bengal-passes-prevention-of-lynching-bill-2019-in-assembly.html> (last visited Jan. 6, 2024).

²The Quint Lab, "Lynching in India," <https://www.thequint.com/quintlab/lynching-in-india/> (last visited Jan. 6, 2024).

³The Indian Express, "NCRB Plans to Create Database on Lynchings, Indian Mob Killings," <https://indianexpress.com/article/india/ncrb-plans-to-create-database-on-lynchings-indian-mob-killings-4742279/> (last visited Jan. 6, 2024).

⁴The Wire, "Mob & Cow Lynching: A Vigilante State of Mind," <https://thewire.in/communalism/mob-cow-lynching-vigilante> (last visited Jan. 6, 2024)

different from “rioting,” which is defined as violence by an unlawful assembly of five or more persons⁵.

The second issue with adopting these categories, in line with what is argued in the aforementioned discussion, is that these categories do not capture the precise nature of the problem. Mob lynching, as extrajudicial violence, does not capture seminal cases like Junaid's⁶, or numerous other cases where people were beaten up for skinning dead cattle. In none of these cases is there any criminality that is, even on the surface, sought to be prevented or punished. The category of mob violence is more evidently unhelpful. It appears to focus on the mode of violence and not the nature of motivation (that is why the authoress stresses the crime to be defined as hate crime).

The third issue incidental to second issue is the registering of the crime. Since **currently, there is no crime recording of “mob lynching” or “hate crime” itself, there is no reliable data to rely on to see the precise picture of this particular crime in the country except a few spurious media reports.** The problem of imprecision is magnified when placed in the context of the methodology that NCRB adopts in collecting its data. Firstly, NCRB routes its data through police personnel at the police station level. This is done through the data pro-formas that it circulates beforehand, followed by training sessions. This data flows up from the station level to the district, state and national levels, where it is verified and compiled. Secondly, NCRB primarily collects data based on First Information Reports (FIRs). Here, it follows the 'Principal Offence Rule' – police personnel record the crime under the most heinous offence or serious criminal provision as reflected in the FIR⁷.

Consequently, while collecting data based on FIRs reduces the police discretion in data recording, it intimately links data to ordinary policing. In other words, if the police in ordinary course is not filing FIRs or not filing them under certain criminal provisions, the same disparity will be reflected

⁵The Economic Times, "Junaid Lynching Case: SC Stays Trial, Seeks Centre's Reply on Plea for CBI Probe," <https://economictimes.indiatimes.com/news/politics-and-nation/junaid-lynching-case-sc-stays-trial-seeks-centres-reply-on-plea-for-cbi-probe/videoshow/63364638.cms> (last visited Jan. 6, 2024)

⁶The Economic Times, "Junaid Lynching Case: SC Stays Trial, Seeks Centre's Reply on Plea for CBI Probe," <https://economictimes.indiatimes.com/news/politics-and-nation/junaid-lynching-case-sc-stays-trial-seeks-centres-reply-on-plea-for-cbi-probe/videoshow/63364638.cms>

⁷Vipin Jain, "Hate Speech & Mob Lynching: A Study Of Its Relations, Impacts & Regulating Laws," Think India (Quarterly Journal), Teerthanker Mahaveer University.

in the data as well⁸. Interestingly, the converse of this also occurs and creates perverse incentives for the police. In India's public culture, higher crimes data is often perceived to reflect badly on the police. This is because in public discourse, higher crimes data is mistakenly interpreted to mean higher incidents of crimes – and hence faulty policing. Political pressures of maintaining an appearance of good policing often pushes the police to maintain low crimes numbers, and consequently also low number of recorded police cases⁹. In other words, the incentives of keeping crimes data low overflow into the police often refusing to record, investigate and prosecute actual cases. Thirdly, NCRB does collect data based on motivations. As mentioned above, NCRB records various motivations for murders and homicides.¹⁰ But these motivations are recorded by the police personnel themselves. While NCRB does claim to conduct training sessions, it is not clear to what extent these training sessions focus on definitions and the creation of standards across police stations¹¹.

Here the authoress would take a liberty to highlight how United Kingdom model has been effective to curb the menace of hate crimes including lynching. UK does not have separate hate crimes legislation, but has a cluster of penalty enhancing laws in case of bias motivation. For example, the Criminal Justice Act mandates enhanced punishments in the cases the criminal act was partly or wholly motivated by hostility towards victim's membership in specified 25 groups¹². This legislative infrastructure does not mandate collection of hate crimes data. This is done by the police force itself under a matrix of guidelines and procedures. Under these established practices, the police is required to record all “hate incidents”, whether or not they amount of an actual crime or whether or not there is evidence of bias motivation, that have been reported to it by the victims.

In England and Wales, the police force—specifically the various enforcement authorities under the criminal justice system like the Crown Prosecution Service (CPS), the National Offender

⁸Tata Institute of Social Sciences, "A Study on Non-Registration of Crimes: Problems & Solutions," accessed from <https://bprd.nic.in/WriteReadData/userfiles/file/201612200235022990797Report-Non-RegistrationofCrimesProblems&Solutions.pdf>.

⁹Human Rights Watch, "Broken System: Dysfunction, Abuse, and Impunity in Indian Police," <https://www.hrw.org/report/2009/08/04/broken-system/dysfunction-abuse-and-impunity-indian-police>

¹⁰M. Mohsin Alam Bhat, "How to Count Lynchings," Indian Express (July 27, 2018), <https://indianexpress.com/article/opinion/columns/mob-lynchingcases-in-india-vigilantism-incidents-supreme-court-narendra-modigovt-national-crime-records-bureau-5278269/>

¹¹Dr. M. Mohsin Alam Bhat, "The Case for Collecting Hate Crimes Data in India," Law & Policy Brief, http://www.jgls.edu.in/wp-content/uploads/2019/03/9th_issue_law_and_policy_brief_sep_2018.pdf

¹² *ibid*

Management Service and other agencies—agreed to a common definition of hate incidents and hate crimes in 2007. According to this definition, “*any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person as being motivated by prejudice or hate.*”¹³ Hence, the focus is on collecting data in a very broad way and not only data related to criminally actionable evidence. Police officers have been provided with criminal data manuals, are expected to flag the category of bias motivations (for example, race, religion, sexual orientation among others, and in total 27 some cases are provided a detailed data form).

The model adopted by the UK appears to be useful for India, since the latter does not have a specific hate crime legislation. Rather than pushing the police personnel to collect data based on their assessment of motivation, it is more appropriate to ask them to collect data along multiple categories like: hate incident (reported by victim or others), hate crime (that fits the police's assessment of motivation), type of bias motivation (caste, religion, region, language, sexual orientation, race, sex, ethnicity among others) and context.

The second model is to separate hate crimes monitoring altogether from the criminal justice system. The advantage of this model of separating crimes data collection from the other institutions of the criminal justice system are immense, most of all for the category of hate crimes. When data-collection mechanisms are contingent on the ordinary course of the criminal justice system, the irregularities, discrepancies and biases of the latter are bound to flow into the former. For example, since the police regularly refuse to register FIRs and women find it hard and are often reluctant to report cases, the NCRB data on crimes against women will remain in the realm of uncertainty. The same goes for all the other hate crimes, including those based on religion and caste. For this reason, many scholars have recommended either replacing the existing system or supplementing it with more rigorous data collection devices like victimisation survey.

Now coming to the only ray of hope that India has right now- Tehseen Poonawla v. Union of India judgement. This judgment lays down certain suggestions which should have eliminated or at least drastically reduced this crime. But the authoress would point out some of the findings of the Court which they have malfunctioned:

¹³ ibid

- It is critical to note that the judgment has three parts as guidelines, namely preventive, remedial and punitive. Much emphasis was given on the preventive part in order to paralyze the commission of this crime in its initial stages. The court suggested that the formation of a special task force to procure intelligence reports on subjects likely to commit or incite such offence. The Director-General of Police and Secretary of Home Department of the States were directed to take regular meetings at least once a quarter with all nodal officers and State Police Intelligence Heads. The question arises whether such meetings have been transformed into reality and what are their outcomes? If the answer is optimistic, then it casts severe doubt on their efficacy as crime rates relating to mob lynching are on the rise.
- One of the effective methods of controlling such crime was suggested by Senior Counsel Ms. Indira Jaising. She proposed for police patrol in sensitive areas. No such initiatives have been reported in the likes such as incidents being halted by patrolling police cars. Rather in several instances, the family members of the victim and witnesses of the crime have reported that delay in arrival of the police was a major cause for aggravation of the situation leading to the victim's death and effective deployment of police personnel could have prevented the crime from taking place.
- The Court also recommended the Parliament to create a specialized offence for mob lynching and allocate adequate punishment for the same. Despite the Court's inclination for a special law, the Centre even after two years, which is responsible for legislation in Parliament did not implement the Court's recommendation. The Centre constituted a group of Ministers (GoM) for the purpose of considering the nature of legislation to be brought in. The idea of the creation of a special law seems far from reality in light of such slothful developments.
- While the Supreme Court cited various insightful literature of American Civil Rights movement proponent Martin Luther King Jr. and American Jurisprudence on Liberty etc., it failed to provide a concrete and realistic definition of mob lynching in its judgment which has left the parliament open to initiate an endless debate as to what constitutes this crime and the methodology and quantum of punishment.

- In the absence of this much-needed definition the crime of mob lynching is being dealt with a general manner since it is partly covered under Section 302 (murder), 307 (attempt to murder), 323 (causing voluntary hurt), 147 (rioting), 148 (rioting armed with deadly weapons) and 149 (unlawful assembly) of the Indian Penal Code(IPC), 1860. This has utterly violated the idea of a separate crime and has decimated the required attention with regard to the sensitivity of this crime.
- The Hon'ble Supreme Court's guidelines have also been neglected in the context of the failure of the Centre and state governments to follow the direction to broadcast on radio and television that lynching and mob violence of any kind would attract severe consequences under the law.
- The concluding recommendation of the case was a creation of a separate offence for lynching, however, as of now NCRB (National Crime Records Bureau) neither recognizes 'Mob Lynching' as a separate branch of crime nor maintains separate statistics on it.

While the landmark case speculated about compensatory scheme and free legal aid for the victims while directing that the victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987. In reality, Pehlu Khan's (victim of Mob Lynching killed in Alwar(Rajasthan), 2017) family is barely surviving due to the financial drainage for their want of justice.¹⁴

The SC cited the methodology in which the American Courts dealt with mob lynching:

"The American Courts deplored this menace and dealt it with iron hands so as to eradicate the same. Ex parte Rigsgins¹⁵ was a case involving the lynching of a Negro citizen who had been imprisoned on the charge of murder. While he was imprisoned in jail, the mob removed him and

¹⁴Hindustan Times, '2017 Alwar lynching: Victim Pehlu Khan's sons charged for smuggling cattle', Hindustan Times (15 April 2017), <https://www.hindustantimes.com/india-news/2017-alwar-lynching-victim-pehlu-khan-sons-charged-for-smuggling-cattle/story-VmtJolsuOOhU7CgIIgeibJ.html>.

¹⁵National Human Rights Commission, 'NHRC Notice to Government of Uttar Pradesh over Reported Mob Lynching of Man After', NHRC Press Release (1 January 2023), <https://nhrc.nic.in/media/press-release/nhrc%C2%A0notice-government-uttar-pradesh-over-reported-mob-lynching-man-after>.

lynched him by hanging.” However, it is both ironic and unfortunate as a similar incident took place in India which solidifies the failure of the law enforcement departments and challenges the very sanctity of this judgment. On 26th November 2018 the National Human Rights Commission (NHRC) took *suo moto* cognizance of media reports of 28 years old Rajendra who was pulled out of a police van and beaten to death by a mob in the presence of Constables in Shamli, Uttar Pradesh.¹⁶

The sanctity of the entire judgment crumbled when a man named Rakbar Khan was brutally lynched even before the ink of this judgment had dried. It has been repeatedly alleged that the slothful actions of the police and their eventual failure in getting the victim his required medical attention has played a pivotal role in Khan’s death. This case amply voices the judgement’s two-pronged approach to punish not only the perpetrator but also the police, for if they had acted on time the victim’s life could have been saved and in the contrary equal liability must be placed on them¹⁷.

After a profusion of petitions on July 26, 2019, the bench comprising the Former Chief Justice of India, Ranjan Gogoi, and Justice Deepak Gupta sought response from the Centre and 10 states on a petition alleging that they had not implemented the directions issued by the Court in that judgment.¹⁸

Unfortunately, till now it has been observed that mob lynching is a crime that is immune to our justice system as well as the law enforcement departments. It has also received attention in the International forum which has not only humiliated the law enforcement departments but also the justice system of India. Taking cognizance of a report filed with OHCHR (Office of the United Nations High Commissioner for Human Rights) on the mob lynching of Tabrez Ansari, United Nations has asked for the details of the case in order to initiate an investigation¹⁹. This issue was also heard at the United Nations (UN)’s Security Council meeting held at the UN headquarters in

¹⁶ibid

¹⁷ibid

¹⁸ ibid

¹⁹‘UN Asks for Case Details of Tabrez Ansari's Mob Lynching', Clarion India (6 July 2022), <https://clarionindia.net/un-asks-for-case-details-of-tabrez-ansaris-mob-lynching/>

New York on July 1, 2019, during the 17th Meeting of the 41st Regular Session that was held before the UN's Human Rights Council.²⁰

The brutal incident of mob lynching violates the rule of law and totally diminishes fundamental jurisprudential concepts like 'fair trial' and 'innocent until proven guilty'. As the Apex Court observed, bystander apathy and numbness of the mute spectators of the crime scene coupled with inefficient legislation and even woeful implementation facilitates this epidemic to manifest the entire country in a state of anarchy and lawlessness. The sole solution to this inhumane epidemic is to adopt a zero-tolerance approach towards this crime coupled with rapid legislation and prompt implementation²¹.

The objective of the judgment to prevent and penalize the culprits of mob lynching and arresting this ghastly trend will not be achieved with the above mentioned lapses and lacunae in the judgment. They are too fundamental to be ignored. Mob lynching with the monstrous proportions is demonizing Muslims and Dalits, tearing the social fabric of the country²². Not only does it weaken the social harmony of the country but also undermine democratic and Constitutional institutions which safeguard the life and liberties of the citizens and prevent the spiraling decay of the society to turn into a barbarian one. Mob lynching is not merely a problem of law and order but a heinous political tool to exclude and marginalize the vulnerable communities. As rightly pointed out by Irfan Engineer, *"Mob lynching seems to be continuation of pattern of low intensity communal violence. The innocuous looking isolated incidents of mob lynching are in fact new pattern of low intensity communal violence. The objectives of sustained communal polarization can now be achieved by this method"*²³. This politics of hatred must be countered and one hopes that this judgment of the Supreme Court will prove instrumental to stop this insanity and quest for blood. In order to end this article, one can return to this stark and hard hitting poem by Esther Popel which describes the similar bloodthirsty politics in America in the time of apartheid and

²⁰ <https://www.newsclick.in/UN-human-right-mob-lynching-hate-crimes-muslims-dalits-india>

²¹ *ibid*

²² 'NCRB Plans to Create Database on Lynchings, Indian Mob Killings', The Indian Express (15 July 2022), <https://indianexpress.com/article/india/ncrb-plans-to-create-database-on-lynchings-indian-mob-killings-4742279/>.

²³ *ibid*

racial segregation and morbidity and dehumanization that accompanied it and what may be the fate facing Indian society.